

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND

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

September 5, 2016 to June 30, 2018

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I - PREAMBLE	1
A. Purpose	1
B. Definitions	1
C. Governing Laws	1
ARTICLE II – EMPLOYEE RIGHTS	2
A. General	2
B. Nondiscrimination	2
C. Employee Responsibilities	2
D. Personnel Files	2
ARTICLE III – CITY RIGHTS	4
A. General	4
ARTICLE IV – RECOGNITION	6
A. Union Recognition	6
B. Union Officers/By-Laws	6
C. Union Bulletin Boards	6
D. Unit Description	6
E. City Recognition	6
F. Recognition of Mutual Obligation	7
G. Strikes	7
H. Unilateral Action	7
ARTICLE V – SCOPE OF REPRESENTATION AND GRIEVANCES	8
A. General	8
B. Grievance Procedure	8
ARTICLE VI – DUES DEDUCTION AND UNION BUSINESS	12
A. General	12
B. Dues Check-Off	12
C. Exceptions to Dues Deduction Authorization Card	13
D. Dues Deduction Check	13
E. Union Business	14
ARTICLE VII – COMPENSATION AND BENEFITS	15
A. SALARIES, PENSION AND PREMIUM PAY	15
1. Salaries:	15
2. Pension Contribution	15
3. Premium Pay	16
(a) P.O.S.T. Certificate Pay	16
(b) Bilingual Certification Program.	16
B. Performance Evaluations	17

C.	Fresno City Employees Health and Welfare Trust.....	17
D.	Hours and Work Schedules.....	18
E.	Leaves	19
	1. Holiday Leave	19
	2. Vacation Leave	19
	3. Sick Leave	19
	4. Family Sick Leave	21
F.	Workers' Compensation	21
G.	Uniform Allowance	21
H.	Drug Testing	22
I.	Permanent Part Time Employees.....	22
ARTICLE VIII – HEADINGS, SAVING CLAUSE, AND FULL UNDERSTANDING.....		23
A.	Headings.....	23
B.	Savings Clause:.....	23
C.	Full Understanding:.....	23
ARTICLE IX - TERMINATION.....		24
EXHIBIT I - SALARIES		27

LEGEND

* * *	= deleted old language
[\$ deleted]	= section/subsection deleted
[§§ deleted]	= two or more sections/ subsections deleted
bold type	= 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 Operating Engineers Local Union No. 3, hereinafter referred to as the Union, representing the Fresno Airport Public Safety Officers, hereinafter referred to as FAPSOA, Association or 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. The parties have met and conferred in good faith and have freely exchanged information, opinions and proposals and have reached agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

B. Definitions

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

C. Governing Laws

The legal relationship between the City and its employees and the City and the Union is governed by Chapter 10 of Division 4 of Title 1 of the Government Code (Section 3500 et seq., commonly known as the Meyers-Milias-Brown Act), applicable provisions of the Public Employment Relations Board (PERB), as may be amended from time to time, and Article 6 of Chapter 3 of the FMC, and the Public Safety Officers Procedural Bill of Rights Act, Government Code Section 3300 - 3312. In the event of any conflict between said laws and this MOU, or in the event of conflicts in interpretation, said laws shall govern.

ARTICLE II
EMPLOYEE RIGHTS

A. General

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

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

B. Nondiscrimination

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

C. Employee Responsibilities

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

D. Personnel Files

1. The Human Resources Division, under the direction of the Director of Personnel Services, shall maintain the official personnel file for each employee. Access and inspection of personnel files shall fall under the guidelines of Section 3306.5 of the California Government Code known as the Public Safety Officers Procedural Bill of Rights Act. Each employee may review, or authorize in writing its review by a designated representative, subject to reasonable rules and regulations, and receive a copy of all material placed in either his or her official file or departmental file unless

prohibited by law. No instrument having a comment adverse to his or her interest shall be placed in a public safety officer's personnel file to be used for any personnel purpose, until he or she has reviewed it, and shall follow the requirements as stated in Section 3305 of the California Government Code.

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

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

ARTICLE III
CITY RIGHTS

A. General

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

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

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

ARTICLE IV
RECOGNITION

A. Union Recognition

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

B. Union Officers/By-Laws

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

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

C. Union Bulletin Boards

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

D. Unit Description

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

E. City Recognition

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

F. Recognition of Mutual Obligation

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

G. Strikes

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

H. Unilateral Action

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

ARTICLE V

SCOPE OF REPRESENTATION AND GRIEVANCES

A. General

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

B. Grievance Procedure

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

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

for as long as mediation is in process.

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

- k. Failure of the grievant to file an appeal within the specified time limit shall constitute an abandonment of the grievance process. Failure of the responsible supervisor or official of the City to render a decision within the specified time limit established by this procedure shall automatically move the grievance to the next higher level for action, without action required of the grievant.

ARTICLE VI

DUES DEDUCTION AND UNION BUSINESS

A. General

Pursuant to and in accordance with Section 3502.5 of the Government Code and all the provisions therein, the City and the Union agree that all employees in this Unit shall be required, as a condition of continued employment, to join the Union or to pay the Union a Service Fee. 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.

B. Dues Check-Off

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

1. The City shall deduct union dues, benefit premiums, and/or both upon proper authorization by FAPSOA members.
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 Unit. The Unit shall neither require a non-member of the Unit to make any payment to a Political Action Committee, nor shall the Union include as a part of the Service Fee any amount to be used for political purposes.
4. 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 a 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 shall be available at the Finance Department, Payroll Section and at the Personnel Services Department.
5. In the event an employee covered hereunder does not authorize deduction of either Unit dues or a Service Fee from the employee's paycheck and does not make such payment directly to the Unit, the Unit shall provide a certification to the City of such failure. Prior to such certification, the Unit shall notify the employee of its intent to provide certification to the City and

give the employee an opportunity to respond within thirty (30) calendar days. Certification shall be on a form provided to the City. Such failure by an employee shall constitute grounds for termination by the appointing authority.

C. Exceptions to Dues Deduction Authorization Card

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

D. Dues Deduction Check

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

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

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

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

OPERATING ENGINEERS LOCAL UNION NO. 3
FRESNO PUBLIC EMPLOYEES DIVISION

E. Union Business

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

ARTICLE VII
COMPENSATION AND BENEFITS

A. Salaries, Pension and Premium Pay

1. Salaries:

Salaries for employees in Airport Public Safety Officer positions shall be **increased by two percent (2%) effective September 5, 2016**, as reflected on Exhibit I, incorporated by this reference.

Salaries for employees in Airport Public Safety Officer positions shall be increased by two percent (2%) effective September 4, 2017, as reflected on Exhibit II, incorporated by this reference.

2. Pension Contribution:

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

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

- **The individual is transferring from a full time permanent position in the City of Fresno Fire and Police Retirement System to a part time position in the Fire and Police System; or**
- **At separation from City employment, the individual elected a Deferred Vested status in the Fire and Police Retirement System. Upon re-employment as a Public Safety Officer, the individual will resume participation in the Fire and Police Retirement System; or**

- **The individual is a retiree of the City of Fresno Fire and Police Retirement System and is reinstated from retirement by the City of Fresno Fire and Police Retirement Board in accordance with Fresno Municipal Code Section 3-334.**

3. Premium Pay:

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

Effective January 1, 2017, members who have satisfactorily attained and maintained the Advanced P.O.S.T. Certificate shall be compensated at a rate of three percent (3%) above the member's base rate of pay.

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

a. Bilingual certification examinations will be conducted in December of each 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 December 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.

(2) 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. The Director of Airports or designee, shall annually designate those positions or assignments for which bilingual skill is desired. This may result in the loss of bilingual designation and pay.

d. In order to remain eligible to receive bilingual premium pay, employees must take and pass the certification examination

once every five (5) years.

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

B. Performance Evaluations

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

C. Fresno City Employees Health and Welfare Trust

The City and the Association agree that the Fresno City Employees Health and Welfare Trust has the sole authority to determine the benefits that will be provided during the term of this MOU. The sole responsibility of the City under this clause is to provide a set dollar amount to be contributed to the Trust on behalf of the employee represented by the Association. The City's contribution for full time employees will be seventy-five percent (75%) of the premium established by the Fresno City Employees Health and Welfare Trust Board prior to July 1, 2014, plus fifty percent (50%) of any increase in the premium effective July 1, 2015. Future increases to the health and welfare premium will be split so that fifty percent (50%) will be absorbed by the City and fifty percent (50%) will be absorbed by employees, except that the employee share shall not exceed thirty percent (30%). Should the

employee share be set at thirty percent (30%), the City share shall be seventy percent (70%). During periods of open enrollment or due to a change in circumstances as defined by the Trust, an employee may opt to contribute the amount necessary to make up the difference through payroll deductions, or accept a reduced coverage option.

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

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

D. Hours and Work Schedules

1. The workweek and work cycle period under FLSA will be determined by management in accordance with the needs of the Airport with the understanding employees perform law enforcement duties under the definition of FLSA.
2. The Unit is on a 14 day work period with a schedule consisting of three twelve (12) hour shifts in one week and four twelve (12) hour shifts in another week. As noted below, this work period and schedule can be changed with appropriate notice.
3. Work schedules are established solely at management's discretion based upon the need to provide service to the public and operational efficiency requirements. Work schedules may be rotated, at management's discretion. Such decisions shall not be appealable or grievable.
4. Management will provide thirty (30) calendar days written notice of a change in work schedules to employees and the Union. A copy will be sent to Labor Relations. Prior to the expiration of said thirty (30) calendar days and upon a written request, the Union will be provided an opportunity to discuss the schedule change.

E. Leaves

1. Holiday Leave

- (a) Employees shall accrue eight (8) hours per month as holiday leave in lieu of the Holidays recognized in FMC Section 3-116.
- (b) Employees in this Unit may request payment and be compensated for up to forty eight (48) hours or ten percent (10%) of their holiday leave balance, whichever is greater, each fiscal year during the term of this MOU. The employee's request to be paid must be received by the Department payroll clerk at least ten (10) calendar days prior to the next biweekly pay period. Employees must cash out a minimum of twelve (12) hours. No cash out may be requested between April 1st and June 30th.

2. Vacation Leave

- (b) Employees shall accrue vacation leave hours for each completed calendar month of employment as reflected below. Employees are allowed to only accumulate up to twice their amount of annual accrual of vacation leave.

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

- (c) An employee's vacation accumulation shall not 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 Director of Aviation 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. Sick Leave

Employees shall accrue sick leave at the rate of eight (8) hours for each completed calendar month of employment. Employees shall not accrue additional sick leave once their balance reaches nine hundred (900) hours.

The FMC, City Administrative Orders, departmental policies, procedures, rules and regulations concerning sick leave usage and administration will continue to apply. Administrative Order 2-19.1, Attendance Policy, shall not apply to members of this Unit.

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 and/or disciplinary action.

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

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

After the employee has taken the first three days of sick leave on or after July 1 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 within one year of such termination will be entitled to reinstatement of their sick leave balances at the time of termination from City employment, up to a total of 48 hours.

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

4. Family Sick Leave

Each fiscal year, employees in this Unit shall be allowed to use up to one half of the employee's annual accrual of sick leave for Family Sick Leave when sick leave is available. Family Sick Leave shall be used only for those purposes defined in California Labor Code, Section 233.

F. Workers' Compensation

1. An employee who suffers an injury/illness in the course and scope of City employment which results in disability shall receive one hundred percent (100%) of base rate of pay not to exceed one year in accordance with Labor Code Section 4850.
2. Partial days of absence due to a work related injury or illness, including the day of injury or illness, shall be at full pay and shall not count toward the exclusion period; however, this time shall be recorded as work related injury/illness absence.
4. If the employee is placed on sick leave, vacation or holiday pending determination as to whether the injury or illness is industrial, and the injury or illness is determined to be industrial, sick leave, vacation or holiday shall be restored within thirty (30) calendar days of such determination provided that the employee has submitted all necessary documents relevant to their Workers' Compensation claim, and the employee placed on work related injury/illness leave as provided herein.
5. If the employee is placed on sick leave, vacation or holiday pending determination as to whether the injury or illness is industrial, and the injury or illness is determined not to be industrial, sick leave, vacation or holiday shall not be restored.
6. Retirement benefits shall not be reduced as a result of compensation paid at the one hundred percent (100%) rate level of compensation established herein. Changes in contribution by the City and employee shall be in accordance with the applicable retirement code sections.

G. Uniform Allowance

Employees shall receive \$790.00 per year as a uniform purchase and maintenance allowance and paid in semi-annual installments on the last pay period in December and June. For employees in Tier 2 of the City of Fresno Fire and Police Retirement System, the uniform allowance is not pensionable.

H. Drug Testing

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

I. Permanent Part Time Employees

1. Permanent Part Time Airport Public Safety Officers ("permanent part time members") shall be included as members of Unit 11 and shall be designated to work on a modified 14 day work period.
2. Permanent part time members will accumulate and use all leave benefits in proportion to the number of hours scheduled for that employee's position based on a full time 14 day, 84 hour schedule.
3. The City shall contribute, towards the health and welfare premium, an amount of money on behalf of the employee in proportion to the number of hours scheduled for that position. The City shall make such contribution only on the condition that the employee agrees to contribute to the Fresno City Employees Health and Welfare Trust the difference between such City contribution and the amount required by the Trust for the level of benefits provided. If the employee does not so agree, then the City shall make no contribution for Health and Welfare benefits for such employee. Election to pay such difference shall be made within thirty (30) days of appointment to the permanent part time position.
4. Permanent part time members who decline to participate in the health plan at commencement of his or her employment may elect to participate each year thereafter during the annual City-wide open enrollment period or within thirty (30) days from the day of a qualified change in status. Participation at any time shall be by deduction from the employee's paycheck.

[§ deleted]

ARTICLE VIII

HEADINGS, SAVINGS CLAUSE AND FULL UNDERSTANDING

A. Headings

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

B. Savings Clause

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

C. Full Understanding

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

ARTICLE IX
TERMINATION

The provisions of this MOU shall be in full force and effect from *** **September 5, 2016**, to June 30, **2018** * * *, subject to the Sections (A. B., and C.) below.

- A. This MOU shall become effective only after approval of the Union, followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter Sections 605 and 609, and shall remain in full force and effect through June 30, **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 not addressed in this MOU, the party requesting any change shall request in writing to meet and confer on the item(s), which item(s) shall be specified in writing.
- C. During the term of this MOU, either party may refuse any request by the other to meet and confer without explanation if the item is directly considered and specifically addressed herein. It is further agreed, however, that this section shall not prohibit the City from requesting to meet and confer on changes to federal, state or City statutes, and City Administrative policies referred to or cited in this MOU, in which case the request to meet and confer shall not be refused.

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

FOR OPERATING ENGINEERS
LOCAL UNION NO. 3:

FOR THE CITY OF FRESNO:

FRED KLINGEL
Business Representative

JEFFREY CARDELL
Personnel Services Director

GLEN FALLS
President

KENNETH PHILLIPS
Labor Relations Manager

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____



Assistant City Attorney

EXHIBIT I
Effective September 5, 2016

Airport Public Safety Officers - Unit 11 Job Code 310002					
Salaries*					
STEP	A	B	C	D	E
Airport Public Safety Officers	4,909 5,007	5,152 5,255	5,396 5,504	5,663 5,776	5,943 6,062

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

EXHIBIT II
Effective September 4, 2017

Airport Public Safety Officers - Unit 11 Job Code 310002					
Salaries*					
STEP	A	B	C	D	E
Airport Public Safety Officers	5,107	5,360	5,614	5,892	6,183

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