

MEMORANDUM OF UNDERSTANDING

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**BETWEEN AND FOR THE
CITY OF FRESNO
AND**

**FRESNO POLICE OFFICERS ASSOCIATION
(Police Management-Unit 9)**

~~Fiscal Years
2009—2012
(Three Year Extension)~~

September 11, 2014 – June 30, 2017

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~~ATTACHMENT "A" (For Purposes of Determining Retroactivity)~~

~~FRESNO POLICY DEPARTMENT REPORT OF PERFORMANCE~~

~~Side Letter Agreements Incorporated into MOU:~~

- ~~1. FY09 Compensation and Benefits Re Opener w/one year MOU Extension,
dated September 10, 2008.~~
- ~~2. Completion of Retirement Enhancement Reopener Health Reimbursement
Arrangement (HRA) Sick Leave/Health Incentive, dated November 6, 2008.~~

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. ~~This MOU is extended for a two year period of time from June 30, 2013 to June 30, 2015.~~ Upon approval by the city, other than the modifications set forth herein, the parties agree that until this MOU terminates on June 30, ~~2015~~ **2017**, all economic benefits currently afforded to affected members shall remain intact without modification unless otherwise agreed to in writing by the parties.

~~Effective July 1, 2009 through June 30, 2014, the parties agree there will be no demotions (excluding demotions for disciplinary cause) of any member of this Unit for purposes of economic or reorganizational purposes or enforcement of involuntary furloughs. Through June 30, 2014, reductions to staffing levels shall only occur through attrition.~~

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, 3-301, 3-301 and 3-603 of the Fresno Municipal Code, hereinafter FMC, shall govern the construction, meaning, and application of words and phrases used herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase ~~which is derivative from it, or from which it is a derivative, as the case may be.~~

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), applicable provisions of the Public Employment Relations Board (PERB), and the Public Safety Officers Procedural Bill of Rights Act (POBOR) as may be amended from time to time, and Article 19 of Chapter 2 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 his exercise of any of these rights. No management employee or confidential employee shall act as a representative of any employee organization which represents employees other than management employees or confidential employees."

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 meet and confer in good faith promptly upon request by the Association and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on a successor MOU at least one (1) week prior to the last regular City Council meeting at which the City budget must be adopted for the ensuing fiscal year in order to meet the June 30 deadline specified in the City Charter. In order that the meet and confer process includes adequate time for the resolution of any impasse, the City shall accept meet and confer process proposals from the Association as early as **February 1, 2017, and will be prepared to commence the actual meet and confer process no later than March 1, 2017.**

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 at least one (1) week prior to the last regular City Council meeting at which the City budget must be adopted for the ensuing fiscal year in order to meet the June 30 deadline specified in the City Charter.

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 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 outlined in the FMC.

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 his or her 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

Rules governing dues check-off are set forth in FMC Section 3-620, as the same may be amended from time to time. The procedures governing dues deductions, agency shop, hold harmless obligations, religious and conscientious objections, and financial reporting requirements, shall be as provided in Government Code Section 3502.5.

1. The City shall deduct the dues or benefit premiums, or both, upon proper authorization by Association members in the Unit.
2. If a member in the Unit desires the City to deduct dues or benefit premiums from the member's paycheck, a deduction authorization shall be made upon a Dues Deduction Authorization ~~card~~ in the form specified in FMC Section 3-620, as the same may be amended from time to time.
3. A Dues Deduction Authorization ~~card~~ may be revoked by a member in the Unit, and the dues or benefit deduction canceled, only during the months of November and December of any year.
4. If a member in the Unit desires to revoke prior Dues Deduction Authorization ~~card~~, a Dues Deduction Revocation shall be ~~made upon a Dues Deduction Revocation card~~ in the form specified in FMC Section 3-620, as the same may be amended from time to time.
5. Upon written authorization by a retired member of the Association, the City shall deduct credit union payments and Association dues monthly from the retirement check of such retired member and forward same to the credit union or Association as designated in such authorization.
6. Dues Deduction Authorization and Revocation ~~cards~~ **forms** are available at the Finance Department, Payroll Section, and Human Resources Division of the Personnel Services Department.

B. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION ~~CARD~~

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 CHECK

1. The dues deduction check covering all such deductions shall be transmitted to the Fresno Police Officers Association.
2. The dues deduction check shall be made in favor of the Fresno Police Officers Association.
3. A dues deduction check will be transmitted at least monthly.

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 .583333 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, ~~EMPLOYEE PERFORMANCE EVALUATIONS, BONUS PAY,~~ DEFERRED COMPENSATION, PENSION CONTRIBUTION, HEALTH REIMBURSEMENT ARRANGEMENT (HRA), BENEFIT PAYOFFS, AND PROMOTION, AND P.O.S.T. CERTIFICATE PAY

1. Salaries

- a. ~~Police Lieutenants and Police Captains — Deferred Salaries) Police Lieutenants and Police Captains agree to defer a one percent (1%) salary increase scheduled to be received January 1, 2011; a two percent (2%) salary increase scheduled to be received July 1, 2011, and a one percent (1%) salary increase scheduled to be received January 1, 2012, as follows:~~
 - i. **Effective July 1, 2014, salaries shall be as reflected on Exhibit I, Table I.**
 - ii. Effective July 1, 2014 **2015**, a two percent (2%) salary increase, as reflected on Exhibit I, Table ~~V~~ **II**; and,
 - iii. Effective ~~January 1, 2015~~ **December 31, 2016**, a two percent (2%) salary increase, as reflected on Exhibit I, Table ~~V~~ **III**.
- b. ~~Deputy Police Chiefs — Deputy Police Chiefs agree to defer a one percent (1%) salary increase scheduled to be received January 1, 2011; a two percent (2%) salary increase scheduled to be received July 1, 2011, and a one percent (1%) salary increase scheduled to be received January 1, 2012, as follows:~~
 - i. **Effective July 1, 2014, salaries shall be as reflected on Exhibit I, Table I.**
 - ii. Effective July 1, 2014 **2015**, the upper end of the salary range for Deputy Police Chiefs shall be **modified to include an**

increase of increased by two percent (2%), as reflected on Exhibit I, Table V. ~~II. Deputy Police Chief salaries will be increased by two percent (2%) on the effective date.~~

- iii. **Effective July 1, 2014 ~~December 31, 2016~~, salaries the salary range for Deputy Police Chiefs shall be modified to include an increase of increased by two percent (2%). Deputy Police Chief salaries will be increased by two percent (2%) on the effective date.**
- i. ~~Effective January 1, 2015, the upper end of the salary range for Deputy Police Chiefs shall be increased by two percent (2%), as reflected on Exhibit I, Table VI; and,~~
- ii. ~~Effective January 1, 2015, salaries for Deputy Police Chiefs shall be increased by two percent.~~
- c. ~~Retirement/DROP - Effective January 1, 2011, the deferred one percent (1%) salary increase shall be included 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.~~
- d. ~~Retirement/DROP - Effective July 1, 2011, the deferred two percent (2%) salary increase shall be included 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.~~
- e. ~~Retirement/DROP - Effective January 1, 2012, the deferred one percent (1%) salary increase shall be included 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.~~
- f. ~~With respect to Sections B.1. c., d. and e., members who retire or enter DROP and receive 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 add the July 1, 2014 and January 1, 2015, salary increases to their retirement benefit or DROP calculation.~~
- g. ~~DROP Participants and Retirees (Tier I) - Effective January 1, 2011, adjustments to the monthly amount deposited allowances for DROP participants and monthly retirement benefit allowances for retirees~~

shall include all deferred salary increases from Section 7.2.01 and be calculated pursuant to FMC Sections 3-301 and 3-302.

- ~~h. DROP Participants and Retirees (Tier I) who receive the January 1, 2011, July 1, 2011 and January 1, 2012, deferred salary increases as adjustments to their monthly retirement allowance shall not be entitled to also add the July 1, 2014 and January 1, 2015, salary increases as adjustments to their monthly retirement allowances.~~

c. Retirement/DROP

- i. It is the intent of this Section B.1.c. 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 set forth in Section B.1.a. and B.1.b. to their retirement benefit or DROP calculation.
- iii. DROP Participants and Retirees (Tier I) – Adjustments effective January 1, 2011, July 1, 2011, and January 1, 2012 to the monthly amount deposited for DROP participants and monthly retirement benefit allowances for retirees shall include all deferred salary increases from Section B.1.c.i. and be calculated pursuant to FMC Sections 3-301 and 3-302.
- iv. DROP Participants and Retirees (Tier I) who are credited with the January 1, 2011, July 1, 2011, and January 1, 2012 deferred salary increases as adjustments to their monthly deposited allowances for DROP and monthly retirement

allowance shall not be entitled to also add the July 1, 2014 and July 1, 2015, salary increases set forth in Section B.1.a. and B.1.b. as adjustments to their monthly DROP and retirement allowances.

- v. **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
- d. **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.
- e. **(Tier I)** – An actuarial study will be conducted on amending FMC Sections 3-302 (g) and 3-301 (a) (9) for Tier I members. Upon completion of the actuarial study, there will be a limited reopener of the MOU to negotiate solely on amending these provisions with respect to retirement calculations. The cost of the actuarial study will be shared equally by the City and the Association.

2. ~~Employee Performance Evaluations:~~

- a. ~~Effective January 1st of each year during the term of this MOU, salary increases for employees in this Unit occupying the class of Deputy Police Chief shall be based upon annual performance evaluations using the following graduated performance-based merit plan table.~~
- b. ~~Effective June 30, 2009, Deputy Police Chiefs shall continue to be evaluated and receive Annual Performance Evaluations, however,~~

~~salary increases will apply as set forth in Section 1. c., d., g. and h, above through January 1, 2012.~~

Unsatisfactory/Needs Improvement	Zero Percent (0%)
Average	Zero Percent (0%)
Above Average	Three Percent (3%)
Superior	Four Percent (4%)
Outstanding	Five Percent (5%)

~~b. The annual rating under this performance-based merit plan shall cover the period of January 1st through December 31st of each year during the term of this MOU. An "outstanding" rating must include justification to the City Manager or designee in the comments section of the Performance Evaluation form.~~

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

~~3. Bonus Pay:~~

~~Employees in this Unit occupying the class of Deputy Police Chief are also eligible to receive annual Incentive Compensation Bonuses based on the same criteria and awarded in the same manner as Department and Deputy Directors pursuant to the Plan Provisions of the City of Fresno Performance Pay Plan. However, Deputy Police Chiefs shall not be subject to any form of fine or charge if an employee's performance does not meet the Chief's expectations. Instead, Deputy Police Chiefs will be subject to the provisions of Article VII, Section K of this MOU or any other applicable actions as permitted by POBOR.~~

~~4.2. Deferred Compensation (Incorporated from 9/30/10 Side Letter Agreement Re: Compensation and Benefits Re-Opener.)~~

~~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.

5-3. Pension Contribution:

The following applies to an employee's pension contribution:

- a. Effective September 22, 2014, the two percent (2%) contribution paid by the City of the employee's required retirement contribution shall be discontinued. On the same date, the existing two percent (2%) supplemental payment for an employee in DROP will be discontinued.**
- b. 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.d. below.**
- c. 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.d. below.

- d. **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.b. 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:**
- 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 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 in Section in Article VII, Section B.1.a. of this MOU.

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 in Article VII, Section B.1.a. in accordance with the of cost of living calculation provisions in the Fresno Municipal Code.

- a. ~~Pension Contribution (FY08 & FY09) – The City will pay one percent (1%) toward the employee's share of his/her pension contribution, including those employees who have entered DROP, such adjustment to be permanent until the employee retires or separates from City service. This contribution will be pensionable, but shall not be used to calculate benefit payoffs.~~
- b. ~~Pension Contribution (FY10) – Effective June 30, 2009, all employees agree to defer the City's contribution of an additional one percent (1%) for a total of two percent (2%) toward the employee's share of his/her pension contribution until FY12.~~
- c. ~~Applicability to DROP Members – Effective June 30, 2009, the parties agree that the existing one percent (1%) pension contribution set forth in 5.a. above will continue to be paid by the City as salary to employees who have entered the Deferred Retirement Option Program (DROP). The parties further agree that effective June 30, 2009, the additional one percent (1%) supplemental payment for a total of two percent (2%), scheduled for July 1, 2009, shall be deferred until FY12. When paid, the supplemental payment will be calculated by multiplying the appropriate percentage times the employee's base rate of pay as reflected in Exhibit I, Tables I, IA, IIA and IIIA and payment shall be included in the employee's biweekly paycheck. The supplemental payment shall not be considered part of~~

~~the employee's base pay. The employee's DROP amount will not be affected by these supplemental salary payments.~~

~~d. Applicability to Retirees (FY10 and FY11) — Adjustments to the monthly retirement allowances for retirees shall be calculated pursuant to FMC Sections 3-301 and 3-302 utilizing the one percent (1%) City pension contribution as compensation.~~

~~e. Pension Contribution (FY12) — Effective June 30, 2012, the City shall contribute an additional one percent (1%) for a total of two percent (2%) toward the employee's share of his/her pension contribution, such adjustment to be permanent until the employee retires or separates from City service. The contribution towards member pension obligations shall be included as compensation for purposes of pension calculations, but shall not be used to calculate benefit payoffs.~~

~~f. Applicability to DROP Members — Effective June 30, 2012, in lieu of the existing one percent (1%) pension contribution set forth in 5.a. above, the City will continue to pay employees who have entered the Deferred Retirement Option Program (DROP) the deferred additional one percent (1%) supplemental payment for a total of two percent (2%). The supplemental payment will be calculated by multiplying two percent (2%) times the employee's base rate of pay as reflected in Exhibit I, Tables I, I, III, IV, and V, and payment shall be included in the employee's biweekly paycheck. The supplemental payment shall not be considered part of the employee's base pay. The employee's DROP amount will not be affected by these supplemental salary payments.~~

~~g. Applicability to Retirees — Adjustments to the monthly retirement allowances for retirees shall be calculated pursuant to FMC Sections 3-301 and 3-302 utilizing the two percent (2%) City pension contribution payment as compensation.~~

~~h. Retroactivity:~~

64. Health Reimbursement Arrangement (HRA) (Incorporated from 9/30/10 Side Letter Agreement Re: Compensation and Benefits Re-Opener.)

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 and cashable vacation leave shall be credited to an account for the employee under the Health Reimbursement Arrangement (HRA) **as follows:**

- ~~July 1, 2008, the number of accumulated sick leave hours in excess of 120 hours at the time of retirement multiplied by 50% of the employee's then hourly rate of pay.~~
- ~~November 3, 2008, the number of accumulated sick leave hours at the time of retirement in excess of 120 hours multiplied by 50% of the employee's then current hourly base rate of pay, except that an employee who retires within sixty (60) calendar days of receipt by the City of Fresno Fire & Police Retirement System of a retirement application by, or on behalf of the employee, shall have accumulated sick leave hours upon retirement in excess of 120 hours upon retirement multiplied by eighty percent (80%) of the employee's then current hourly base rate of pay.~~
- **July 1, 2009, 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 application by, or on behalf of the employee, 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 by, or on behalf of the employee, 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 dependent upon the employee's eligibility requirement as set forth in the Retirement/Attendance Health Incentive provision in Section H.1, paragraph 21-a, below, and

- ~~• The number of accumulated cashable vacation leave hours at the time of retirement multiplied by the employee's then current hourly base rate of pay.~~
- Effective August 1, 2009, the **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.

~~The~~ **At the City's option**, HRA accounts ~~shall~~ **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. 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.

~~After July 1, 2008, the requirement in the first paragraph of this Section that an employee use less than eighty (80) hours of sick leave in the preceding 24 months shall be eliminated and no such requirement shall be made for an employee otherwise eligible for this benefit.~~

75. 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, IV, and V** 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 46., above.

86. Promotion

- a. For classes which have step increases (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. Lieutenants and Captains who are promoted after July 1, 2009, will be placed at Step D of the class promoted to **if the higher level 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.**
- b 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.

97. Post P.O.S.T. Certificate Pay – All compensation earned by a member pursuant to this sub-section shall be in addition to any other incentive and/or premium pays received and shall be compensable for retirement purposes.

- a. Members who have satisfactorily attained the Supervisory P.O.S.T. Certificate shall be compensated at a rate of four percent (4%) 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 ~~an additional one percent (1%) for a total of nine percent (9%)~~ above the member's base rate of pay.

C. SERVICE UNIFORM ALLOWANCE

~~Effective July 1, 2009, employees received an additional \$110.00 for~~ **Employees shall receive** a total of \$1,200 as a service uniform purchase and maintenance

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 considered as compensation for purposes of calculating pension benefits for a member. ~~Pursuant to the Side Letter Agreement Re: Compensation and Benefits Re-Opener dated September 30, 2010, the employees agreed to relinquish and give up their service uniform allowance during fiscal year 2011. However, when an employee enters DROP or separates from City service at retirement age the uniform allowance shall be included in the calculation of the member's DROP or retirement benefits. Effective July 1, 2011, payment of uniform allowance will resume as set forth above.~~

~~(It is the intent of this agreement to hold retirees and DROP participants harmless on the relinquished FY11 service uniform allowance.)~~

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. ~~The City's contribution will be eighty percent (80%) of the premium established by the Fresno City Employees Health and Welfare Trust board.~~

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.

~~The FPOA and the City of Fresno agree to a limited MOU reopener regarding health care premiums if all City bargaining units other than the FPOA are subject to a different formula for determining health care contributions. Meet and confer sessions shall start no earlier than January 1, 2013, and any modifications resulting from the reopener shall take effect no earlier than July 1, 2013.~~

E. WELLNESS PROGRAM

1. Wellness Program Development Committee

Effective October 1, 2014, the Wellness Program will be discontinued; however, members that earned a wellness incentive during FY 14 will receive the incentive in FY 15.

~~Through the Police Basic (Unit 4) MOU, a Wellness Program Development Committee (WPDC) was created for the purpose of developing a departmental Wellness Program (WP) for Unit 4 members, and for providing all aspects of program and policy administration, oversight and maintenance. The WPDC is composed of participants selected by the Chief of Police or designee and the Association. The WP provides for a monetary incentive for achieving goals and maintaining standards, voluntary participation; the services of a health/fitness coordinator; individually tailored consultations and screenings; educational components; sole responsibility on the part of any contracted WP service provider for the maintenance and monitoring of confidentiality of participant health, medical, and fitness information/records (i.e., such information shall not be provided to the City or any City department); and the sharing solely of attendance and participation related information with the City, on the part of any contracted WP service provider, to facilitate administration and disbursement of WP incentives. The WP is outlined in a departmental Standing Order, and implementation of any WP policy modifications shall be at the discretion of the WPDC. This Committee will also serve members of the Police Management, Unit 9.~~

~~Members of this Unit, and the Chief of Police, shall be eligible to voluntarily participate in the Fresno Police Department Wellness Program. Effective July 1, 2009, the sum of \$40,000 shall be utilized for payments of monetary incentives and for services provided by the contracted WP provider. Effective July 1, 2010 and July 1, 2011, the City shall provide an additional \$5,000, for a total of \$10,000. The City shall not be obligated to pay in excess of \$45,000 in FY 11 and \$50,000 in FY12 to the WP on behalf of the members of this Unit, and the Chief of Police. Should the total monetary incentive due to eligible members exceed the fiscal year's allotted sum, payment to eligible members will be prorated and calculated base on an hourly rate. Said hourly rate shall be established by dividing the remaining funds by the total hours earned by the eligible WP participant to establish the amount due. (For example: \$425,000 — money available minus \$80,000 — service fees =~~

~~\$345,000 — money to pay participants) if 550 participants earned 20,000 hours. Divided \$345,000 by 20,000 = \$17.25 an hour. Multiply \$17.25 x 56 hours = \$966). WP monetary incentives shall be paid by separate check no later than the last pay date in August of the subsequent fiscal year. In the event any portion of the WP funding for a particular fiscal year remains undistributed/unspent, the WPDC shall encumber the undistributed/unspent funding prior to the end of the fiscal year for use for the WP in the subsequent fiscal year.~~

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

F. LIFE INSURANCE AND LONG TERM DISABILITY BENEFITS

1. Life Insurance:

The Life Insurance benefit up to the active employee's 70th birthday is 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 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 as of the date of DROP entry by multiplying the

lump sum described above in this subparagraph 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.

2. For the employee who has reached the minimum 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 as of the date of retirement by multiplying the lump sum described above in this subparagraph 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 retirement age and have elected a Deferred Vested status in the City of Fresno Fire & Police Retirement System.
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 Effective October 1, 2014, employees shall accrue sick leave at the rate of ~~eight (8)~~ **seven and one half (7.5)** 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.

Retirement Attendance/Health Incentive – At service retirement or at a disability retirement if the employee is otherwise eligible for service retirement, the employee will be credited for all unused sick leave pursuant

to the City's Health Reimbursement Arrangement as set forth in Section B., paragraph 46., above ~~in excess of 120 hours, and effective July 1, 2009, will be credited for all unused hours, at 50% or 80% of the employee's then current base rate of pay, to be used solely to pay premiums for medical insurance (including COBRA premiums), pursuant to the City's Health Reimbursement Arrangement as set forth in Section B., paragraph 6., above.~~

2. Vacation Leave:

a. ~~Employees Effective October 1, 2014, employees~~ shall accrue ~~16.667 vacation leave hours for each completed calendar month of employment. Effective July 1, 2010, the accrual rate shall increase to 17.167 hours, and effective July 1, 2011, the rate shall increase to 17.677~~ (Pursuant to MOU Article VI, Section D., Subsection 1. each employee's applicable accrual rate will be reduced monthly by .583333 hours for Association time bank purposes.) Employees are allowed to accrue 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 46, 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. ~~Effective October 1, 2010, the cap for accumulated holiday leave increased to 488 hours. If an employee exceeds the monthly 488 hour cap, holiday leave shall be paid down automatically by the department to the 488 hour cap without the consent of the employee. The cap for~~

~~accumulated monthly holiday leave shall remain at 488 hours through June 30, 2011.~~

- b. ~~Effective July 1, 2011, the~~ **The** cap for accumulated monthly holiday leave shall ~~be~~ revert to 96 hours. ~~Holiday hours in excess of 96 will be placed in a "Special Holiday Leave Bank" as set forth in paragraph (f) below.~~
- dc. ~~Once regular holiday leave banks are reduced to the 96 hour cap,~~ **Employees** who are at the 96 hour cap will receive an automatic pay down of any hours exceeding the cap ~~effective July 1, 2011.~~
- e. ~~Effective upon approval of this agreement by the City, all members agree to continue an extension to freeze voluntary Holiday time pay downs from July 1, 2011 through June 30, 2012.~~
- d. ~~In accordance with subparagraph (c) above, effective~~ **On** July 1, 2011, all holiday leave balances in excess of 96 hours ~~shall be~~ **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;
- i. Voluntary cash-out of forty-three (43) hours each FY beginning in FY14 through FY18; and,
- ii. Voluntary cash-out of one-hundred (100) hours immediately prior to separation or prior to the employee filing retirement paperwork.

~~After the one-time deposit,~~ **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. ~~46~~, or cashed out at separation if not eligible to participate in the HRA.

d. ~~The one-time, non-pensionable payment of \$650.00 agreed to in the Side Letter Agreement Re: Compensation and Benefits Re-Opener dated September 30, 2010, shall be paid to all members by separate check as follows:~~

i. ~~\$325.00 per employee payable on December 1, 2011, and,~~

ii. ~~\$325.00 per employee payable on December 1, 2012.~~

ge. Effective July 1, 2012 through June 30, 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 fiscal year.

hf. 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.

ig. 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. 46, or cashed at separation if not eligible for the HRA.

jh. A Tier 2 member who has reached the minimum retirement age and elects to enter DROP or retire (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. Administrative Leave: (Incorporated from 9/30/10 Side Letter Agreement Re: Compensation and Benefits Re-Opener.)

Employees shall receive sixty (60) hours of administrative leave each fiscal year. The Police Chief or designee may grant up to an additional thirty-two (32) hours administrative leave each fiscal year to employees. This additional administrative 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 administrative leave cannot be cashed in by employees. Employees may receive payment for up to sixty (60) hours of Administrative leave not taken during the fiscal year. Any Administrative leave not taken or compensated for shall not be added to the leave credited in the next fiscal year.

- a. ~~Effective July 1, 2010 and July 1, 2011, the sixty (60) hours of administrative leave received by employees for each of those fiscal years shall be automatically moved into the employee's Holiday time bank and shall be compensable for retirement purposes.~~
- b. ~~Effective July 1, 2012, the provisions contained in subparagraph a., above, shall apply.~~

I. WORKERS' COMPENSATION

1. ~~Notwithstanding the provisions of FMC Section 3-118, an employee in this Unit who suffers an injury or illness in the course and scope of City employment shall receive eighty-five (85) percent of full wages or salary from the City.~~

Notwithstanding the provisions of FMC Section 3-118, an employee who suffers an injury or illness in the course and scope of City employment on or after January 1, 2010 shall become entitled, regardless of his or her 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.

~~Compensation for an accepted claim of a work related injury or illness shall begin following the first three (3) days after the employee leaves work as a result of the injury or illness. However, this three (3) day waiting period shall be waived and compensation shall begin on the first day of a work related injury or illness only if:~~

- a. ~~the employee is hospitalized as an inpatient for at least twenty-four (24) hours; or,~~
- b. ~~the employee is absent from work fourteen (14) days or more; or,~~
- c. ~~the employee is placed on light duty at any time during the first three (3) days.~~

~~2. Partial days of absence due to a work related injury or illness, including the day of injury or illness, shall be at full pay and shall not count toward the three (3) day exclusion period; however, this time shall be recorded as work related injury/illness absence.~~

~~3. At the employee's option, in the event the work related injury/illness is not provided during the first three (3) days of absence due to the work related injury or illness, the employee, may at the employee's option, take sick leave vacation or holiday leave for that period.~~

~~4. If the employee opts to use sick leave, vacation or holiday for the first three (3) days and it is later determined that the work related injury/illness pay under paragraph 1. Above, beginning on the first day of a work related injury is appropriate, the leave time shall be restored to the employee and the employee's pay or leave balance will be adjusted accordingly.~~

~~If the employee has been on leave without pay for the first three (3) days and it is later determined that pay is applicable from the first day, the employee shall be paid therefore.~~

5 2. 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 is determined to be industrial, sick leave, vacation or holiday shall be restored within thirty (30) calendar days of such determination, and the employee placed on work related injury/illness leave as provided herein.

4 3. Retirement benefits shall not be reduced as a result of a member receiving Workers' Compensation benefits.

5 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.

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. Work Week for Field Commanders

- a. Newly promoted Police Lieutenants will be assigned to the patrol division for a minimum of six (6) months before they are eligible for non-patrol assignments.

Chief's Exemption: The Police Chief may select up to two (2) newly promoted Police Lieutenants to serve in non-patrol assignments without time limitations. The department and the association will maintain a copy of the acknowledgment. Once the selected Police Lieutenant leaves this non-patrol assignment, the Police Lieutenant must be assigned to the patrol division for a minimum of six (6) months before they are eligible for any non-patrol assignment.

- b. Police Lieutenants designated as Field Commanders of a Patrol Bureau in the Field Operations Division are assigned to a 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.
- c. A 4/10 work schedule consists of four (4) ten (10) hour work days. The work week begins 0011 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.
- d. ~~Effective September 1, 2009,~~ 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.
- e. 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.
- f. 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.

- g. Employees shall accumulate eight (8) hours of sick leave per month, and receive sick leave pay for the actual number of hours absent.
- h. 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.
- i. 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 held. For example, if the Deputy Police Chief has previously held 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 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 or unfair employer-employee relations charge 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.
 - (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- "ACT")**

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:

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

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

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: "(a) Controlled Substances and Alcohol Testing Regulations, Fresno Area Express, (b) Controlled Substances and Alcohol Testing Regulations, Federal Motor Carrier Safety Administration", and should these positions be changed or modified, the parties agree to establish a new list of positions which are subject to these two policies pursuant to the ACT and the Department of Transportation. As personnel changes within these positions, the parties agree that the Department will give notice to the Association and the Risk Management Division of such changes.
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 Standing Order, policy or procedure.
6. Last Chance Agreements do not apply to members of the Association. As required by federal law, employees who have tested positive and who have returned to work, will still be subject to random selection for testing and will be subject to six additional tests for drugs and alcohol during the subsequent year.

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 ~~Standing Order~~
2.4.12 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, ~~narcotic~~
or vice enforcement, such member shall execute a written agreement and
release stating full consent, and would be required to take a drug test.
2. In the event the City provides an annual scheduled physical, all members
~~would~~ **shall** be required to submit to a drug test.
3. Sworn members while assigned to any special unit engaging in drug, ~~narcotic~~
or vice enforcement shall be required to periodic unannounced drug tests
subject to the following conditions:

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

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

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

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** (~~Incorporated from Side Letter Agreement dated September 10, 2008~~)

~~Standing Order 2.4.10~~ **Department Policies and Procedures #340**, as well as the FMC, City Administrative Orders, policies, procedures, operation manuals, rules and regulations 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 ~~June 30, 2013~~ **September 11, 2014** to June 30, 2015 **2017**, upon approval by the City, subject to Sections (A.B. and C.), below.

- A. This Agreement/MOU shall become effective only after ratification by the members of the Association followed by City approval and the expiration of the waiting period for the Mayor's action provided in Charter Sections 605 and 609, and shall remain in full force and effect through June 30, 2015 **2017**.

~~(Incorporated from 9/30/10 Side Letter Agreement Re: Compensation and Benefits Re-Opener.)~~ The City and the Association previously agreed that the Mayor shall appoint one (1) police officer, as defined in ~~Fresno Municipal Code~~ ("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.

IN WITNESS WHEREOF, the parties hereto have set their hands this ____ day
of _____, 2014.

**FOR THE FRESNO POLICE
OFFICERS ASSOCIATION:**

FOR THE CITY OF FRESNO

ANDREW J. HALL
President, FPOA Management

BRUCE RUDD
City Manager

JACKY PARKS
President, FPOA

JEFFREY T. CARDELL
Director of Personnel Services

MIKE BROGDON
Police Lieutenant

JERRY DYER
Chief of Police

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

BY: _____


Supervising Deputy

TABLE I Police Management - Unit 9 SALARIES EFFECTIVE JULY 1, 2014						
CLASS TITLE	A	B	C	D	E	F
Police Lieutenant	7563	7942	8340	8757	9195	9504
Police Captain	8709	9145	9603	10,084	10,589	10,944
Deputy Police Chief		4163	-	12,285		

TABLE II Police Management - Unit 9 SALARIES EFFECTIVE JANUARY 1, 2015 (1% deferred from 7/1/14 and 1% deferred from 1/1/12) SALARIES EFFECTIVE JULY 1, 2015 (2% increase for Lts and Captains and to upper end of DC range, maintaining 5% between steps and 3.35% between E and F)						
CLASS TITLE	A	B	C	D	E	F
Police Lieutenant	7715	8101	8507	8933	9380	9695
Police Captain	8884	9329	9796	10,286	10,801	11,163
Deputy Police Chief		4163 9639	-	12,531		

TABLE III Police Management - Unit 9 SALARIES EFFECTIVE December 31, 2016 (2% increase)						
CLASS TITLE	A	B	C	D	E	F
Police Lieutenant	7870	8264	8678	9112	9568	9889
Police Captain	9062	9516	9992	10,492	11,018	11,388
Deputy Police Chief		4163 9832	-	12,782		