

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND

FRESNO CITY FIREFIGHTERS ASSOCIATION

LOCAL No. 753

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

A.F.L. - C.I.O.

(Fire Management - Unit 10)

OCTOBER 17, 2016 TO JUNE 30, 2018

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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 Fresno City Firefighters Association Local 753, International Association of Fire Fighters, AFL-CIO, (Fire Management - Unit 10) hereinafter referred to as the Association, has as its purpose: To establish wages, hours, and other terms and conditions of employment for the members of this Unit.

B. DEFINITIONS

Unless the particular provision or the context otherwise requires, and except to the extent that a particular word or phrase is otherwise specifically defined in this MOU, the definitions and provisions contained in Sections 3-101, 3-201, 3-301, 3-401 and 3-603 of the Fresno Municipal Code (hereinafter FMC) shall govern the construction, meaning, and application of words and phrases used herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or 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), applicable provisions of the Public Employment Relations Board (PERB), Chapter 4 of Part 7 of Division 2 of the California Labor Code (Sections 1960, 1961, 1962, and 1963), 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

The rights of employees, except as expressly modified herein, are as set forth in FMC Section 3-604. Execution of this MOU by the Association shall not be deemed a waiver of any Association or employee right unless the right is clearly or explicitly modified or restricted herein.

B. EMPLOYEE RESPONSIBILITIES

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

C. NONDISCRIMINATION

The provisions of this MOU shall apply equally to and be exercised by, all employees consistent with state and federal nondiscrimination statutes. City practices and policies will be consistent with the requirements mandated by applicable federal and state 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.
2. All other rights formerly or presently enjoyed by or vested in the City on the effective date of this MOU and not mentioned in paragraph 1 are retained by and reserved to the City unless explicitly waived by the City by resolution of the Council or by Council approved MOU.
3. 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.
4. This MOU is not intended to restrict consultation in good faith with the Association regarding matters within the right of the City to determine.
5. This MOU shall be construed as requiring the City to follow its provisions in the exercise of the authority conferred upon the City by law, except that this clause shall not be deemed to be a grant of authority to sue any person, including the Association, not otherwise existing.

ARTICLE IV
RECOGNITION

A. 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. 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, MOU negotiations may be initiated at the request of either party as early as six (6) months preceding expiration of the MOU, but in any case, shall commence no later than four (4) months preceding expiration of the MOU.

B. RECOGNITION OF UNIT DESCRIPTION

The Fire 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, as such Unit may be modified from time to time pursuant to the provisions of the FMC:

Fire Battalion Chief
Fire Deputy Chief

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.

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. INFORMATION TO ASSOCIATION

1. The City shall provide to the Association:
 - (a) Changes to the Salary Resolution.
 - (b) Changes to Job Specifications for classes in this Unit.
 - (c) Changes to the Administrative Order Manual that affect employees in this Unit.

- (d) Changes to the Fire Department organizational structure that affect employees in this Unit.
 - (e) Additions or deletions of classes that affect this Unit.
2. The Fire Department shall provide:
- (a) Copies of written departmental policies, rules and regulations prior to implementation, on matters which directly affect employees in this Unit, except in an urgent situation, in which case the City shall discuss the issue with the Association as soon as possible thereafter.
 - (b) An opportunity to discuss matters of interest to employees in this Unit, directly with the Association or through committees or advisory bodies created for that purpose.

F. LOCKOUT AND STRIKE

- 1. No lockout of employees shall be instituted by the City during the term of this MOU.
- 2. Nothing contained in this section is intended to waive or infringe upon any rights guaranteed to any party or entity under the Meyers-Milias-Brown Act (MMBA), Government Code §§ 3500, et seq., or any other applicable State or Federal law.
- 3. Participation by an employee in an unlawful strike or work stoppage shall subject the employee to disciplinary action, up to and including removal from City service. Participation by an employee in a lawful strike or work stoppage is governed by Labor Code Section 1962.

G. UNILATERAL ACTION

In the event the meet and confer process for a successor MOU results in an impasse, as defined in the FMC, the City shall not take unilateral action regarding wages, hours, and other terms and conditions of employment prior to the completion of the impasse procedures 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 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 FMC Section 3-604, and City rights as set forth in FMC Section 3-605(a), are excluded from the scope of representation.

B. GRIEVANCE PROCEDURE

1. A grievance is a dispute concerning the interpretation or application of any existing City rule or regulation governing personnel practices or working conditions, including this MOU. A grievance involves the claimed misapplication or misinterpretation of a rule or regulation relating to an existing right or duty; it does not relate to the establishment or 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 rule or regulation 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 Association may represent employees covered by this MOU on a grievance under the grievance procedure.
4. An Association Officer designated by the Association in writing shall be excused from regular duties without loss of compensation for such time as is necessary to attend and represent the grievant at a grievance hearing, beginning at the first level of supervision.
5. The procedure and sequence in filing and processing a grievance shall be as follows:
 - (a) The grievant and/or Association representative shall discuss the grievance with the grievant's immediate supervisor before a written grievance may be filed.
 - (1) If the grievance is not settled through this discussion, it

either may be discussed with the next higher supervisor or 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.

- (2) Upon receipt of a written grievance, the immediate supervisor shall give the grievant a written reply within nine (9) calendar days.
 - (3) Prior to moving to the next level, the grievance shall be referred to the Association for review and recommendations.
- (b) Should the grievant not be satisfied with the answer received from the immediate supervisor, the grievant may within nine (9) calendar days file an appeal to the Fire Chief. The Fire Chief shall have twenty-one (21) 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 grievant and/or representative shall have the opportunity, if desired, to present to the Fire Chief the position regarding the grievance.
- (c) The City and Association may mutually agree to waive steps 1 and 2 and proceed directly to hearing by the Committee when the issue is one over which the grievant's supervisor or Fire Chief has no jurisdiction.
- (1) If the grievant is not satisfied with the decision of the Fire Chief, the grievant may within nine (9) calendar days after receipt of the written reply, file a request for a review of the Fire Chief's decision to the Grievance Advisory Committee.
 - (2) The City and the Association may agree to seek resolution of the grievance through mediation using the services of the State Conciliation Service, prior to hearing by the Grievance Advisory Committee. Time limits for processing of grievance are automatically extended for so long as mediation is in process. The fees and expenses of the mediator shall be paid half by the City and half by the Association.
 - (3) 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 will attempt to convene within thirty (30) calendar days in order to hear the grievance.
 - (4) The Grievance Advisory Committee shall conduct a hearing and make a recommendation to the City Manager within

thirty (30) calendar days of their last meeting.

The Grievance Advisory Committee shall be bound by the language of the MOU, City Administrative Orders, ordinances, rules and regulations, and department rules and regulations consistent therewith in considering any issue properly before them. The Grievance Advisory Committee shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue not so submitted. The Grievance Advisory Committee may not recommend changes in established wages or benefits, nor recommend the payment of back wages or benefits to a date prior to the date of the incident.

- (5) The Grievance Advisory Committee shall be composed of three members, one selected by the Association, one selected by the City and one member mutually agreed to by the parties.
- (d) The City Manager shall review the decision of the Fire Chief and recommendations of the Grievance Advisory Committee and shall render a written decision to the grievant within twenty-one (21) calendar days after receipt from the Grievance Advisory Committee.
- (e) Failure of the grievant to file the grievance or an appeal within the specified time limit for any step of the procedure 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. All time limits herein may be extended by mutual agreement of the parties.

ARTICLE VI
DUES DEDUCTION

A. GENERAL

1. Except as expressly modified herein, 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, as the same may be amended from time to time.
2. Any appeal of a termination resulting from the application of this Section shall be processed in accordance with the provisions of the FMC.

B. DUES CHECK-OFF

Rules governing dues check-off are set forth in FMC Section 3-620, as the same may be amended from time to time.

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.
3. The service fee shall consist of, and not exceed, the standard initiation fee, periodic dues, and general assessments of the Association for the duration of this MOU. The Association shall not require a non-member of the Association to make any payment to a Political Action Committee, nor shall the Association include as a part of the service fee any amount to be used for political purposes.
4. In the event an employee covered hereunder does not authorize deduction of either Association dues or a service fee from the employee's paycheck and does not make such payment directly to the Association, the Association shall provide a certification, signed by the Association President, to the City of such failure. Prior to such certification, the Association shall notify the employee of its intent to provide certification to the City, and give the employee an opportunity to respond within thirty (30) days. Certification shall be in the form of a letter from the Association to the City. Such failure by an employee shall constitute grounds for termination by the appointing authority.
5. 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.

If an Association member in the Unit desires to revoke a dues deduction authorization card, a dues deduction revocation shall be made upon a

Dues Deduction Revocation card.

Dues Deduction Authorization and Revocation cards are available at the Finance Department, Payroll Section and the Personnel Services Department.

6. Upon written authorization by a retired member of the Association, the City shall deduct Association deductions, credit union deductions and benefit fund deductions from the retirement check of such retired member and forward such deductions as designated, within 14 days.

C. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION CARD

1. The Association member's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When a member is a nonpay 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 required to deposit the amount which would have been deducted if the member had been in a pay status during the pay period. In the case of a member who is a nonpay status during only a part of the pay period and whose salary is insufficient to cover other legal and required deductions, no dues deduction or deposit shall be made.

D. DUES DEDUCTION CHECK

1. The deduction check covering all such deductions shall be transmitted to: Fresno City Firefighters Association Local No. 753, 710 R Street, Fresno, California 93721 or such address as may be provided to the City by the Association.
2. The deduction check shall be made in favor of: Fresno City Firefighters Association Local No. 753, and shall be transmitted no later than 14 days from the date of deduction.

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 AND PENSION CONTRIBUTION

1. Salaries

*** Effective *** **October 17, 2016**, salaries shall be increased by two ** * percent (2%) as reflected in Exhibit I, Table I, attached hereto and incorporated by reference.

Effective January 1, 2018, salaries shall be increased by three percent (3%) as reflected in Exhibit I, Table II, attached hereto and incorporated by reference.

2. Pension Contribution

The following applies to employee's pension contributions:

[§ deleted]

a.. *** **Employees** in Unit 10 shall make an additional contribution equal to one percent (1%) of their pensionable compensation to the City of Fresno Fire and Police Retirement System, reducing the City normal 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 to the City of Fresno Fire and Police Retirement System. The employee shall have no option to receive the 1% contribution in cash. The 1% 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.

b. **All members who were hired into a permanent City position on or after July 1, 2014 shall make an additional contribution equal to three percent (3%) of their pensionable compensation to the City of Fresno Fire and Police 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 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.

- c. **Employees who separate City employment regardless of reason and withdraw their employee contributions from the Fire and Police Retirement System between July 1, 2014, and the effective date of a Fresno Municipal Code amendment pursuant to the provisions in paragraph "d" will have an amount refunded by the City equal to the additional amount contributed in accordance with paragraph "a" and "b" above.**

- 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 paragraphs "a" and "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:**
 - 1. **Active members in Tier 2 who were hired before July 1, 2014, shall have their Normal Contribution Rate increased from nine percent (9%) to ten percent (10%).**
 - 2. **Active members in Tier 2 who were hired on or after July 1, 2014, shall have their Normal Contribution Rate increased from nine percent (9%) to twelve percent (12%).**
 - 3. **Members of Tier 1 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.**
 - 4. **Members who entered DROP prior to March 7, 2011 are not required to make Member Normal Contributions in accordance with the provisions in the Fresno Municipal Code.**
 - 5. **Members who enter DROP on or after March 7, 2011 are required to make Member Normal Contributions, and their Member Normal Contributions shall continue to be deposited into the member's DROP account.**

C. 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.

D. HEALTH AND WELFARE

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 employees represented by the Association. Effective **August 1, 2014** * * *, the City will contribute **seventy-five percent (75%)** of * * * the premium established by the Fresno City Employees Health and Welfare Trust Board, and the employee may opt to contribute the amount necessary to make up the difference of the premium established by the Fresno City Employees Health and Welfare Trust Board, through payroll deductions, or accept a reduced coverage * * * **option**.

After August 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 Fresno City Employees Health and Welfare Trust Board. At such time as the employee share is set at 30%, the City shall pay 70%.

* * *

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

The City and the Association shall meet and confer on proposed modifications to the Health and Welfare Trust; and proposed alternative health plans. The process may include other represented bargaining units. It is understood that the continuation of the Side Letter on the Health & Welfare Trust dated February 24, 2009 shall be included in this process.

The parties also agree to work collectively in conjunction with their Board representatives to research and recommend potential cost-saving measures for the Health & Welfare Trust, which may include a choice of health program options based on individual need or preference, including a reduced option equivalent to the City's premium contribution, a separate rate for single employees with no dependents, or other flex plan programs; mandatory generic mail order drug maintenance for employees who require prescription drug therapy for any period of 90 days or more; or other measures that may be identified as this work progresses.

E. UNIFORM ALLOWANCE

Employees shall receive \$840 per year as a uniform purchase and maintenance allowance, and paid in semi-annual installments on the last pay period in December and June.

F. PREMIUM PAY

1. Working Additional Full or Partial Shifts

- (a) Consistent with the Superior Court Permanent Injunction issued on December 10, 1980, the parties agree that employees occupying the class of Fire Battalion Chief may work full or partial 24-hour shifts on a voluntary basis. If an employee works a full or partial 24-hour shift, in addition to any shift which is a part of the employee's normal work schedule, the employee shall be paid premium pay in an amount equivalent to one and one-half (1.5) times the hourly rate of a Fire Captain's pay at F Step for each hour worked for a shift which is at least 4 hours in length **until an agreement is reached on a mandatory staffing schedule but not later than six months from the date the MOU is approved by the City Council at which time premium pay shall be in an amount equivalent to one and one-half (1.5) times the hourly rate of C Step of the employee's rank.** Excluded from such compensation are the following assignments.
- (1) Attendance at staff meetings.
 - (2) Appearances at Civil Service hearings.
 - (3) Court appearances.
 - (4) Appearances at grievance or Skelly hearings.
 - (5) Administrative duties performed while off duty as defined in Administrative Manual 101.1 Administrative Assignments, as may be modified by mutual agreement of the parties.
- (b) Excluding those assignments enumerated in Section F., 1. (a), above, Battalion Chiefs on a 56-hour work schedule may also work, in addition to their normal work schedule and on a voluntary basis, other duties as assigned in addition to their normal work schedule to be determined on a case-by-case basis. Compensation shall be at the premium pay rate prorated on an hour per hour basis.
- (c) A Fire Battalion Chief on a 56-hour schedule assigned to a 40-hour work week schedule for emergency fire suppression duties or other special assignments on a temporary basis shall be paid at the applicable base hourly rate for each hour worked in such assignment in excess of forty (40) hours. Excluded from such compensation are the following assignments.
- (1) Attendance at staff meetings.
 - (2) Appearances at Civil Service hearings.

- (3) Court appearances.
 - (4) Appearances at grievance or Skelly hearings.
 - (5) Administrative duties performed outside the temporary assignment as defined in as defined in Administrative Manual 101.1 Administrative Assignments, as may be modified by mutual agreement of the parties.
- (d) A Fire Battalion Chief permanently assigned to a forty (40) hour work week shall be entitled to Premium Pay under Section F., 1. (a) or (b) for working full or partial 24-hours shifts in addition to his/her normal work schedule. If recalled to be a part of the Incident Command Team on an emergency basis compensation will be paid at the applicable forty (40) hour base hourly rate for each hour worked in such assignment.

(e) **Mandatory Schedule Reopener**

A committee will be formed with two members from Unit 10 and two members from Fire Administration to establish a mandatory staffing schedule to address coverage of the 56-hour Battalion Chief positions within Unit 10 due to planned and unplanned absences. This committee will convene within one month of adoption of the MOU and will prepare the mandatory staffing schedule for review and approval by the Fire Chief. The staffing schedule will be submitted to the Fire Chief no later than 6 months from the date of MOU adoption.

2. **Education Incentive**

Members who have satisfactorily attained a Chief Officer Certificate through the California State Fire Marshal, a Chief Officer Designation through the Commission on Professional Credentialing, or an Executive Fire Officer Certificate through the National Fire Academy shall be compensated at a rate of nine percent (9%) above the member's base rate of pay.

3. **Mutual Aid Agreements/Overhead Replacement Pay**

*** * * Members** of this Unit temporarily assigned to another agency through a Mutual Aid Agreement, contract or Memorandum of Agreement with the State shall receive overhead replacement (OHR) pay **consistent with Premium Pay Section F 1**. OHR pay shall be equal to, but not greater than, reimbursement to the City of Fresno for wage replacement costs for time worked beyond the member's normally scheduled hours.

A member who is assigned to replace a temporarily assigned member noted in the paragraph above to substitute for the member's normally scheduled work hours shall receive the OHR pay reimbursed to the City of Fresno for that time period.

4. Staff Position Assignments

Employees who accept a special administrative staff assignment, as defined by the Chief or designee shall receive ten percent (10%) of base pay for the class of Battalion Chief on a monthly basis prorated and paid to those employees who are assigned to an administrative staff assignment. This premium pay is pensionable.

The administrative staff assignments will be assigned to a forty (40) hour work week. No more than two (2) employees will be given such assignment at any given time, unless the Chief, in consultation with the Director of Personnel, determines there is a need for an additional special staff assignment.

An employee who accepts a special administrative staff assignment is required to do so for a minimum of two years. An employee who leaves the assignment in less than two years by determination of the Fire Chief, or who accepts a new position with another agency shall retain the premium pay already earned but shall not earn any additional pay.

5. Bilingual Certification Program

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

- (a) Bilingual certification examinations will be conducted once a year. During the examination noticing period, examination applications will be available at the Personnel Services Department, Human Resources Division and City department personnel units.
 - (1) In order to qualify for the examination, the application must be received by the Human Resources Division during the month of November, but no later than the last regular business day of November.
 - (3) Bilingual examination application deadlines are not appealable or grievable.
- (b) Bilingual certification examinations are conducted for Cambodian, Hmong, Laotian, Sign, Spanish, and Vietnamese languages.

- (c) Certified employees shall be recertified every five (5) years in order to maintain certification. The initial recertifications will be staggered in order to smooth the number of annual recertification examinations.
- (d) The bilingual premium pay rate for certified permanent employees is one hundred dollars (\$100) per month, regardless of how many languages for which an employee is certified.
 - (1) Certified employees shall interpret/translate for departments/divisions they are not assigned to, provided the requesting department/division has a demonstrated customer service related need, and has obtained approval from the certified employee's supervisor.
 - (2) Certified employees shall not refuse to interpret/translate while on paid status. Refusal shall result in appropriate disciplinary action. Certified employees may be assigned to any incident or investigation requiring their bilingual skills and may be required to prepare written reports related to the incident or investigation. The objective of this policy will be to utilize department resources in the most efficient way possible.
 - (3) Except in the event of an emergency, bilingual employees who are not certified shall not be required to interpret/translate.

G. LEAVES

1. Holiday Leave

- (a) Effective February 1, 2014, employees shall accrue, at the 56 hour rate, * * * **thirteen (13)** hours per month (this is equal to six **and one half (6.5)** 24 hour working shifts) as holiday leave in lieu of the Holidays recognized in FMC Section 3-116.

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

- (b) Employees at the rank of Battalion Chief shall be allowed to draw vacation and holiday time in any configuration of hours or shifts, by rank, by departmental seniority subject to the provisions of FMC Section 3-108.
- (d) Employees may request payment for any holiday leave balance.

2. Vacation Leave

- (a) Employees shall accrue twenty-four (24) hours of vacation leave for

each completed calendar month of employment (The accumulation of unused vacation leave shall not exceed 576 hours, which amounts to vacation accrued in a two year period of time.)

- (b) No employee's vacation accumulation shall cease due to refusal by the City to grant vacation leave prior to the employee 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 (1) month prior to the month in which the limit would be reached, and such request is refused, the Fire Chief 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. Administrative Leave

Battalion Chiefs shall receive 72 hours of administrative leave effective July 1 of each fiscal year. Upon their employment by the City, newly appointed employees shall be credited with six (6) hours of administrative leave for each full calendar month remaining in the fiscal year. Employees provisionally appointed shall receive six (6) hours of administrative leave for each full month of such provisional appointment. Employees may receive payment during the fiscal year only for the 72 hours of base administrative leave not taken. Any administrative leave not taken at the end of the fiscal year shall not carry over to the next fiscal year.

Deputy Chiefs shall receive ninety (90) hours of administrative leave effective July 1 of each fiscal year. Upon their employment by the City, newly appointed Deputy Chiefs shall be credited with seven and one-half (7.5) hours of administrative leave for each full calendar month remaining in the fiscal year. Deputy Chiefs provisionally appointed shall receive seven and one-half (7.5) hours of administrative leave for each full month of such provisional appointment. Deputy Chiefs may receive payment during the fiscal year only for the ninety (90) hours of base administrative leave not taken. Any administrative leave not taken at the end of the fiscal year shall not carry over to the next fiscal year.

The Fire Chief may grant up to an additional thirty-two (32) hours Administrative Leave to Fire Deputy Chiefs and Fire Battalion Chiefs based on an annual job performance evaluation, as outlined in Article VII, Section N. The determination by the Fire Chief to grant administrative leave shall be made at the time the annual performance evaluation is completed, and credited to the employee the following July 1st. The additional thirty-two (32) hours administrative leave shall be credited during July of the fiscal year in which it must be taken. In determining the number of additional hours to be awarded, the Fire Chief shall also consider the employee's extended work hours and attendance.

- a. The additional administrative leave granted cannot be cashed in by

employees.

- b. Employees not otherwise eligible for administrative leave who are provisionally appointed to permanent positions in classes eligible for administrative leave, and new employees, shall not be granted any part of this administrative leave.

4. Sick Leave

Employees shall accrue sick leave at the rate of twelve (12) hours for each completed calendar month of employment, with unlimited accumulation. Unless otherwise modified, Administrative Manual 101.2, Constant Staffing Policy, shall apply as well as the FMC, City administrative orders, policies, procedures, rules and regulations concerning sick leave usage and administration. In the event of any conflict, Departmental policies and Instruction No. 34 shall apply.

The first three days of sick leave used by an employee on or after July 1st of each fiscal year will be considered Leave taken under AB1522, Healthy Workplace Healthy Family Act of 2014 and will not be subject to corrective/disciplinary action.

The first three days of sick leave on or after July 1st of each year can be used for:

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

Employees will be eligible to take earned sick leave on the ninetieth (90th) day of employment with the City. Sick leave shall accrue at the rate of 12 hours for each completed calendar month of service, with unlimited accrual.

After the employee has taken the first three days of sick leave on or

after July 1st of each year the provisions regarding AB1522, Healthy Workplace Healthy Family Act of 2014 will not be applicable.

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

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

This does not increase the amount of sick leave available through the MOU. It also does not reduce any sick leave benefits available to employees in the MOU, or any other applicable provisions in the Fresno Municipal Code or Fire Department Policies and Procedures.

5. Compensation for Unused Leave

Employees eligible to receive payment for any unused leave balances (i.e., holiday, administrative, sick and vacation) shall be compensated for such accumulated leave balances based on accumulations calculated on a fifty-six (56) hour (24-hour shift) basis.

6. Family Sick Leave

Employees will be allowed to use up to half of their annual accumulation of sick leave in accordance with California Labor Code Section 233. Family Sick Leave. Family Sick Leave shall be used only for those purposes defined in the California Labor Code Section 233.

7. Bereavement Leave

Upon the death of a member of an employee's immediate family, the employee shall be allowed use of sick leave not to exceed forty-eight (48) hours. Use of sick leave to attend the funeral of a person other than a member of the immediate family may be granted to an employee by the Fire Chief or designee. The Fire Chief or designee shall notify the Personnel Director when any employee is granted such leave. Immediate family, as used in this subsection, shall include parent, spouse or registered domestic partner, natural or legally adopted child, brother, sister, mother-in-law and father-in-law.

H. **SICK LEAVE BENEFIT AT THE TIME OF ELECTION TO ENTER THE DEFERRED RETIREMENT OPTION (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.

[§ deleted]

3. The parties agree to reopen the meet and confer process upon request by the Association to discuss Retirement Enhancement Options if the City and Unit 4, Non-Management Police, or Unit 5, Non-Management Fire, or Unit 9 Management Police, agree to retirement enhancement options. The development and implementation of such options shall require mutual agreement by the Association and the City.

I. ATTENDANCE/HEALTH INCENTIVE

At service retirement, **or at a disability retirement if the employee is otherwise eligible for service retirement**, employees who have used one hundred sixty-eight (168) hours or less of sick leave (excluding hours used for Workers' Compensation benefits, any protected leave – e.g. Family Sick Leave,

Family & Medical Leave, or Bereavement Leave) in the 24 months preceding their date of retirement will be credited for all unused sick leave * * * at * * * **50%** 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 J below.

J. HEALTH REIMBURSEMENT ARRANGEMENT (HRA)

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

- *** * * For employees hired before October 17, 2016, and any employees who do not enter DROP, all accumulated sick leave * * * at the time of retirement multiplied by * * * 50% of the employee's then current hourly base rate of pay pursuant to the eligibility criteria as set forth in the Retirement Attendance/Health Incentive provision in Section I, and**
- **Employees in DROP hired on or after October 17, 2016, shall have all accumulated sick leave hours upon retirement multiplied by 50% 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.**
- Hourly base rate of pay for 40 hour work week employees shall be the equivalent of the base monthly salary for an employee as provided in this MOU, multiplied by twelve (12) months then divided by 2,080 hours.
- Hourly base rate of pay for 56 hour work week employees shall be the equivalent of the base monthly salary for an employee as provided in this MOU, multiplied by twelve (12) months then divided by 2,912 hours.

At the employer's option, the accounts may 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) but not to be below zero.

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.

K. JURY DUTY AND COURT APPEARANCES

Jury Duty - With the permission of the Fire Chief or designee, an employee who is required to report for and does report for jury duty may not be required to report for regular duty prior to jury service if such report is impractical or would cause the employee to be late for jury duty. If the employee is required to report for jury duty on the day following a duty shift, the employee may be released up to one hour prior to the shift's end, if necessary, to assure timely attendance at jury duty. Employees in this Unit shall not be required to refund to the City any mileage reimbursement received as a result of jury duty.

Court Appearances - The payment of Court time/appearances shall be in accordance with FMC Section 3-109.

L. ABSENT WITH RELIEF (AWR)

1. With the approval of the Fire Chief or designee, an employee may attend to Association or other personal matters by providing the City an off-duty employee of like rank to work for such absent employee. The City shall incur no additional liability due to such replacement nor shall the City assume any responsibility regarding "pay back" of such time. It shall be the duty of the employee to arrange for replacement and secure required approval not less than ten hours in advance of the requested absence. In cases of tardiness, the ten hour notice requirement will be waived. In the event of an emergency, the ten hours notice may be waived with approval of the Fire Chief or designee. Should an employee become ill while working an AWR, as outlined by Department policy, the employee shall make a diligent attempt to secure a replacement with an AWR. An ill employee becoming ill while working an AWR is eligible to use earned holiday or vacation leave to replace the AWR. Use of accumulated vacation and/or holiday leave, when an employee's sick leave is exhausted, is prohibited unless approved by the Fire Chief. An employee becoming ill between 2000 and 0800 hours is eligible use earned sick leave to replace the AWR. Such approval shall not be unreasonably withheld. An employee requesting approval of an AWR shall submit a document by which the substitute employee assigns to the City an amount of the employee's salary equal to the salary which will accrue to the requesting employee during the absence. Such assignment shall be executed by the City solely for that portion of the requesting employee's shift which the substitute employee fails to work for any reason. In such event, the failure by the replacement employee to report or remain for duty shall not result in any loss of compensation to the requesting employee. No loss of compensation shall occur if the replacement provides a substitute employee of like rank during the absence. Approved AWR's shall not be revoked by the City.
2. No employee shall take an AWR for the purpose of other employment, self-employment included.

3. AWR's are governed by Fresno Fire Department Administrative Manual 101.2, Constant Staffing Policy, and may be modified by mutual agreement of the parties.

M. WORKERS' COMPENSATION

1. Notwithstanding the provisions of FMC Section 3-118, an employee who suffers an injury/illness in the course and scope of City employment shall receive 100% percent of the employee's full wages or salary in accordance with Labor Code 4850.
2. If the employee is placed on sick leave, vacation, or holiday leave pending determination as to whether the injury or illness is industrial, and the injury or illness is determined to be industrial, sick leave, vacation, or holiday leave shall be restored within thirty (30) calendar days of such determination provided that the employee has submitted all necessary documents relevant to their Workers' Compensation claim, and the employee placed on work related injury/illness leave as provided herein.
3. If the employee is placed on sick leave, vacation, or holiday leave pending determination as to whether the injury or illness is industrial, and the injury or illness is determined not to be industrial, sick leave, vacation, or holiday leave shall not be restored.
4. Retirement benefits shall not be reduced as a result of compensation paid at the 100 percent rate level of compensation established herein. Changes in contribution by the City and employee shall be in accordance with the applicable retirement code sections.
5. Taxes shall not be withheld on compensation at the 100 percent rate which is paid due to an injury or illness sustained in the course and scope of employment with the City. In the event Federal tax regulations are amended to include compensation received while absent due to injury or illness suffered in the course and scope of employment as taxable income, the parties agree to meet and confer over the affect of such change. The parties agree that such meet and confer is limited to the provisions of Article VII, Section M and that it does not constitute a reopener of the entire MOU.
6. Notwithstanding the provisions of the FMC, for the first sixty (60) days of absence in any fiscal year, benefits, including but not limited to holiday leave accumulation and uniform allowance, shall continue to accrue.

N. SUPPRESSION SERVICE DELIVERY

The City intends for the members of this Unit to be the management providers of fire suppression to the City of Fresno. This does not preclude instant aid agreements, reciprocal or non-reciprocal aid agreements, or other interim measures to accomplish this intent, nor is it intended to restrict the ability of the

City to determine the mission of its Fire Department.

Nothing herein is intended to restrict consultation in good faith with the Association regarding matters within the right of the City to determine.

O. AMERICANS WITH DISABILITIES ACT (ADA), FAMILY MEDICAL LEAVE ACT (FMLA), CALIFORNIA FAMILY RIGHTS ACT (CFRA) AND WORKPLACE VIOLENCE

The requirements mandated by these statutes have been established in City policies (Administrative Order manual and Injury and Illness Prevention Program handbook) and the Family Medical Leave Act Handbook.

P. NO SMOKING POLICY AND DRUG/ALCOHOL TESTING

No smoking and drug and alcohol testing procedures have been established in departmental operational policies, and may be modified by mutual agreement of the parties.

Q. HOURS OF WORK AND SCHEDULES

1. The workweek for the City begins on Monday at 12:01 a.m. and ends the following Sunday at midnight. The comparison of hours between a 5/8, 9/80 and/or 4/10 with that of a twenty-four (24) hour schedule, or vice versa, utilizes a conversion factor of 1.4.

2. Each 9/80 work schedule will consist of eight 9-hour shifts, one 8-hour shift and one day 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 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.

Scheduling of days off is determined by management, but must be on a Monday or Friday.

3. Workweek schedules are established by the department/divisions based upon the need to provide service to the public/other city departments.

4. For 5/8, 9/80 and/or 4/10 schedules, position assignments by classification, staffing levels, workweek schedules, and days off are determined solely by management, and are subject to change based on varying workload, the addition of authorized staffing, and department operational and service needs.

(a) Employees temporarily/permanently assigned to perform administrative tours of duty are assigned by management to a 5/8, 9/80 or 4/10 workweek schedule, or combination thereof. (Light duty is not considered a temporary/permanent administrative tour of duty.) Based on the needs of the service, an employee's work schedule may be modified with at least five calendar days written

notice to the affected employees. In the event of an emergency, such work schedule may be modified with less notice.

As determined by the Chief or designee, employees assigned to assist with Firefighter Recruit Academy or School will be placed on a 5/8 schedule during this special training period of time.

- (b) The hours for a 5/8 workweek consist of five, eight hour days with two consecutive days off. The hours for a 4/10 workweek consist of four, ten hour days with three days off, of which two of the days off will be consecutive. Scheduling of days off is determined by management.
 - (c) Leave requests for all time off are processed utilizing a conversion factor of 1.4.
5. The 2/4 schedule shall be the normal work schedule for employees on a 56 hour work week. The 2/4 schedule will consist of two 24-hour worked back to back, with four shifts off (e.g. AABBBCCAABBCC). All transfers and movement of relief personnel in such manner as to avoid having employees work greater than 72 consecutive hours.

R. DEPUTY FIRE CHIEF STATUS

An employee holding the position of Fire Deputy 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 Fire Deputy Chief has previously held status as a Fire Battalion Chief, the employee has return rights to a position in the class of Fire Battalion Chief. The Fire Chief or designee has the prerogative of assigning the former Fire Deputy Chief as necessary for the good of the service. Time spent in the Fire Deputy 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.

ARTICLE VIII
HEADINGS/REFERENCES/CITATIONS

A. HEADINGS

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

B. REFERENCES/CITATIONS

References/citations in this MOU (includes exhibits, addendums, attachments, and side letters) to any existing federal, state, or city ordinances, rules, regulations, policies, Administrative Order Manual, Personnel Manual sections and subsections thereof, Salary Resolution sections and subsection thereof, and side letters in no way incorporates said references/citations into this MOU, unless so noted.

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

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 regarding all such matters are hereby superseded and terminated in their entirety. With respect to side letter agreements, any not attached to this MOU are hereby terminated in their entirety. Those side letter agreements attached to this MOU shall continue in force subject to the terms and conditions set forth within each side letter. In the absence of any specified term in any such side letter, they shall terminate upon the expiration of this MOU. Any side letter agreement entered into during the term of this MOU shall continue in force subject to the terms and conditions set forth in the side letter. 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.

C. Nothing in this Article shall be interpreted to mean that the parties waive any rights under the Meyers-Milias-Brown Act, Government Code Section 3500, *et. seq.*

ARTICLE X
TERMINATION

This MOU shall be in full force and effect from * * * **October 17, 2016**, through June 30, **2018** * * *, subject to Sections A., B., and C. below.

- A. This MOU shall be 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 the 30th day of June, * * * **2018**.
- 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 which are not addressed in this MOU, the party requesting such modification 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 such 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 MOU. It is further agreed, however, that this Article shall not prohibit the parties from requesting to meet and confer on changes to federal or state statutes referred to or cited in this MOU, in which case the request to meet and confer shall not be refused.
- D. **The City and Association shall meet and agree over any proposed changes to the Personnel and Civil Service provisions of the FMC during the term of this MOU: If the Unit wishes to meet regarding any proposed changes, a meeting or meetings to discuss the proposed changes will not be unreasonably delayed.**

IN WITNESS WHEREOF, the parties hereto have set their hands this
_____ day of _____, 2016.

**FOR THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS:**

FOR THE CITY OF FRESNO:

DANIEL L. KOONTZ
Labor Consultant

JEFFREY T. CARDELL
Director, Personnel Services

RICHARD CABRAL
Deputy Chief

KENNETH PHILLIPS
Labor Relations Manager

RONALD STODGELL
Battalion Chief

KERRI DONIS
Fire Chief

CARLTON JONES
President, IAFF Local 753

MIKE GETTY
Business Manager

YVONNE DEDMORE
Payroll Manager

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____


Assistant City Attorney

EXHIBIT I - SALARIES

TABLE I Fire Management - Unit 10 Salaries - Effective October 17, 2016						
STEP	A	B	C	D	E	F
Fire Battalion Chief	8248	8662	9093	9547	10024	10524
Fire Deputy Chief	10456	10980	11530	12107	12713	13350

TABLE II Fire Management - Unit 10 Salaries - Effective January 1, 2018						
STEP	A	B	C	D	E	F
Fire Battalion Chief	8495	8922	9366	9833	10325	10840
Fire Deputy Chief	10770	11309	11876	12470	13094	13751