

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND

**FRESNO POLICE OFFICERS ASSOCIATION
(Non-Supervisory Police-Unit 4)**

**FISCAL YEARS
2009 – 2012
(Three Year Extension)**

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SIDE LETTER AGREEMENTS INCORPORATED INTO MOU:

- 1. Airport Task Force Assignment dated February 23, 2007.**
- 2. Premium Pay for Performing Chief Police Pilot Duties dated May 15, 2007.**
- 3. Association Business dated September 25, 2007.**
- 4. Filling Special Assignments dated October 12, 2007.**
- 5. Proximity Detail dated November 2, 2007.**
- 6. FY09 Compensation and Benefits Reopener w/one year MOU Extension dated July 1, 2008.**
- 7. Retirement Enhancement Reopener – HRA/Sick Leave Incentive/Seniority dated November 4, 2008.**

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LEGEND

Officer(s) = member(s) where applicable

* * * = old language deleted

[\$ deleted] = section/subsection deleted

[\$§ deleted] = two or more
sections/subsections deleted

bold type = new language

CHAPTER 1

PREAMBLE

1.1 PURPOSE

This Memorandum of Understanding, hereinafter MOU, entered into between the City of Fresno, hereinafter referred to as the City, and the Fresno Police Officers Association, hereinafter referred to as the Association, has as its purpose: to establish wages, hours, and other terms and conditions of employment for members of this Unit. **This MOU is extended for a three year period of time from June 30, 2009 to June 30, 2012. Effective July 1, 2009, other than the modifications set forth herein, the parties agree that until this MOU terminates on June 30, 2012, all economic benefits currently afforded to affected members shall remain intact without modification unless otherwise agreed to in writing by the parties.**

1.1.01 Effective July 1, 2009 through June 30, 2011, the parties agree there will be no demotions (excluding demotions for disciplinary cause) of any member of this Unit for purposes of economic or reorganizational purposes or enforcement of involuntary furloughs.

1.2 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 Article 3 of Chapter 3 * * * , Sections 3-101 * * * , 3-201 * * * , 3-301 * * * , and 3-603 * * * of the Fresno Municipal Code, (hereinafter FMC), shall govern the construction, meaning, and application of words and phrases used 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.

1.3 GOVERNING LAWS

The employer-employee relationship between the City and its employees and the City and the Association is governed by Chapter 10 of Division 4 of Title I 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), the Public Safety Officers Procedural Bill of Rights Act (POBR), as may be amended from time to time, and Article 6 * * * of Chapter 3 * * * of the FMC. In the event of any conflict between said laws and this MOU, or in the event of conflicts in interpretation, said laws shall govern.

CHAPTER 2

EMPLOYEE RIGHTS

2.1 GENERAL - EMPLOYEE RIGHTS

Except as otherwise provided in this MOU, the rights of employees include those 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 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."

2.2 EMPLOYEE RESPONSIBILITIES

All employees in the Non-Supervisory Police Unit, hereinafter Unit, acknowledge that the City shall consider the positions and proposals of the Association as the meet and confer positions and proposals of all employees, individually and collectively, in said Unit.

2.3 NONDISCRIMINATION

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

2.3.01 A member seeking to utilize the grievance procedure, claiming a violation of Section 2.3, shall make an election of remedies between arbitration, and any other remedy available at law, through local, state, or federal law. The election of remedy shall take place at the step in the grievance procedure leading to final and binding arbitration.

2.3.02 When a member seeks to go to arbitration claiming a violation of Section 2.3, the member, the City, and the Association shall enter into an agreement which provides that in exchange for the member's commitment to voluntarily determine the matter through arbitration, the member agrees to waive the member's right to pursue any other remedy otherwise available through local, state, or federal law. Said agreement shall comply with all statutory and judicial requirements, and contain a provision that the member has been advised of the member's right to consult an attorney and/or local, state, or federal anti-discrimination agency regarding the member's discrimination claim and that the member's consent to the agreement is voluntary and knowing.

CHAPTER 3

CITY RIGHTS

3.1 GENERAL

Except as otherwise provided in this MOU, the rights of the City include those rights enumerated in FMC Section **3-605 * * ***, as the same may be amended from time to time.

3.2 SPECIFIC

3.2.01 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.”

- 3.2.02** The rights of the City include the determination of staffing levels, including but not limited to, staffing by shift and class. Minimum staffing levels, by shift, area, and day of the week, shall be established by appropriate departmental order.
- 3.2.03** 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 3.2.01 are retained by and reserved to the City.
- 3.2.04** 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.
- 3.2.05** This MOU is not intended to restrict consultation in good faith with the Association regarding matters within the right of the City to determine.

CHAPTER 4

RECOGNITION

4.1 ASSOCIATION RECOGNITION

The City acknowledges the Association as the recognized employee organization representing the Unit, and shall meet and confer in good faith promptly upon request by the Association and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on a successor MOU at least one (1) week prior to the last regular City Council meeting at which the City budget must be adopted for the ensuing fiscal year in order to meet the June 30 deadline specified in the City Charter. 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 impasse, the City shall accept meet and confer process proposals from the Association as early as February 1, * * * **2012**, and will be prepared to commence the actual meet and confer process no later than March 1, * * * **2012**.

4.2 RECOGNITION OF UNIT DESCRIPTION

The Non-Supervisory Police Unit consists of all employees holding a permanent position, as defined in FMC Section **3-202** (p)(4) * * *, in one of the following classes (hereinafter collectively referred to as member unless otherwise specified), as such Unit may be modified from time to time pursuant to the provisions of the FMC:

Police Officer Recruit
Police Officer
Police Specialist
Police Sergeant

4.3 CITY RECOGNITION

The Association recognizes the City Manager of the City, or such other person as may be designated in writing, as the designated representative of the City pursuant to FMC Section **3-615** * * *, 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, opinions, and proposals, and to endeavor to reach agreement on a successor MOU at least one (1) week prior to the last regular City Council meeting at which the City budget must be adopted for the ensuing fiscal year in order to meet the June 30 deadline specified in the City Charter.

4.4 RECOGNITION OF MUTUAL OBLIGATION

The Association 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.

4.5 STRIKES

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

4.6 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 the completion of the impasse procedures, including, but not limited to, mediation and fact finding as outlined in the FMC.

CHAPTER 5

SCOPE OF REPRESENTATION

5.1 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** * * *, are excluded from the scope of representation.

The Association is the exclusive representative of all employees holding a permanent position (includes probationary employees) within those classes in the Unit, as defined in FMC **3-202** (p) (4) * * *.

5.2 REPRESENTATION

The City will not interfere with, or discriminate in any way against, any employee by reason of his or her membership in the Association.

The Association agrees to represent Unit members in a manner consistent with the requirements of the Meyers-Milias-Brown Act, POBR, and applicable state and federal regulations.

CHAPTER 6

DUES DEDUCTION

6.1 DUES CHECKOFF

Rules governing dues check-off are set forth in the FMC Section **3-620 * * ***.

- 6.1.01** The Association member's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When a member is in a non-pay status for an entire pay period, no dues deduction shall be made from the future earnings to cover that pay period, nor will the member be required to deposit the amount which would have been deducted if the member had been in a pay status during the pay 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.
- 6.1.02** The City shall deduct the dues or benefit premiums, or both, upon proper authorization by Association members in the Unit.
- 6.1.03** 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.
- 6.1.04** 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.
- 6.1.05** If a member in the Unit desires to revoke prior dues deduction authorization card, a dues deduction revocation shall be made upon a Dues Deduction Revocation card.
- 6.1.06** Upon written authorization by a retired member of the Association, the City shall deduct credit union payments and Association dues monthly from the retirement check of such retired member and forward same to the credit union or Association as designated in such authorization.
- 6.1.07** Dues Deduction Authorization and Revocation cards are available at the Finance Department, Payroll Section, and Operations Division of the Personnel Services Department.

6.2 DUES DEDUCTION CHECK

- 6.2.01 The dues deduction check covering all such deductions shall be transmitted to the Fresno Police Officers Association.
- 6.2.02 The dues deduction check shall be made in favor of the Fresno Police Officers Association.
- 6.2.03 A dues deduction check will be transmitted at least monthly.

6.3 ASSOCIATION BUSINESS

- 6.3.01 Association members shall have their monthly vacation leave accrual levels (denoted in Section 7.12.05(1), vacation leave), reduced by .583333 hours per month, which shall be placed in a time bank and administered by the department for Association business use. Members designated by the Association may, with the approval of the department, attend to direct Association business, including such activities as attendance at Association membership and Board meetings, PORAC and other similar conferences, and direct involvement in charitable Association activities. Time banked under this provision may also be designated by the Association to cover members who AWS for designated Association members who are attending to Association business. The department is not required to grant time off for Association business if it will require filling the position on an overtime basis.

(Incorporated from Side Letter Agreement dated September 25, 2007):

- 6.3.02 The Association President **and First Vice President** may use the time banked under this provision for Association business to a maximum of 40 hours per week **each**. In the event the President **or First Vice President** of the Association is required by the FPOA Board to commit additional time beyond 40 hours per week to perform his/her duties as President, he/she shall be permitted to draw additional hours up to an amount not to exceed 40 hours per calendar month **each**. Any Association leave hours utilized by the President **or First Vice President** in excess of 40 hours per week shall be transferred to the President's **or First Vice President's** compensatory or holiday time bank. In the event of an emergency requiring significant extraordinary deployment of department personnel, the Association President **and/or First Vice President** may be required to return to regular duty for a period not to exceed thirty (30) consecutive days. An Association President **and/or First Vice President** who leaves office shall be

returned to the previously held assignment, or other assignment as mutually agreed to.

6.3.03 Any time spent by the Association President, **First Vice President** and by members designated by the Association to be on such business, shall be deducted from the Association's time banked balance. It is further agreed by the parties that once accrued vacation leave is donated to the Association, the City no longer has any obligation to compensate, either in cash or in equivalent time off, such members.

CHAPTER 7

COMPENSATION AND BENEFITS

7.1 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.

7.2 SALARIES AND PENSION CONTRIBUTION

7.2.01 **[§ deleted]** Step Increases (FY09) - The classes of Police Officers, Specialists and Police Sergeants agree to defer until July 1, 2010, the two percent (2%) salary increase previously scheduled to be received on June 30, 2009.

7.2.02 **[§ § deleted]**

(1) Retirement/DROP Between 6/30/09 and 7/1/10 - Effective June 30, 2009, the deferred two percent (2%) salary increase shall be included in any retirement benefit or DROP calculation pursuant to the applicable FMC sections for members who separate from City service by service retirement or by disability retirement, or enter DROP between June 30, 2009 and July 1, 2010.

(2) FY09-DROP Members and Retirees - Effective June 30, 2009, adjustments to the monthly amount deposited allowances for DROP members and monthly retirement benefit allowances for retirees shall include the two percent (2%) deferred salary increase from Section 7.2.01 and be calculated pursuant to FMC Sections 3-301 and 3-302.

7.2.03 **[§ § deleted]**

Step Increase (FY11)

(1) Effective July 1, 2010, salaries for the classes of Police Officers, Specialists and Police Sergeants shall be increased by two percent (2%) as reflected on Exhibit I, Table II.

Consistent with Section 7.2.02(2) above, DROP members and retirees received an increase in their monthly DROP amount deposited or retirement benefit allowances related to the two percent (2%) deferred base salary increase effective June 30, 2009. Therefore, DROP members and retirees shall not have their monthly DROP amount deposited or retirement benefit allowances increased by the July 1, 2010, two percent (2%) base salary increase as would have otherwise been calculated pursuant to FMC Sections 3-3-1 and 3-302.

- (2) Effective January 1, 2011, salaries for the classes of Police Officers, Specialists and Police Sergeants shall be increased by one percent (1%) as reflected on Exhibit I, Table III.

7.2.04 [§ § deleted]

Step Increase (FY12)

- (1) Effective July 1, 2011, salaries for the classes of Police Officers, Specialists and Police Sergeants shall be increased by two percent (2%) as reflected on Exhibit I, Table IV.
- (2) Effective January 1, 2012, salaries for the classes of Police Officers, Specialists and Police Sergeants shall be increased by one percent (1%) as reflected on Exhibit I, Table V.

[§ § deleted]

7.2.05 RETIREMENT CALCULATION

Effective July 1, 2011, a Tier 1 member who is demoted for economic or reorganization purposes and who separates from City Service by service retirement or disability retirement without entering into DROP shall have their retirement benefit calculated using the member's highest average monthly compensation earnable by the member during any thirty-six (36) consecutive month period of service instead of the average monthly compensation earnable by the member during the last three (3) years of employment with the City of Fresno Police Department.

7.2.06 [§ § deleted]

7.2.07 [§ deleted]

7.2.08 [§ deleted]

7.2.09 [§ deleted]

7.2.10 Employees hired into classes which have step increases will move from Step "A" to Step "B" on the anniversary date which is twelve (12) calendar months from the date the employee was permanently appointed to the current class.

7.2.11 Upon successful completion of * * * **one (1) year** of service as a Police Officer Recruit, Recruits shall be appointed as a Police Officer using the rules applicable to flexible staffing, and shall be on probation for * * * **six (6) months** as a Police Officer. **All other Police Officer hires shall serve a one (1) year probationary period.**

7.2.12 A Police Officer and/or Police Specialist assigned to be an Acting Sergeant under the provisions of FMC Section **3-260** * * *, shall be paid for such assignment at whatever step is closest to, but not less than, the Officer's regular base salary. In no case shall an Officer be paid at a rate higher than the highest Step for Sergeant. Acting Sergeants shall continue to receive PTO premium pay.

7.2.13 **Effective July 1, 2009, when a Police Officer or Police Specialist is promoted to Police Sergeant, the promoted Officer shall be placed in Step D * * * of the new salary range, or the step which provides at least three and one-half percent (3 ½%) above base pay, whichever is greater. Officers promoted to Sergeant on or after November 1, 2007, and prior to July 1, 2009, will retroactively be placed at Step D, however, will maintain their current anniversary date for step advancement.**

7.3 OVERTIME AND COMPENSATORY TIME OFF (CTO)

7.3.01 The work day for members shall be eight (8) or ten (10) consecutive hours **(or the designated twelve (12) hour work shift for Proximity Detail)**. Pursuant to Section 7(k) of the FLSA, the City has established a twenty-eight (28) day work period for law enforcement personnel. However, except as may be otherwise provided in this MOU, any time worked in excess of the eight (8), ten (10) **or a twelve (12)** hour day, or in excess of the forty (40) hour work week (or the designated thirty [30] hour/fifty [50] hour work schedule for Canine Officers and Officers

assigned to patrol matrix and DCST units **or the designated thirty-six (36), forty (40) or forty-four (44) hour work schedule for Officers assigned to Proximity Detail**), including mandatory training whether as a student/instructor, shall be compensated as overtime.

- 7.3.02** When a member is in transit outside the City to attend training, the travel time will be compensated at the member's base/straight time rate of pay.
- 7.3.03** Overtime, whether in cash or CTO, shall be at one and one-half (1 ½) times the base rate of pay.
- 7.3.04** Members on vacation leave may be permitted to work overtime by notifying the department of their desire to work.
- 7.3.05** Call back shall be paid at a minimum of three (3) hours at the rate of time and one-half (1 ½). Any time worked prior to the beginning of a shift or immediately following a shift shall not be considered as call back and shall be compensated at the applicable hourly rate.
- 7.3.06** Contact with a member by telephone, at any time other than during the member's regular shift, for the purpose of obtaining additional information or clarifying work performed, shall be compensated at the applicable hourly rate, to the nearest 1/10th of an hour, but in no event shall the member be paid for such phone contact of less than six (6) minutes.
- 7.3.07** A member who has worked more than eight (8) hours or ten (10) hours on any one work day shall not be involuntarily required to adjust a subsequent shift or work day in that same work week to avoid the payment of overtime. The department is under no obligation to grant CTO or vacation on the subsequent day.
- 7.3.08** Members may elect to accrue CTO in lieu of cash payment for overtime hours worked. CTO is accumulated at the applicable straight/base time, time and one-half, or double time rate for the time worked. CTO is to be used for time off, and is subject to approval in the same manner as vacation. In the event the department is unable to approve a CTO time off request, the department shall compensate the member in cash at the applicable straight/base time rate of pay for the amount of CTO time off the member requested but was not approved.

- (1) * * * **Members may accrue a CTO balance not to exceed 120 hours, except as otherwise provided herein. Members who**

have reached the maximum accrual (120 hours) shall be given cash payment for additional overtime hours worked until such balance has been reduced below the maximum allowable amount (120 hours).

- (2) Members may request payment for any CTO leave balance.
- (3) The parties will continue to meet and confer concerning the manner in which CTO can be used. However, there shall be no change to this subsection without mutual agreement of the parties.

7.4 PREMIUM PAY

Premium pays provided in Sections 7.4.02, 7.4.03 and 7.4.05 shall not be stacked. Monthly rates of premium pay will be paid on a biweekly basis.

7.4.01 Police Specialist - Any Officer assigned as a Police Specialist prior to May 31, 1988 shall remain a Police Specialist thereafter during that Officer's career, until the Officer retires, resigns, voluntarily demotes, is promoted, or is involuntarily removed.

7.4.02 Specialized Assignments - Employees occupying the Police Officer class, the terminal class of Police Specialist, and Police Sergeant in assignments which require specialized tactical equipment and/or specialized tactical training, and flexing of work hours without notice, as determined solely by the Chief of Police or designee, shall receive premium pay of \$275 per month above the member's base rate of pay, with the exception of Pilots and Flight Instructors assigned to Skywatch who shall receive the premium pay amounts as set forth below. This premium pay is compensable for retirement purposes. The list of units currently determined by the Chief of Police or designee to qualify as such an assignment are:

- | | |
|-----------------------------------|--|
| • HEAT | • Skywatch |
| • MAGEC | • Street Violence Bureau (SVB) |
| • Mounted Patrol | • Tactical Teams |
| • Parole Apprehension Team (PAT) | • District Crime Suppression Team (DCST) |
| • Neighborhood Traffic Unit (NTU) | • Vice/Intelligence |

The Chief of Police or designee shall provide in writing to the Association any additions or deletions to this list.

- (1) Employees occupying the Police Officer class or Police Sergeant class assigned to Skywatch who receive and maintain a Commercial Pilot License issued by the Federal Aviation Administration shall receive premium pay of \$500 per month above the employee's base rate of pay.
- (2) Employees occupying the Police Officer class or Police Sergeant class assigned to Skywatch who receive and maintain certification as a Flight Instructor issued by the Federal Aviation Administration shall receive premium pay of \$750 per month above the employee's base rate of pay.

(Incorporated from Side Letter Agreement dated May 15, 2007):

- (3) **Employees occupying the Police Officer class and who are assigned the duties of a Chief Police Pilot in Skywatch Unit shall receive a premium pay of twenty and one half percent (20.5%) above the Officer's base rate of pay. While assigned the duties of a Chief Police Pilot, a Police Officer will not be entitled to receive the \$500 and \$750 premiums under subsections (1) and (2), above. This premium is compensable for retirement purposes.**
- (4) **Any Officer assigned to the Unit to perform the duties of a Chief Police Pilot shall retain permanent status as a Police Officer. The above premium pay received by an Officer assigned to the Skywatch Unit will be terminated upon transfer out of the Unit.**
- (5) **Any Officer who subsequently wishes to be removed from the Skywatch Unit while performing the duties of a Chief Police Pilot shall not be allowed to laterally transfer to another supervisory position or to a different special unit until meeting all standard procedures set forth in Section 7.15 of this MOU.**
- (6) **Any Officer assigned to the Skywatch Unit to perform the duties of a Chief Police Pilot remains subject to all the terms and conditions of this MOU, except as stated above.**

7.4.03 Patrol Training Officer/Specialist/PTO Coordinator - Members occupying the classes of Police Officer and Police Specialist assigned full-time Patrol Training Officer (PTO) and full-time PTO Coordinator

functions will receive \$500 per month in addition to their base rate of pay. This premium pay is compensable for retirement purposes. Those assigned to temporary Patrol Training Officer duties will be compensated at the monthly premium pay, prorated for each full work day they are assigned to train any department member. This premium pay is compensable for retirement purposes.

- 7.4.04** Bomb Squad - Members who are members of the Bomb Squad shall receive double their regular straight time rate for that time spent (from call to completion) in dealing with explosives. Said double time shall be the total compensation for such time spent, whether on regular duty time or when called from off duty.
- 7.4.05** Life Insurance - The City will provide \$250,000 in life insurance/death benefit coverage to members assigned to bomb squad, helicopter pilot, airplane pilot, or helicopter observer duties.
- 7.4.06** Special Duty Pay - Members occupying the classes of Sergeant, Police Officer, and Police Specialist assigned full-time to the Police Training Unit will receive special duty pay of \$275 per month in addition to their base rate of pay, effective July 1, 2006. Special duty pay is compensable for retirement purposes. Sergeants and Police Officers assigned to the Training Unit receiving special pay may be assigned flexible hours of work to meet the needs of the department with forty-eight (48) hours notice. Adjustments pursuant to this section may last no longer than seven (7) consecutive calendar days, nor occur more than once during any thirty (30) day period. The intent of special duty pay is to maintain parity at the same rate as specialized assignment pay as indicated in 7.4.02.
- 7.4.07** Night Shift - Officers not on probation and any Sergeants who are regularly assigned/scheduled to work a "night shift" between the hours of 5:00 p.m. and 8:00 a.m., shall receive night shift premium pay in addition to their base rate of pay. If one-half (½) or more of an officer not on probation and Sergeants regularly scheduled shift hours fall between the hours of 5:00 p.m. and midnight, the night shift premium pay will be \$160 per month. If one-half (½) or more of an officer not on probation and Sergeants regularly scheduled shift hours fall between the hours of midnight and 8:00 a.m., the night shift premium pay will be \$240 per month. This premium pay shall not apply to members receiving premium pay pursuant to Sections 7.4.02, 7.4.02(1), and 7.4.02(2), above. **This premium is compensable for retirement purposes.**

7.4.08 Motorcycle Duty Hazard Pay:

Members assigned to the Traffic Bureau whose primary duties involve the riding of a police motorcycle during the course of their employment shall receive a monthly motorcycle duty hazard pay added to their base salary in the amount of \$275 per month. This shall be over and above any other premium pay received and shall be compensable for retirement purposes.

7.4.09 Bilingual Certification Program - The bilingual certification program consists of a City administered examination process whereby members may apply for a 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 City Fire and Police Retirement System.

- (1) A Bilingual certification examination will be conducted in December of each year. During the examination noticing period, examination applications will be available at the Personnel Services Department, Operations Division and City department personnel units.

In order to qualify for the December examination, the application must be received by the Personnel Services Department during the month of November, but no later than the last regular business day of November.

Bilingual examination application deadlines are not appealable or grievable.

- (2) Bilingual certification examinations are conducted for Cambodian, Hmong, Laotian, Sign, Spanish, Armenian and Vietnamese languages.
- (3) The bilingual premium pay rate for certified permanent members is one-hundred dollars (\$100) per month, regardless of how many languages for which a member is certified.

Certified members 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 member's supervisor.

Certified members shall not refuse to interpret/translate while on paid status. Refusal shall result in appropriate disciplinary action. Certified members 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.

Except in the event of an emergency, bilingual members who are not certified shall not be required to interpret/translate.

7.4.10 Education Incentive Plan (EIP) - EIP will continue to apply solely to those members listed on MOU Exhibit II, which may be amended from time to time as a result of promotion, retirement, resignation or termination, provided the member meets the existing eligibility requirements enumerated below.

(1) EIP Premium Pay for Degrees Awarded:

Bachelors - each member who has been awarded a Bachelors degree, in a field approved by the Chief of Police or designee and the Chief Administrative Officer, from an accredited institution of higher learning shall be paid three percent (3%) above the member's base rate of pay.

Masters or Doctorate - each member who has been awarded a Masters or Doctorate degree, in a field approved by the Chief of Police or designee and the Chief Administrative Officer, from an accredited institution of higher learning shall be paid five percent (5%) above the member's base rate of pay.

(2) EIP Premium Pay for Degrees Already Held:

To receive pay for degrees already held, a member listed on MOU Exhibit II must enroll in an accredited college or university, and satisfactorily complete an additional 12 semester units in accordance with the requirements detailed below. After completion of these requirements, the amount of EIP premium pay for the applicable degree already held shall be permanent (i.e., hard-coded), and be added to the member's regular paycheck in accordance with subsection 7.4.10 (1) above.

Eligible members who satisfactorily complete three (3) semester units of graduate or undergraduate level courses per semester from an accredited college or university, in a field approved by the Chief of Police or designee, shall be paid an additional two percent (2%) above the member's base rate of pay. Courses to which the City sends a member on City time, and/or at City expense, shall not qualify nor shall classes taken on "pass-fail", life experience, or non-alphabetic grading system qualify, unless expressly approved prior to commencement of the course. Compensation shall be in a lump sum at completion of the semester's course work.

A member shall be considered to have satisfactorily completed a course upon receipt of a "C" grade for each unit completed prior to receipt of a Bachelors degree, and at least a "B" grade for each unit completed after receipt of a Bachelors degree.

Upon verification of satisfactory completion of courses taken, a member shall be eligible to receive the amount indicated in this Subsection 7.4.10 (2) for a period equivalent to one (1) semester. A semester shall be considered to be four (4) calendar months or eight consecutive biweekly pay periods.

- (3) Any member who is receiving an education bonus pursuant to the previously existing MOU effective July 1, 1984, shall not have that bonus reduced as a result of participation in the EIP provided by this MOU. Any premium pay for further attendance at school, as provided herein, shall be in addition to any bonus pay already received. Any EIP premium pay applied for degrees held pursuant to Subsections 7.04.09(1) and 7.04.09 (2) above shall be in lieu of any education bonus pay previously received.

7.4.11 Post Certificate Pay - All compensation earned by a member pursuant to this Section, 7.4.11, shall be in addition to any other incentive and/or premium pays received and shall be compensable for retirement purposes.

- (1) Members who have satisfactorily attained the intermediate P.O.S.T. Certificate shall be compensated at a rate of two percent (2%) above the member's base rate of pay.
- (2) Members who have satisfactorily attained the advanced P.O.S.T. Certificate shall be compensated at a rate of four percent (4%) above the member's base rate of pay.

- (3) Members who have satisfactorily attained the intermediate P.O.S.T. Certificate shall be compensated at a rate of four percent (4%) above the member's base rate of pay.
- (4) Members who have satisfactorily attained the advanced P.O.S.T. Certificate shall be compensated at a rate of eight percent (8%) above the member's base rate of pay.

7.5 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 members 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. Members 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.

7.6 SERVICE UNIFORM ALLOWANCE

7.6.01 * * * **Effective July 1, 2009, members** shall receive an **additional \$110** * * * for a total of * * * **\$1,200** * * *, as a service uniform purchase and maintenance allowance, prorated and paid in semiannual installments on the last pay date in December and June. The service uniform allowance provided pursuant to this section shall be considered as compensation for purposes of calculating * * * pension benefits **for a member**.

7.6.02 Members assigned to Motorcycle duty shall be provided, at City expense, the safety equipment described in Government Code Section 50081.1 (i.e., boots, riding breeches, leather jacket, leather gloves, safety helmet, and protective glasses).

7.7 WORKERS' COMPENSATION

- 7.7.01** Notwithstanding the provisions of FMC Section **3-118** * * *, a member in this Unit who suffers an injury or illness in the course and scope of City employment shall receive eighty-five (85) percent of full wages or salary from the City, beginning on the first calendar day of such absence. Except for the provision of full pay (as modified herein), the remaining provisions of FMC Section **3-118** * * * shall apply. Members on "light duty" as a result of an injury or illness suffered in the course and scope of employment shall receive their regular salary during the period of light duty.
- 7.7.02** Partial days of absence due to injury or illness in the line of duty, including the day of injury, shall be at full pay, however this time shall be recorded as injury absence.
- 7.7.03** If a member is placed on sick leave, vacation, CTO or holiday pending determination as to whether the injury or illness is industrial, and the injury is determined to be industrial, sick leave, vacation, CTO or holiday will be restored within 30 calendar days of such determination, and the member placed on injury leave as provided herein.
- 7.7.04** Retirement benefits shall not be reduced as a result of compensation at the eighty-five (85) percent rate.
- 7.7.05** Taxes shall not be withheld on compensation at the eighty-five (85) percent rates which are not taxable due to injury in the line of duty.
- 7.7.06** If a member is on leave pursuant to an accepted industrial injury, that member shall continue to accrue sick leave, vacation leave, holiday leave, and be afforded all health and welfare benefits that would have been received had the member not been injured.

7.8 COURT APPEARANCES

Notwithstanding the provisions of FMC Section **3-117** * * *, the following rules shall apply to court appearances. Members qualifying under Subsection 7.8.01 below are not eligible for qualifying under Subsection 7.8.02 below, and members qualifying under Subsection 7.8.02 below are not eligible for qualifying under Subsection 7.8.01.

- 7.8.01** If a member receives a departmental notice or subpoena requiring a court appearance on the member's regularly scheduled day off, or on a vacation, or on a day off on CTO, or on a day off on holiday, which has been approved prior to notice and/or the member's receipt of a

departmental notice or subpoena, and the member has not been released by the Court Liaison Office (CLO) by 0900 hours on the day of the court appearance from such departmental notice or subpoena vis-a-vis voice mail, the member shall be considered to be on court appearance standby duty, and has the option of compensation under either Subsection 7.8.01(1) or 7.8.01(2) below. Compensation for members on “automatic go” appearance shall occur solely under Subsection 7.8.01(3) below.

- (1) Premium pay for court appearance standby duty, as described above, shall be \$36 per day. Time spent on court appearance standby duty (i.e., at home) shall not be considered hours worked, and premium pay for court appearance standby duty shall not be included in the calculation of a member’s base rate of pay under the Fair Labor Standards Act.

In the event a member, who is on court appearance standby duty at home, appears in court, the member shall also be compensated for a minimum of two (2) hours at one and one-half times (1 ½) the member’s base rate of pay, or at one and one-half times (1 ½) the member’s base rate of pay for the actual time of the appearance, whichever is greater. This compensable time starts from the time the member reports to court at the directed appearance time through completion of the appearance.

- (2) Report to and standby at the CLO, and be compensated for a minimum of two (2) hours at one and one-half times (1 ½) times the member’s base rate of pay. If the member is not required to appear in court, the department may require the member to perform assigned duties during this two (2) hour minimum period. Members shall be released from CLO standby duty when the subpoena or notice is cancelled, or they are released by the court.

If a member’s CLO standby duty extends beyond the two (2) hour minimum, or the member appears in court beyond the two (2) hour minimum, the member shall be compensated at one and one-half times (1 ½) the member’s base rate of pay for the actual time beyond the two (2) hour minimum.

- (3) Members on “automatic go” court appearance shall be compensated for a minimum of three (3) hours at one and one-half times (1 ½) the member’s base rate of pay, or at one and one-half times (1 ½) the member’s base rate of pay for

the actual time of the mandatory appearance, whichever is greater. This compensable time starts from the time the member reports to court at the directed "automatic go" appearance time through completion of the appearance.

7.8.02 If a member receives a departmental notice or subpoena requiring a court appearance on a regular day of work which falls outside of assigned work hours, the member shall have the option of:

- (1) standing by at home, when legally permitted; or,
- (2) appearing at the CLO, with a minimum of two (2) hours pay, at one and one-half (1 ½) times the rate of pay. During this two (2) hour period, if the member is not required to appear in court, the member may, at the option of the department, be required to perform duties as assigned.
- (3) If the court appearance starts within one-half (½) hour immediately following a shift, the member shall receive a one (1) hour minimum. If the court appearance falls during the shift and continues beyond the end of the shift, the member shall be paid at the applicable hourly rate for the actual time spent in court.

7.8.03 Where a member's appearance extends beyond the two (2) hour minimum, the member shall be paid one and one-half times (1 ½) the member's base rate of pay for the actual time of the appearance.

7.8.04 The provisions of Subsections 7.8.01 and 7.8.02 supra, shall also apply to members required to appear in any judicial or administrative proceeding as a witness pursuant to subpoena, court order, or request of the District Attorney. This provision shall apply to all judicial proceedings (civil, criminal, or administrative) and Civil Service proceedings in which a member's presence is ordered, directed, or requested because of his or her employment as a Police Officer.

7.8.05 The department and Association will continue to meet as needed to resolve concerns involving CLO program processes and applications.

7.8.06 In the event a member is off on a regular day of work as a result of AWS, and is required to make a court appearance, the member shall be compensated for court time in accordance with Section 7.8 for a member required to make a court appearance on a regular day of work. Conversely, in the event a member is substituting as a result of AWS on a regularly scheduled day off/vacation/holiday/CTO, the

substituting member shall be compensated in accordance with compensation afforded under Section 7.8 for a member required to make a court appearance on his or her scheduled day off.

7.9 TAKE-HOME VEHICLES

- 7.9.01** Except as is otherwise specifically determined in this MOU, the Chief of Police, shall have the authority to determine which members shall be assigned take-home vehicles. For security purposes, all paperwork in connection with said vehicle assignments shall remain in the office of the Chief of Police, or designee within the department, except basic identifying information (not to include home addresses or telephone numbers).
- 7.9.02** Members who are assigned vehicles for “take-home” purposes may drive their assigned vehicles to their residences within fifteen (15) miles of any point in the city limits for the City of Fresno. The Chief of Police may allow members who reside more than fifteen (15) miles to have take-home vehicles, at his sole discretion. Otherwise, members who reside more than fifteen (15) miles from the city limits must leave their assigned vehicles at an approved City facility.
- 7.9.03** Unless inconsistent with this MOU, Administrative Order 8-8 shall apply with reference to the purpose and benefit of City “take-home” vehicles.

7.10 WELLNESS PROGRAM DEVELOPMENT COMMITTEE

The Wellness Program Development Committee (WPDC) was created for the purpose of developing a departmental Wellness Program (WP) for members, and for providing all aspects of program and policy administration, oversight and maintenance. The WPDC is composed of participants selected by the Chief of Police or designee and the Association. The WP provides for a monetary incentive for achieving goals and maintaining standards, voluntary participation; the services of a health/fitness coordinator; individually tailored consultations and screenings; educational components; sole responsibility on the part of any contracted WP service provider for the maintenance and monitoring of confidentiality of participant health, medical, and fitness information/records (i.e., such information shall not be provided to the City or any City department); and the sharing solely of attendance and participation related information with the City, on the part of any contracted WP service provider, to facilitate administration and disbursement of WP incentives. The WP is outlined in a departmental standing order, and implementation of any WP policy modifications shall be at the discretion of the WPDC.

*** * * Effective July 1, 2009**, the sum of **\$500,000** * * * shall be utilized for payments of monetary incentives and for services provided by the contracted WP provider. *** * * Effective July 1, 2010 and July 1, 2011**, the City shall provide an additional \$25,000, **for a total of \$50,000**. The City shall not be obligated to pay in excess of *** * * \$500,000 in FY 10, * * * \$525,000 in FY11 and * * * \$550,000 in FY12** for the WP. Should the total monetary incentive due to eligible members exceed the FY's allotted sum, payment to eligible members will be prorated and paid as a percentage of the amount due to each member. Said percentage shall equal the percentage figure obtained by dividing the remaining funds by the total amount due. (For example: $\$300,000 \div \$400,000$ [greater cash compensation figure] = 75% [prorated percentage to be applied to the amount due each eligible member].) WP monetary incentives shall be paid by separate check no later than the last pay date in August of the subsequent fiscal year. In the event any portion of the WP funding for a particular fiscal year remains undistributed/unspent, the WPDC shall encumber the undistributed/unspent funding prior to the end of the fiscal year for use for the WP in the subsequent fiscal year.

Effective July 1, 2009, the benefits provided pursuant to this section shall be considered as compensation for purposes of calculating pension benefits for a member.

7.11 TIME CHANGE

This is to clarify and confirm City processes when a time change occurs. Any member regularly scheduled to work, and who does work, an eight-hour or ten-hour shift during which a change from Pacific Standard Time to Pacific Day-light time, or vice versa, occurs, will be paid as follows:

When such shift occurs in the spring, the member shall receive the full eight or ten hours pay. Any time worked in excess of the regular shift as scheduled shall be at the applicable overtime rate.

When such shift occurs in the fall, the member shall receive the regular eight or ten hours pay. Overtime at the applicable rate shall only be paid for work which is performed immediately before the scheduled starting time and for work which is performed after the scheduled end of the shift. No overtime, at any rate, shall be paid when the actual number of hours worked during such scheduled shift is nine or eleven hours because of the change from daylight savings to standard time.

7.12 LEAVES

7.12.01 Sick Leave:

Members shall accrue sick leave at the rate of eight (8) hours for each completed calendar month of employment, with unlimited accumulation. Except for Administrative Orders 2-19, 2-19.1 and 2-20, Standing Order 2.4.13, the FMC, City Administrative Orders, policies, procedures, rules and regulations concerning sick leave usage and leave administration shall continue to apply. In the event of any conflict, Standing Order 2.4.13 shall apply.

7.12.02 RETIREMENT ATTENDANCE INCENTIVE AT THE TIME OF ELECTION TO RETIRE OR ENTER THE DEFERRED RETIREMENT OPTION PROGRAM (DROP) - A Tier I or Tier II employee who meets the criteria as outlined below, will receive only one of the following benefits based on whether or not the employee enters the DROP program before retiring from City employment.

- (1) Election into DROP Program - For a Tier I or Tier II employee who has reached the minimum retirement age and has elected to enter the DROP Program, the calculation of the member's monthly DROP amount shall include an amount equal to 40% of the member's unused sick leave in excess of 120 hours as if it were a one-time-payment at the hourly base rate of pay in effect for the member as of the DROP entry date. **Effective July 1, 2009, the "in excess of 120 hours" will no longer be in effect with all sick leave hours being included in the computation.** The member's pension contribution on this amount will be calculated as of the date of DROP entry by multiplying the lump sum described above in this subparagraph by the member's pension contribution rate, and that amount will be deducted from the member's DROP account. The City will also be required to make a corresponding pension contribution to the retirement system based on the additional pensionable compensation created by the Retirement Attendance Incentive.
 - (a) Tier II Members Participating in DROP - For those members who entered the DROP program prior to July 1, 2006, the DROP account balance and monthly deposit amounts shall be recalculated to include an amount equal to 40% of the member's unused sick leave balance as of the member's DROP date in excess of 120 hours times his/her base rate of pay in effect at the date of entry into DROP. **Effective July 1, 2009, the "in excess of 120 hours" will no longer be in effect with all sick leave hours being included in the computation.**

- (2) Election Not to Enter DROP - For a Tier I or Tier II member who has reached the minimum retirement age and who retires from the City for service or for disability without entering DROP, an amount equal to 40% of the member's unused sick leave balance in excess of 120 hours shall be included in the computation of the member's retirement allowance as if it were a one-time-payment at the hourly base rate of pay for the employee in effect at the date of retirement. **Effective July 1, 2009, the "in excess of 120 hours" will no longer be in effect with all sick leave hours being included in the computation.** The member and the City will make a corresponding pension contribution to the retirement system based on the additional pensionable compensation created by the Retirement Attendance Incentive. The member's retirement contribution will be calculated as of the date of retirement by multiplying the lump sum described above in this subparagraph by the employee's pension contribution rate and the employee agrees to have this amount withheld from the employee's first retirement benefit payment from the Retirement System as the employee's retirement contribution for this additional amount of pensionable compensation.

This provision shall not apply to members who retire prior to age 50 due to a disability or to former members that have separated from City service prior to reaching the minimum retirement age and have elected a Deferred Vested status in the City of Fresno Fire & Police Retirement System.

- (3) Retirement Attendance/Health Incentive - At service retirement or at a disability retirement of a Tier I or Tier II member who is otherwise eligible for service retirement, and * * * will be credited for * * * unused sick leave in **accordance with the provisions of * * *** Section 7.12.03 below.
- (4) Hourly base rate shall be the equivalent of the monthly salary for the employee as provided in Exhibit I, multiplied by twelve (12) months then divided by 2,080 hours.

7.12.03 Health Reimbursement Arrangement (HRA)

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 HRAs. 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 separation from permanent employment with the City of Fresno by service retirement or at disability retirement if **the * * *** member is otherwise eligible for service retirement, the value of the member's accumulated sick leave shall be credited to an account for the employee under the HRA such "value" shall be determined as follows:

- *** * *** The number of accumulated sick leave hours in excess of 120 hours at the time of retirement multiplied by 50% of the member's then current hourly base rate of pay.

(Incorporated from Side Letter Agreement dated November 4, 2008):

- *** * *** The number of accumulated sick leave hours at the time of retirement in excess of 120 hours multiplied by 50% of the employee's then current hourly base rate of pay, except that an employee who retires within sixty (60) calendar days of receipt by the City of Fresno Fire and Police Retirement System of a retirement application by, or on behalf of the employee, shall have accumulated sick leave hours in excess of 120 hours upon retirement multiplied by 80% of the employee's then hourly rate of pay.
- **Effective July 1, 2009, all accumulated sick leave hours multiplied by 50% of the employee's then current hourly base rate of pay at the time of retirement, except that an employee who retires within sixty (60) calendar days of receipt by the City of Fresno Fire & Police Retirement System of a retirement application by, or on behalf of the employee, shall have all accumulated sick leave hours upon retirement multiplied by eighty (80%) of the employee's then hourly rate of pay.**
- **Effective July 1, 2009, the total number of all accumulated holiday leave hours at the time of separation for retirement purposes shall be paid at the member's then current hourly base rate of pay.**
- The hourly base rate of pay shall be the equivalent of the monthly salary for a member as reflected in Exhibit I,

multiplied by twelve (12) months then divided by 2,080 hours.

The HRA accounts shall be book accounts only – no actual trust account shall be established for any member. 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 members shall not be allowed to cash out any accumulated or accrued sick leave at retirement.

Upon each anniversary date of the MOU, the Association may amend the HRA provisions of this MOU to include a provision requiring all members of the Association to convert an agreed upon amount of accrued vacation leave to the HRA.

7.12.04 Family Sick Leave:

Members 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 only for those purposes defined in the California Labor Code. Use of Family Sick Leave shall be authorized and recorded by a department head or designee.

7.12.05 Vacation Leave:

- (1) Members shall accrue vacation leave hours for each completed calendar month of employment as reflected in the table below. (Pursuant to Section 6.3.01, each Officer's applicable accrual rate will be reduced monthly by .583333 hours for Association time bank purposes.) Members with less than 15 years of continuous employment are allowed to accrue 280 hours of vacation leave, and members with 15 years or more of continuous employment are allowed to accrue 360 hours of vacation leave.

Years of Continuous Employment	Accrual Rate (hrs./mo.)	Effective 7/1/10	Effective 7/1/11
Less than 5	8	8.5	9
More than 5 but less than 10	8.667	9.167	9.667
More than 10 but less than 15	10	10.5	11
More than 15 but less than 20	11.334	11.834	12.334
More than 20 but less than 25	13.334	13.834	14.334
More than 25 but less than 30	14.667	15.167	15.667
More than 30	16.667	17.167	17.667

- (2) No member's vacation accumulation shall cease due to refusal by the City to grant vacation leave prior to the member reaching the vacation accrual cap applicable to the member's position and length of service. In the event a member requests in writing vacation leave one month prior to the month in which the cap would be reached, and such request is refused, the Chief of Police or designee shall extend the member's accrual cap for ninety (90) days, during which time the member shall be scheduled for vacation leave sufficient to reduce the member's balance below the accrual cap. Request for extensions under this section may be denied if the member failed to sign up for and take his/her maximum accrued annual vacation leave during dates which were available for that purpose.
- (3) No member's vacation accumulation shall cease due to inability to use vacation time while off on Workers' Compensation leave due to a work related injury or illness. A member on such leave must notify the Chief or designee in writing if this is likely to occur, and the Chief or designee will extend the member's vacation accrual cap until the member either returns to work, or separates from employment.

7.12.06 Holiday Leave:

- (1) Members shall accrue eight and two-thirds hours per month as holiday leave in lieu of the Holidays recognized in FMC Section **3-116**. * * *

January 1.
The third Monday in January.
The third Monday in February.
The last Monday in May.
July 4.
The first Monday in September.
November 11.
Thanksgiving Day in November.
The Friday after Thanksgiving Day in November.
December 25.
Employee's Birthday.
Two Personal Business Days
Any day or part of a day declared by the Council, ordinance or resolution, to be a holiday.
- (2) At separation, accumulated holiday leave shall be paid at the member's base rate of pay **in accordance with Section 7.12.03**.
- (3) **Effective July 1, 2009, all members agree to freeze Holiday time pay downs through September 30, 2010. The cap for accumulated holiday leave shall not exceed a monthly amount of 230 hours. If prior to September 30, 2010, a member exceeds the monthly 230 hour cap, holiday leave shall be paid down automatically by the department * * * to the 230 hour cap, * * * without the consent of the member.**
- (4) * * * **After September 30, 2010, members may request the department to pay down the member's Holiday Time up to a maximum of ninety-six (96) hours, once per pay period. The time bank cap shall remain at 230 hours.**

7.12.07 Family Events:

In the event a member requests paid time off (vacation, CTO, or holiday time) not less than two weeks in advance to attend a major family or social event (wedding, birthday, etc.) and permission is

granted to attend such event, the permission for time off shall not be cancelled, except in event of emergency. An emergency is defined as circumstances beyond the control of the City and not having been known 48 hours in advance of the circumstance creating the emergency.

7.12.08 Guaranteed Leave:

- (1) Effective July 1, **2009**, * * * **four (4)** * * * times during each matrix semester period, personnel assigned to the patrol matrix may submit a request for guaranteed leave, which request will be honored, subject to the following conditions and procedures:

No more than five (5), **and effective July 1, 2010, no more than eight (8)** guaranteed leave requests will be honored for any single date. This limit applies city-wide, and for all shifts combined.

Guaranteed leave requests may not be submitted for Christmas Eve, Christmas Day, New Year's Eve, New Year's Day, Thanksgiving Day and the day after Thanksgiving.

Requests must be submitted no less than thirty (30), **and effective July 1, 2010, no less than fifteen (15)** calendar days before the date requested to be off, but no more than sixty (60) calendar days before the date requested to be off.

Requests are to be submitted to the Duty Office, to be date and time stamped by Duty Office personnel when received. Requests will be honored on a first-come, first-served basis, to the above stated maximum of five.

Guaranteed leaves may be taken using vacation time only.

Guaranteed leaves may only be for one (1) work shift per request.

Once submitted, guaranteed leave slots may not be transferred from one member to another.

- (2) The Duty Office will be responsible for tracking members' usage of guaranteed leave requests. Once a member submits a guaranteed leave request, the member may cancel the time off, but the request will still count as one of their allowable requests during the matrix period. Conversely, when the Duty

Office prepares the pending duty schedules (approximately two weeks ahead of time) and finds a member has a guaranteed leave request for a date that the member would otherwise have been allowed the time off without using guaranteed leave, the Duty Office will so notice the affected member, and the leave will be granted without it counting as one of the member's two allowable guaranteed leave requests.

- (3) The department will establish a \$100,000 fund for each remaining fiscal year of this MOU, for payment of overtime costs associated with the granting of guaranteed leave. The \$100,000 shall be split into two equal portions for July 1st through December 31st, and for January 1st through June 30th, for each fiscal year. Should overtime costs to backfill guaranteed leave not consume the \$50,000 in any semester of a fiscal year, the excess will be carried over and added to the fund for the following semester, and consideration will be given to increasing the number of allowable requests during following semesters. Any such increases must be with mutual agreement of the department and Association.
- (4) Should overtime costs to backfill guaranteed leave consume the \$50,000 during a semester, or the \$50,000 and any carry-overs during any subsequent semester, guaranteed leave requests will not be accepted for the remainder of the affected semester.

7.12.09 Vacation Leave Bidding:

Simultaneously with the bidding for shift assignments **in the Patrol Division**, during the month of * * * **December for each fiscal year during the term of this * * * MOU * * *** and at least **fifteen (15) days** prior to **January * * * 1** of each year, all covered members may bid to schedule **vacation**, according to date of hire as a Police Officer, or in the case of Sergeant, the date of promotion. **A member may bid to schedule** vacation in an amount equal to the maximum vacation leave time accrued by that member for the fiscal year * * *. **At the time of the bidding process, a member has the option to bid for a one time use of the maximum vacation leave time accrued or may choose to schedule two (2) separate vacation periods. If a member chooses to schedule two separate vacation periods, he/she may participate in a second bidding process to occur following the completion of the initial bidding. This second bidding process shall also be governed by seniority as stated**

above and be limited to the remaining vacation leave time accrued for that fiscal year. Said vacations shall be scheduled to be taken between * * * **February 1** immediately following the **bidding process** and the next * * * **January 31st** and may be scheduled to coincide with the member's regular days off.

Should the member later decide to schedule vacation in an amount in excess of that accrued during that fiscal year, the decision to allow such additional vacation time shall be at the discretion of the department.

7.12.10 Requests for Leave of Absences:

Requests for leave of absence should be submitted at least 24 hours in advance to increase the likelihood of being approved.

7.13 HOURS AND WORK SCHEDULES, MATRIX ASSIGNMENTS, DUTY OFFICE, NON-MINIMUM STAFFING, POLICE RESOURCE OPTIMIZATION SYSTEM, ABSENT WITH SUBSTITUTE **AND PROXIMITY DETAIL**

7.13.01 Hours and Work Schedules:

(1) **All members will be assigned to an eight (8), ten (10), or twelve (12) hour day as directed within this MOU. All shifts will include a paid thirty (30) minute meal break. If a member is unable to take their meal break due to work load, the member may complete a scantron for thirty (30) minutes of straight time from the Compensatory Time account. Members must notify their supervisor for scantron approval if they are unable to take a meal break. If a member's meal break is interrupted due to work load, they may complete their meal break at a later time or complete a scantron with supervisor approval. Meal breaks may not be taken within the first and last hour of a shift without supervisor approval.**

The thirty (30) minute paid meal break will satisfy compensation for donning and doffing.

(2) Unless specifically modified by the parties, a work week consists of four (4) ten-hour work days, completed beginning 0001 hours on Monday and ending on 2400 hours the following Sunday. Days off will be scheduled consecutively.

(3) The work day shall be ten (10) work hours unless specifically

modified by the parties. * * * Except as provided below for Task Forces, and as provided in Section 7.14.03 for Traffic Officers, uniformed personnel shall work a 10-hour work day.

* * *

- (4) Based on the needs of or significant benefit to the department, the Chief of Police may apply a “5/8” schedule to specified units outside of patrol matrix duties, either:

With the concurrence of the affected personnel, or

With thirty (30) days notice to affected personnel, on the condition that said affected personnel who wish to remain on a 4/10 schedule will be allowed to return to a patrol shift consistent with their seniority. In addition, affected members may be considered, at management’s discretion, for transfer to another special unit with a 4/10 schedule.

- (5) Members who are assigned to training may be assigned on a 5/8 basis, to accommodate the training schedule. The department will make every effort not to schedule any member to training which will conclude immediately prior to the member’s four or five-day work period.

- (6) * * * **The department * * * has established** a base work schedule for members assigned to the District Crime Suppression Team (DCST) * * * **that consists** of a work week of five (5) ten-hour days followed by a week of three (3) ten hour days or vice-versa, with a total of six (6) days off during the two work weeks. * * * DCST Officers and Sergeants will revert back to the 4/10 work week, * * * **at the discretion of the department.** * * * The decision to discontinue this work schedule and revert back to the 4/10 work week is not appealable or grievable.

7.13.02 Patrol Work Schedule/Matrix:

- (1) A 4/10 work week will be in effect for personnel assigned to day and swing shifts on patrol matrix duties. The base work schedule for members assigned to the midnight shift on patrol matrix duties will consist of a work week of five (5) ten-hour days followed by a week of three (3) ten hour days or vice-versa, with a total of six (6) days off during the two work weeks. This schedule may be cancelled by the City following sixty (60) days written notice to the Association, at which time

members would revert to the 4/10 work week. The decision to discontinue this work schedule and revert back to the 4/10 work week is not appealable or grievable.

- (2) Subject to meet and confer, the implementation of the base work schedule for members assigned to day and swing shifts on patrol matrix duties may be changed to the same work schedule of the midnight shift as set forth in Subsection (1) above. Once implemented, the schedule may be cancelled by the City as also set forth in Subsection (1), above.
- (3) Scheduling will consist of both fixed days on and off as well as rotation of days on and off. No member shall be scheduled to work for more than forty (40) hours in any work week.
- (4) A minimum of 20% of the available positions will be assigned to fixed days on and off, and all other positions will have rotating days on and off. Members with rotating days off will be scheduled for four days on and four days off for three weeks, followed by five days on and three days off, for four weeks, etc.
- (5) **Effective December 2008, Patrol Matrix sign-ups were changed to December from the month of March.** Every 12 months, all work assignment positions in the patrol matrix shall be declared open for the purpose of bidding by Sergeants, Specialists, and Officers according to date of hire as a Police Officer, or in the case of Sergeant, the date of promotion, for the district preference, shift assignment, and days off and on. For the purpose of bidding, Sergeants will precede Officers/Specialists.
- (6) Any member who is absent at the time of bidding is solely responsible for obtaining and reviewing the matrix drafts and instructions, and for securing a proxy to represent him/her during the bidding process.
- (7) Personnel assigned to patrol who are on injury or other absence status at the time of bidding will be allowed to participate without any restriction based on that status, and will assume the assignment chosen upon return to duty.
- (8) At the time of bidding, the department will create duplicate details to ones taken by members not expected to return to duty within thirty (30) days of the start of the matrix period.

Members who subsequently bid for the newly created duplicate details will remain on the shift chosen, but may be moved to any other vacancy within that shift when the absent member holding the original detail returns to duty, and may continue to be moved within the shift as vacancies are filled by returning personnel. The provisions of this sub-section will apply to the matrix process * * * and may or may not be extended to subsequent matrix processes, contingent upon mutual agreement of the department and the Association.

- (9) Nothing in the preceding sub-sections precludes moving probationary employees pursuant to paragraph (10), below.
- (10) Assignments as a result of the bidding process will begin on **the first Monday following January 1st * * *** of each year. During the 12-month assignment cycle, if a hardship exists, a special request for a change in district and/or shift can be submitted. Each member will be allowed one request during a 12-month assignment cycle. A response will be issued to the member within 30 calendar days. Barring a training need, approved requests will be honored once a vacant position that addresses the hardship becomes available.
- (11) Probationary Police Officers or Recruits may not be permitted to bid for positions but may instead be assigned to a district, shift and detail. With a 28-day notice, these Officers may also be subject to district and shift reassignment.
- (12) Police management reserves the right to designate specific detail numbers for probationary Officers and Recruits to prevent the concentration of probationary personnel on any given shift in a given district. Any such allocation will apply only to swing, lap, and/or midnight shifts, and will be accomplished in such a manner as to ensure balance of probationary employees between policing districts and shifts. Subject to the aforementioned considerations, police management may also designate certain detail numbers as "not available for sign-up" based upon the anticipated deployment of any Officers or Recruits in the Patrol Training Program at the time of the matrix bidding.
- (13) Police management reserves the right to determine the allocation, by shift and district, of PTO positions based upon the needs of the department. Any PTO who elects not to participate in the matrix as a result of these allocations shall

declare his/her intention in writing no later than two calendar weeks prior to the matrix bidding process.

7.13.03 Patrol Schedule Exploratory Committee - There is created a Patrol Schedule Exploratory Committee. The purpose of this committee will be to research various patrol scheduling systems in an attempt to develop a schedule that will allow for on-duty training of patrol personnel while still meeting minimum staffing needs. This committee will be composed of members selected by the Chief of Police or designee and the Association. The recommendation of the committee will be advisory to the Chief of Police.

7.13.04 Duty Office:

- (1) Officers assigned to the Duty Office may be scheduled to work a modified "3/12" schedule consisting of three (3) twelve (12) hour work shifts one week, followed by three (3) twelve (12) hour work shifts and one (1) eight (8) hour work shift the next, or vice versa.
- (2) Officers working in the Duty Office not scheduled on a "3/12" basis will be scheduled on a "4/10" basis.
- (3) Work schedules will contain specific hours and day off patterns established and/or modified by agreement of Police Department Management, acting on behalf of the City, and the Association, acting on behalf of the affected members.
- (4) Hours worked in excess of the scheduled eight (8), ten (10) or twelve (12) hour work shift, or in excess of the scheduled thirty-six (36), forty (40) or forty-four (44) work week, will be compensated as overtime.
- (5) Either the City or the Association may discontinue this section with thirty (30) days written notice to the other party. The decision to discontinue this agreement is not grievable or appealable. Discontinuation of this section will result in the reinstatement of all schedule and overtime provisions existing in the current MOU.

7.13.05 Non-Minimum Staffing - Flexing of Hours:

To accommodate the personal needs of members and to create the best working environment, given the context of a police department whose primary goal is service to the community, members assigned to

non-minimum staffing units may request and be assigned flexible hours of work. The member's Supervisor may adjust hours of work under the following conditions:

- (1) The operational needs of non-minimum staff unit shall be the primary concern for a Supervisor when determining a request for flexing of hours.
- (2) A Supervisor may grant a member's request to flex hours up to one (1) hour before or after the standard shift hours beginning at 0700 and ending at 1730.
- (3) The occasional granting of a flex schedule pursuant to this subsection will be only for specific qualified purposes as determined by a Supervisor. Examples of a specific qualified request by a member may include attending his or her child's baseball game, a doctor's appointment, meeting someone who is arriving at the airport, or some other qualified event.
- (4) Granting a long-term flex schedule shall require concurrence of the Bureau Commander. Examples of the need for a long-term flex schedule may include home nurse care for a spouse and the need to relieve the care giver, circumstances involving a "special needs" child, continuing education, or some other qualified event.
- (5) A Supervisor may require the members to decide amongst themselves who is to be granted a flex schedule. The decision by the members shall be by mutual agreement. If the members are unable or unwilling to make such decision, the Supervisor shall have the discretion to make whatever decision he or she deems appropriate.
- (6) With the concurrence of the Bureau Commander and in lieu of granting a flex schedule, a Supervisor may offer to a member the option of a fixed 5/8 schedule with the hours of 0730 to 1600, for a minimum of thirty (30) days.
- (7) In order to meet departmental operational and service needs, a Supervisor may terminate, at any time, a member's flexed schedule upon thirty (30) days written notice to the affected member. The decision to discontinue a flex hour schedule is not appealable or grievable.

7.13.06 * * * Staff Wizard/Corona Solutions:

The department may utilize * * * **Staff Wizard/Corona Solutions** in the deployment of patrol personnel (policing districts). Deployment is inclusive of the number and scheduling of shifts, the number and configuration of policing districts, members assigned to each shift, and the day off configuration and/or rotation of days off. Data used to develop * * * **Staff Wizard/Corona Solutions** recommendations at the beginning of each matrix period, and the resulting district and shift minimum staffing levels will be based on the number of personnel assigned to the patrol matrix who are not expected to be on injury or other absence status longer than thirty (30) days into the matrix period.

* * * **Staff Wizard/Corona Solutions** recommendations can be implemented up to a maximum of two (2) times in a fiscal year provided that all affected members receive the change that will occur at sign-ups. No shift shall start before 0600. Although * * * **Staff Wizard/Corona Solutions** may recommend Summer/Winter base shift hours, management reserves the right at any time to adjust those hours with five (5) calendar days advance notice based on operational/service needs.

The department reserves the right to determine initial minimum staffing levels in patrol, by shift and district, at the beginning of the matrix period. During the course of the matrix period, the department may review and increase minimum staffing levels. The department may subsequently reduce the increases, but, except as may be required by budget reductions resulting in actual personnel reductions, may not go below levels initially set for each shift and district at the beginning of the matrix period. Such changes in minimum staffing levels may not occur more often than monthly, and may not cause a cancellation of previously approved time off, or previously approved on-duty training time.

The Association will designate a representative who will participate in the process of determining annual * * * **Staff Wizard/Corona Solutions** recommendations.

7.13.07 Absent with Substitute (AWS):

- (1) AWS with Trade - In accordance with Section 7 (p)(3) of the Fair Labor Standards Act (FLSA) as discussed in 29 CFR 553.31, the City agrees that members may substitute for one another when staffing levels do not permit a member to take time off. The substitution must be during scheduled work hours, and in the performance of work in the same capacity. The hours worked are excluded by the City in the calculation

of the hours for which the substitute member would otherwise be entitled to overtime compensation under the FLSA and under Section 7.3. When one member substitutes for another, the member being substituted for will be credited as if he or she had worked his or her normal schedule for that shift.

- (2) Probationary Officers - Officers on probation may utilize 40 hours of AWS to take time off during any calendar quarter with no restriction on how many hours of AWS they can work during any calendar quarter. Probationary Officers needing to utilize more than 40 hours of AWS to take time off during a calendar quarter may do so with district commander approval.
- (3) Non-Probationary Officers - Non-probationary Officers may utilize 120 hours of AWS to take time off during any calendar quarter with no restriction on how many hours of AWS they can work during any calendar quarter. Non-probationary Officers needing to utilize more than 120 hours of AWS to take time off during a calendar quarter may do so with district commander approval.
- (3) AWS with Compensation - When one member substitutes for another, the member being substituted for will be credited as if he or she had worked his or her normal schedule for that shift. If the substituting member wishes to be compensated for the substitute shift worked at the base/straight time rate of pay, then the member being substituted for shall transfer the applicable number of holiday leave, vacation or CTO hours to the substituting member's "like" account. (Note: The member being substituted for may only select one account from which to take hours for transfer, and those hours shall only be transferred to the volunteer substitute's "like" account. If the substituting member's selected account is at the maximum allowable balance, the substituting member shall be compensated at the base/straight time rate of pay from the transferred hours. An internal processing form has been established to accomplish this transfer.)
- (4) AWS Notification to Department - Members wishing to provide a substitute must notify the department at least 24-hours in advance of the substitution on a form provided for that purpose. The substitute must be satisfactory to the department. If the substitute is determined to not be a satisfactory substitute, the commanding Officer shall provide the reason(s) in writing within a reasonable amount of time.

7.13.08 Proximity Detail: (Incorporated from Side Letter Agreement dated November 2, 2007)

- (1) The Proximity Detail may be created by the Chief at his discretion. Officers assigned to Proximity Detail may be scheduled to work a modified “3/12” schedule consisting of three (3) twelve (12) hour work shifts each week, followed by three (3) twelve (12) hour work shifts and one (1) eight (8) hour shift the next, or vice versa.
- (2) Work schedules will be modeled according to the below matrix, with specific hours and day off patterns established and/or modified by agreement of Police Department Management, acting on behalf of the City, and the FPOA, acting on behalf of the affected Officers.

Model Schedule – Proximity Detail (Week 1)

	MON	TUE	WED	THU	FRI	SAT	SUN
Officer #1	0600-1800	0600-1800	0600-1800	DO	DO	0600-1600	DO
Officer #2	DO	DO	0600-1800	0600-1800	0600-1800	DO	DO

Model Schedule – Proximity Detail (Week 2)

	MON	TUE	WED	THU	FRI	SAT	SUN
Officer #1	0600-1800	0600-1800	0600-1800	DO	DO	DO	DO
Officer #2	DO	DO	0600-1800	0600-1800	0600-1800	0600-1600	DO

- (3) Hours worked in excess of the scheduled eight (8), ten (10), twelve (12) hour work shift or in excess of the scheduled thirty-six (36), forty (40) or forty-four (44) hour work week shall be compensated as overtime.
- (4) Either the City or the FPOA may discontinue this agreement with thirty (30) days written notice to the other party and to the Labor Relations Division. The decision to discontinue this agreement is not grievable or appealable. Discontinuation of this agreement will result in the reinstatement of all schedule and overtime provisions existing in the current MOU.
- (5) The parties agree that the adoption of the above scheduling provisions for Proximity Officers does not imply acceptance by either party of similar schedule changes for any other unit or personnel within the Department, and agree that this Agreement will not be considered precedent setting in any regard.
- (6) Any Officer assigned to Proximity Detail shall be selected in accordance with Chapter 7, Section 15.

7.14 ASSIGNMENTS, COVERAGE & HOURS - EXCEPTIONAL PROVISIONS

7.14.01 Patrol Matrix (Supervision):

- (1) In the event a Sergeant assigned on the matrix is absent from duty, a position is vacant, or there is no Sergeant assigned to duty, and any commander assigned to the affected district, or the Duty Office determines that a replacement or additional personnel are required, a Sergeant shall be hired back on overtime to fill the vacancy, or, if no Sergeant is available, a Police Specialist, Police Officer, or PTO may be assigned to an acting position to perform the Sergeant's duties. Any Specialist or Officer so assigned for the majority of a shift shall be compensated at the lowest step in the salary range of the Police Sergeant class which is at least three and one-half percent higher than the rate received in the employee's current class. If such compensation requires a payment greater than highest Step, then highest Step shall be paid. PTO's assigned to be acting Sergeants shall continue to receive PTO premium pay as provided in Section 7.4.3. This subsection shall be in lieu of the "acting pay" provisions of FMC Section **3-260** * * *.

- (2) No additional compensation shall be paid to Police Specialists, Police Officers or PTOs who are assisting in the day to day administration performed by Sergeants nor for acting as a patrol supervisor (Senior Officer available) when the Sergeant is on-duty but unavailable.

7.14.02 Special Units - Flexing of Hours:

Sergeants, Specialists or Officers in non-patrol matrix assignments may be assigned flexible hours of work to meet the needs of the department. The Police Chief or designee may adjust hours of work under the following conditions, without payment at the overtime rate:

- (1) with the concurrence of the Sergeant, Specialist or Officer; or,
- (2) in the event of emergency, which is defined as circumstances beyond the control of the City and not having been known 48 hours in advance of the circumstance creating the emergency; or,
- (3) with forty-eight (48) hours notice to the Sergeant, Specialist or Officer. Adjustments pursuant to this subsection may last no longer than seven (7) consecutive calendar days, nor occur more than once during any thirty (30) day period; or,
- (4) where the adjustment has been made to cover a special event and the special event is canceled with less than forty-eight 48 hours notice to the department, and the department then promptly cancels the adjustment and returns the Specialist or Officer to the regular schedule.

Overtime worked past the scheduled end of a shift shall not be considered as a shift adjustment. An adjustment of hours prior to the shift shall be considered as an adjustment.

Officers assigned to special units receiving "Flexible Hours" premium pay are excluded from the forty-eight (48) hour notice requirement. However, when practical, they will be given as much advance notice as possible when hours are to be flexed. Flexing of these Officers is also not limited to seven (7) days in duration, nor as to frequency. However, when such adjustments exceed thirty (30) days, the Association shall be provided with a plan for a return to regular schedules.

7.14.03 Traffic Bureau:

(1) Traffic Enforcement Unit (TEU):

Hours of Work: Except when necessary to police special operations, including but not limited to traffic and/or DUI enforcement, parades, holiday functions and fairground related activities, the base work hours of the TEU shall be **between** 0715 to 1800, with the exception that up to forty percent (40%) of the TEU Officers may be worked on a "B" shift. The "B" shift's base work hours shall be **between** 0915 to 2000 from October 1 to March 31, and **between** 1115 to 2200 from April 1 to September 30.

Meal Period: TEU Officers agree to take a 45-minute unpaid meal period between the second and eighth hour of the work day. It will be the Officer's responsibility to notify the supervisor if the Officer cannot schedule an unpaid meal period during the specified time set aside for this purpose. An unpaid meal period taken outside the specified hours requires the approval of a supervisor. If work conditions do not allow an Officer to take an unpaid meal period, the Officer will be compensated at a rate of one and one-half times the base rate of pay for the meal period missed. No more than one-half of the Officers working a given district may take their meal period at the same time, unless specifically approved by a supervisor.

Days Off: The days off for the base work hours of **between** 0715 to 1800 will be Friday, Saturday and Sunday or Saturday, Sunday and Monday. The Officers working the "B" shift may be required to work on Saturdays and Sundays. Officers will receive three (3) consecutive days off during the normal workweek of Monday through Sunday.

Flexing of Work Hours/Days Off: TEU Officers may be assigned flexible hours of work to meet the needs of the department pursuant to the provisions of Section 7.14.02.

Seniority: Department seniority shall be the recognized selection method for work assignments within the TEU, unless there is a clear preference for a specific assignment by the appointing authority.

Vacations: TEU vacation sign-ups shall be done by

department seniority during assignment sign-ups. No more than fifteen percent (15%) of the entire unit may be allowed annual vacation at once, without prior approval of the division commander.

(2) Neighborhood Traffic Unit (NTU)

Base hours for the NTU will be **between** 1700-0300 hours. Base hours may be adjusted periodically to meet the needs of the department and/or to address weather and climate issues. NTU Officers will also be subject to flexing of hours on a day-to-day basis, and will accordingly receive premium pay pursuant to Section 7.4.02. NTU Officers will work ten (10) hour shifts. * * * While the primary focus of the NTU will be on traffic and related issues, they may also be assigned to other events, duties or projects, as necessary, to meet the needs of the department.

(3) Uniforms/Safety Equipment:

Traffic Bureau Officers assigned to motorcycle duty shall be provided, at the City's expense, the safety equipment described in Government Code Section 50081.1. This shall include, but not be limited to, one (1) pair of motorcycle riding boots, three (3) pairs of riding pants, one (1) motorcycle jacket, one (1) pair each of summer and winter gloves, one (1) motorcycle safety helmet and one (1) pair of protective glasses. The safety equipment shall be repaired at the City's expense. If an Officer assigned to motorcycle duty leaves the Traffic Bureau for one (1) year or more and then returns, the Officer will be equipped with new safety equipment, with the exception of a new jacket. Jackets will be issued to returning Officers as needed at the discretion of the bureau commander.

(4) Take-home Vehicles:

Traffic Bureau Officers assigned to motorcycle duty, and Officers assigned to the Collision Reconstruction Unit (CRU), will be allowed to drive their assigned vehicles to their residences, subject to the provisions of Section 7.9 (Take-home Vehicles.)

(5) Reductions/Reorganization:

In the event of reductions of personnel from the Traffic Bureau, the TEU and NTU will be considered as separate units for purposes of applying the “last in first out” rule.

7.14.04 Canine Unit - The following applies to Officers assigned to the Canine Unit (includes Narcotics Canine):

- (1) The City will install kennels at the home of the Officers assigned canines, pay for veterinary care, food, and miscellaneous supplies. Officers assigned canines will be allowed to drive their assigned City vehicle to their place of residence. Except as provided in Section 7.9, Canine Officers who reside farther than fifteen (15) miles from the City limits must leave their assigned vehicles at an approved City facility, and provide approved secure transportation for the canine from that point to their residences. Unless inconsistent with this section, Administrative Order 8-8 shall apply with reference to the purpose and benefit of City take-home vehicles.

Canine Officers will not be permitted to voluntarily transfer to other assignments during the service life of the Officer's canine. Canine Officers are not precluded from competing for promotional positions.

- (2) The canine and the kennel installed by the City at the Officers' home are the property of the City. In the event an Officer is no longer assigned to the canine unit, the City reserves the right to maintain ownership of the canine or return the canine to the original vendor or other designated party, as determined by the Chief of Police or designee.
- (3) Canine Officers are subject to flexible hours of work as described in Section 7.14.02. The base work schedule for Officers assigned to the Canine Unit will consist of a work week of five (5) ten-hour days followed by a work week of three (3) ten hour days, with a total of six (6) days off during the two work weeks, to include at least one weekend. This schedule may be cancelled by the City following thirty (30) days notice to the FPOA, at which time Canine Officers would revert to the 4/10 weekly work schedule set forth in Section 7.13.01(1).
- (4) Police Management reserves the right to determine the allocation of K-9 positions by shift, district and days off to

ensure the optimal coverage of such units in the field. Bidding for allocated positions will be done within the Canine Unit, by department seniority, date of hire as a Police Officer. Canine Unit schedules will be established annually to coincide with the patrol matrix, but will not be included in the patrol matrix. Canine units will not be counted to satisfy Watch III minimum staffing requirements on a daily basis other than as may be required to meet those minimum staffing levels established at the beginning of the matrix period.

- (5) Compensation paid pursuant to Section 7.14.04 is overtime, and is therefore not considered as compensation under the first or second tier of the City's Fire and Police Retirement System.
- (6) Time spent by the Officers for home care of the canine is considered hours worked pursuant to the Fair Labor Standards Act. The canine Officer will be compensated for one (1) hour each day in the care of the canine. Officers may spend more than one (1) hour a day with the canine, but any time over one (1) hour a day shall be considered as normal owner-related activities for the enjoyment of the individual and the canine. Officers that spend more than one (1) hour a day with the canine, and believe that this time is hours worked shall turn in a time sheet no later than the next working day, after the time spent with the canine, to the canine supervisor.
- (7) Compensation under Section 7.14.04 is not for the performance of Police Officer duties and, therefore, compensation for the home care of the canine will be calculated at one-half the applicable overtime rate of pay for "A" step of the Recruit class.

7.14.05 AIRPORT TASK FORCE ASSIGNMENT (Incorporated from Side Letter Agreement dated February 23, 2007)

- (1) **The Airport Task Force shall be a special unit as that term is defined in this MOU pursuant to Section 7.15.**
- (2) **The work week for those assigned to the Airport Task Force will consist of five (5) eight-hour days beginning 0001 hours on Monday and ending 2400 hours the following Sunday. Scheduling will consist of rotation of days on and off. No Officer/Specialist shall be scheduled to work for more than forty (40) hours in any work week**

and will receive days off consecutively. Alternate work schedules such as a 4/10 or 3/12 can occur, but only with mutual agreement between the Fresno Police Department and the Fresno Police Officers Association.

- (3) Thirty (30) days prior to the opening of the patrol matrix, Officers/Specialists qualified pursuant to Section 7.15.01, and who are selected by the Department to serve on the Airport Task Force will bid for shift assignments and vacation according to seniority based on date of hire with the Department. Vacant positions at the time of the Unit sign-up, not filled by Officers/Specialists qualified pursuant to Sections 7.15.01, will be filled by the least senior non-probationary members during the Unit sign-up according to seniority based on date of hire with the Department, after the qualified Officers/Specialists have signed up, and in accordance with Sections 7.15.05 and 7.15.06. Any Officer/Specialist absent at the time of the bidding is solely responsible for obtaining and reviewing the matrix drafts and instructions, and for securing a proxy to represent him/her during the bidding process. Should a vacancy arise after the Unit sign-up, the department shall fill the vacancy, and follow the MOU, under Sections 7.15.01 (1) through (4) and 7.15.02 through 7.15.06, and absent any qualified members, shall revert back to Section 7.16.02.
- (4) Officers/Specialists assigned to the Airport Task Force are eligible to utilize the Absent with Substitution (AWS) system in accordance with this MOU under Section 7.13.07. Officers/Specialists wishing to participate in AWS with Officers/Specialists assigned to the Airport Task Force must first obtain an airport security badge. There will be no cost to the Officer/Specialist to attend airport security training, or to obtain the security badge, nor shall the City incur any overtime cost.
- (5) Officers/Specialists assigned to the Airport Task Force are eligible to utilize four (4) "Guaranteed Leave" days per each matrix semester out of the guaranteed leave time bank established pursuant to this MOU under Section 7.12.08. Officers/Specialists will comply with the same list of conditions and procedures outlined in this MOU under Section 7.12.08, except that no more than one

guaranteed leave request will be honored for any single date for all shift assignments of the Airport Task Force, and Airport Task Force Officers/Specialists requests for guaranteed leave do not count as one of the five patrol matrix requests. Officers/Specialists utilized to fill Airport Task Force positions under guaranteed leave time off must possess an airport security badge.

- (6) Officers/Specialists assigned to the Airport Task Force will be supervised by Airport Public Safety Supervisors pursuant to the provisions set forth in the pending "Agreement for Services Between the City of Fresno Department of Airports and the Fresno Police Department," and with the agreement from the Fresno Police Officers Association.**
- (7) Officers/Specialists assigned to the Airport Task Force will be provided with an assigned locker at a dressing station located on the airport property.**

7.15 FILLING SPECIAL ASSIGNMENTS

Definition: Special units (positions) are defined as all units (positions) outside of patrol matrix duties.

7.15.01 At least once each calendar year the department will administer a written test to qualify Officers/Specialists for assignment to special unit positions. The test will be designed to certify competency in law, policy, procedures and whatever other areas of skill or knowledge the department deems appropriate. The notification of, and minimum qualifications for, the approaching test will be announced by voice mail, and will be posted in work areas, no less than seven (7) days before the date of the test.

- (1)** Prior to each test the department will determine and announce the "passing" score for the test. While it may be set higher, the passing score will not be lower than 70% correct.
- (2)** Subsequent to each test, the department will establish a non-ranked list of Officers who have passed the test, and are thereby "qualified" for assignment to special unit positions. Said lists will remain in effect three (3) years after which Officers who have not been chosen for a special unit will have to re-qualify to remain eligible.

- (3) Officers must have two (2) years of experience in patrol matrix duties to take the test. Except as provided below, Officers must pass the test and have three (3) years of experience in patrol matrix duties at the time of assignment to a special unit.

Any current or temporary PTO will be considered “qualified” for assignment to a special unit position.

Any Officer who has successfully passed the PTO exam within the last three (3) years shall also be considered “qualified” for assignment to a special unit position.

Any Officer who is on the “top 25” current Sergeant’s promotional list shall also be considered “qualified” for assignment to a special unit.

- (4) Officers currently assigned to a special unit will not be required to test, nor meet patrol experience requirements to remain in their existing positions or to move to another special unit position. If an Officer currently assigned to a special unit, or who is assigned to a special unit pursuant to these provisions returns to patrol matrix duties, he/she shall be deemed qualified under this section for one (1) year from the date of leaving the special unit. Should an Officer who has returned to patrol matrix duties not be returned to a special unit during that year, he/she must then qualify pursuant to this section before another assignment to a special unit. Said qualification is to include both the testing and minimum patrol time components.
- (5) **Effective July 1, 2011, Sergeants who have been demoted for economic or reorganizational issues remain qualified for PTO and Special Unit assignments.**

7.15.02 Officers - Officers who have qualified per the above may submit a Request for Consideration (RFC) for future openings in special units. This request shall be in a form and format developed by the department, shall specifically state the position desired, and shall be directed to the Division Commander over the division in which the position falls. While Officers may submit multiple requests for a variety of positions, each request must be specific to one position. Division Commanders will forward RFCs to the appropriate bureau or Section Commanders where they will remain on file for one year.

Officers are responsible for monitoring the expiration of RFCs they

have submitted, and for re-submission thereof as necessary if they wish to continue to be considered for vacancies as they occur.

(Incorporated from Side Letter Agreement dated October 12, 2007):

Sergeants - Sergeants interested in special unit assignments may submit an RFC for future openings in special units. This request shall be in a form and format developed by the department, shall specifically state the position desired, and shall be directed to the division commander over the division in which the position falls. While Sergeants may submit multiple requests for a variety of positions, each request must be specific to one position. Division Commanders will forward RFCs to the appropriate bureau or Section Commanders where they will remain on file for one year.

Sergeants are responsible for monitoring the expiration of RFCs they have submitted and re-submission thereof as necessary if they wish to continue to be considered for vacancies as they occur.

As Sergeant openings occur Commanding Officers will notify all who have applied for consideration during the preceding year, and request a Memo of Interests and whatever additional documents they deem appropriate for an initial review of the candidates. From this review, Commanding Officers will narrow the field to no less than three (3) candidates for the first opening, plus one (1) more for each additional opening, if there are multiple openings available. Commanding Officers, or designee, will then interview each of these candidates before a selection is made.

7.15.03 As openings occur, Commanding Officers will notify all who have applied for consideration during the preceding year, and request a Memo of Interests and whatever additional documents they deem appropriate for an initial review of the candidates. From this review, Commanding Officers will narrow the field to no less than three candidates for the first opening, plus one more for each additional opening, if there are multiple openings available. Commanding Officers, or designee, will then interview each of these candidates before a selection is made. Commanding Officers may involve unit supervisors at any point in the selection process.

7.15.04 The above qualifying and selection process will apply equally to all special unit positions, including Training & Development (T&D) positions. This process will not, however, apply to PTO selections.

7.15.05 The department retains the right to assign any Officer to any special unit position, outside of the above process, when the assignment is made for a specific purpose based on specific need that the Officer assigned can best address. The department will, upon request, verbally identify the specific skill set and the needs to be addressed as well as the time sensitive needs of the department. However, such assignments may be made for no more than one (1) year after which the Officer must have met the above qualifications and process to remain in that or any other special unit position.

Chief's Exemption - The Chief may select up to five (5) sworn Officers to serve in a special unit assignment without time limitations. Officers assigned under 7.15.05 are eligible for assignment under this sub-section. The selected Officer must have successfully completed probation and shall sign an acknowledgment of Section 7.15.01 (1) through (4) and section 7.15.05. The department and the association will maintain a copy of the acknowledgment. Once the selected Officer leaves this special unit assignment, the Officer must meet the above qualifications and process to be eligible for any other special unit position as outlined in Section 7.15.01 (1) through (4).

7.15.06 Should there be insufficient candidates qualified through the above process to fill the positions available, the department may assign any Officer off of probationary status to open positions as necessary to fill special units. Such assignments may be for no more than one (1) year for any Officer so assigned, unless the Officer has subsequently met the qualifications as described above.

7.16 DURATION OF ASSIGNMENT - SPECIAL UNITS ONLY

7.16.01 Special Units (positions) are defined as all units (positions) outside of the patrol matrix.

7.16.02 Officers and Sergeants assigned to special unit positions shall generally be assigned for a minimum of two (2) years. Movement subsequent to assignment to a special unit is at the discretion of the Chief of Police for the good of the department, and may be accomplished either:

With the concurrence of the affected Officer or Sergeant, or with thirty (30) days notice to the affected Officer or Sergeant, except that those Officers/Sergeants assigned to investigative units and responsible for investigating felony crimes shall be provided sixty (60) days notice.

Effective July 1, 2009, the notification shall not occur between November 1st and February 28th.

7.16.03 Normal movement under this Section (i.e., 7.16) is not appealable.

7.16.04 Training & Development (T&D) Positions: T&D positions will be designed to enhance the abilities and skills of Officers to improve the experience base of potential future supervisors, and to allow the department to assess personnel for future regular special unit assignments.

- (1) Within three (3) years of the implementation of this MOU, the department will create and identify T&D positions which will number a minimum of five percent (5%) of the total number of special unit positions department-wide.
- (2) T&D positions will generally be one-year assignments. However, in order to coincide with patrol matrix sign-ups, at the discretion of the department, T&D assignments may be as short as six (6) months or as long as eighteen (18) months.
- (3) Upon completion of a T&D assignment, Officers may be moved to another T&D position, to a regular special unit assignment or returned to patrol.
- (4) To ensure availability of T&D positions for those seeking them, Officers will be limited to a total of three (3) such assignments. Similarly, Officers may not be assigned to a T&D position in any unit they have been previously assigned.
- (5) The department has the discretion to determine where the T&D positions will be located, and may change those determinations as positions vacate and are refilled. However, the department will endeavor to spread the T&D positions as widely as possible, without negatively affecting workflow and productivity to provide the broadest possible experience base for Officers moving through these positions.
- (6) Should there be insufficient qualified applicants to fill the number of positions dictated by the five percent (5%) minimum the department may reduce that number to coincide with the number of qualified applicants.

7.17 CAREER DEVELOPMENT PROGRAM

There is created a Career Development Program Exploratory Committee. The purpose of this committee will be to research and develop a recommendation for a program designed to prepare and assist members seeking advancement within the department to recognize and utilize existing skills and abilities, and to provide pathways for attaining specialized career assignments within the department. Areas for exploration may include **evaluation of educational opportunities, lateral and promotional movement**, training plans, job steps **and the need for a rank between Officer and Sergeant, * * *** and/or between Sergeant and Lieutenant. * * *

Effective July 1, 2009, the committee will be composed of **no less than two (2) department representatives and two (2) representatives of * * *** the Association. The recommendation of the committee will be advisory to the Chief of Police, and no program will be implemented without agreement between the Association, the department and the City.

[§ deleted]

- (1) The committee shall schedule and meet **quarterly. * * ***
- (2) * * * The committee shall issue a **proposed career development program by June 30, 2012, which * * *** include a joint * * * recommendation.
- (3) The **proposed career development program * * *** shall be submitted to the Chief of Police, City Manager, Director of Personnel Services and the Association.
- (4) Within forty-five (45) days of the issuance of the **proposed career development program, * * *** either the City or the Association may request that formal negotiations commence to negotiate an agreement to adopt some or all of the recommendations of the committee. Any recommendations or proposal must be agreed to by both the Association and the City.
- (5) The parties may modify any provision of this section by mutual agreement.

7.18 SENIORITY (Incorporated from Side Letter Agreement dated November 6, 2008)

7.18.01 Definitions: Seniority within rank and class shall begin upon the date on which an Officer receives a permanent appointment to a position in the class. A **permanent** demotion from a promotional position shall result in loss of accrued seniority in * * * **the higher rank. A temporary**

demotion from a higher rank shall not result in loss of accrued seniority in the higher rank, but seniority in the higher rank will not accrue during the term of the demotion. A temporary demotion is defined as a demotion wherein the employee may be reappointed to the higher rank without a competitive process. The seniority of Police Officer/Police Officer Recruit who is hired on the same date shall be as follows:

- (1) Placement on a promulgated eligible list by score will be the order of seniority.
- (2) In cases where Officers/Recruits are hired from Entry Level Lists promulgated on different dates, those hired from the list promulgated first shall have seniority.
- (3) Seniority for Police Cadet shall begin on the date they are sworn-in as Police Officer Recruit.
- (4) When hired on the same day from a Lateral Police Officer List and Entry Level Police Officer List, the Lateral Police Officer will have seniority.
- (5) When two (2) or more Officers have the same date of hire and no Police Officer promulgated list exists to determine seniority, the most senior will be determined by the Officer's permanent full-time date of hire as a City employee, and if not applicable, seniority will be determined by lottery. The results of the lottery shall be used to determine present and future seniority.

7.18.02 Vacation Selection: Vacation selection by division, section, district or shift, as determined by the department, shall be based upon, and determined by, seniority within the class.

7.18.03 Shift/Detail Assignments: The primary consideration in making shift or detail assignments shall be the needs of the department subject to the seniority provisions below.

- (1) Patrol Matrix Assignments: Except as otherwise provided below and in Section 7.13.02 (Matrix Schedules), patrol matrix assignments shall be filled by seniority. Seniority for all work assignments subject to bid in the patrol matrix by Police Officer/Police Specialists shall be by date of hire as a Police Officer or, in the case of a Sergeant, the date of promotion. Any subsequent changes in patrol matrix assignments shall be

accomplished as vacancies occur and not by "bumping" or changing of previously existing assignments.

Exception: An Officer or Sergeant reassigned to the patrol matrix by the department without the consent of the Officer or Sergeant shall be assigned to a shift according to his or her seniority in that class.

- (2) Department Reorganization/Personnel Reductions-Special Units: In the event of a departmental reorganization, or a reduction of personnel due to budget restrictions, which reorganization or personnel reduction causes the movement of special units, the movement shall be accomplished as follows:

If there are no volunteers to move, the "last in first out" rule shall apply within any affected unit. For purposes of this section, a "unit" will generally be defined as a specialized work group under the control of a supervisor. In the case of like work groups each under the control of different supervisors, including but not limited to DCST, Traffic and Narcotics, said units will be considered as one unit for purposes of applying the "last in first out" rule.

Subject to the special provisions listed below, personnel displaced pursuant to these provisions may be offered placement in other existing special unit vacant positions. Should no such vacancies exist, or be offered, and the movement will result in a return of personnel to patrol matrix duties, displaced personnel shall be allowed to "bump" the Officer/Sergeant most recently assigned from patrol matrix duties to a special unit, and assume that Officer/Sergeant's position. Ties in assignment date seniority shall be broken by department seniority, with the least senior being the one "bumped."

Exception: There shall be no bumping from the Canine, Skywatch or Mounted Units.

Premium Pay Positions: Whenever possible, personnel displaced from premium pay positions shall be considered for placement in other vacant premium pay positions.

Placement: The department is not obligated to offer all existing vacancies to displaced personnel, but shall, whenever

possible, consider placements that will maintain shift and day off schedules for the affected member.

Should the affected Officer/Sergeant accept an alternate assignment pursuant to these provisions, and later request reassignment to patrol, the Officer/Sergeant may not bump a less senior Officer/Sergeant in patrol.

7.19 FEDERAL DRUG POLICY (Federal Omnibus Transportation Employee Testing Act - "ACT")

Policy:

7.19.01 The City maintains two separate policies to distinguish those procedures required by the Federal Transit Administration and the Federal Motor Carrier Safety Administration, entitled:

"Controlled Substances and Alcohol Testing Regulations, Fresno Area Express", adopted by the City Council on March 14, 2006, which may be amended from time to time, after compliance with applicable collective bargaining laws.

"Controlled Substances and Alcohol Testing Regulations, Federal Motor Carrier Safety Administration", which may be amended from time to time after compliance with applicable collective bargaining laws.

7.19.02 The parties agree that each policy sufficiently summarizes the current federal regulations required by the ACT. Both policies will be distributed to every affected member of the Fresno Police Officers Association Non-Supervisory Police Unit upon implementation or amendment of the policies, and at the time of training and orientation.

7.19.03 The parties acknowledge that there currently exists a list of positions subject to the provisions of the two policies: "(a) Controlled Substances and Alcohol Testing Regulations, Fresno Area Express, (b) Controlled Substances and Alcohol Testing Regulations, Federal Motor Carrier Safety Administration", and should these positions be changed or modified, the parties agree to establish a new list of positions which are subject to these two policies pursuant to the ACT and the Department of Transportation. As personnel changes within these positions, the parties agree that the Department will give notice to the Association and the Risk Management Division of such changes.

7.19.04 The Risk/Safety Manager will be responsible for receiving all information related to the implementation of this policy and directing

the applicable disciplinary action in coordination with the Labor Relations Manager.

7.19.05 The parties agree to abide by the federal regulations set forth in each policy. Employees who are members of the Association will also be subject to the provisions of any applicable Department Standing Order, policy or procedure.

7.19.06 Last Chance Agreements do not apply to members of the Association. As required by federal law, employees who have tested positive and who have returned to work, will still be subject to random selection for testing and will be subject to six additional tests for drugs and alcohol during the subsequent year.

7.20 GENERAL TESTING GUIDELINES FOR EMPLOYEES NOT COVERED BY THE FEDERAL OMNIBUS TRANSPORTATION EMPLOYEE TESTING

General Requirements

Drug and substance tests may also be required under Departmental Standing Order 2.4.12, as the same may be modified following consultation with the Association pursuant to FMC **3-607**.

7.20.01 Whenever a member is assigned to a special unit engaging in drug, narcotic or vice enforcement, such member shall execute a written agreement and release stating full consent, and would be required to take a drug test.

7.20.02 In the event the City provides an annual scheduled physical, all members would be required to submit to a drug test.

7.20.03 Sworn members while assigned to any special unit engaging in drug, narcotic or vice enforcement shall be required to periodic unannounced drug tests. Subject to the following conditions:

A member shall execute a written agreement and release stating full consent to such periodic unannounced drug tests.

At the request of the Commander of the Management Support Bureau, the City of Fresno Risk/Safety Manager shall select and schedule the date and time when each member will be tested. Such test may be administered no more than once a year.

Under this subsection, any random testing without notice will be in compliance with applicable court decisions.

7.20.04 All drug testing noted above will be performed in accordance with the Federal Omnibus Transportation Act, except in those instances where members are unable to provide a urine sample such members may elect to provide a blood sample. It is understood that if a member cannot provide a sufficient sample or, in the alternative, refuses to provide a blood sample, the test shall be considered to be positive.

In addition to any testing requirements contained in this MOU provision, all members are subject to the "Identification and Consent Procedures" outlined in Administrative Order 2-25, along with its corresponding testing procedures.

7.21 ADMINISTRATION OF PERSONNEL ACTIONS

During the term of this MOU, the Chief of Police or designee shall administer personnel actions, including but not limited to, the areas of grievances, administrative hearings, Skelly hearings and discipline.

7.22 SUCCESS PLAN

Attached as Exhibit III * * * **are the documents regarding the Police Department's Employee Success Plan and Inventory of Choices/Goals by which Success Plans can be Drafted.**

Any appeal of comments set forth in a performance evaluation, including, but not limited to references to a "Success Plan" shall be as follows:

7.22.01 In the first instance, the member shall initiate the appeal of any comments with his/her immediate supervisor. The member shall initiate the appeal in writing and within thirty (30) days of receipt of the evaluation.

7.22.02 In the event that the appeal cannot be resolved with the immediate supervisor, the Association member may advance the appeal in writing through his/her chain of command. Any such appeal shall be submitted within ten (10) days of receipt of the decision.

7.22.03 Each member of the command staff considering the appeal shall issue a written decision on the appeal within ten (10) days of receipt.

7.22.04 The final step of the appeal shall be to the Deputy Chief in the chain of command of the appealing member. The written decision of the Deputy Chief shall be provided to the member within thirty (30) days of receipt of the appeal, or the date of hearing, whichever is later.

- 7.22.05 The member shall have the option of requesting a meeting/hearing with each member of the command staff hearing the appeal(s).
- 7.22.06 The command staff member hearing the appeal shall have the authority to modify all or part of the evaluation.
- 7.22.07 The member may submit a written response to any decision of a command staff member. Any such written response shall be inserted into the member's personnel file.
- 7.22.08 **The manner in which an employee has carried out his/her "Success Plan" may be referenced/discussed only in the "Performance of Duties" section of the evaluation form.**

7.23 DISCIPLINARY PROCEDURES (Incorporated from Side Letter Agreement dated September 16, 2008)

Standing Order 2.4.10, as well as the FMC, City Administrative Orders, policies, procedures, **operation manuals**, rules and regulations, all as the foregoing exist **during the term * * *** of this MOU, concerning disciplinary procedures will apply. **However, any permanent member receiving a Final Order of Disciplinary Action resulting in a termination, demotion or suspension of one hundred-twenty hours (120) or more may, in lieu of submitting an appeal through established means per their respective procedures, within fifteen (15) calendar days of service of the Final Order of Disciplinary Action request binding arbitration. If a request for binding arbitration is submitted by a member or their representative, the member or their representative shall be required to provide a written waiver of their right to bring the matter through any other established means, including an appeal to the Civil Service Board. The arbitrator shall regulate the conduct of the hearing process. The arbitrator shall set the date, time and place of the hearing, which place shall be on City premises, and shall, by certified United States mail, postage prepaid, give not less than ten (10) days notice of such date, time and place to the appellant, or the appellant's designed representative and the appointing authority. The hearing shall be recorded by a court reporter or electronic process. Oral evidence may be heard only on oath or affirmation. The arbitrator's decision shall be final and binding, any may be challenged only pursuant to the California Arbitration Act, Code of Civil Procedure Sections 1280 et seq.**

The fees and expenses of the arbitrator shall be paid half by the City and half by the Association.

The parties shall endeavor to prepare a mutually agreed panel of seven (7)

arbitrators to be utilized for the purposes of discipline arbitrations. In the event that the parties fail to identify a panel of agreed upon arbitrators, the arbitrator shall be selected from a list of seven (7) arbitrators provided by the California State Mediation and Conciliation Service. If the parties cannot agree on an arbitrator from the list of seven, the parties shall alternatively strike names until a single arbitrator's name remains.

7.24 IN LIEU OF SUSPENSION

By mutual agreement between the Chief or designee and the affected member, a member suspended from duty without pay may forfeit accumulated holiday, CTO, and/or vacation credits equal to the number of hours of suspension in lieu of the suspension. If the suspension is reduced or reversed at the conclusion of the appeal process, the City shall reinstate the appropriate amount of forfeited credits. This provision is not subject to the grievance procedure.

7.25 USE OF A HEARING OFFICER IN DISCIPLINARY ACTION INITIATED BY CITY

Members may elect the alternate appeal procedure before a Hearing Officer instead of a hearing before the Civil Service Board, as provided in FMC Section **3-283. * * ***

7.26 ADMINISTRATIVE HEARING PROCEDURE

It is the purpose and intent of the City and the Association to provide for an administrative appeal procedure for a member to appeal "punitive action" which is proposed to be taken against him/her for which an appeal is not otherwise provided under the Charter or the Civil Service Rules. For purposes of this section "punitive actions" are defined as written reprimands, reduction or loss of base salary, and transfer/reassignment, when it results in a loss of base salary or is used as punishment. This section is not subject to the grievance procedure.

7.26.01 Where the department proposes "punitive action" (as defined above), the affected member shall be advised, in writing, of the department's proposed action no less than ten (10) calendar days before the proposed effective date of the action.

7.26.02 Any dispute between the parties as to whether the action is "punitive" shall be presented to the Chief of Police or designee. If the Chief is directly involved in the action it shall be presented to the Administrative Hearing Committee as defined in 7.26.04, below. The Chief or designee or the Committee shall rule on the dispute before proceeding with a hearing. If the Chief or designee or the Committee find no punitive action then the member shall not be entitled to a hearing.

7.26.03 The member shall have ten (10) calendar days after receipt of the notice to respond, either orally or in writing, to the appropriate division commander. An appeal from a member shall suspend the proposed punitive action until the conclusion of this procedure.

7.26.04 The division commander has ten (10) calendar days to respond. If he or she upholds the proposal or modifies it in a manner unacceptable to the member or fails to respond within the specified time period the member shall have ten (10) calendar days to appeal, either orally or in writing, to the Chief of Police or designee.

The Chief or designee is disqualified from hearing the appeal if the Chief or designee has been directly involved in the disputed action. If the Chief or designee is disqualified, it will be heard by an administrative Hearing Committee. The Committee will be comprised of one representative from the Association and one from the City. A third member from the department will be selected and mutually agreed upon by both parties and will act as Chairperson.

7.26.05 The Chief or designee (or the Administrative Hearing Committee) shall hear the appeal within ten (10) calendar days of receipt of the notice of appeal. When the action is heard by the Committee, the Committee will make a recommendation to the Chief or designee within three (3) calendar days. The Chief or designee shall render a written decision to affirm, reject, or modify the Committee's decision within ten (10) calendar days after the hearing. The written decision shall set forth the basis for the decision, the action to be imposed and the effective date thereof. The decision of the Chief or designee shall be final.

7.26.06 The time limits above may be mutually waived by the parties.

7.27 GRIEVANCES

7.27.01 Grievance Procedure

A grievance is a dispute concerning the interpretation or application of any existing City policy, practice, written rule or regulation governing personnel practices or working conditions, including this MOU. The grievance procedure relates only to existing rights or duties, not to the establishment or abolition 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, or Retirement Board. A grievance can be initiated by any grieved employee or group of grieved employees, or by the Association on behalf of a grieved employee or group of grieved employees. Grievances should be settled as near as possible to their source and in as informal a setting as possible.

7.27.02 Informal Process

The grievant (this term includes the Association) must first attempt to resolve the grievance on an informal basis through discussions with the immediate supervisor without undue delay. The informal process must be completed within twenty (20) calendar days after the occurrence of the alleged incident giving rise to the grievance, or when the grievant knew or should have reasonably become aware of the facts giving rise to the grievance.

If the grievance is not resolved at the immediate supervisor level, the grievant may attempt to resolve the grievance on an informal basis through discussions with the next levels of supervision, following the chain of command up to the Deputy Chief of Police.

Every effort shall be made to find an acceptable solution to the grievance through this informal process. Once the informal process has been exhausted, the grievant may invoke the formal process.

7.27.03 Formal Process

A written grievance must set forth the specific rule, regulation, policy, practice, or MOU provision claimed to have been violated, describe the specific incident or circumstances of the alleged violation, and specify the remedy sought.

7.27.04 Formal Filing Procedure

The procedure and sequence in filing and processing a grievance shall be as follows:

(1) Step One - Filing the Grievance:

The grievant or representative may file the formal grievance within ten (10) calendar days from the last day of the informal process through the grievant's immediate supervisor to the Chief of Police or designee. The grievance shall summarize the results of the informal process. If the Association has not previously been involved, a copy of the grievance shall be submitted to the Association. The grievant or the Association may request to have a meeting regarding the grievance with the Chief of Police or designee in an attempt to resolve the concerns at this level. If no request for a meeting is made, and upon receipt of the written grievance, the Chief of Police or designee shall give the grievant a written reply within fourteen (14) calendar days.

(2) Step Two - Request for Arbitration:

If the grievant is not satisfied with the decision of the Police Chief or designee, only the Association may within ten (10) calendar days after receipt of the written reply, file a request for arbitration utilizing the written grievance and submitting it to the Labor Relations Manager. The Association shall be limited to two (2) such requests for arbitration per fiscal year on a grievance that involves a dispute concerning the interpretation or application of an existing City policy, practice, written rule or regulation. There shall be no limitation on requests for arbitration dealing with MOU interpretation or application. Any request for arbitration that does not meet the requirements of this subsection shall not be processed, and such grievance concludes at Step One above.

(3) Step Three - Arbitration and Immediate Arbitration:

Within five (5) calendar days from the receipt of the arbitration request, either party may request the State Mediation and Conciliation Service to submit a list of five (5) neutrals. These neutrals will be statewide experts in the field of labor relations.

Within five (5) calendar days upon receiving the list, the Labor Relations Manager and the Association shall alternatively strike a name from the list, and the last name remaining shall be designated as the neutral arbitrator.

The arbitrator selected shall submit the earliest date(s) in which the arbitrator can hold the hearing, of which the Association and the Labor Relations Manager can mutually select a date.

The arbitrator shall hold a hearing on the issue or issues submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the opinion within thirty (30) calendar days following the closing of the hearing, unless the period has been mutually extended in writing by all parties. The decision shall be sent to the City Labor Relations Manager and to the Association.

The arbitrator's decision shall be final and binding, and may be challenged only pursuant to the California Arbitration Act, C.C.P. Sections 1280, et sequentes.

Immediate Arbitration - Either party (City or the Association) may waive the grievance procedure time limits specified in this subsection (i.e., .04) and proceed to immediate arbitration in any case where the party alleges that the other is threatening to take an action in violation of the MOU in so short a period of time as to disallow the party from proceeding within the time limits of this subsection (i.e., .04). To put it another way, immediate arbitration may be sought by either party where there is "no adequate remedy at law," or where normally a party would be entitled to seek injunctive relief. However, the method of proceeding to immediate arbitration must be done consistent with the following provisions.

The arbitration shall take place no earlier than the fifteenth (15th) day following the request by the grieving party for such "immediate arbitration," unless otherwise mutually agreed. During the two-week period (14 calendar days) immediately following the request for immediate arbitration, the responding party shall have the opportunity to attempt to resolve the dispute.

If the City is the responding party, the Chief of Police and Director of Personnel Services, or their designated representatives, jointly, shall have the opportunity to meet with or otherwise communicate with appropriate Association representatives, in an attempt to resolve the dispute.

Once the request for immediate arbitration is filed, the parties shall (even though dispute resolution discussions are going on during the two-week period) attempt to agree upon a neutral arbitrator and to obtain a date for arbitration hearing as soon as possible immediately following the two-week period.

The parties will attempt to have a standing list of available "immediate arbitrators," but if no agreement on same is reached, the parties will obtain five arbitrators, by telephone, if possible, from the State Mediation and Conciliation Service. The first arbitrator available to hear the matter following the two-week period shall be selected as arbitrator. The order of contacting the potential arbitrators shall be determined by lot unless mutually agreed to otherwise. The parties are free to mutually agree upon an immediate arbitrator through any other process or agreement.

In any case, the arbitrator selected to decide the grievance shall have the full and equitable power to frame a decision, including an order to the party initiating the grievance to abide by the time limits provided in the grievance procedure, or a restraining order against the party threatening the action, or any other form of arbitration order that would resolve the matter in an equitable and just manner. However, the arbitrator may not add to, subtract from, change or modify any provision of this MOU and shall be authorized only to apply existing provisions of this MOU to the specific facts involved and to interpret only applicable provisions of this MOU.

Unless the parties agree otherwise, closing argument shall be presented orally and there shall be a "bench" decision.

The parties shall attempt to have the arbitration proceedings completed as quickly as possible, including by meeting nights and weekends, if at all feasible.

(4) General Arbitration/Immediate Arbitration Provisions:

An arbitrator shall have, in the arbitrator's discretion, the ability to hear evidence on both arbitrability and on the merits at the same hearing, holding for a later ruling on the issue of arbitrability.

Time limits set forth in the formal process may be modified by mutual agreement of the grievant or representative and the department or City. Failure of the grievant to file an appeal within the specified time limit for any but the first step of the procedure shall constitute an abandonment of the grievance.

The cost of making a stenographic record of the arbitration hearing shall be borne by the party requesting such records. There shall be no post-hearing briefs, except by mutual agreement.

The fees and expenses of the arbitrator shall be paid half by the City and half by the grievant; however, the arbitrator may order that the City or the grievant pay the total of such fees and expenses should the arbitrator find that, but for the unreasonableness of a party's posture, the convening for arbitration would not have been necessary.

Witnesses who are employees and on duty at the time of the scheduled appearance shall be released from duty without loss of compensation for the time required to testify. No overtime payments shall be made because of scheduled appearances.

Individual grievants shall be released from duty without loss of pay for the time of the arbitration hearing. A representative shall be permitted to be present without loss of compensation on behalf of the grievant.

Arrangements for release time for grievant's witnesses shall be made with the Labor Relations Manager, who shall issue all appearance notices no later than 24 hours in advance of the scheduled hearing.

No employee shall be discriminated against, harassed, coerced, or suffer any reprisal because of filing or processing of a grievance or participating in a grievance procedure.

CHAPTER 8

POLICING SPECIAL EVENTS AND CONTRACT LAW ENFORCEMENT SERVICES

This MOU chapter sets forth the full and entire understanding of the parties regarding policing special events and contract law enforcement services.

8.1 GENERAL

The Fresno Police Department, at the sole discretion of the Chief of Police, may allow private parties and public agencies to contract with the City for additional police service, at a special detail assignment level pursuant to 29 U.S.C. 207 (p)(1), (p)(2) and (p)(3), and 29 C.F.R. 553.227 et sequentes. The special detail assignment(s) performed by Police Officer/Police Specialist/Police Sergeant classes (hereinafter member[s]), shall consist of, but not be limited to, providing uniformed foot/vehicle patrol to a special events/contract law enforcement services event at the discretion of the Chief of Police.

8.2 PROCEDURES

8.2.01 Members assigned to special events/contract law enforcement services shall be volunteers selected from a special events and contract law enforcement services assignment list. The number and rank of the members assigned shall be determined by the Chief of Police, or designated representative. The Chief of Police may restrict a member from working extra duty for the good of the department.

- (1) Members who desire to be placed on the assignment list must have completed their probation. Members on sick leave, industrial injury leave, "temporary light duty," or leave of absence shall not be eligible.
- (2) The assignment list shall be the basis for all member assignments. Members who desire to be placed on the assignment list shall notify the Chief's designated representative. All Members on the assignment list shall be notified by voice mail when policing special events and/or contract law enforcement services positions are available. Positions shall be filled using the following process.

The Chief's designated representative will sequentially number the calls, starting with the first member responding from the assignment list, and so on. The designated representative will then use computer spreadsheet software programmed to

select a random number drawn from the sequential numbers assigned to the responding members. The random number selected will be the starting point for making assignments, and for filling the positions. If the positions are not filled after going through the entire list of numbers, the designated representative will continue through the list again, and so on, until all positions are assigned or a subsequent notification is issued.

- 8.2.02** Any member who fails to appear for assignment or fails to notify the designated representative of his/her inability to work the assignment, 24-hours prior to the beginning of the assignment schedule, shall be removed from the assignment list. Any member who is removed from the assignment list shall not be eligible for reinstatement to the assignment list for a period of six (6) months. Removal from the assignment list shall not be deemed a disciplinary action pursuant to Civil Service Board rules or a punitive action pursuant to Government Code Section 3303 (h), and is not appealable or grievable.

Members performing special events/contract law enforcement services assignments shall be subject to all rules, orders, and procedures of the Police Department.

In no event shall a member performing special events/contract law enforcement services work be assigned to a job site where a labor union picket line has been established.

- 8.2.03** Once a Contract for Law Enforcement Services has been formally executed, Reserve Officers shall not be used to replace sworn members for policing special events and contract law enforcement services. In the event a Fresno Municipal Code ordinance concerning policing special events/contract law enforcement services is amended by Council, the parties agree to reopen meet and confer on this subsection (8.2.03) at the request of either the City or the Association. Requests for special events policing and/or contract law enforcement services will first be filled by volunteer members available through the assignment list. If no volunteer members are available, the vacancies may be filled by Reserve Officers.

- 8.2.04** Generally, calls for service within the special events and contract law enforcement services policing areas may be handled by regularly assigned FOD area patrol units. However, members performing special events and contract law enforcement services may be assigned to handle calls for service that are consistent with the duties requested by the contracting party.

8.2.05 Officer working conditions for the Big Fresno Fair shall be established by mutual agreement between the Big Fresno Fair, City of Fresno and the Association, and shall be reflected in a corresponding agreement between the parties.

8.3 COMPENSATION

8.3.01 The rate of pay for members occupying Police Officer/Police Specialist classes who are working special events and contract law enforcement services assignments shall be at the time and one-half rate for "A" Step Police Officer. The rate of pay for members occupying the Police Sergeant class who are working special events and contract law enforcement services assignments shall be at the time and one-half rate for "A" Step Police Sergeant. Compensation for Officers/Sergeants for all special events detail assignments worked at the Big Fresno Fair shall be by separate check no later than the last pay period in November of the year the Big Fresno Fair special events detail assignment is worked.

8.3.02 The hours worked, and pay received for special events and contract law enforcement services assignments, shall not be credited toward years of service for retirement benefits or regular overtime. Educational incentives shall not apply to the special events and contract law enforcement services assignment rate of pay.

8.3.03 The parties agree that for the purpose of FLSA regulations, compensation paid for working special events and contract law enforcement assignments is at the applicable overtime rate, and shall not be considered compensation for pension plan benefits calculations.

8.3.04 A member reporting to an assignment site shall receive a minimum of four (4) hours pay regardless of actual time worked. Employment of more than four (4) hours shall be paid to the nearest tenth of an hour for the actual time worked.

8.3.05 Any accident, illness or injury which arises out of or occurs in the course of employment in a policing special events and contract law enforcement services assignment shall be covered under the city's workers' compensation plan pursuant to Section 7.7.

CHAPTER 9

HEADINGS

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

CHAPTER 10

SAVING CLAUSE/FULL UNDERSTANDING

10.1 SAVING CLAUSE

In the event any chapter, 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 chapter, section or portion thereof 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 chapter, section, or portion thereof.

10.2 FULL UNDERSTANDING

It is intended that this MOU sets forth the full and entire understanding of the parties, and any previous understanding or agreement by the parties regarding all such matters are hereby superseded and terminated in their entirety.

With respect to side letter agreements, any not attached to this MOU are hereby terminated in their entirety. Those side letter agreements attached to this MOU shall continue in force subject to the terms and conditions set forth within each side letter. In the absence of any specified term in any such side letter, they shall terminate upon the expiration of this MOU. Any new side letter agreement entered into during the term of this MOU shall continue in force and effect subject to the terms and conditions described in the side letter. In the absence of any term in such new side letters, they, too, shall terminate upon the expiration of this MOU. This paragraph is not intended to prevent either party from relying on discussions which occurred during the meet and confer process for the purpose of clarifying the meaning of this MOU.

CHAPTER 11

TERMINATION

The provisions in this MOU shall be in full force and effect **extended** from * * * **June 30, 2009 to June 30, 2012**, subject to the Sections (.1, .2 and .3) below:

- 11.1 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 effective through June 30, **2012**.
- 11.2 During the life of this MOU should either party desire to modify its terms or to meet and confer with the other party as to matters within the scope of representation which are 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.
- 11.3 During the term of the MOU, either party may refuse any request by the other to meet and confer without explanation if (1) the item is directly considered and specifically addressed herein; or (2) is directly considered and specifically addressed in any FMC section, charter section or provision, or resolution section, which section specifically establishes wages, hours, or other terms and conditions of employment; or (3) the specific item was included in an initial written proposal from the party making the request during the meet and confer process which led to this agreement. No unilateral action on any such refused proposal may be taken by the requesting party after such a refusal by the other.

It is further agreed, however, that this section shall not prohibit the City from requesting to meet and confer on changes to federal or state statutes referred to or cited in this MOU, and which impacts the implementation of this MOU, in which case the request to meet and confer shall not be refused.

IN WITNESS WHEREOF, the parties hereto have set their hands this _____ day
of _____, 2009.

**FOR THE FRESNO POLICE
OFFICERS ASSOCIATION:**

FOR THE CITY OF FRESNO:

JACKY PARKS
President

KENNETH G. PHILLIPS
Labor Relations Manager

BILL TROLLINGER
Specialist

JERRY DYER
Chief of Police

JOHN CONLEE
Police Officer

LORI M. NAJERA
Sr. Human Resources Analyst

PAUL PRESTON
Executive Board
Member/Police Sergeant

MICHAEL CAVALLERO
Executive Board Member
Retired Police Officer

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

BY: _____
Deputy City Attorney