

Memorandum of Understanding

BETWEEN AND FOR THE

CITY OF FRESNO

AND

**OPERATING ENGINEERS, LOCAL UNION NO. 3
(Fresno Airport Public Safety Officers - Unit 11)**

February 28, 2022 through December 31, 2022

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| <u>LEGEND</u> | |
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ARTICLE I

PREAMBLE

A. Purpose

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

B. Definitions

Unless the particular provision or the context otherwise requires, and, except to the extent that a particular word or phrase is otherwise specifically defined in this MOU, the definitions and provisions contained in Sections 3-101, 3-201, 3-202, 3-501 and 3-603 of the Fresno Municipal Code, hereinafter FMC, shall govern the construction, meaning, and application of words and phrases herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

C. Governing Laws

The legal relationship between the City and its employees and the City and the Union is governed by Chapter 10 of Division 4 of Title 1 of the Government Code (Section 3500 et seq., commonly known as the Meyers-Milias-Brown Act), as may be amended from time to time, and Article 6 of Chapter 3 of the FMC, and the Public Safety Officers Procedural Bill of Rights Act, Government Code Section 3300 et seq., for employees who are public safety officers as defined by the Government Code Section 3301. In the event of any conflict between said laws and this MOU, or in the event of conflicts in interpretation, said laws shall govern.

ARTICLE II
EMPLOYEE RIGHTS

A. General

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

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

B. Nondiscrimination

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

C. Employee Responsibilities

All employees in Unit 11 acknowledge that the City shall consider the positions and proposals of the Union as the meet and confer positions and proposals of all employees, individually and collectively, in said Unit.

D. Personnel Files

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

a comment adverse to his or her interest shall be placed in a public safety officer's personnel file to be used for any personnel purpose, until he or she has reviewed it, and shall follow the requirements as stated in Section 3305 of the California Government Code.

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

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

ARTICLE III
CITY RIGHTS

A. General

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

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

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

ARTICLE IV
RECOGNITION

A. Union Recognition

The City recognizes Operating Engineers Local Union No. 3 (OE3), as the exclusive bargaining agent representing the Fresno Airport Public Safety Officers Unit (FAPSO* * *) and therefore, shall meet and confer in good faith promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on an MOU.

B. Union Officers/By-Laws

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

The Union shall provide the City with a copy of the Unit's bylaws and provide a copy of any changes as they are made.

C. Union Bulletin Boards

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

D. Unit Description

1. The Unit consists of all employees holding a permanent position, as defined in FMC Section 3-202, in the class of Airport Public Safety Officer as such Unit may be modified from time to time in the manner designated in the FMC.
2. The class of Airport Public Safety Officer shall remain allocated to the Department of Airports under the supervision of the Public Safety Division.

E. City Recognition

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

F. Recognition of Mutual Obligation

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

G. Strikes

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

H. Unilateral Action

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

I. Seniority

Seniority for Airport Public Safety Officers is determined by continuous service from the date hired in the classification as a permanent full time or permanent part time employee, less any unprotected leave without pay. Consistent with Fresno Municipal Code section 3-291, permanent full time employees are more senior than permanent part time employees.

J. New Employee Orientation

The Personnel Services Department (PSD) provides a new employee orientation program to all new City employees (i.e., NEO). PSD will notify OE3 at least 10 days in advance of a scheduled NEO, and at the end of the work week immediately preceding the NEO if the NEO will include any individuals who will be represented by the Association, unless the City is unable to reasonably do so because of an unforeseeable urgent need critical to City operations.

A representative of the bargaining unit will be invited to the NEO meeting room immediately prior to a session to be conducted by the bargaining unit and will be introduced by a City staff member. The bargaining unit will be provided an opportunity to meet with new bargaining unit members at the last session of the NEO. The session will be scheduled for twenty (20) minutes. This session will not be held if there are no new bargaining unit members attending the NEO or if the bargaining unit representative is not available.

K. Employee Information

The City will provide the employee information it has on file in compliance with AB 119 for all new hires in the bargaining unit within 30 days of hire, as well as all employees represented by OE3 at least once per quarter.

ARTICLE V

SCOPE OF REPRESENTATION AND GRIEVANCES

A. General

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

B. Grievance Procedure

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

grievance with the grievant's immediate supervisor before a written grievance may be filed.

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

- f. The neutral may be chosen either by mutual agreement of the Union and the City, or by the "strike" method from a list of neutrals provided by the State Mediation and Conciliation Service.
 - (1) Fees and expenses of the neutral shall be paid half by the City and half by the Union or the individual grievant(s); provided, however, that the neutral may recommend that the City or the Union or the individual grievant(s) pay the total of such fees and expenses should it find that, but for the unreasonableness of that party's posture, the hearing before the neutral would not have been necessary. The City and the Union shall select a neutral or request a list of neutrals from the State Mediation and Conciliation Service within fourteen (14) calendar days of the receipt of a grievance requesting review by a neutral.
 - (2) The neutral shall be bound by the language of the MOU, City Administrative Orders (AO), ordinances, rules, and regulations, and department rules and regulations consistent therewith in considering any issue properly before them. The neutral shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue not so submitted. The neutral may not recommend changes in established wages or benefits, nor recommend the payment of back wages or benefits, prior to the date the grievance was timely filed.
- g. A date for the neutral to convene a hearing will be set within thirty (30) calendar days from the date that a grievance reaches the Labor Relations Division at Art. V.B.5.d. above, provided it meets all criteria for the filing and processing of a grievance.
- h. All time limits herein may be extended by mutual agreement of the parties.
- i. The neutral shall conduct an evidentiary hearing, interview witnesses, and consider all relevant documents prior to submitting its conclusions and recommendations to the City Manager within thirty (30) calendar days of its last meeting.
- j. The City Manager shall review the decision of the Department Head and recommendations of the neutral, and shall render a written decision to the employee within fourteen (14) calendar days after receipt from the neutral.
- k. Failure of the grievant to file an appeal within the specified time limit shall constitute an abandonment of the grievance process. Failure of

the responsible supervisor or official of the City to render a decision within the specified time limit established by this procedure shall automatically move the grievance to the next higher level for action, without action required of the grievant.

ARTICLE VI

DUES DEDUCTION AND UNION BUSINESS

A. Dues Check-Off

1. The City shall deduct union dues, benefit premiums, and/or both, following receipt of notice from the Union that authorization has been provided to the Union by members of the Unit. The City shall stop dues or benefit premiums, or both, upon receipt of notice from the Union that members in the Unit have revoked their authorization. Should there be a dispute regarding the deduction of dues, the Union, shall provide the City with a copy of the authorization(s) signed by the employee.
2. The Union, in consideration for and as a condition of the City withholding and transmitting payroll and benefit deductions authorized by this Section and in compliance with SB 866, shall hold harmless the City of Fresno, its officers, and employees from any liability that may result from making, canceling, or changing requested deductions.
3. Upon written authorization by a retired member of the Unit, the City shall deduct credit union payments and Unit dues monthly from the retirement check of such retired member and forward same to the credit union or Unit as designated in such authorization.

B. Exceptions to Dues Deduction Authorization

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

C. Dues Deduction Check

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

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

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

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

OPERATING ENGINEERS LOCAL UNION NO. 3
FRESNO PUBLIC EMPLOYEES DIVISION

D. Union Business

1. The City shall allow a reasonable number of employees of this Unit a reasonable amount of time off without loss of compensation when members are conducting contract negotiations within the scope of representation.
2. Approval of time off pursuant to subsection D.1, above, shall not be unreasonably withheld, however the City may deny use of time, if the time off requested would preclude the Department from maintaining the efficiency and needs of governmental operations.

ARTICLE VII

COMPENSATION AND BENEFITS

A. Salaries, Pension and Premium Pay

1. Salaries:

- a. **In the regular paycheck on March 18, 2022 , active employees in a permanent position on February 28, 2022, shall receive a one-time lump sum payment equivalent to three percent (3%) of actual base wages earned while the employee was in a permanent position in this Unit from October 2, 2021 through February 27, 2022 . For purposes of this section, actual base wages earned will include the hours an employee was absent without pay due to a statutorily protected leave such as, but not limited to, leaves taken under the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), Pregnancy Disability Leave (PDL), and Military Leave, but shall not include hours an employee was absent due to unprotected leave without pay status (e.g., on disciplinary suspension, etc.). The employee shall bear responsibility for any and all individual income tax consequences resulting from this lump sum payment. The lump sum payment shall be compensable for retirement purposes.**
- b. **Effective February 28, 2022, * * *salaries for employees in Airport Public Safety Officer positions shall be adjusted by three (3%), as reflected on Exhibit I, Table I, attached hereto and incorporated by this reference.**
- c. **Effective * * *February 28, 2022, a * * * "G" Step will be added to the salary range as reflected on Exhibit I, Table I, attached hereto and incorporated by reference. The * * * "G" Step represents a five percent (5%) increase above the * * * "F" Step. An employee is required to be in the * * * "F" Step * * * for one (1) year or 2,080 hours of service, whichever is greater, prior to advancement to the * * * "G" Step. Those employees who are currently at * * * "F" Step and have been so for at least one year on or prior to * * *February 28, 2022, will automatically move to the * * * "G" Step. All other employees will advance to the * * * "G" Step after one (1) year or 2,080 hours of service, whichever is greater, at the * * * "F" Step.**
- d. **Effective June 20, 2022, salaries for employees in Airport Public Safety Officer positions shall be adjusted by three (3%), as reflected on Exhibit I, Table II, attached hereto and incorporated by this reference.**

2. Pension Contribution:

Employees in the Fire and Police Retirement system shall pay an additional contribution equal to three percent (3%) of their pensionable compensation to the Fire and Police Retirement System, reducing the City retirement contribution by the corresponding amount. In accordance with Internal Revenue Code Section 414(h)(2) and related guidance, the City shall pick-up and pay the contribution by salary reduction in accordance with this provision to the City of Fresno Fire and Police Retirement System. The employee shall have no option to receive the three percent (3%) contribution in cash. The three percent (3%) contribution paid by the employee will not be credited to an employee's accumulated contribution account nor will it be deposited into a member's Deferred Retirement Account Program ("DROP") account.

Permanent part time members shall participate in the Social Security System unless they are members of the City of Fresno Fire and Police Retirement System. Permanent part time members shall not be members of the Fresno Fire and Police Retirement System unless:

- The individual participated in the plan as a full time permanent employee and whose contributions remain on deposit in the City of Fresno Fire and Police Retirement System; or
- At separation from City employment, the individual elected a Deferred Vested status in the Fire and Police Retirement System. Upon re-employment as a Public Safety Officer, the individual will resume participation in the Fire and Police Retirement System; or
- The individual is a retiree of the City of Fresno Fire and Police Retirement System and is reinstated from retirement by the City of Fresno Fire and Police Retirement Board in accordance with Fresno Municipal Code Section 3-334.

COLA Adjustments

COLA Adjustments for Career-Rank Average Method DROP Members and Retirees

Effective *****February 28, 2022**, any future cost of living adjustments ("COLA adjustments") for Career-Rank Average Method Deferred Retirement Option Program ("DROP") members and retirees who entered DROP or retired (not having entered DROP) from positions in this unit under FMC Section 3-301(a)(9) prior to *****February 28, 2022**, and whose COLA adjustments are calculated using the*****"F"** Step of their respective rank, shall have their COLA adjustments

calculated under FMC Section 3-301 (a)(9) using the* * * “G” Step salary in lieu of their * * * “F” Step salary to determine “average compensation”.

COLA Adjustments for Final Three Year Average Method DROP Members and Retirees

Effective * * * **February 28, 2022**, any future COLA adjustments for Final Three Year Average Method DROP members and retirees shall be calculated pursuant to FMC Section 3-302(g).

For Final Three Year Average Method DROP members and retirees, COLA pursuant to FMC Section 3-302(g) will be effective July 1, 2021, for the * * * **February 28, 2022 wage increase, and will be effective July 1, 2022 for the June 20, 2022 wage increase.**

The parties agree to a limited reopener on the subject of changing the normal pension contribution rate to reflect the additional payments above.

3. Premium Pay:

(a) P.O.S.T. Certificate Pay

* * ***Members** who have satisfactorily attained and maintained the Advanced P.O.S.T. Certificate shall be compensated at a rate of * * * **seven percent (7%)*** * *above the member’s base rate of pay.

(b) Night Shift Premium

Employees who have a shift regularly scheduled from 19:30 hours to 07:30 hours will receive night shift premium pay of **\$1.75** * * *per hour for all hours actually worked between 19:30 hours and 07:30 hours. * * *

(c) Bilingual Certification Program

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

a. Bilingual certification examinations will be conducted on an as needed basis. Examination applications will be available at the

Personnel Services Department and City department personnel units.

- b. Bilingual certification examinations are conducted for languages as outlined in the Salary Resolution.
- c. The Director of Airports or designee, shall annually designate those positions or assignments for which bilingual skill is desired. This may result in the loss of bilingual designation and pay.
- d. In order to remain eligible to receive bilingual premium pay, employees must take and pass the certification examination once every five (5) years.
- e. The bilingual premium pay rate for certified permanent employees is one hundred dollars (\$100) per month, regardless of how many languages for which an employee is certified.
 - (1) Certified employees may interpret/translate for departments/divisions they are not assigned to, provided the requesting department/division has a demonstrated customer service related need, and has obtained approval from the certified employee's supervisor.
 - (2) Certified employees shall not refuse to interpret/translate while on paid status. Refusal shall result in appropriate disciplinary action. Certified employees may be assigned to any incident or investigation requiring their bilingual skills and may be required to prepare written reports related to the incident or investigation. The objective of this policy will be to utilize department resources in the most efficient way possible.
 - (3) Except in the event of an emergency, bilingual employees who are not certified shall not be required to interpret/translate.

B. Performance Evaluations

Performance evaluations for new employees will be done on a quarterly basis for the first year of employment and will then be conducted at least annually thereafter.

C. Fresno City Employees Health and Welfare Trust

The City and the Association agree that the Fresno City Employees Health and Welfare Trust has the sole authority to determine the benefits that will be provided during the term of this MOU. The sole responsibility of the City under this clause is to provide a set dollar amount to be contributed to the Trust on behalf of the employee represented by the Association. The City's contribution for full time employees will be seventy-five percent (75%) of the premium established by the Fresno City Employees Health and Welfare Trust Board prior to July 1, 2014, plus fifty percent (50%) of any increase in the premium effective July 1, 2015. Future increases to the health and welfare premium will be split so that fifty percent (50%) will be absorbed by the City and fifty percent (50%) will be absorbed by employees, except that the employee share shall not exceed thirty percent (30%). Should the employee share be set at thirty percent (30%), the City share shall be seventy percent (70%). During periods of open enrollment or due to a change in circumstances as defined by the Trust, an employee may opt to contribute the amount necessary to make up the difference through payroll deductions, or accept a reduced coverage option.

Should any other represented bargaining unit in the City negotiate a successor MOU, or extend the period of an MOU, or have terms imposed resulting in a greater contribution by the City, upon the Union's request, the City will match that benefit.

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.

Other Health Insurance Opt Out

1. With proof of other health insurance coverage, employees may opt out of enrolling in the City's Health and Welfare plan if enrolled in a health plan outside of the City, such as a spousal plan.
2. Eligible employees (i.e., with proof of other health insurance) may opt out of enrolling in the City's Health and Welfare plan upon:

- (a) employment with the City;
 - (b) within thirty (30) days of a qualifying event; or
 - (c) during the open enrollment period for the Health Plan.
3. **On an annual basis during the month of November,** An employee electing to opt out of the City's Health and Welfare plan will be required to submit proof of other health insurance * * * to the Personnel Services Department. * * * **If other insurance is discontinued for any reason at any point, the employee must notify the Personnel Services Department Immediately. If the employee does not provide proof of other health insurance annually during the month of November, they will automatically be enrolled in the City's Health and Welfare Trust Plan, and will not be eligible to opt out of the City's Health and Welfare Trust Plan during the respective plan year unless they have a qualifying event and submit proof of other insurance within thirty (30) (30) days of the qualifying event. Otherwise, they may opt out during the open enrollment period for the Health and Welfare Trust Plan with acceptable proof of other health insurance.**
4. **Acceptable proof of other health insurance will be * * * presenting a current insurance identification card bearing the employee's name, * * * or proof of the employee's eligibility from the insurance provider. In all cases, acceptable proof of other health insurance for purposes of this section must include the City employee's name. * * ***

D. Hours and Work Schedules

- 1. The workweek and work cycle period under FLSA will be determined by management in accordance with the needs of the Airport with the understanding employees perform law enforcement duties under the definition of FLSA.
- 2. The Unit is on a 14 day work period with a schedule consisting of three twelve (12) hour shifts in one week and four twelve (12) hour shifts in another week. As noted below, this work period and schedule can be changed with appropriate notice.
- 3. Regular Work Schedule Assignments:

Full time employees in this unit have the first choice of regularly assigned work shifts and regular days off. The order in which the full time employees select their regular work shift and regular days off is based on date of hire in a permanent position with the Department of Airports in the Airport Public

Safety Officer classification. Such selection is made at the time of appointment as a permanent full time employee in the Airport Public Safety Officer classification. After the full time employees in this unit have selected their work schedules and regular days off, the permanent part time employees will be assigned their work schedules and regular days off. The department maintains its right to modify schedules to meet the needs of the department. The department will provide at least fourteen (14) calendar days advance notice of any schedule change, except in emergent situations, to the affected employee(s).

4. Filling of Planned Open Shifts:

Airport Public Safety (APS) will post monthly schedules showing the available open shifts by job classification. APS will post the next month's schedule by the 15th of the prior month and notice of the posting will be transmitted to all employees in the unit. Once the open shifts have been posted for forty-eight (48) hours, permanent employees may submit no more than four (4) requests to the designated department representative to fill no more than three (3) shifts. Such requests are to be submitted no later than seventy-two (72) hours after posting of the open shifts. The department will assign open shifts on a seniority order basis based on length of continuous service as a permanent employee in their present class while minimizing overtime. The final schedule will be posted no more than ten (10) calendar days after the announcement of open shifts. The department reserves the right to fill any unfilled shifts (including unplanned shifts) by assignment, temporary officers, APS Supervisors, or Fresno Police Department Officers.

E. Leaves

1. Holiday Leave

- (a) ***Employees shall accrue eight point four ***8.4 hours per month in lieu of the Holidays recognized in FMC Section 3-116.
- (b) Employees in this Unit may request payment and be compensated for up to forty eight (48) hours or ten percent (10%) of their holiday leave balance, whichever is greater, each fiscal year during the term of this MOU. The employee's request to be paid must be received by the Department payroll clerk at least ten (10) calendar days prior to the next biweekly pay period. Employees must cash out a minimum of twelve (12) hours. No cash out may be requested between April 1st and June 30th.

2. Vacation Leave

- (a) Employees shall accrue Vacation Leave hours for each completed

calendar month of employment as reflected below. Employees are allowed to only accumulate up to twice their amount of annual accrual of Vacation Leave.

| Years of Continuous Employment | Accrual Rate (hrs./mo.) |
|--------------------------------|-------------------------|
| Less than 10 | 8 |
| More than 10 | 10 |

Effective October 1, 2021

| Years of Continuous Employment | Accrual Rate (hrs./mo.) |
|--------------------------------|-------------------------|
| Less than 10 | 8.4 |
| More than 10 | 10.5 |

- (b) An employee’s Vacation Leave accumulation shall not cease due to refusal by the City to grant Vacation Leave prior to the employee reaching the Vacation Leave accumulation limit applicable to the employee’s position and length of service. In the event an employee requests in writing Vacation Leave one (1) month prior to the month in which the limit would be reached, and such request is refused, the Director of Aviation or designee shall extend the employee’s Vacation Leave accumulation limit for ninety (90) days during which time the employee shall be scheduled for Vacation Leave sufficient to reduce the employee’s balance below the accumulation limit.

3. Sick Leave

Employees shall accrue Sick Leave at the rate of eight point four (8.4) hours for each completed calendar month of employment. Employees shall not accrue additional Sick Leave once their balance reaches nine hundred (900) hours. The FMC, City Administrative Orders, departmental policies, procedures, rules and regulations concerning Sick Leave usage and administration will continue to apply.

Protected Sick Leave

All employees may use up to one-half of their annual Sick Leave accrual for purposes consistent with California Labor Code section 233.

Protected Sick Leave, as described above, may be used under the following circumstances, and may be designated as protected time pursuant to the state law at the employees' discretion:

- Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee;
- Diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee's parent (a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child), child (a child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis - this definition of a child is applicable regardless of age or dependency status), spouse, registered domestic partner, sibling, grandparent, or grandchild; or,
- For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in Labor Code Section 230(c) and Labor Code Section 230.1(a).

Employees who terminate City employment and return within one year of such termination will be entitled to reinstatement of their Sick Leave balances at the time of termination from City employment, up to a total of 48 hours.

Any leave taken under these provisions which would also apply to other Sick Leave provisions (e.g., Protected Sick Leave and/or family and medical leave) would also count toward those provisions.

4. Supplemental Sick Leave

* * *On each July 1 * * *employees shall be credited forty (40) hours of Supplemental Sick Leave with an accrual limit of forty (40) hours per year and up to a total lifetime maximum of eighty (80) hours. However, if an employee is absent from work on a leave without pay status on July 1st, the additional forty (40) hours shall be prorated and received upon the employee's return to work. The credit of hours shall be prorated for employees hired after July 1st.

Supplemental Sick Leave may only be utilized once the employee has exhausted all other Sick Leave and Vacation Leave accruals or as Protected Sick Leave as set forth in Article VII, Subsection E.4 above.

During the first and second year of employment, where an employee is

accruing Supplemental Sick Leave, up to one-half of the total time accrued during the fiscal year may be used in accordance with California Labor Code 233, as described in section 4 above. Employees may use Supplemental Sick Leave for this purpose only once the employee has exhausted their regular Sick Leave balance.

Upon separation from City service the accrued Supplemental Sick Leave hours will be:

- (a) As service credit on an hour-per-hour basis upon retirement; or
- (b) Cashed out at retirement or upon separation from the City.

F. Compensatory Time Off (CTO)

1. * * * **An employee has the option to accrue CTO in lieu of cash payment for overtime hours worked for the first sixty (60) hours of overtime worked in a fiscal year. CTO may not be rolled over into the next fiscal year. CTO may * * * be used for time off during the fiscal year it is earned, * * * will be cashed out * * * upon separation from employment if unused CTO from the current fiscal year remains, * * * or will be cashed out * * * during the last pay period of each fiscal year * * * at the employee's base rate of pay.**
2. Employees who have reached the maximum accrual (60) hours **of CTO in a fiscal year** shall be given cash payment for additional overtime hours worked. * * *
3. CTO shall be accumulated at the applicable overtime rate for the time worked under the provisions of the Fair Labor Standards Act (FLSA).
4. The use of accumulated CTO shall be requested, and subject to approval by the Airport * * * **Public Safety Manager** or designee.

G. Health Reimbursement Arrangement

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

* * * **At service retirement, or at a disability retirement if a Tier I or Tier II member is otherwise eligible for service retirement, or upon resignation if the employee is otherwise eligible for service retirement, employees who have used one hundred twelve (112) hours or less of sick leave used for sick time**

(excluding only hours used for Workers' Compensation benefits and/or protected leaves such as Family & Medical Leave, and Family Sick Leave, and/or Bereavement Leave) in the 24 months preceding their date of retirement, will be credited with an account for the employee under the HRA to be used solely to pay premiums for medical insurance (including COBRA premiums) **and qualified medical expenses pursuant to the City of Fresno Retiree HRA Plan Document**. The "value" of the account shall be determined as follows:

The number of accumulated sick leave hours in excess of 240 hours at the time of retirement multiplied by * * ***80%** of the employee's then current hourly base rate of pay.

The hourly base rate of pay for employees shall be the equivalent of the monthly salary for an employee as reflected in the * * ***Salary Resolution** , multiplied by twelve (12) months then divided by 2,080 hours; or

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

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

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

H. Workers' Compensation

1. An employee in this unit who suffers an injury/illness in the course and scope of City employment which results in disability shall receive workers' compensation salary and benefits in accordance with the California Labor Code and as set forth in this Subsection F.
2. Partial days of absence due to a work related injury or illness, including the day of injury or illness, shall be at full pay and shall not count toward the

exclusion period; however, this time shall be recorded as work related injury/illness absence.

4. If the employee is placed on sick leave, vacation or holiday pending determination as to whether the injury or illness is industrial, and the injury or illness is determined to be industrial, sick leave, vacation or holiday shall be restored within thirty (30) calendar days of such determination provided that the employee has submitted all necessary documents relevant to their Workers' Compensation claim, and the employee placed on work related injury/illness leave as provided herein.
5. If the employee is placed on sick leave, vacation or holiday pending determination as to whether the injury or illness is industrial, and the injury or illness is determined not to be industrial, sick leave, vacation or holiday shall not be restored.
6. Retirement benefits shall not be reduced as a result of compensation paid at the one hundred percent (100%) rate level of compensation established herein. Changes in contribution by the City and employee shall be in accordance with the applicable retirement code sections.

I. Uniform Allowance

Employees shall receive * * ***\$1,200** per year as a uniform purchase and maintenance allowance and paid in semi-annual installments on the last pay period in December and June. For employees in Tier 2 of the City of Fresno Fire and Police Retirement System, the uniform allowance is not pensionable.

J. Drug Testing

Employees will be subject to pre-employment drug testing and ongoing random drug testing in accordance with the drug testing process outlined in the City's Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing program. Employees will be included in the City's FMCSA drug and alcohol testing pool for purposes of random drug testing selection. Employees selected during a random pull shall not affect the required minimum annual percentage rate for FMCSA random drug and/or alcohol testing or reporting requirements, but shall be tested for drugs prohibited by the FMCSA. An employee, who is determined to have a positive random drug test result or refuses to submit to a random drug test, may be subject to disciplinary action up to and including removal (i.e., termination).

K. Permanent Part Time Employees

1. Permanent Part Time Airport Public Safety Officers ("permanent part time members") shall be included as members of Unit 11 and shall be designated to work on a modified 14 day work period.

2. Permanent part time members will accumulate and use all leave benefits in proportion to the number of hours scheduled for that employee's position based on a full time 14 day, 84 hour schedule.
3. The City shall contribute towards the health and welfare premium in accordance with Article VII, Section C. Fresno City Employees Health and Welfare Trust.

L. TEMPORARY ASSIGNMENT TO PERFORM DUTIES OF ABSENT EMPLOYEES (ACTING)

In the absence of an Airport Public Safety Supervisor, members of this unit who meet the minimum qualifications of the Airport Public Safety Supervisor classification may be authorized by the Airports Director or designee to act as an Airport Public Safety Supervisor. For hours actually worked in an acting capacity, the employee will be compensated as an Airport Public Safety Supervisor such that the employee shall be paid the step in the Airport Public Safety Supervisor salary range which is at least three and one-half percent (3.5%) higher than the base rate pay received as an Airports Public Safety Officer. If such an increase would require a payment greater than the highest step of the Airport Public Safety Supervisor salary range, then the highest step of the Airport Public Safety Supervisor salary range shall be paid.

ARTICLE VIII

HEADINGS, SAVINGS CLAUSE AND FULL UNDERSTANDING

A. Headings

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

B. Savings Clause

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

C. Full Understanding

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

ARTICLE IX
TERMINATION

The provisions of this MOU shall be in full force and effect from ****February 28, 2022 to December 31, 2022****, subject to the Sections (A. B., and C.) below.

- A. This MOU shall become effective only after approval of the Union, followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter Sections 605 and 609, and shall remain in full force and effect through ****December 31, 2022**.
- B. During the term of this MOU, should either party desire to modify its terms or to meet and confer as to matters within the scope of representation not addressed in this MOU, the party requesting any change shall request in writing to meet and confer on the item(s), which item(s) shall be specified in writing.
- C. During the term of this MOU, either party may refuse any request by the other to meet and confer without explanation if the item is directly considered and specifically addressed herein. It is further agreed, however, that this section shall not prohibit the City from requesting to meet and confer on changes to federal, state or City statutes, and City Administrative policies referred to or cited in this MOU, in which case the request to meet and confer shall not be refused.
- D. REOPENERS/MEET AND CONFER
1. The parties agree to meet and confer over:
 - Revisions to the Personnel provisions of the Fresno Municipal Code (FMC),Chapter 3, Article 1);
 - Revisions to the Civil Service Regulations in the FMC, Chapter 3, Article 2; and
 - Revisions to the Employer-Employee Relations provisions of the, Chapter 3, Article 6.
 2. **During the term of the MOU, the parties agree to a limited reopener to meet quarterly, at minimum, for the sole purpose of discussing and evaluating the following:**
 - **Compensatory Time Off accrual limit;**
 - **Night Shift Premium hourly rate; and**

- **The impact of leave used by Permanent Part Time (PPT) employees on the applicable overtime rate pursuant to FLSA, use of Sick Leave by PPT employees for scheduled overtime beyond the employee's base hours.**

IN WITNESS WHEREOF, the parties hereto set their hands this ____ day of _____, 2022.

FOR OPERATING ENGINEERS
LOCAL UNION NO. 3:

FOR THE CITY OF FRESNO:

ALLEN DUNBAR
Business Representative

TJ MILLER
Director of Personnel Services

JEFFREY NOBLE
Airport Public Safety Officer

STEPHANIE HERNANDEZ
Senior Human Resources/Risk Analyst

PETER RETA
Airport Public Safety Officer

JENNIFER MISNER
Human Resources Manager

MICHAEL TOROSIAN
Senior Human Resources/Risk Analyst

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____
Senior Deputy City Attorney

EXHIBIT I

| Airport Public Safety Officers - Unit 11 Job Code 310002 TABLE I Salaries Effective February 28, 2022 | | | | | | | |
|--|------|------|------|------|------|------|------|
| CLASS TITLE | A | B | C | D | E | F | G |
| Airport Public Safety Officers | 5582 | 5858 | 6136 | 6440 | 6758 | 7097 | 7452 |

*Hourly rates are to be calculated as if working 40 hours per week.

EXHIBIT II

| Airport Public Safety Officers - Unit 11 Job Code 310002 TABLE II Salaries Effective June 20, 2022 | | | | | | | |
|---|------|------|------|------|------|------|------|
| CLASS TITLE | A | B | C | D | E | F | G |
| Airport Public Safety Officers | 5750 | 6034 | 6321 | 6634 | 6961 | 7310 | 7676 |

*Hourly rates are to be calculated as if working 40 hours per week