

# MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND THE

CITY OF FRESNO MANAGEMENT EMPLOYEES ASSOCIATION

(Management Confidential - Unit 14)

**July 1, 2017 to September 29, 2019**

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| <u>LEGEND</u>    |                                               |
|------------------|-----------------------------------------------|
| * * *            | = deleted old language                        |
| [§ deleted]      | = section/subsection deleted                  |
| [§§ deleted]     | = two or more<br>sections/subsections deleted |
| <b>bold type</b> | = new language                                |

## ARTICLE I

### PREAMBLE

#### A. PURPOSE

This Memorandum of Understanding (MOU), entered into between the City of Fresno, hereinafter referred to as the City, and the City of Fresno Management Employees Association, Management Confidential Unit, hereinafter referred to as the Association, CFMEA, or as Unit, has as its purpose the establishment of wages, hours, and other terms and conditions of employment, and to promote collaboration in the resolution of issues affecting all parties.

#### 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 2 of Chapter 3, and Sections 3-101, **3-201**, **3-202**, <sup>\*\*\*</sup>, 3-501, and 3-603 of the Fresno Municipal Code (FMC) shall govern the construction, meaning, and application of words and phrases herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

#### C. GOVERNING LAWS

The legal relationship between the City and its employees and the City and the 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 or MMBA), <sup>\*\*\*</sup> as may be amended from time to time, and Article 6 of Chapter 3 of the FMC. In the event of conflict between said laws and this MOU, or in the event of conflicts in interpretation, said laws shall govern.

## ARTICLE II

### EMPLOYEE RIGHTS

#### A. GENERAL

The rights of employees are set forth in Section 3-604 of the FMC, 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 relationship with the City. No employees shall be interfered with, intimidated, restrained, coerced, or discriminated against by the City or by an employee or an employee organization because of his [or her] exercise of any of these rights. No management employee or confidential employee shall act as a representative of any employee organization which represents employees other than management employees or confidential employees."

#### B. NONDISCRIMINATION

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

#### C. EMPLOYEE RESPONSIBILITIES

All employees in the 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.

#### D. PERSONNEL FILES

1. The **Personnel Services Department** \*\*\* shall maintain the official personnel file for each employee. Each employee may review, or authorize in writing its review by a designated representative, subject to reasonable rules and regulations, and receive a copy of all material placed in either his or her official file or departmental **personnel** file. If an employee disagrees with the content of a document placed in either file, it shall be the right of the employee to submit a response to the Director of Personnel Services to be attached to the document in question and included in the appropriate file. Personnel files are ~~considered~~ confidential and access is limited.

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

## ARTICLE III

### CITY RIGHTS

#### A. GENERAL

1. The rights of the City include those rights enumerated in FMC Section 3-605, as the same may be amended from time to time. Specifically:

"(a) The exclusive rights to 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 other legitimate reasons;
- (7) maintain the efficiency of governmental operations;
- (8) determine the methods, means, and personnel by which government operations are to be conducted;
- (9) determine the content of job classifications;
- (10) take all necessary actions to carry out its mission;
- (11) exercise complete control and discretion over its organization and technology of performing its work."

2. The rights of the City include the determination of staffing levels, including but not limited to, staffing by shift and class.
3. All other rights formerly or presently enjoyed by or vested in the City on the effective date of this MOU and not mentioned in Section 1.(a) above are retained by and reserved to the City unless explicitly waived by the City by resolution of the Council or by Council-approved MOU.

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

## ARTICLE IV

### RECOGNITION

#### A. ASSOCIATION RECOGNITION

1. The City acknowledges the Association as the recognized employee organization representing the Management Confidential 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. \*\*\* In order that the meet and confer process includes adequate time for full consideration of the proposals of both parties and for the resolution of any impasse, the City shall accept proposals from the Association as early as March 1<sup>st</sup> of the year the MOU expires.
2. It is expressly agreed and understood by the parties that under Government Code Section 3502.5, an agency shop agreement shall not apply to management, confidential or supervisory employees. As used in this section, "agency shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the agreement, or a period of three years from the effective date of such agreement, whichever comes first. Employees of the City shall have the right to refuse to join or participate in the activities of the Association and shall have the right to represent themselves individually in their employment relationship with the City of Fresno. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by the Association because of the exercise of these rights.

#### B. UNIT DESCRIPTION

The Association represents one unit consisting of Management Confidential employees holding a permanent position, as defined in FMC Section 3-202(p)(4), in one of the classes listed in Exhibit 14 of the Salary Resolution, as such Unit may be modified from time to time in the manner designated in the FMC.

All classes in Exhibit 14 of the Salary Resolution are assigned to the Executive Pay Range Plan and are part of the Unclassified Service, as defined in the City Charter Section 1000. Members of the Unclassified Service are at-will employees who serve at the will of the appointing authority and are not covered by the City's Civil Service \*\*\* **regulations or procedures unless they also apply specifically to employees holding permanent positions in the Unclassified Service.**

C. CITY RECOGNITION

The Association recognizes the City Manager of the City of Fresno, or such person as may be designated in writing, as the designated representative of the City, and shall meet and confer in good faith promptly upon request by the City and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on a successor MOU at least one (1) week prior to the last 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. LOCKOUT AND STRIKES

1. In the event the meet and confer process beginning prior to the expiration of this MOU results in an impasse, the City shall not take unilateral action regarding wages, hours, and other terms and conditions of employment prior to completion of any impasse resolution procedures required under State bargaining law.
2. No unlawful strike or work stoppages by City employees, as defined in the FMC Section 3-624 **or state bargaining laws**, shall be caused, instigated, encouraged, condoned, participated in, or honored by the Association or its members during the term of this MOU.
3. No lockout of employees shall be instituted by the City during the term of this MOU.

## ARTICLE V

### REPRESENTATION AND RESOLUTION OF CONCERNS

#### A. SCOPE OF REPRESENTATION

"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 OF EMPLOYEES

1. A member of the Association whose presence is requested by management to discuss or review an action of the employee has the right to be represented by an Officer, Director, or member of the Association if it appears that the discussion or review may result in **a reprimand (oral or written) \*\*\***, suspension, demotion or termination. Should an employee request such representation, no further discussion or review may occur until a representative is present, except that an unreasonable delay shall not result from such a request. The presence of a representative of the employee's own choosing who is not an Officer, Director, or member of the Association shall also satisfy the requirements of this section. An employee shall not represent nor be represented by an individual within his or her line of supervision.
2. This Section does not apply to the normal ongoing employment relationship or supervisor/subordinate relationship between the City and its employees, when such matters include, but are not limited to, work direction, scheduling, and non-disciplinary counseling or performance evaluations, except as provided in Article VIII, Section B. 4.
3. The Association agrees to represent employees in this Unit in a manner consistent with the requirements of the Meyers-Milias-Brown Act and applicable state and federal regulations.

#### C. RESOLUTION OF CONCERNS

Concerns regarding the interpretation or application of the provisions of this MOU shall be resolved exclusively as outlined in Administrative Order 2-15, Resolution of Concerns of Management and Confidential Employees. The City recognizes the right of employees who are members of the Association to be represented by the Association in resolving concerns.

#### D. CORRECTIVE ACTIONS

Employment and separation of employment for employees holding a permanent position in the Unclassified Service, pursuant to FMC Section 3-277 and Fresno City Charter Section 1000, will be consistent with the applicable provisions of the FMC and the Charter. Employees hired by the City on or after December 30, 2013 will not be covered by FMC Section 3-277. Unclassified employees are not covered by Civil Service rules **regulations or procedures unless they also apply specifically to employees holding permanent positions in the Unclassified Service** and are at-will employees who serve at the pleasure of the appointing authority.

## ARTICLE VI

### COMMUNICATIONS

#### A. ASSOCIATION BUSINESS

The City agrees to allow Association Officers, subject to the approval of each employee's supervisor and the needs of the City, reasonable leave for the day-to-day conduct of Association business, including representation of employees as provided in Article V. Attendance at Association conferences, workshops, training, etc., will be charged to the employee's accrued leave benefits, to be designated by the employee. Approval of such leave will not be unreasonably withheld.

#### B. ASSOCIATION OFFICERS AND DIRECTORS

A written list of the Officers of the Association and the Association Directors, with the specific areas they represent, shall be furnished to the City immediately after their designation and the Association shall notify the City promptly in writing of any changes of such Association Officers or Directors.

#### C. EXCHANGE OF INFORMATION

##### 1. General

**On a timely basis, \*\*\* the City shall provide notification to the Association \*\*\* upon posting \*\*\* amendments to the Administrative Order Manual, \*\*\* new and amended Salary Resolutions, new and amended Position Authorization Resolutions, and job bulletins on the City's website. \*\*\***

##### 2. Class Specifications

Revisions to specifications for classes contained in this Unit will be provided to the Association for review and comment prior to adoption by the Director of Personnel Services.

##### 3. If new classes are created which the City determines appropriate for inclusion in this Unit, the City shall provide a copy of the specifications to the Association and reasonable notice and opportunity to meet and confer prior to the action to adopt a salary for the classes. If, after a reasonable period of meeting and conferring, agreement cannot be reached, staff, after notifying the Association, will forward their recommendation to the City Council.

##### 4. **The Association shall provide the Labor Relations Division with a copy of its By-Laws. Whenever those By-Laws are amended, the**

**Association shall promptly provide an updated copy of the By-Laws to the Labor Relations Division.**

**D. DEPARTMENT REPRESENTATIVES**

The director of each department will act as a liaison between the City and the Association for that department. The director will be the primary contact for the Association on labor relations issues within the department.

## ARTICLE VII

### DUES DEDUCTIONS

#### A. GENERAL

1. Rules governing dues checkoff are set forth in FMC Section 3-620, as the same may be amended from time to time.
2. The City shall deduct the dues or benefit premiums, or both, upon proper authorization by Association members in the Unit.
3. 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 on a Dues Deduction Authorization card.
4. If a member in the Unit desires to revoke the member's prior Dues Deduction Authorization card, a dues deduction revocation shall be made upon a Dues Deduction Revocation card. A Dues Deduction Authorization card may be revoked by a member, and the dues or benefit deduction canceled, only during the months of November or December of the last year of this MOU.
5. Dues Deduction Authorization and Revocation cards are available at the Finance Department and Personnel Services Department.
6. **Dues deductions will be terminated when an employee leaves the bargaining unit.**

#### B. EXCEPTION TO THE DUES DEDUCTION AUTHORIZATION CARD

The members' earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When a member is in unpaid status for an entire pay period, no dues deduction shall be made from future earnings to cover that pay period, nor will the member be allowed to deposit with the City Controller the amount which would have been deducted if the member had been in a paid 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 deduction \*\*\* shall be transmitted at least monthly to an account specified \*\*\* the City of Fresno Management Employees Association\*\*\*.**

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## ARTICLE VIII

### 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

This Unit is comprised of E-Range Compensation Plan classes (identified on Exhibit 1).

##### §

1. **\*\*\* Employees hired by the City** on or after August 1, 2015 shall make an additional contribution equal to 1.5% of their pensionable compensation to the City of Fresno Employees Retirement System, reducing the City contribution by a corresponding amount. **Employees hired by the City who enter Unit 14 on or after August 1, 2015 and were paying an additional one and one half percent (1.5%) of their pensionable compensation immediately prior to entering Unit 14, shall continue to pay the additional one and one half percent (1.5%) of their pensionable compensation to the City of Fresno Employees Retirement System, reducing the City 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 Employees Retirement System. The employee shall have no option to receive the 1.5% contribution in cash. The 1.5% 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.

**The City and the Association agree to a limited reopener of this provision in regard to the possible revision of Normal Contributions to the Employee Retirement System for those employees paying an additional one and one half percent (1.5%).**

2. Employees who are above the top of the range of their classification will be "Y-Rated," i.e. **they** will be held at their current salary until such time as the range of their classification **matches** or exceeds the employee's salary. For the term of this MOU **\*\*\***, employees who are "Y-Rated" will be held harmless with respect to DROP and retirement calculations, including

calculations impacting members who separate from City employment and elect a deferred vested status.

### **3. Salary Ranges**

**Effective July 1, 2017, all classifications in Range E13 will be moved to Range E12, and**

- a. **The minimum and maximum of the salary ranges will be increased by two percent (2%) as reflected in Exhibit 1 attached hereto and incorporated by this reference.**
  - b. **Effective July 1, 2017, a new salary range will be created for Deputy City Engineer and Building Services Manager. The new range will be two and one half percent (2.5%) above Salary Range E11, as reflected in Exhibit 1 attached hereto and incorporated by this reference.**
  - c. **Effective July 1, 2018, the minimum and maximum of the salary ranges will be increased by an additional two percent (2%) as reflected in Exhibit 2 attached hereto and incorporated by reference.**
4. Annual performance evaluations shall be conducted prior to an employee's anniversary date in the current position by the Department Director or designee, utilizing the City of Fresno Performance Evaluation Form \*\*\* **attached hereto as Exhibit 3 and incorporated by this reference.**
- a. Salary increases will be determined by the Performance Evaluation as follows:
    - (1) 1 overall on the Performance Appraisal Rating– 0%.
    - (2) 2 overall on the Performance Appraisal Rating– 0%.
    - (3) 3 overall on the Performance Appraisal Rating – no less than two percent (2%); however, if any competency is below a rating of 3, no increase will be provided; however, the employee will be re-evaluated in six (6) months.
    - (4) 4 or 5 overall on the Performance Appraisal Rating – an increase relevant to performance; however, If any competency is below a rating of 3, no increase will be provided; however, the employee will be re-evaluated in six (6) months.

- (5) An employee who has been subjected to any formal disciplinary action in the twelve (12) months preceding their annual performance evaluation will not be eligible for a salary increase.
  - b. The salary percentage increase, as determined above, will be effective on the employee's anniversary date.
  - c. The results of an employee's annual performance evaluation rating are final and are not subject to an appeal process.
  - d. The annual performance evaluation will include clear objectives for the next rating period.
  - e. Upon promotion into the unit, an employee's salary shall be increased by at least five percent (5%) or it shall be at the bottom of the salary range, whichever is greater, but not to exceed the top of the salary range.
5. **Effective January 1, 2018, the City shall reimburse fifty dollars (\$50.00) per month to all Unit employees in deferred compensation who voluntarily participate in the City's deferred compensation plan of a contribution of at least fifty dollars (\$50) per month.**
6. Employees in this Unit may have the opportunity to participate in a City of Fresno Performance Pay Plan if implemented by the City. The City will meet with CFMEA prior to implementing any Performance Pay Plan.
7. Deferred Vested Retirement

For purposes of calculating Compensation Earnable as defined in FMC 3-501, any employee in the City of Fresno Employees Retirement System (hereafter "System") in a class in Unit 14 who separates from City service on or after August 1, 2015, and elects to remain a member of the System shall have their Compensation Earnable calculated as follows:

Beginning July 1 following the date the Deferred Vested Member separates from City service, the Member's Compensation Earnable at the time of separation shall be indexed with the Consumer Price Index (hereafter "CPI") – United States City Average for Urban Wage Earners and Clerical Workers -- all items (i.e. general price inflation) and the Employment Cost Index for Wage Inflation (i.e. across the board pay increases) for State and local government employees, as published by the Bureau of Labor Statistics of the United States Department of Labor.

Determination of the percentage of annual increase or decrease in CPI and Employment Costs for wage inflation shall be made by the Retirement Board on or before April 1 of each year for each of the two immediately

preceding calendar years. The percentage by which such indexes for the more recent full calendar year shall have increased or decreased over or below indexes for the full calendar year immediately prior shall be the percentage used to calculate adjustments to Compensation Earnable with the following exceptions: banking shall not be applied nor shall the sum of accumulated CPI and Employment Costs adjustments plus Compensation Earnable exceed the Executive Pay Range approved by the City Council at the time of retirement.

The sole exception to exceeding the Executive Pay Range will be individuals who were "Y-Rated at the time of separation." These individuals will be held at their Y-Rated salary until such time as the range of their classification equals or exceeds the individuals Y-Rated salary.

This process will continue each July 1 until the Deferred Vested Member elects to begin receiving the retirement benefit. This adjusted Compensation Earnable shall be used in the Member's final compensation for the calculation of the retirement benefit.

If a Deferred Vested Member held more than one position during his or her highest three consecutive years, the Compensation Earnable in each position shall be allocated on a time held, pro-rata basis and the combined adjusted Compensation Earnable, including adjustments due to CPI and Employment Costs for wage inflation, shall be used in the Member's final compensation for the calculation of the retirement benefit.

System members who retire or enter Deferred Retirement Option Program (hereafter "DROP") on or after August 1, 2015, shall have any previously held Executive Pay Range salaries determined in accordance with this Subsection.

#### C. PREMIUM PAY

1. Certificate/License/Registration Premium Pay - If any of the certificates, licenses and/or registrations detailed in the paragraph below are determined by the City to be minimum qualifications in the job classification, premium pay for that particular certificate, license and/or registration shall not be paid.

Permanent employees in the class of Building Services Manager, who possess a valid registration as an Architect, Civil Engineer, Electrical Engineer, Structural Engineer, or Traffic Engineer issued by the State of California, shall receive an additional five percent (5%) of their base rate of pay per month.

2. **Bilingual Premium Pay Program - The City and the Association jointly encourage employees to use their language skills to provide the highest level of service to the community. The bilingual certification**

program consists of a City administered examination process whereby employees may apply for bilingual examination and if certified by the examiner, receive bilingual premium pay for interpreting and translating.

- a. The Bilingual certification examinations will be conducted as needed. Examination applications will be available at the Personnel Services Department, Human Resources Division, and City department personnel units. In order to remain eligible to receive bilingual premium pay, employees must take and pass the certification examination once every five (5) years.
- b. Department Directors, or their designees, shall designate those positions or assignments in which bilingual skill is desired. Applications for a bilingual examination must be signed by the Department Director or designee.

Bilingual examination results are not appealable or grievable.

- c. Bilingual certification examinations are conducted for languages as specified in the Salary Resolution.
- d. Employees who have passed the bilingual examination and who are receiving bilingual premium pay may not refuse to translate while on the job.
- e. Employees who are bilingual but who have chosen to not receive bilingual premium pay shall not be required to translate on the job except in an emergency.
- f. The bilingual premium pay rate for classified employees in these Units will be one hundred dollars (\$100) per month regardless of how many languages for which an employee is certified.

#### **D. LIFE INSURANCE AND DISABILITY COVERAGE**

The City shall provide Life Insurance and Long Term Disability Insurance for members of this Unit in the amounts and formulas currently provided.

#### **E. FRESNO CITY EMPLOYEES HEALTH AND WELFARE**

Effective July 1, 2014 the City shall contribute seventy-five percent (75%) of the employee's health and welfare premium. Employees may opt to contribute the amount necessary to make up the difference through payroll deductions, or accept a reduced coverage option. After July 1, 2014, the cost of any future increases in the health and welfare premium will be shared on a fifty percent (50%) basis by the

City and employees, except that employees will be required to pay no more than thirty percent (30%) of the premium established by the City of Fresno Employees Health and Welfare Trust Board. At such time as the employee share is thirty percent (30%), the City shall pay seventy percent (70%).

Should any other represented bargaining unit in the City receive a greater contribution towards health benefits from the City, either through negotiation of a successor MOU, extension of the period of an MOU, or imposition of terms, resulting in a contribution by the City which is a percentage of the health premium as opposed to a flat contribution rate, the City and the Association will meet and confer with the goal of providing an equivalent benefit.

The parties agree to a limited reopener on health and welfare benefits. The reopener will include discussions on alternative health plans and/or modifications to the City of Fresno Health and Welfare Trust arrangement.

## F. LEAVES

### 1. Attendance Policy:

Effective July 1, 2006, the FMC, City administrative orders, City policies, procedures, rules and regulations concerning sick leave usage and administration shall apply. Administrative Order 2-19.1, Attendance Policy, shall no longer apply to members of this unit.

### 2. Annual Leave:

Effective July 1, 2000, the following annual leave program was implemented for all employees occupying classes in this Unit who are employed in permanent positions at fixed monthly or yearly salaries. The annual leave program for employees hired by the City before December 30, 2013 consists of combining previously existing vacation and sick leave (reduced from eight (8) hours per month to five and five-tenths (5 5/10) hours per month) accumulation rates, while simultaneously freezing existing unused sick leave balances.

a. Annual Leave Accrual - Vacation leave and sick leave will no longer be accumulated as provided in the FMC, but **annual leave will be** as detailed below.

(1) Less than Ten Years - For such employees who have been continuously employed by the City for less than ten (10) years and were \*\*\* City employees **holding permanent positions** prior to December 30, 2013, the annual leave accrual rate will be 15.5 hours for each completed calendar month of employment. In the event the City agrees to a higher annual leave accrual rate for members of recognized labor organizations who participate in the City of Fresno Employees

Retirement System, the City agrees that it will increase the annual leave accrual rate to the same level for employees represented by the Association.

For such employees who have been continuously employed by the City for less than ten (10) years and became \*\*\* City employees **holding permanent positions** on or after December 30, 2013, the annual leave accrual rate will be 13.33 hours for each completed calendar month of employment.

- (2) More than Ten Years - For such employees who have been continuously employed by the City for ten (10) years or more and were \*\*\* City employees **holding permanent positions** prior to December 30, 2013, the annual leave accrual rate will be 18.83 hours for each completed calendar month of employment. In the event the City agrees to a higher annual leave accrual rate for members of recognized labor organizations who participate in the City of Fresno Employees Retirement System, the City agrees that it will increase the annual leave accrual rate to the same level for employees represented by the Association.

For such employees who have been continuously employed by the City for ten (10) years or more and became \*\*\* City employees **holding permanent positions** on or after December 30, 2013, the annual leave accrual rate will be 16 hours for each completed calendar month of employment.

- (3) Annual Leave Accumulation Limit – Employees may accumulate unused annual leave not to exceed eight hundred forty (840) hours.

Any employee with more than six hundred eighty (680) hours of annual leave as of December 30, 2013 will have all hours above 680 placed in a special annual leave bank which may be used for the same purpose as annual leave and shall be cashed out upon leaving City employment in accordance with subsection (6) below.

- (4) Use of Annual Leave - Annual leave requests will be administered in accordance with existing FMC provisions, City administrative orders, policies, procedures, rules and regulations.
- (5) Unused Annual Leave Pay Out During Fiscal Year - Employees will be permitted to cash out up to forty eight (48) hours or ten percent (10%) of their annual leave balance each

fiscal year. During the term of this MOU, employees can only cash out annual leave before April 1<sup>st</sup> of each fiscal year. No cash out can be done between April 1<sup>st</sup> and June 30<sup>th</sup>.

- (6) Unused Annual Leave Pay Out - Upon separation from City service, an employee will be compensated for all unused annual leave balances at his or her applicable base rate of pay. Compensation received under this provision will not be considered pensionable for retirement purposes. The FMC was modified to include a definition of annual leave, and exclude accrued annual leave pay outs from pensionable compensation under the City of Fresno Employees Retirement System.
- (7) Transfer - An employee transferring to a position represented by a different bargaining group, which is not covered by annual leave, may either cash out his or her unused annual leave balance at \*\*\* **the former class'** base rate of pay, or have the unused annual leave balance converted to a vacation leave balance of hours. The conversion is obtained by multiplying unused annual leave hours by the \*\*\* **former class'** base rate of pay (convert to an hourly figure), dividing the product by the \*\*\* **new class'** base rate of pay (convert to an hourly figure), and placing the resulting balance for leave usage as requested and designated by the employee. (Conversion example: 100 [unused annual leave hours] x \$15.00 [CFMEA class monthly base rate converted to hourly] = \$1,500.00 [product] ÷ \$20.00 [non-CFMEA class monthly base rate converted to hourly] = 75 [converted hours to be placed in a vacation balance account].) Upon separation from City service, the employee who transferred to a position outside \*\*\* **of Unit 14** will be compensated for all unused annual leave hours at \*\*\* **the** base rate of pay **for the class held by the employee at the time of separation.** Compensation received under this provision will not be considered pensionable for retirement purposes.

b. \*\*\* **Protected Sick Leave**

Each fiscal year, employees will be allowed to use for themselves and family members up to the hours of Annual Leave accrued and available in six months for Protected Sick Leave for the purposes identified in California Labor Code Section 233. The first three days or twenty-four hours, whichever is greater, of used Protected Sick Leave shall also be considered leave taken under California Labor Code Section 246.5 (i.e., AB 1522, Healthy Workplace Healthy Family Act of 2014).

- c. Sick Leave Balances Unused - Effective July 1, 2000 all employees occupying classes in this Unit who are employed in permanent positions at fixed monthly or yearly salaries, had their unused sick leave balances frozen.

(1) Use of Frozen Sick Leave - \*\*\* **Frozen** sick leave balances may ~~only be used in accordance with FMC 3-107, or for those purposes defined in California Labor Code Section 233 up to the statutory amount for the fiscal year unless the statutory amount has been satisfied by use of other leaves for the fiscal year.~~ \*\*\*

(2) Unused Frozen Sick Leave Pay Out - At service retirement or at a disability retirement if the employee is otherwise eligible for service retirement, employees will be credited with the number of accumulated frozen sick leave balances in excess of 240 hours at the time of retirement multiplied by 40% of the employee's then current hourly rate of pay to be used solely to pay premiums for medical insurance (including COBRA provisions), pursuant to the City's Health Reimbursement Arrangement as set forth in Section G., below.

(3) **Employees who terminate City employment and return within one year of such termination will be entitled to reinstatement of their frozen sick leave balances up to a total of forty-eight (48) hours.**

3. Supplemental Sick Leave:

Employees shall be credited with forty (40) hours of supplemental sick leave, each fiscal year thereafter during the term of this MOU with an accrual limit of eighty (80) hours. Employees who have earned eighty (80) hours or more prior to July 1, 2015 shall retain those hours but shall not accrue any additional time. Upon their employment with the City, new employees appointed to such permanent positions shall be credited with a pro-rated number of hours for each full calendar month remaining on such appointment in the fiscal year. Employees may utilize the hours as follows:

- a. Once frozen sick or annual leave has been exhausted;
- b. As service credit on an hour-per-hour basis upon retirement;
- c. Placed in a Health Reimbursement Arrangement in accordance with Article VIII, Section G;

- d. To be cashed out at separation from the City if not eligible for participation in the Health Reimbursement Arrangement; or,
- e. May be used in the performance of community activities during the course of the employee's normal work day, with \*\*\* approval **of the Department Director or designee.**

4. Holiday Leave:

- a. Except as may be modified in this Section, Holidays shall be governed by FMC Section 3-116.

January 1

The third Monday in January

The third Monday in February

The last Monday in May

July 4

The first Monday in September

November 11

Thanksgiving Day in November

The Friday after Thanksgiving Day in November

December 25

Employee's Birthday

One Personal Business Day (8 hours credited to holiday balance on July 1)

Any day or part of a day declared by the Council, by Ordinance or Resolution, to be a holiday.

If January 1, July 4, November 11, or December 25 falls upon a Sunday, then the following Monday will be observed as the holiday in lieu of Sunday.

- b. Any employee in Unit 14 who is exempt from the payment of overtime and who is otherwise eligible to receive such accumulation, who is required to work a regularly scheduled shift on a holiday, shall have the number of hours worked up to eight (8) hours added to his or her holiday balance on the first day of the pay period following the date of such work.
- c. When a holiday falls on a Saturday, or on an employee's regularly scheduled day off, an employee shall be credited with eight (8) hours of holiday leave on the first day of the following month.
- e. Employees may request payment and be compensated for up to forty-eight (48) hours or ten percent (10%) of their holiday leave balance each fiscal year. Employees can only cash out holiday leave before April 1<sup>st</sup> of each fiscal year. No cash out can be done between April 1<sup>st</sup> and June 30<sup>th</sup>.

5. \*\*\* Management Leave:

Exempt employees shall receive sixty (60) hours of \*\*\* **Management** leave each fiscal year, and may request payment and be compensated for up to forty-eight (48) hours of their \*\*\* **Management** leave balance during the fiscal year in which it is credited. Upon employment by the City, new employees appointed to exempt positions shall be credited with five hours of \*\*\* **Management** leave for each full calendar month remaining in the fiscal year. \*\*\* **Management** leave not taken or compensated during the fiscal year in which it is credited shall not be added to the leave credited in the next fiscal year, nor carried over. Exempt employees shall be compensated for any \*\*\* **Management** leave balance, not to exceed sixty (60) hours, upon termination from City service.

6. \*\*\* Management Time Off

City employees who are designated as exempt from overtime under the provisions of the Fair Labor Standards Act and who receive \*\*\* **Management** leave pursuant to paragraph 5., 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 Department Directors, Assistant Directors or Division Managers may approve \*\*\* **management** time off for a full day's absence.

G. Health Reimbursement Arrangement (HRA)

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

At separation from permanent employment with the City of Fresno by service retirement or at a disability retirement if the employee is otherwise eligible for service retirement, employees who have used eighty (80) hours or less of \*\*\* leave used for sick time (excluding only hours used for protected leave such as family and medical leave, \*\*\* Workers' Compensation leave, **and/or Bereavement Leave**) in the 24 months preceding their date of retirement, will be credited with an account for the employee under the HRA to be used solely to pay premiums for medical insurance (including COBRA premiums). The "value" of the account shall be determined as follows:

- The number of accumulated supplemental sick leave hours at the time of retirement multiplied by the employee's then current hourly base rate of pay.
- The number of accumulated frozen sick leave hours in excess of 240 hours at the time of retirement multiplied by 40% of the employee's then current hourly base rate of pay.
- The hourly base rate of pay 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 employer's option**, HRA accounts shall be book accounts only – no actual trust account shall be established for any employee. Each HRA book account shall be credited on a monthly basis with a rate of earnings equal to the yield on the City's Investment Portfolio (provided that such yield is positive).

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

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

## H. 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 66.67% of average weekly earnings in the fifty-two (52) weeks prior to the injury. Should the State-mandated workers' compensation rate of payment be adjusted, the City and the Association will have a limited reopener to adjust the rate accordingly. 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.
  - a. 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 the work related injury or illness only if:

- (1) the employee is hospitalized as an inpatient on the first day for at least twenty-four (24) hours; or
  - (2) the employee is absent fourteen (14) calendar days, or more.
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 towards the three (3) day exclusion period, however, this time shall be recorded as a work related injury/illness absence.
3. At the employee's option, in the event of a work related injury/illness pay from the City is not provided during the first three (3) days of absence due to the work related injury or illness. The employee may take frozen sick leave, annual leave, holiday or administrative leave for that period.
4. If the employee opts to use frozen sick leave, annual leave, holiday, or administrative leave for the first three (3) days and it is later determined that work related injury/illness pay under paragraph 1.a. above, beginning on the first day of a work related injury or illness is appropriate, the leave time shall be restored to the employee 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. If an employee is placed on frozen sick leave, annual leave, holiday, or administrative leave pending determination as to whether the injury or illness is industrial, and the injury or illness is determined to be industrial, frozen sick leave, annual leave, holiday, or administrative leave shall be restored and the employee placed on work related injury/illness leave as provided herein.
6. Retirement benefits shall not be reduced as a result of the level of compensation established herein. Changes in contribution by the City and employee shall be in accordance with applicable FMC Retirement Code sections.
7. Taxes shall not be withheld on compensation which is paid due to an injury or illness sustained in the course and scope of employment with the City.

#### I. COURT TIME

Notwithstanding the provisions of FMC Section 3-109, an employee in this Unit who receives a notice or subpoena requiring a court appearance during a pre-approved vacation, holiday or administrative leave, **and appears at such court hearing and/or trial**, shall be credited with annual leave, holiday or administrative leave equivalent to the actual number of hours spent in court on such day(s).

J. WORK SCHEDULES

The City and employees of the Association may mutually agree to alternative work schedules for individual employees, including, but not limited to 9/80's. Both the City and the employee retain the right to withdraw the mutual agreement and return to the regular schedule established by the employee's division.

K. USE OF PERSONAL VEHICLES

Employees may be required, at the discretion of the City, to use their personal vehicles for City business. Employees required to use their personal vehicles on City business, other than traveling to and from work, shall be reimbursed in accordance with Administrative Order 2-2, Transportation Allowance and Mileage Reimbursement Policy. Employees may be required, at the discretion of the City, to take a City vehicle home to facilitate efficient response to after-hours emergencies or City business, pursuant to Administrative Order 8-8, City-Owned/Leased Vehicles/Acquisition, Assignment and Usage Policy.

## ARTICLE IX

### HEADINGS, SAVING CLAUSE, AND FULL UNDERSTANDING

A. Headings:

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

B. Saving Clause:

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

C. Full Understanding:

It is intended that this MOU sets forth the full and entire understanding of the parties, and any previous understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded and terminated in their entirety. With respect to side letter agreements, any not attached to this MOU are hereby terminated in their entirety. Those side letter agreements attached to this MOU shall continue in force subject to the terms and conditions set forth within each side letter. In the absence of any 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 of this MOU shall be in full force and effect from July 1, **2017** \*\*\* to **September 29, 2019** \*\*\*, subject to the sections (A., B., and C.) below.

- A. This MOU shall become effective only after ratification by the members of the Association, followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter Sections 605 and 609, and shall remain in full force and effect through **September 29, 2019** \*\*\*.
- B. During the term of this MOU, should either party desire to modify its terms or to meet and confer as to matters within the scope of representation not addressed in this MOU, the party requesting any change shall request in writing to meet and confer on the item(s), which item(s) shall be specified in writing.
- C. During the term of this MOU, either party may refuse any request by the other to meet and confer without explanation if the item is directly considered and specifically addressed herein, or if the specific item was included in a written proposal from the party making the request during the meet and confer process which led to this MOU. No unilateral action on any such refusable 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, state, \*\*\* City statutes, **regulations or case law**, and City administrative policies referred to or cited in this MOU, in which case the request to meet and confer shall not be refused.

- D. **The parties agree to a limited reopener on Long Term Disability and participation in State Disability Insurance (SDI).**
- E. **The parties agree to meet and confer during the term of the MOU on the following:**

**Revisions to the Personnel provisions of the Fresno Municipal Code (FMC), Chapter 3, Article 1);**

**Revisions to the Civil Service Regulations in the FMC, Chapter 3, Article 2; and,**

**Revisions to the Employer-Employee Relations provisions of the, Chapter 3, Article 6.**

IN WITNESS WHEREOF, the parties hereto have set their hands this \_\_\_\_ day  
of \_\_\_\_\_.

FOR CITY OF FRESNO  
MANAGEMENT EMPLOYEES  
ASSOCIATION:

\_\_\_\_\_  
KIM GILLINGHAM  
Labor Representative

\_\_\_\_\_  
SHELLEY MORRISON  
President

\_\_\_\_\_  
KIM JACKSON  
Vice President

\_\_\_\_\_  
ROBIN O'MALLEY  
Secretary

\_\_\_\_\_  
DEL ESTABROOKE  
Member at Large

\_\_\_\_\_  
SHELBY MACNAB  
Negotiating Team Member

\_\_\_\_\_  
TODD STERMER  
Negotiating Team Member

FOR THE CITY OF FRESNO:

\_\_\_\_\_  
TJ MILLER  
Assistant Director, Personnel Services

\_\_\_\_\_  
KENNETH G. PHILLIPS  
Labor Relations Manager

\_\_\_\_\_  
GREGORY BARFIELD  
Assistant Director, Transportation

\_\_\_\_\_  
YVONNE DEDMORE  
Payroll Manager

\_\_\_\_\_  
STEPHANIE MARTINEZ  
Management Analyst II

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

BY: \_\_\_\_\_

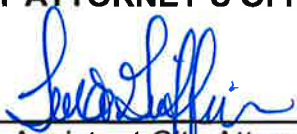
  
Assistant City Attorney

EXHIBIT 1 – Table I  
Management Confidential – Unit 14  
Salaries Effective July 1, 2017

| CLASS TITLE                                       | A | B    | C | D     | E |
|---------------------------------------------------|---|------|---|-------|---|
| Administrative Manager                            |   | 7937 | - | 9912  |   |
| Airports Marketing & Public Relations Coordinator |   | 6022 | - | 7520  |   |
| Airports Operations Manager                       |   | 7216 | - | 9011  |   |
| Airports Planning Manager                         |   | 7216 | - | 9011  |   |
| Airports Properties Manager                       |   | 7216 | - | 9011  |   |
| Assistant City Clerk                              |   | 6022 | - | 7520  |   |
| Building Services Manager                         |   | 8136 | - | 10160 |   |
| Business Manager                                  |   | 7216 | - | 9011  |   |
| City Traffic Engineer                             |   | 7216 | - | 9011  |   |
| Communications Manager                            |   | 7937 | - | 9912  |   |
| Community Sanitation Manager                      |   | 6022 | - | 7520  |   |
| Construction Manager                              |   | 7216 | - | 9011  |   |
| Crime Scene Investigation Bureau Manager          |   | 7216 | - | 9011  |   |
| Deputy City Engineer                              |   | 8136 | - | 10160 |   |
| Division Manager                                  |   | 7216 |   | 9011  |   |
| Economic Development Analyst                      |   | 6022 | - | 7520  |   |
| Facilities Manager                                |   | 7216 | - | 9011  |   |
| Fleet Manager                                     |   | 7216 | - | 9011  |   |
| Housing & Neighborhood Revitalization Manager     |   | 7937 | - | 9912  |   |
| Information Services Manager                      |   | 7937 | - | 9912  |   |
| Law Office Manager                                |   | 7216 | - | 9011  |   |
| Management Analyst III                            |   | 7216 |   | 9011  |   |
| Parks Manager                                     |   | 7216 | - | 9011  |   |
| Personnel Manager                                 |   | 7216 | - | 9011  |   |
| Planning Manager                                  |   | 7937 | - | 9912  |   |
| Projects Administrator                            |   | 7937 | - | 9912  |   |
| Public Works Manager                              |   | 7937 | - | 9912  |   |
| Purchasing Manager                                |   | 7216 | - | 9011  |   |
| Records Manager                                   |   | 7216 | - | 9011  |   |
| Recreation Manager                                |   | 7216 | - | 9011  |   |

EXHIBIT 1 – Table I  
Management Confidential – Unit 14  
Salaries Effective July 1, 2017

| CLASS TITLE                 | A | B    | C | D    | E |
|-----------------------------|---|------|---|------|---|
| Revenue Manager             |   | 7216 | - | 9011 |   |
| Senior Management Analyst   |   | 6022 | - | 7520 |   |
| Sewer Maintenance Manager   |   | 7216 | - | 9011 |   |
| Solid Waste Manager         |   | 7216 | - | 9011 |   |
| Training Officer            |   | 6022 | - | 7520 |   |
| Transit Maintenance Manager |   | 7216 | - | 9011 |   |
| Transit Operations Manager  |   | 7216 | - | 9011 |   |
| Wastewater Manager          |   | 7216 | - | 9011 |   |
| Water System Manager        |   | 7216 | - | 9011 |   |

**EXHIBIT 1 – Table II**  
**Management Confidential – Unit 14**  
**Salaries Effective July 1, 2018**

| CLASS TITLE                                       | A | B    | C | D     | E |
|---------------------------------------------------|---|------|---|-------|---|
| Administrative Manager                            |   | 8096 | - | 10111 |   |
| Airports Marketing & Public Relations Coordinator |   | 6143 | - | 7671  |   |
| Airports Operations Manager                       |   | 7361 | - | 9192  |   |
| Airports Planning Manager                         |   | 7361 | - | 9192  |   |
| Airports Properties Manager                       |   | 7361 | - | 9192  |   |
| Assistant City Clerk                              |   | 6143 | - | 7671  |   |
| Building Services Manager                         |   | 8299 | - | 10364 |   |
| Business Manager                                  |   | 7361 | - | 9192  |   |
| City Traffic Engineer                             |   | 7361 | - | 9192  |   |
| Communications Manager                            |   | 8096 | - | 10111 |   |
| Community Sanitation Manager                      |   | 6143 | - | 7671  |   |
| Construction Manager                              |   | 7361 | - | 9192  |   |
| Crime Scene Investigation Bureau Manager          |   | 7361 | - | 9192  |   |
| Deputy City Engineer                              |   | 8299 | - | 10364 |   |
| Division Manager                                  |   | 7361 |   | 9192  |   |
| Economic Development Analyst                      |   | 6143 | - | 7671  |   |
| Facilities Manager                                |   | 7361 | - | 9192  |   |
| Fleet Manager                                     |   | 7361 | - | 9192  |   |
| Housing & Neighborhood Revitalization Manager     |   | 8096 | - | 10111 |   |
| Information Services Manager                      |   | 8096 | - | 10111 |   |
| Law Office Manager                                |   | 7361 | - | 9192  |   |
| Management Analyst III                            |   | 7361 |   | 9192  |   |
| Parks Manager                                     |   | 7361 | - | 9192  |   |
| Personnel Manager                                 |   | 7361 | - | 9192  |   |
| Planning Manager                                  |   | 8096 | - | 10111 |   |
| Projects Administrator                            |   | 8096 | - | 10111 |   |
| Public Works Manager                              |   | 8096 | - | 10111 |   |
| Purchasing Manager                                |   | 7361 | - | 9192  |   |
| Records Manager                                   |   | 7361 | - | 9192  |   |
| Recreation Manager                                |   | 7361 | - | 9192  |   |

EXHIBIT 1 – Table II  
Management Confidential – Unit 14  
Salaries Effective July 1, 2018

| CLASS TITLE                 | A | B    | C | D    | E |
|-----------------------------|---|------|---|------|---|
| Revenue Manager             |   | 7361 | - | 9192 |   |
| Senior Management Analyst   |   | 6143 | - | 7671 |   |
| Sewer Maintenance Manager   |   | 7361 | - | 9192 |   |
| Solid Waste Manager         |   | 7361 | - | 9192 |   |
| Training Officer            |   | 6143 | - | 7671 |   |
| Transit Maintenance Manager |   | 7361 | - | 9192 |   |
| Transit Operations Manager  |   | 7361 | - | 9192 |   |
| Wastewater Manager          |   | 7361 | - | 9192 |   |
| Water System Manager        |   | 7361 | - | 9192 |   |