

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND

FRESNO POLICE OFFICERS ASSOCIATION
(Police Management-Unit 9)

January 31, 2022 – June 16, 2024

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LEGEND

* * * = deleted old language
[§ deleted] = section/subsection deleted/moved
[§§ deleted] = two or more
sections/subsections deleted/moved
bold type = new language

ARTICLE I

PREAMBLE

A. 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. Upon approval by the city, other than the modifications set forth herein, the parties agree that until this MOU terminates, all economic benefits currently afforded to affected members shall remain intact without modification unless otherwise agreed to in writing by the parties.

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 Article 3 of Chapter 1 Sections 3-101, 3-201, 3-202, 3-301, 3-401, 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 or from which it is a derivative.

C. 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), and the Public Safety Officers Procedural Bill of Rights Act (POBOR) 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.

ARTICLE II

EMPLOYEE RIGHTS

A. GENERAL - EMPLOYEE RIGHTS

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 their 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. EMPLOYEE RESPONSIBILITIES

All employees in the Police Management 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.

C. NONDISCRIMINATION

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

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 in emergencies;
 - (11) exercise complete control and discretion over its organization and the 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. Minimum staffing levels, by shift, area, and day of the week, shall be established by appropriate departmental order.

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) are retained by and reserved to the City.
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 Association regarding matters within the right of the City to determine.

ARTICLE IV

RECOGNITION

A. RECOGNITION OF UNIT DESCRIPTION

The Police Management 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 employee unless otherwise specified), provided that such Unit may be modified from time to time in the manner designated in the FMC:

Police Lieutenant
Police Captain
Deputy Police Chief

B. ASSOCIATION RECOGNITION

The City acknowledges the Association as the recognized employee organization representing the Unit, and therefore, shall comply with all provisions of the Meyers-Milias-Brown Act (Government Code §3500 et. seq.) including, but not limited to meeting and conferring 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 a successor MOU. In order that the meet and confer process includes adequate time for the resolution of any impasse, the City shall accept meet and confer process proposals from the Association as early as the 1st of February of the last year of the expiration of this MOU, and will be prepared to commence the actual meet and confer process no later than March 1st of the last year of the MOU.

C. 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.

D. 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.

E. STRIKES

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

F. 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, including, but not limited to, mediation as outlined in the FMC and fact finding as may be prescribed in the Meyers-Milias-Brown Act.

ARTICLE V

SCOPE OF REPRESENTATION

A. GENERAL

"Scope of representation" shall be as defined in FMC Section 3-603(w), as the same may be amended from time to time. Said Section presently reads as follows:

"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 Section 3-604, and City rights as set forth in Section 3-605(a), are excluded from the scope of representation.

B. REPRESENTATION

1. The City will not interfere with, or discriminate in any way against, any employee by reason of their membership in the Association.
2. The Association agrees to represent Unit employees in a manner consistent with the requirements of the Meyers-Milias-Brown Act, POBOR, and applicable state and federal regulations.

ARTICLE VI

DEDUCTIONS AND ASSOCIATION BUSINESS

A. DUES CHECKOFF/DEDUCTIONS

The procedures governing dues deductions, agency shop, hold harmless obligations, religious and conscientious objections, and financial reporting requirements, shall be as provided in Government Code Section 3550 et seq. and Senate Bill 866 (SB 866).

1. The City shall deduct the dues or benefit premiums, or both, following receipt of notice from the Association that authorization has been provided to the Association by members in the Unit. The City shall stop dues or benefit premiums, or both, upon receipt of notice only from the Association that authorization has been provided to the Association by members in the Unit. Should there be a dispute regarding the deduction of dues, the Association shall provide the City with a copy of the authorization(s) signed by the employee.
2. A Dues Deduction Authorization may be revoked by a member in the Unit, subject to the terms of the Authorization* * *.
3. If a member in the Unit desires to revoke, cancel, or change prior dues deduction authorization, such requests will be directed to the Association.
4. 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.
5. The Association, 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

B. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION

The earnings of employees who opt to join the Association must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When an employee is in a non-pay status for an entire pay period, no dues deduction shall be made from future earnings to cover that pay period, nor will the employee be allowed to deposit with the City Controller the

amount which would have been deducted if the member had been in a pay status during the pay period. Whenever the member's salary is not sufficient to cover other legal and required deductions, no dues deduction or deposit shall be made.

C. DUES DEDUCTION

1. Dues deductions covering all such deductions shall be transmitted to the Fresno Police Officers Association.
2. Dues deductions shall be made in favor of the Fresno Police Officers Association.
3. Dues deductions will be transmitted at least monthly to an account specified by the Fresno Police Officers Association.

D. ASSOCIATION BUSINESS

1. Employees occupying classes represented by the Association shall have their monthly vacation leave accrual levels (denoted in MOU Article VII, Section H. 2., vacation leave), reduced by .66666 hours per month, which shall be placed in a time bank and administered by the department for Association business use. Officers designated by the Association may, with the approval of the department, attend 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 Absent with Substitute (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.
2. The Association Chairman may use the time banked under this provision for Association business in eight (8) hour increments to a maximum of 24 hours per week.
3. Any time spent by the Association Chairman, 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.

ARTICLE VII

COMPENSATION AND BENEFITS

A. GENERAL

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

B. SALARIES, DEFERRED COMPENSATION, PENSION CONTRIBUTION, HEALTH REIMBURSEMENT ARRANGEMENT (HRA), BENEFIT PAYOFFS, PROMOTION, AND P.O.S.T. CERTIFICATE PAY

1. Salaries

a. Police Lieutenants and Police Captains:

- i. Effective * * ***June 21, 2021**, Police Lieutenant and Police Captain salary ranges shall be increased by three percent (3%) as reflected on Exhibit I, Table I attached hereto and incorporated by this reference.
- ii. **Effective January 31, 2022, an “H” Step will be added to the salary range for the classifications of Police Lieutenant and Police Captain, as reflected on Exhibit I, Table II, attached hereto and incorporated by this reference. The “H” Step represents a five (5%) percent increase above the “G” Step. Employees are required to serve one (1) year at the “G” Step prior to progressing to the “H” Step pursuant to Section 2 of the Salary Resolution.**
- iii. **Effective January 31, 2022, incumbents of the Police Captain classification at a salary step lower than F Step will be placed at the F Step, and will receive a new anniversary date for purposes of future step progressions.**
- iv. Effective * * ***June 20, 2022**, Police Lieutenant and Police Captain salary ranges shall be increased by three percent (3%), as reflected on Exhibit I, Table III attached hereto and incorporated by this reference.

- v. **Effective June 19, 2023, Police Lieutenant and Police Captain salary ranges shall be increased by three percent (3%), as reflected on Exhibit I, Table IV attached hereto and incorporated by this reference.**
- vi. **Effective June, 19 2023, an “I” Step will be added to the salary range for the classifications of Police Lieutenant and Police Captain, as reflected on Exhibit I, Table IV, attached hereto and incorporated by this reference. The “I” Step represents a five (5%) percent increase above the “H” Step. Employees are required to serve one (1) year at the “H” Step prior to progressing to the “I” Step pursuant to Section 2 of the Salary Resolution.**

b. Deputy Police Chiefs

- i. **Effective * * *June 21, 2021, the salary range for Deputy Police Chief shall be modified to include an increase of three percent (3%) to the top and bottom of the range as reflected on Exhibit I, Table I, attached hereto and incorporated by this reference.**
- ii. **Effective January 31, 2022, the salary range for Deputy Police Chief shall be modified to include an increase of five percent (5%) to the top and bottom of the range as reflected on Exhibit I, Table II, attached hereto and incorporated by this reference.**
- iii. **Effective * * *June 20, 2022, the salary range for Deputy Police Chief shall be modified to include an increase of three percent (3%) to the top and bottom of the range, as reflected on Exhibit I, Table III attached hereto and incorporated by this reference.**
- iv. **Effective June 19, 2023, the salary range for Deputy Police Chief shall be modified to include an increase of three percent (3%) to the top and bottom of the range, as reflected on Exhibit I, Table IV attached hereto and incorporated by this reference.**
- v. **Effective June 19, 2023, the salary range for Deputy Police Chief shall be modified to include an additional increase of five percent (5%) to the top and bottom of the range, as reflected on Exhibit I, Table IV attached hereto and incorporated by this reference.**

c. COLA Adjustments for Career Rank Average Method DROP Members and Retirees

Effective *****January 31, 2022, for the classifications of Police Lieutenant and Police Captain** 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 *****January 31, 2022**, and whose COLA adjustments are calculated using the *****"G"** Step of their respective rank shall have their COLA adjustments calculated under FMC Section 3-301 (a)(9) using the *****"H"** Step salary in lieu of their *****"G"** Step salary to determine "average compensation".

Effective **June 19, 2023, for the classifications of Police Lieutenant and Police Captain** 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 **June 19, 2023**, and whose COLA adjustments are calculated using the **"H"** Step of their respective rank shall have their COLA adjustments calculated under FMC Section 3-301 (a)(9) using the **"I"** Step salary in lieu of their **"H"** Step salary to determine "average compensation".

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

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 *****June 21, 2021** wage increase, **July 1, 2022** for the **June 20, 2022 wage increase**, and will be effective *****July 1, 2023** for the *****June 19, 2023** wage increase.

e. Retirement/DROP

- i. It is the intent of this Section B.1.e. to hold members harmless from any negative impact from the following deferred salary increases. The deferred salary increases listed below shall be

included, if appropriate, in any retirement benefit or DROP calculations pursuant to the applicable FMC sections for members who separate from City service by service retirement or by disability retirement, or enter DROP.

Effective January 1, 2011, One percent (1%)

Effective July 1, 2011, Two percent (2%)

Effective January 1, 2012, One percent (1%)

- ii. With respect to Sections B.1. c, members who retire or enter DROP and are credited with the January 1, 2011, July 1, 2011, and January 1, 2012, deferred salary increases in their retirement benefit or DROP calculation shall not be entitled to also include the July 1, 2014 and July 1, 2015, salary increases to their retirement benefit or DROP calculation.
- iii. DROP Participants and Retirees (Tier 2) – In accordance with FMC Sections 3-411 and 3-424, should the CPI percentage for the more recent full calendar year decrease below the CPI percentage for the full calendar year immediately prior, that percentage decrease shall not be used to reduce retirement allowances or deposits to the members' DROP account. It shall instead be used to reduce any previously banked cost of living increases. Any decrease in excess of the members'/retirees' cost of living bank shall be accumulated in the bank and offset by future cost of living increases as occurring in succeeding years

2. Deferred Compensation

The City will contribute to the City's Deferred Compensation Plan fifty-five dollars and thirty-nine cents (\$55.39) per employee per pay period to the City's Deferred Compensation Plan. In order for employees to receive this benefit, the employees must personally enroll in the Deferred Compensation Plan by contacting the deferred compensation administrator (Fidelity) and the Police Department's payroll clerk and authorize a contribution of at least fifty-five dollars and thirty-nine cents (\$55.39) per pay period. This contribution by the City shall not be pensionable compensation; shall not be included in the calculation of retirement benefits; and payment will be prospective from the point of enrollment.

3. Pension Contribution:

The following applies to an employee's pension contribution:

- a. Employees in Tier 2 hired on or after September 11, 2014, 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 a 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 Option Program ("DROP") account. This provision will terminate on implementation of Article VII, Section B.3.c. below.
- b. Effective September 22, 2014, employees in Tier 2 who were hired before September 11, 2014, including those in DROP, who promote from the Basic Unit (Unit 4) into the Management Unit (Unit 9) will pay nine percent (9%) into the pension system.

Those employees in Tier 1, including those in DROP, who promote from the Basic Unit (Unit 4) in the Management Unit (Unit 9) will not be required to pay any additional amount, reducing the City's contribution into the pension system.

These provisions in Article VII, Section B.3.c. will terminate on implementation of Article VII, Section B.3.c. below.

- c. With the support of the Association, the City will make efforts to amend the Municipal Code to allow the additional contribution amounts above in in Article VII, Section B.3.a. to become part of the Member Normal Contribution Rate. When the Municipal Code is so amended, the City and the Association agree that, on the first pay period following the date the new FMC provision goes into effect, all of the following will apply if approved by City Council:
 - i. The Member Normal Contribution Rate for members of Tier 2 in the Fire and Police Retirement System hired on or after September 11, 2014, shall be twelve percent (12%).
 - ii. Active members in Tier 2 who were hired before September 11, 2014 including those who promoted from Unit 4 to Unit 9, shall have a Normal Contribution Rate of ten percent (10%). The City will pay one percent (1%) of the employee's Normal Contribution Rate.

- iii. Members of Tier 1 in the Fire and Police Retirement System shall have their Member Normal Contribution Rate increased by an additional one percent (1%), which will be added to their existing Entry Age Normal Contribution Rate effective with the change in the FMC in accordance with this Section. The City will pay this additional one percent (1%) on behalf of the employee.
- iv. Members in the DROP program who entered DROP prior to March 7, 2011, are not required to make Member Normal Contributions in accordance with the Fresno Municipal Code.
- v. Members who entered DROP on or after March 7, 2011, are required to continue Member Normal Contributions and their Member Normal Contributions shall be deposited into the member's DROP account.
- e. Employees who separate City employment regardless of reason and withdraw their employee contributions from the Fire and Police Retirement System between September 22, 2014 and the effective date of a Fresno Municipal Code amendment pursuant to the provisions in Article VII, Section B.3.d., will have an amount refunded by the City equal to the additional amount contributed in accordance with Article VII, Section B.3.b. above.
- f. Tier 1 DROP participants and Tier 1 retirees were previously granted a total of four percent (4%) in cost of living increases based on the salary deferral language in the previous MOU only; deferrals included a one percent deferred pay increase in January 1, 2011, a two percent in July 1, 2011, and a one percent in January 1, 2012.

On July 1, 2014, active employees received a two percent (2%) salary increase which offset two percent (2%) of the four percent (4%) deferred salary increases that were credited previously as cost of living increases. The remaining two percent (2%) deferred cost of living increase for Tier 1 DROP participants and retirees will be offset by the July 1, 2015 salary increase they received.

The cost of living calculation for FY 2017 for Tier 1 DROP participants and Tier 1 retirees will include the December 31, 2016 salary increase in accordance with the cost of living calculation provisions in the Fresno Municipal Code.

4. Health Reimbursement Arrangement (HRA)

At separation from permanent employment with the City of Fresno by service retirement or at disability retirement if the employee is otherwise eligible for service retirement, the value of the employee's accumulated sick leave, **holiday leave, special holiday leave**, and cashable vacation leave shall be credited to an account for the employee under the Health Reimbursement Arrangement (HRA) as follows:

- For employees hired before September 11, 2014, and any employees who do not enter DROP, 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, an application for disability retirement, if otherwise eligible for a service retirement, or an application for service retirement (not having submitted an application for disability retirement), shall have all accumulated sick leave hours upon retirement multiplied by eighty (80%) of the employee's then hourly rate of pay.
- For employees in DROP hired on or after September 11, 2014, 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 the accumulated sick leave hours shall not exceed the number of sick leave hours which the employee had at the time of entry into DROP.
- Employees in DROP hired on or after September 11, 2014, who retire within sixty (60) calendar days of receipt by the City of Fresno Fire & Police Retirement System of an application for disability retirement if otherwise eligible for a service retirement, or an application for service retirement (not having submitted an application for disability retirement), shall have all accumulated sick leave hours upon retirement multiplied by eighty (80%) of the employee's then hourly rate of pay, except that the accumulated sick leave hours shall not exceed the number of sick leave hours which the employee had at the time of entry into DROP.

All payments noted above are conditioned on the employee's satisfaction of the eligibility requirement as set forth in the Retirement/Attendance Health Incentive provision in Section H.1, paragraph 2, below, and

- The total number of all accumulated holiday leave hours at the time of separation for retirement purposes 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 an employee as reflected in Exhibit I, multiplied by twelve (12) months then divided by 2,080 hours.

At the City's option, HRA accounts may be book accounts only – no actual trust account shall be established for any employee. A book account means that 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 **as well as other qualified medical expenses as defined in Internal Revenue Code Section 213(d), and further detailed in Internal Revenue Service Publication 502**. 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.

[§deleted]

It is the intent of the parties to delete the following phrase "if the member is otherwise eligible for service retirement" from the first paragraph of section (4) provided that removal of such language will not result in any material detriment to the plan or the City, its plan participants, or to the tax status of the plan. In the event that such detriment exists, the City will notify FPOA within 90 days of the effective date of this MOU with an explanation in writing. It is understood that a change in the plan document will require meet and confer with all affected bargaining units.

5. Benefit Payoffs

Benefit payoffs (e.g. holiday, administrative leave) shall be at the employee's applicable base rate of pay, as reflected in Exhibit I, Tables I, II, and III at the time of payment. However, employees shall not be allowed to cash out any

accumulated hours of sick and/or vacation leave pursuant to the HRA set forth in Section B., paragraph 4, above.

6. Promotion

- a. For classes which have step increases (i.e., Police Lieutenant and Police Captain), movement to the next higher step will be at the discretion of the Chief of Police, based on the employee's last Annual Performance Evaluation which demonstrates that the individual meets the job standards for that class. **Effective January 31, 2022**, Lieutenants who are promoted will be placed at Step* * *F of the class promoted to if the * * * **promotive** class contains steps. **Effective June 19, 2023, Lieutenants who are promoted will be placed at Step G of the class promoted to, if the promotive class contains steps.**
- b. Employees who are promoted from the Basic Unit (Unit 4) to the Management Unit (Unit 9) will be promoted to a step which is not less than three and one half percent (3.5%) above compensation at the lower classification to include all premium pays actually received at the time of promotion, but excluding any overtime payments; or, fifteen percent (15%) above top step Sergeant, whichever is greater.
- c. The value of education incident plan (EIP) premium pay held in the FPOA Unit 4 class at the time of promotion to a FPOA Unit 9 class shall be considered in the calculations for determining step placement shall not be less than the "C" step level. This value consideration calculation is applicable solely to the promotional step placement determination described in this Subsection.

7. P.O.S.T. Certificate Pay – All compensation earned by a member pursuant to this subsection shall be in addition to any other incentive and/or premium pays received and shall be compensable for retirement purposes. **Members eligible for compensation under this subsection shall receive only the highest applicable rate of either 7(a) or 7(b) as follows:**

- a. Members who have satisfactorily attained the Supervisory P.O.S.T. Certificate shall be compensated at a rate of nine percent (9%) above the member's base rate of pay.
- b. Effective July 1, 2009, members who have satisfactorily attained the Management P.O.S.T. Certificate shall be compensated ten percent (10%) above the member's base rate of pay.

8. Take-Home Vehicles

Each member shall be entitled to either a transportation allowance or a take-home vehicle at their choosing and such employees must comply with Administrative Order 8-8.

9. Field Commander Assignments

When a field commander vacancy occurs, the Chief of Police may backfill the assignment for the good of the service with another Police Lieutenant. If no Police Lieutenant volunteers for the assignment, it may be offered to Police Captains. Police Lieutenants or Police Captains who are approved to work an additional shift in addition to their normal work week will be paid * * * **the amounts set forth in Article VII Section E.** If no Police Lieutenants or Police Captains volunteer for the additional shift, the Chief of Police may fill the assignment with a Police Sergeant.

C. SERVICE UNIFORM ALLOWANCE

Employees who are promoted from the Basic Unit (Unit 4) to the Management Unit (Unit 9) shall receive a one-time non-pensionable \$500 stipend for the purchase of the appropriate service uniform required for the higher classification. Annually thereafter, employees shall receive a total \$1,600 as a service uniform (wool) purchase and maintenance allowance, ("service uniform allowance"), prorated and to be paid in a separate check on a pay period-by-pay period basis. The service uniform allowance provided pursuant to this section shall be compensation for purposes of calculating pension benefits for a member.

D. 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.

Effective October 1, 2014, the City's contribution will be seventy-five percent (75%) of the employee's health and welfare premium. Subsequently, the cost of any increase in the health and welfare premium will be shared equally between the City and the employee, with fifty percent (50%) to be paid by the City and fifty percent (50%) to be paid by the employee, except that employees will be required to pay no more than thirty percent (30%) of the premium established by the Fresno City Employees Health & Welfare Trust Board. At such time as the employee share is set at thirty percent (30%), the City shall pay seventy percent (70%).

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.

E. CONTRACT LAW ENFORCEMENT SERVICES

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 United States Code ("U.S.C.") §207(p)(1), (p)(2) and (p)(3) under FLSA, and 29 Code of Federal Regulations ("C.F.R.") §553.227 et seq.

At the discretion of the Chief of Police, Police Lieutenants, Police Captains, and Deputy Chiefs may be assigned to special detail assignments including, but not limited to, providing uniformed foot/vehicle patrol for a **special events/contract law enforcement service where the City receives reimbursement from a third party subject to the Contract Law Enforcement Services Fee contained in the City's adopted Master Fee Schedule or applicable inter-agency Mutual Aid Agreements.**

Compensation **will be paid * * *** for *** * *any shift* * *** **when the assignment worked pursuant to this subsection** is in addition to the normal work week. **Members of Unit 9 shall be compensated for each hour, and/or portion of an hour, worked regardless of the length of shift. The hourly rate paid to the member shall be equal to the member's annual salary divided by 2080. The amended Master Fee Schedule is subject to Council's approval.**

[§ deleted]

The hours worked, and pay received for **special events/contract law enforcement services assignments** shall not be credited toward years of service for retirement benefits.

Any accident, illness, or injury which arises out of or occurs in the course of employment while assigned to a contract law enforcement service shall be covered under the City's workers' compensation plan.

F. LIFE INSURANCE AND LONG TERM DISABILITY BENEFITS

1. Life Insurance:

The Life Insurance benefit shall be up to an active employee's 70th birthday at 100% of annual earnings, rounding up to the next \$1,000, with a maximum of \$150,000. In addition, employees assigned to the bomb squad shall have accidental death, dismemberment and paralysis insurance coverage in the amount of \$250,000.

2. Long Term Disability:

An employee is eligible for long term disability insurance after 30 days from the date of the disability or after all sick leave is exhausted, whichever is greater. The benefit amount is 66 2/3% of salary up to age 65. The maximum benefit period differs after age 61. For more specific information, refer to the insurance certificate.

G. SICK LEAVE BENEFIT AT THE TIME OF ELECTION TO ENTER THE DEFERRED RETIREMENT OPTION PROGRAM (DROP) OR AT RETIREMENT.

An 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. For an employee who has reached the minimum service retirement age and who has elected to enter the DROP Program, the calculation of the employee's monthly DROP amount shall include an amount equal to fifty percent (50%) of the employee's unused sick leave balance as of the DROP entry date, with the sum calculated by multiplying fifty percent (50%) of the hours of unused sick leave by the hourly base rate of pay for the employee in effect as of the DROP entry date. The employee's pension contribution on this amount will be calculated at the date of DROP entry by multiplying the lump sum described above in this subsection 1 by the employee's pension contribution rate and that amount will be deducted from the employee'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 Sick Leave Benefit. The value of the additional amount in this subsection may be included in the member's gross pay at the time of DROP entry for taxable compensation purposes under IRS regulation calculations.

2. For the employee who has reached the minimum service retirement age and retires from the City without entering DROP, an amount equal to fifty percent (50%) of the employee's unused sick leave balance shall be included in the computation of the employee'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. The employee and the City will make a corresponding pension contribution to the retirement system based on the additional pensionable compensation created by the Sick Leave Benefit. The employee's retirement contribution will be calculated at the date of retirement by multiplying the lump sum described above in this subsection 2 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 employees who retire prior to age 50 due to a disability or to former employees that have separated from City service prior to reaching the minimum service retirement age and have elected a Deferred Vested status in the City of Fresno Fire & Police Retirement System. The value of the additional amount in this subsection may be included in the member's gross pay at the time of retirement for taxable compensation purposes under IRS regulation calculations.
3. Hourly base rate shall be the equivalent of the monthly salary for an employee provided in Exhibit I multiplied by twelve (12) months then divided by 2,080 hours.

H. LEAVES

1. Sick Leave:

Employees shall accrue sick leave at the rate of eight (8) hours for each completed calendar month of employment, with unlimited accumulation. The FMC, City administrative orders, departmental policies, procedures, rules and regulations concerning sick leave usage and administration will continue to apply. Administrative Order 2-19.1, Attendance Policy, shall no longer apply to members of this Unit. The attendance/health incentive component detailed below will also continue to apply.

Protected Sick Leave - Members shall be allowed **to take up to * * * forty-eight (48) hours** of accrued sick leave per fiscal year for Protected Sick Leave **under Labor Code section 233**. Protected Sick Leave may be used *** * *for kin care or any other purpose defined * * ***in California Labor Code section 233. **Members must elect whether to designate Sick Leave taken as Protected Sick Leave pursuant to this section.** The first three days or twenty-four hours, whichever is greater, shall also be considered

leave taken under California Labor Code section 246.5 (i.e., AB 1522, Healthy Workplace Healthy Family Act of 2014). Use of Protected Sick Leave shall be authorized and recorded by the department head or designee. Members who separate City employment and return within one (1) year of such separation will be entitled to reinstatement of unused Sick Leave balances at the time of separation from City employment, up to a total of forty-eight (48) hours.

Retirement Attendance Incentive – At service retirement or at a disability retirement if the employee is otherwise eligible for service retirement, the employee will be credited for unused sick leave pursuant to the City's Health Reimbursement Arrangement as set forth in Section B., paragraph 4. above to be used solely to pay premiums for medical insurance (including COBRA premiums).

2. Vacation Leave:

- a. Employees shall accrue 18.667 hours for each completed calendar month of employment (Pursuant to MOU Article VI, Section D., Subsection 1. each employee's applicable accrual rate will be reduced monthly by .66666 hours for Association time bank purposes.) Employees are allowed to accrue a maximum of 500 hours of vacation leave. Upon separation from the City, the balance of accrued vacation leave shall be:
 - (1) Credited to the City's Health Reimbursement Arrangement (HRA) as set forth in Section B., paragraph 4., above, or;
 - (2) If not eligible for participation in the HRA, the balance of accrued vacation leave shall be cashed out.
- b. No employee's vacation accumulation shall cease due to refusal by the City to grant vacation leave prior to the employee's reaching the vacation accumulation limit applicable to the employee's position and length of service. In the event an employee requests in writing vacation leave one month prior to the month in which the limit would be reached, and such request is refused, the Chief of Police or designee shall extend the employee's accumulation limit for ninety (90) days, during which time the employee shall be scheduled for vacation leave sufficient to reduce the employee's balance below the accumulation limit.

3. Holiday Leave:

- a. Employees shall accumulate eight and two-thirds (8 2/3) hours of holiday leave for each completed calendar month of employment.
- b. The cap for accumulated monthly holiday leave shall be 96 hours.
- c. Employees who are at the 96 hour cap will receive an automatic pay down of any hours exceeding the cap.
- d. On July 1, 2011, all holiday leave balances in excess of 96 hours were placed as a one-time deposit in a "Special Holiday Leave Bank", which hours may be used as follows:

Special Holiday Leave Bank

- i. Approved leave;
- ii. Absent With Substitute (AWS) agreements transferred only to the substituting employee's regular holiday bank;
- ii. Voluntary cash-out of forty-three (43) hours each FY beginning in FY14. If this option is taken, the value of the cash-out may be included in the member's gross pay in the year cashed-out for taxable compensation purposes under IRS regulation calculations; and,
- iii. Voluntary cash-out of one-hundred (100) hours immediately prior to separation or prior to the employee filing retirement paperwork. If this option is taken, the value of the cash-out may be included in the member's gross pay in the year cashed-out for taxable compensation purposes under IRS regulation calculations.

Employees may not place any additional hours in the Special Holiday Leave Bank.

At separation from City service, all remaining hours in the Special Holiday Leave Bank shall be credited to an HRA account for the employee if eligible for service retirement as set forth in Article VII, Section B. 4., or cashed out at separation if not eligible to participate in the HRA.

- e. Effective July 1, 2015, members may voluntarily request the department to pay down the member's Holiday Time up to a maximum of ninety-six (96) hours per month.

- f. At separation, for retirement purposes, the employees' accumulated regular holiday leave hours shall be paid at the member's then current hourly base rate of pay in accordance with Article VII, Section B. 4., or cashed **out** at separation if not eligible for the HRA.
- g. A Tier 2 member who elects to enter DROP or retires not having entered DROP, shall have amounts equal to the member's unused holiday leave balance and Special Holiday Leave balance (at the DROP effective date, or retirement date, not having entered DROP) multiplied by the member's current hourly base rate of pay included in the computation of the member's final average salary as if it were a one-time payment. Based on the additional pensionable compensation, the member and the City will make corresponding pension contributions to the retirement system. The employee agrees to have this pension contribution amount withheld from the employee's DROP account if entering DROP, or from the employee's final paycheck (not having entered DROP).

4. Management Leave:

Lieutenants and Captains shall receive * * ***ninety** (* * * **90**) hours of Management Leave each fiscal year. Deputy Chiefs shall receive one hundred **eight** (* * * **108**) hours of Management Leave each fiscal year. The Police Chief or designee may grant up to an additional thirty-two (32) hours of Management Leave each fiscal year to employees. This additional Management Leave will be based on above average or higher job performance and merit as determined by the Chief or designee. The decision by the Police Chief or designee to grant such additional leave shall be made during June and is effective July 1st of the fiscal year in which it may be taken. Any such additional Management Leave cannot be cashed out by employees.

Lieutenants and Captains may *****cash out** up to *****ninety** (****90**) hours of Management Leave not taken during the fiscal year. Deputy Chiefs may receive payment for up to one hundred **eight** (* * ***108**) hours of Management Leave not taken during the fiscal year. Any Management Leave not taken or compensated for shall not be added to the leave credited in the next fiscal year, nor carried over.

[§ deleted]

5. Management Time Off

Employees who are designated as exempt from overtime under the provisions of the Fair Labor Standards Act and who receive leave pursuant

to paragraph 4., above, may be granted management time off if the supervisor or designee determines that service delivery and performance of job functions will not be impaired due to the employee's absence. Such time off shall not be calculated on an hour-for-hour basis in relation to total hours worked. Management time off shall not be deducted from any other existing leave banks.

Management time off must be scheduled in advance when possible, approved as management time off by the employee's supervisor or designee and generally taken in increments of less than one day.

Only the Police Chief or a Deputy Police Chief may approve management time off for a full day's absence.

I. WORKERS' COMPENSATION

1. Notwithstanding the provisions of FMC Section 3-118, an employee who *** **becomes disabled from illness or injury incurred** in the course and scope of City employment on or after January 1, 2010 shall become entitled, regardless of their period of service with the City, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments as provided by California Labor Code Section 4850. The remaining provisions of FMC Section 3-118 shall apply.

Employees 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.

2. If the employee is placed on sick, vacation or holiday leave pending determination as to whether the injury or illness is industrial, and the injury is determined to be industrial, sick, vacation or holiday leave shall be restored within thirty (30) calendar days of such determination, and the employee placed on work related injury/illness leave as provided herein.
3. Retirement benefits shall not be reduced as a result of a member receiving Workers' Compensation benefits.
4. Taxes shall not be withheld on compensation due to injury in the line of duty.

J. ASSIGNMENTS, ROTATION AND WORK SCHEDULES

1. Assignments:

Assignments are determined by the Police Chief or designee based on the needs of the Police Department.

2. Rotation:

It is the prerogative of the Police Chief or designee to rotate Police Management personnel as necessary for the good of the service. The Chief of Police will give consideration to rotation of Unit members through assignments every thirty-six (36) months.

3. Schedules:

It is the prerogative of the Police Chief or designee to assign employees to a 5/8, 9/80 or 4/10 schedule as necessary for the good of the service.

4. No later than March 31* * ***of each year** the Chief will meet with representatives of this unit regarding work schedules. During *** **these** meetings the parties * * ***may** explore 1) * * *modified schedules * * ***that** allow for continuity of operations as well as continued support for the Chief and 2) * * *a pilot program**(s) as appropriate** * * *. The Chief retains the sole discretion to revise schedules for the good of the service. **In the event that the Chief makes a permanent change to the work schedules, they shall endeavor to provide thirty (30) days written notice to impacted members of the Unit.**

5. Work Week for Field Commanders

- a. **Day Shift Administrative Patrol Lieutenants * * * * * may be** assigned to **the** 4/10 work schedule. It is the prerogative of the Police Chief or designee to reassign employees to another schedule other than a 4/10 as necessary for the good of the service.
- b. A 4/10 work schedule consists of four (4) ten (10) hour work days. The work week begins 0000 hours on Monday and ends on 2400 hours the following Sunday. Each 4/10 schedule within the work week consists of a total of forty (40) scheduled hours of actual work time.
- c. Police Lieutenants designated as Field Commanders of a Patrol Bureau in the Field Operations Division may be scheduled to work a modified "3/12" schedule as agreed upon by the Department and FPOA.
- d. An employee assigned to a 4/10 or 3/12 schedule who is off on a holiday which is a regular work day shall utilize leave balances accrued in the holiday work bank, administrative leave bank, or vacation bank.

- e. Each 9/80 work schedule will consist of eight 9-hour shifts, one 8-hour shift and one day off in addition to regular days off, per 14-day period broken down into two 40-hour per week Fair Labor Standards Act (FLSA) work weeks. All employees working a 9/80 work schedule shall have an FLSA work week which begins four (4) hours after the start time of the day of the week which constitutes the employee's alternating day off. This shall be an 8-hour shift. The work week shall end exactly 168 hours later. The workweek for each such position will be defined in writing. The original document will be maintained by the Department and a copy filed with the Personnel Services Department and the Payroll Division of the Finance Department.
- f. Employees shall accumulate eight (8) hours of sick leave per month, and receive sick leave pay for the actual number of hours absent.
- g. Employees on a 4/10 or 3/12 plan shall accumulate the same number of hours of vacation per month under a 5/8 plan. Vacation leave will be granted for the actual number of hours absent.
- h. Absent with Substitute (AWS) – Police Lieutenants assigned as Field Commanders may utilize AWS to find a replacement. Any Police Lieutenant may work as a Field Commander replacement as outlined below.
 - (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. When one member substitutes for another, the member being substituted for will be credited as if he or she had worked his or normal schedule for that shift.
 - (2) 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 administrative leave 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 substitutes "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.)

- (3) AWS Notification to Department – Members wishing to provide a substitute must notify the Department using the internal processing form. 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.

K. DEPUTY POLICE CHIEF STATUS

An employee holding the position of Deputy Police Chief who is removed for reasons other than malfeasance or misconduct may return to a position in the previous class permanently held. For example, if the Deputy Police Chief has previously held permanent status as a Police Captain, the employee has return rights to a position in the class of Police Captain. The Police Chief or designee has the prerogative of assigning the former Deputy Police Chief as necessary for the good of the service. Time spent in the Deputy Police Chief position will be considered in determining seniority in the last previous job class held. No other employee in this Unit shall be demoted (bumped) to a position in a lower class as a result of this action.

L. CONSOLIDATION OF SERVICES

The City recognizes its obligation to meet and confer with the Association regarding potential consolidation of Police services with Fresno County, to the extent it affects wages, hours and other terms and conditions of employment for members of this Unit. Notwithstanding the provisions of Article X, Termination, mention of this issue herein shall not preclude action by the City regarding consolidation after conclusion of the meet and confer process.

M. GRIEVANCES

1. 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, Retirement Board, arbitrator, unfair employer-employee relations charge, or fact finding procedure.

2. A written grievance must set forth the specific rule, regulation or policy claimed to have been violated, describe the specific incident or circumstances of the alleged violation, and specify the remedy sought. Any dispute between the parties as to the grievability of an issue or as to whether the requirements of this procedure have been met shall be presented to the Grievance Advisory Committee. The Committee shall rule on the dispute before proceeding with the hearing.
3. The procedure and sequence in filing and processing a grievance shall be as follows:
 - a. The grievant or grievant's representative shall discuss the grievance with the grievant's immediate supervisor before a written grievance may be filed. Grievances should be settled as near as possible to their source and in as informal setting as possible. The parties agree that every effort shall be made to find an acceptable solution through this informal process before a written grievance is filed.

However, in the case of complaints involving discrimination, as set forth in Article II, Section C, where such claim is filed as a grievance, it shall be filed in accordance with the formal process outlined herein.

- (1) If the grievance is not settled through the informal process, a written grievance may be filed with the grievant's immediate supervisor. A written grievance must be filed within twenty-one (21) calendar days from the time the grievant becomes aware, or should have become aware of, the issue or incident giving rise to the problem. The grievance shall summarize the results of the informal process.
 - (2) Upon receipt of a written grievance, the immediate supervisor shall give the grievant a written reply within seven (7) calendar days.
- b. Should the grievant not be satisfied with the answer received from the immediate supervisor, the grievant may, within seven (7) calendar days, file an appeal with the Police Chief or designee. The Police Chief or designee shall have fourteen (14) 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 Police Chief or designee may confer with the grievant and appropriate supervisors in an attempt to bring about a harmonious solution.

- c. If the grievant is not satisfied with the decision of the Police Chief or designee, the grievant may within seven (7) calendar days after receipt of the written reply, file a request for a review of the Police Chief or designee's decision to the Grievance Advisory Committee. The grievance shall be reviewed by the Association before it is referred to the Grievance Advisory Committee.
 - (1) From the date a grievance otherwise meeting all criteria for the filing and processing of a grievance reaches the Labor Relations Division, the Grievance Advisory Committee shall be convened within twenty-eight (28) calendar days in order to hear the grievance.
 - (2) All time limits herein may be extended by mutual agreement of the parties.
 - (3) The Grievance Advisory Committee shall talk to the grievant and the supervisor involved to set forth in writing the facts of the particular situation as objectively as possible and recommend a solution to the City Manager within fourteen (14) calendar days of their last meeting.
 - d. The City Manager shall review the decision of the Police Chief or designee, recommendations of the Grievance Advisory Committee and shall then render a written decision to the employee within fourteen (14) calendar days after receipt from the Grievance Advisory Committee.
 - e. Failure of the grievant to file an appeal within the specified time limit of the procedure beginning within subsection 3. b. shall constitute an abandonment of the grievance. 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.
- 4. The Grievance Advisory Committee shall be comprised of one employee selected by the Association, one employee selected by the City and a third individual to be mutually agreed upon by the City and the Association who shall serve as the Chairperson.
 - 5. Employees and Association Representatives shall be allowed reasonable time off without loss of pay to present grievances under this procedure.

N. FEDERAL DRUG POLICY (Federal Omnibus Transportation Employee Testing Act of 1991, as amended) (Public Law 102-143, 10/28/91)

Policy:

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

“Fresno Area Express Controlled Substances and Alcohol Testing Policy for “Safety-Sensitive” Employees/Individuals Subject to Federal Transit Administration (FTA) Regulations”, which may be amended from time to time, after compliance with applicable collective bargaining laws.

City of Fresno Controlled Substances and Alcohol Testing Policy for “Safety-Sensitive” Employees/Applicants Subject to Federal Motor Carrier Safety Administration (FMCSA) Regulations, which may be amended from time to time after compliance with applicable collective bargaining laws.
2. 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.
3. The parties acknowledge that there currently exists a list of positions subject to the provisions of the two policies referenced above, 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.
4. 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.
5. 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 policy or procedure.
6. Last Chance Agreements do not apply to members of the Association. As required by federal law or regulation, 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.

O. 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 Policy and Procedures, as the same may be modified following consultation with the Association pursuant to FMC Section 3-607.

1. Whenever a member is assigned to a special unit engaging in drug or vice enforcement, such member shall execute a written agreement and release stating full consent, and would be required to take a drug test.
2. In the event the City provides an annual scheduled physical, all members shall be required to submit to a drug test.
3. Sworn members while assigned to any special unit engaging in drug 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.

4. All drug testing noted above will be performed in accordance with the Federal Omnibus Transportation Act, except in those instances where the 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.
5. 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.

P. DISCIPLINARY PROCEDURES

Department * * **Policy**, as well as the FMC, City Administrative Orders, policies, procedures, operation manuals, rules and regulations, **all as the foregoing exist upon execution of this MOU or as they may be amended during the term of this MOU**, concerning disciplinary procedures will apply. However, any permanent employee 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 an employee, the employee 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 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 designated 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, and may be challenged only pursuant to the California Arbitration Act, Code of Civil Procedure Section s 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 the names until a single arbitrator's name remains.

ARTICLE VIII

HEADINGS

MOU article, provision, section, and paragraph headings (includes exhibits, addendums, attachments, agreements 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.

ARTICLE IX

SAVING CLAUSE/FULL UNDERSTANDING

A. SAVING CLAUSE

In the event any article, section or portion of this MOU should be held invalid and unenforceable in any court of competent jurisdiction, such decision shall apply only to the specific article, section or portion thereof 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.

B. FULL UNDERSTANDING

This MOU sets forth the full understanding and agreement of the parties, and any previous understanding or agreements by the parties, whether formal or informal, 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 and shall continue subject to the term(s) set forth herein, or in the absence of any specified term, the side letter agreements 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.

ARTICLE X

TERMINATION

The provisions in this Agreement/MOU shall be in full force and effect extended from * * * **[the first day of the pay period following Council approval]** to * * * **June 16, 2024**, upon approval by the City, subject to Sections (A.B. * * *C. and D.), below.

- A. This Agreement/MOU shall become effective only after ratification by the members of the Association followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter Sections 605 and 609, and shall remain in full force and effect through * * * **June 16, 2024**.

The City and the Association previously agreed that the Mayor shall appoint one (1) police officer, as defined in FMC Section 3-301 (p) (3) from a City management position and one (1) firefighter as defined in FMC Section 3-301 (f) from a City management position as voting members to the Fresno Fire and Police Retirement Board under the authority as described in Section 3-305 (a) (1) of the FMC. In the event any individual(s) so appointed fails to qualify, resigns, retires, or no longer qualifies to serve on the Board, the Mayor subject to the approval of the City Council shall appoint a replacement under the terms and provisions of this agreement within twenty (20) business days. If a decision is approved by the Fire and Police Retirement Board to separate the commingled investments of the Fresno Fire and Police Retirement System and the Fresno Employees Retirement System, this agreement on Mayoral appointments to the Fire and Police Retirement Board shall immediately become null and void and the appointment provisions contained in FMC Section 3-305 shall apply.

- B. During the life of this Agreement/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 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 Agreement/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. Either party shall also have the right to refuse a request on any matter falling within the scope of representation and which would be the basis of a proper refusal under (1) – (3) supra, if the proposal, if accepted or implemented, would only

become effective after the expiration of this MOU. 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 or regulations.

D. Police Reform/Reimaging Efforts

- 1. Subject to Sections A and B of this Article, nothing in this MOU shall preclude the City from requesting meet and confer during the term of the MOU on matters described in section 2. of this Article pertaining to police reform/reimaging efforts during the term of the MOU.**
- 2. In the event that the City desires to implement a policy, procedure, ordinance, or related to or arising from the Fresno Police Reform Commission and Implementation Team recommendations and related police reform efforts that are within the scope of bargaining under the Meyers-Milias-Brown Act (Government Code Sec. 3500 et seq.) ("MMBA"), the City will provide the FPOA with prior written notice along with the specific written proposal. Such written notice will be provided in sufficient time to comply with the requirements of the MMBA but no less than thirty (30) days before its proposed implementation date, except in case of an emergency as defined by MMBA. Nothing herein shall be construed as a waiver of any collective bargaining rights of the FPOA or to expand required bargaining obligations under the MMBA.**
- 3. This section D shall sunset on June 16, 2024.**

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

FOR THE FRESNO POLICE OFFICERS
ASSOCIATION

FOR THE CITY OF FRESNO:

ROCKNE A. LUCIA, ESQ.
Chief Negotiator

JONATHAN HOLTZMAN, ESQ.
Chief Negotiator/Special Counsel

BRANDON WIEMILLER
President, FPOA

TJ MILLER
Director of Personnel Services

ROB BECKWITH
Police Captain

BRUCE RUDD
Special Counsel

JOE ALVAREZ
Police Captain

STEPHANIE HERNANDEZ
Senior Human Resources/Risk Analyst

DAVE RAMOS
Police Captain

LUKE JENSEN
Legal Assistant

MIKE BROGDON
Police Lieutenant

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____
Assistant City Attorney

ISRAEL REYES
Police Captain

EXHIBIT I

Table I							
Salaries Effective June 21, 2021							
CLASS TITLE	A	B	C	D	E	F	G
Deputy Police Chief		11622	-	15109			
Police Captain	10202	10712	11248	11810	12403	13024	13675
Police Lieutenant	8861	9303	9770	10258	10771	11310	11876

Table II								
Salaries Effective January 31, 2022								
CLASS TITLE	A	B	C	D	E	F	G	H
Deputy Police Chief		12204	-	15865				
Police Captain	10202	10712	11248	11810	12403	13024	13675	14359
Police Lieutenant	8861	9303	9770	10258	10771	11310	11876	12470

Table III								
Salaries Effective June 20, 2022								
CLASS TITLE	A	B	C	D	E	F	G	H
Deputy Police Chief		12571	-	16341				
Police Captain	10509	11034	11586	12165	12776	13415	14086	14790
Police Lieutenant	9127	9583	10064	10566	11095	11650	12233	12845

Table IV									
Salaries Effective June 19, 2023									
CLASS TITLE	A	B	C	D	E	F	G	H	I
Deputy Police Chief		13597	-	17674					
Police Captain	10825	11366	11934	12530	13160	13818	14509	15234	15996
Police Lieutenant	9401	9871	10366	10883	11428	12000	12600	13231	13893

EXHIBIT II

AGREEMENT BETWEEN THE
CITY OF FRESNO
AND
FRESNO POLICE OFFICERS ASSOCIATION (FPOA)
BASIC UNIT 4, AND MANAGEMENT UNIT 9

SIDE LETTER OF AGREEMENT

City of Fresno Fire and Police Retirement System:

During the term of the current MOU which is scheduled to expire on June 30, 2017, the parties agree to meet to study provisions of the Fresno Municipal Code (FMC) regarding "Dissolution or Legal Separation" and the prospect of allowing City of Fresno Fire and Police Retirement System members to "buy back" a portion of a member's retirement which was awarded to an ex-spouse in a domestic relations order and a refund was taken by the ex-spouse.

Any change to the FMC in this regard would proceed only if there is no adverse impact to either the City of Fresno Fire and Police Retirement System or the City of Fresno's employer contribution rate, and requires mutual agreement of all of the affected units in the City of Fresno Fire and Police Retirement System.

Performance Evaluation Forms:

Upon mutual agreement, the City and the Association will meet for the express purpose of discussing changes to the performance evaluation form for Association members. Any changes to the employee evaluation form require mutual agreement.

Signatures of the parties:

**FOR THE CITY OF FRESNO,
POLICE DEPARTMENT:**

**FOR THE FRESNO POLICE
OFFICERS ASSOCIATION:**

Jerry Dyer, Chief of Police

Jacky Parks, President, Basic

Andrew J. Hall, President, Management

FOR THE CITY OF FRESNO

Jeffrey Cardell
Director of Personnel Services

Date _____

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____
Supervising Deputy Attorney

EXHIBIT III

**Agreement between
City of Fresno**

and

Employee Organizations Representing City of Fresno Employees

This agreement was reached in an effort to lower the current cost of the monthly health contribution rates between March 1, 2009 and June 30, 2010 as set by the Fresno City Employees Health and Welfare Trust (Trust) thereby assisting to ameliorate fiscal developments faced by the City of Fresno (City). The agreement also provides short term guarantees by the City for the unencumbered reserve of the Trust while setting a long term minimum of four (4) months for the Trust unencumbered reserve. This agreement sets forth the full and entire understanding of the City and Bargaining Units whose representatives have signed this agreement regarding these matters. This Agreement is effective March 1, 2009 and will remain in force so long as the Trust agrees to maintain a health contribution rate that is calculated to maintain a minimum of a four (4) month unencumbered reserve as calculated by the actuary selected by the Trust (actuary).

1. This agreement will be effective only if the provisions below affecting the Trust are approved by a majority of affected represented bargaining units and the City Council and if the Trust sets a monthly health contribution rate of seven hundred twenty-nine dollars (\$729) effective March 1, 2009 through June 30, 2010.
2. The parties agree that, for the period March 1, 2009 through June 30, 2010, if the Trust unencumbered reserve falls below a four (4) month unencumbered reserve as calculated by the actuary selected by the Trust for two (2) consecutive months, the City will pay to the Trust an amount sufficient to restore the level of the Trust unencumbered reserve to four (4) months.
3. The restoration to a four (4) month unencumbered reserve must occur within 30 days notice to the City by the Trust's third party administrator. This payment by the City shall not be utilized in the calculation of the amounts due by the City and employees for established Trust health contribution rates.
4. Effective June 30, 2010 if the Trust unencumbered reserve is calculated by the actuary selected by the Trust to be less than a four (4) month unencumbered reserve, the City will pay an amount to the Trust sufficient to restore the level of the unencumbered reserve to four (4) months. This payment by the City shall not be utilized in the calculation of the amounts due by the City and employees for established Trust health contribution rates.
5. The parties agree that, for the monthly health contribution rate effective July 1, 2010 and for all subsequent monthly health contribution rates, the Trust will set a monthly health contribution rate not less than the rate calculated by the actuary

selected by the Trust necessary to maintain a minimum unencumbered reserve of four (4) months.

6. The parties will support amendments to the Trust necessary to implement this agreement.

**FOR THE FRESNO CITY
EMPLOYEES ASSOCIATION:**



**FOR THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,
LOCAL 753, BASIC UNIT:**



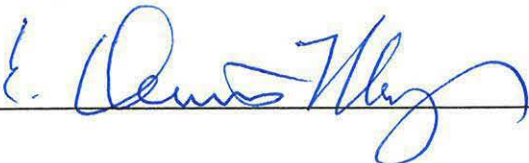
**FOR THE INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 100:**



**FOR THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,
LOCAL 753, MANAGEMENT UNIT:**



**FOR THE CITY OF FRESNO
MANAGEMENT EMPLOYEES
ASSOCIATION:**




**FOR THE AMALGAMATED TRANSIT
UNION, LOCAL 1027**



**FOR THE FRESNO POLICE OFFICERS
ASSOCIATION, BASIC UNIT:**




**FOR THE FRESNO POLICE OFFICERS
ASSOCIATION, MANAGEMENT UNIT:**



**FOR THE CITY OF FRESNO
PROFESSIONAL EMPLOYEES
ASSOCIATION:**

**FOR THE FRESNO AIRPORT PUBLIC
SAFETY SUPERVISORS:**



Page 3

Agreement re: Health & Welfare Trust Reserve

Employee Organizations representing City of Fresno Employees

FOR THE CITY OF FRESNO:



Date: February 24, 2009

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

BY: Tom R. Asghatyan
Deputy City Attorney

FRESNO POLICE DEPARTMENT

REPORT OF PERFORMANCE
FOR SWORN EMPLOYEES

☐ Month Probationary Evaluation
☐ Annual Evaluation
☐ Exit Evaluation

Prepared by: _____

DATE: EVALUATION PERIOD FROM TO	EMPLOYEE: RANK: ASSIGNMENT:
---	--

Ratings: (1) Unacceptable, (2) Needs Improvement, (3) Meets Standards,
 (4) Exceeds Standards, (5) Outstanding

Key Objectives:

Criteria	1	2	3	4	5
Customer Satisfaction: Works well with the public and with relationship with other agencies and organizations.					
Employee Satisfaction: Cooperates with co-workers, supervisors.					
Financial Management: Uses available resources, technology and equipment effectively.					

Values (ACT IT)**Accountability:** By this we mean that we take personal responsibility for our actions.**Compassion:** We care about and respect people.**Trust:** We mean we believe in each other.**Innovation:** Seek new and creative ways to improve our business.**Teamwork:** We work together to achieve our Vision.

Job Knowledge, Skills & Proficiency: Consider the employee's knowledge of department procedures and regulations, understanding of the scope of assigned duties and the ability to perform those duties as directed.					
Quality and Accuracy of Work: Consider the accuracy, neatness and thoroughness of work produced, and the oral and written expression of assigned duties.					
Decision Making/Problem Solving: Consider the employee's ability to identify problems, develop and implement solutions to impact the problems, and the achievement of desired results.					
Acceptance of Responsibility: Consider the employee's motivation to seek and complete assignments without undue supervision.					
Appearance: Consider the employee's professional appearance and image, proper grooming, and cleanliness of duty attire.					
Attendance: Consider the employee's attendance and punctuality.					
Compliance with Regulations: Consider the employee's compliance with department procedures and policies and willingness to follow instructions.					

FRESNO POLICE DEPARTMENT



REPORT OF PERFORMANCE FOR SWORN EMPLOYEES

_____ Month Probationary Evaluation
 _____ Annual Evaluation
 _____ Exit Evaluation

Prepared by: _____

DATE: EVALUATION PERIOD FROM TO	EMPLOYEE: RANK: ASSIGNMENT:
---	--

Performance of Duties: Accepts assignments and follows through in a timely, effective, efficient and appropriate manner to meet deadlines with minimum supervision. Demonstrates productive use of time, promptness in completing assignments, and daily planning to achieve results.					
Initiative: Consider the employee's performance in new situations, performance in emergencies, and officer safety.					
Supervisory Performance (when applicable): Consider the supervisor's leadership skills, ability to complete assignments, assisting in employee development, maintaining proper discipline, making sound decisions, communication skills, and commitment to organizational goals.					
OVERALL VALUES RATING: This employee's overall (Key Objectives and Values) rating is:					

OVERALL REVIEW OF PERFORMANCE: RECOMMENDATIONS: ATTACHMENTS:

FRESNO POLICE DEPARTMENT



**REPORT OF PERFORMANCE
FOR SWORN EMPLOYEES**

____ Month Probationary Evaluation
____ Annual Evaluation
____ Exit Evaluation

Prepared by: _____

DATE: EVALUATION PERIOD FROM TO	EMPLOYEE: RANK: ASSIGNMENT:
---	--

FRESNO POLICE DEPARTMENT



**REPORT OF PERFORMANCE
FOR SWORN EMPLOYEES**

☐ **Month Probationary Evaluation**
☐ **Annual Evaluation**
☐ **Exit Evaluation**

Prepared by: _____

DATE: EVALUATION PERIOD FROM TO	EMPLOYEE: RANK: ASSIGNMENT:
---	--

EMPLOYEE'S COMMENT:

Driver's License No: _____ **Expires On:** _____

Pursuant to Government code 3306, a public safety officer shall have 30 calendar days within which to file a written response to any comment entered in his/her personnel file. Such written response shall be attached to, and shall accompany, this evaluation.

Employee's Signature

Date

Supervisor's Signature

Date

Operations Commander's Signature

Date

District Commander's Signature

Date

**Side Letter of Agreement
Between
City of Fresno and Fresno Police Officers Association**

This Side Letter of Agreement ("Agreement") is entered into by and between the City of Fresno ("City") and the Fresno Police Officers Association ("Association"), representing Unit 9, Police Management, and sets forth the full and entire understanding of the parties regarding Management Leave in the current Memorandum of Understanding ("MOU") between the City and the Association, specifically amending Article VII, Section H, Subsection 4, Management Leave, with the language below to reflect what was negotiated between the parties and practice. Section H of Article VII, Compensation and Benefits, of the MOU is amended as follows:

4. Management Leave:

Lieutenants and Captains shall receive ninety (90) hours of Management Leave each fiscal year. Deputy Chiefs shall receive one hundred eight (108) hours of Management Leave each fiscal year. The Police Chief or designee may grant up to an additional thirty-two (32) hours of Management Leave each fiscal year to employees. This additional Management Leave will be based on above average or higher job performance and merit as determined by the Chief or designee. The decision by the Police Chief or designee to grant such additional leave shall be made during June and is effective July 1st of the fiscal year in which it may be taken. Any such additional Management Leave cannot be cashed out by employees.

Lieutenants and Captains may cash out up to ninety (90) hours of Management Leave not taken during the fiscal year. Deputy Chiefs may receive payment for up to one hundred eight (108) hours of Management Leave not taken during the fiscal year. Any Management Leave not taken or compensated for shall not be added to the leave credited in the next fiscal year, nor carried over. **The additional eight (8) hours, given by this MOU, for fiscal year 22 will be prorated and four (4) hours will be credited to the employee's Management Leave bank unless the employee's Management Leave bank is at the maximum, whereupon, the prorated hours will be cashed out.**

This Agreement shall be effective on the date below until the implementation of a successor MOU. This subject will be addressed in the successor MOU.

FOR THE FRESNO POLICE
OFFICERS ASSOCIATION:

Signature on File

BRANDON WIEMILLER
FPOA President

FOR THE CITY OF FRESNO:

Signature on File

MARISSA SANCHEZ
Director of Personnel Services

August 25, 2022
Date: _____

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

Signature on File
BY: _____
Deputy City Attorney