# MEMORANDUM OF UNDERSTANDING

**BETWEEN AND FOR THE**

**CITY OF FRESNO**

**AND**

**AMALGAMATED TRANSIT UNION, LOCAL 1027 (ATU)**
**(Bus Drivers - Unit 6)**

**April 6, 2015 – June 30, 2017**

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

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# ARTICLE I

## PREAMBLE

### A. PURPOSE

This Memorandum of Understanding, hereinafter MOU, entered into between the City of Fresno, hereinafter the City, and Amalgamated Transit Union, Local No. 1027, hereinafter ATU, has as its purpose to establish wages, hours, and other terms and conditions of employment. In the event ATU or the City becomes aware of a practice, procedure, or activity which is not in compliance with this MOU then, notwithstanding such practice, procedure, or activity the parties shall immediately comply with the applicable provision of the MOU, rule, regulation, or statute.

### 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 Chapter 3, Sections 3-101, 3-202, 3-501, and 3-603 of the Fresno Municipal Code hereinafter FMC, shall govern the construction, meaning, and application of words and phrases used herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

### C. GOVERNING LAWS

The legal relationship between the City and its employees and the City and ATU is governed by Chapter 10 of Division 4 of Title I of the Government Code (Section 3500 et seq., commonly known as the Meyers-Milias-Brown Act), and Article 6 of Chapter 3 of the FMC, and in the event of conflict between said laws and this MOU, or in the event of conflicts in interpretation, said laws shall govern.

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# ARTICLE II

## EMPLOYEE RIGHTS

### A. GENERAL - EMPLOYEE RIGHTS

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

### B. NONDISCRIMINATION

The provisions of this MOU shall apply equally to, and be exercised by, all employees consistent with state and federal nondiscrimination statutes. The requirements mandated by these statutes have been established in City policies.

### C. EMPLOYEE RESPONSIBILITIES

All employees in the Bus Drivers Unit, hereinafter Unit, as described in Article IV Section E, acknowledge that the City shall consider the positions and proposals of ATU as the meet and confer positions and proposals of all Bus Drivers, individually and collectively, in said Unit.

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# ARTICLE III

## CITY RIGHTS

A. GENERAL

1. ATU and the City agree that the rights of the City are as set forth in FMC Section 3-605.

2. This MOU is not intended to restrict discussion with ATU regarding matters which may affect the members but which are outside the mandatory scope of bargaining.

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 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 ATU, not otherwise existing.

B. RESERVED RIGHTS

All City rights formerly or presently claimed by or vested in the City on the effective date of this MOU, even though not specifically set forth in this Article, are retained by the City unless clearly and explicitly modified or restricted in this MOU, and no City right shall be deemed waived, modified, or restricted unless such waiver, modification or restriction is explicitly and specifically approved by the City Council.

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# ARTICLE IV

## RECOGNITION

### A. UNION RECOGNITION

The City acknowledges ATU as the recognized employee organization representing the Unit, and therefore, shall meet and confer in good faith promptly upon request by ATU and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to make every reasonable effort to reach agreement on matters within the scope of representation * * *. In order that the meet and confer process includes adequate time for full consideration of the proposals of both parties and for resolution of any impasse * * *, **MOU negotiations may be initiated at the request of either party as early as four (4) months preceding expiration of the MOU.**

### B. UNION OFFICERS AND STEWARDS

1. A written list of the Officers and Stewards of ATU shall be furnished to the City immediately after their designation and ATU shall notify the City promptly in writing of any changes of such ATU Officers.

2. Not later than at the completion of the training period, the City shall inform each new Bus Driver in this unit of the name and address of ATU. The City and ATU shall share equally the cost of printing copies of this MOU sufficient to provide a copy to all current Bus Drivers, Bus Drivers hired during the term of this agreement, all Fresno Area Express, hereinafter FAX, management employees, and the Labor Relations Division.

3. The City shall provide to ATU a monthly report that includes the names addresses and phone numbers of all Bus Drivers. The report will include their hire date, date the driver first was hired as a PPT and/or when the Bus Driver went to full time status, and the dates the Bus Drivers are transferred, terminated, retired, or promoted. The City will provide advance information on the probation end date for all probationary Bus Drivers.

4. An ATU officer will be allowed to use up to thirty (30) minutes unpaid time to speak with each student Bus Driver class to provide a union orientation. FAX management may or may not attend the "orientation" at their discretion.

5. The City recognizes the ATU President, Vice President, and Secretary-Treasurer as the designated representatives of ATU, and only these officers, or other officers designated in writing by the President, shall be authorized to meet and confer with the City, or otherwise represent ATU in

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its relations with the City. ATU officers off on approved ATU leave without pay on the day before or day after a holiday shall not lose credit for that holiday.

C. UNION BULLETIN BOARDS

The Union may use bulletin boards designated by the City to post materials related to Union business. Any materials posted must be dated, initialed by the Union representative responsible for the posting, and a copy of all materials posted must be distributed to the Transit General Manager or designee at the time of posting.

D. REPRESENTATION

ATU agrees to represent all Bus Drivers in the Unit without discrimination, interference, restraint, or coercion, subject to the right of such Bus Drivers to represent themselves individually in their employment relations with the City. ATU shall defend and hold harmless the City, its officers and employees, from any costs or liability arising out of or related to any claim of any Bus Driver in the Unit that ATU is discriminating and/or has discriminated against or failed to represent such Bus Driver in violation of any law or the provisions of this subsection.

E. RECOGNITION OF UNIT DESCRIPTION

The Bus Drivers Unit consists of all employees of the class, Bus Driver (hereinafter referred to as employee/Bus Driver), holding a permanent position, as defined in FMC Section 3-202 (p)(4), which states, "Permanent position shall mean a full time or part time position in the classified service created pursuant to this article, or a position in the unclassified service, the duration of which is not limited by the terms of the ordinance, resolution or other authorized action creating it." Such Unit may be modified from time to time in the manner designated in the FMC. The Unit does not include individuals employed as Student Drivers. The City shall provide to ATU two (2) copies of the seniority list not later than 15 days after the effective date of this MOU and within five (5) work days of each change to the seniority list.

F. CITY RECOGNITION

ATU recognizes the City Manager of the City, or such other person as may be designated in writing, as the designated representative of the City, pursuant to FMC Section 3-615, and shall meet and confer in good faith promptly upon request by the City and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to make every effort to reach agreement on a successor MOU at least one (1) week prior to the last regular Council meeting at which the City budget must be adopted for the ensuing fiscal year in order to meet the June 30 deadline in the City Charter.

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G. RECOGNITION OF MUTUAL OBLIGATION

ATU 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.

H. POLICY MEMORANDA

FAX shall provide to the ATU President, Vice President, or Secretary-Treasurer two (2) copies of each policy memorandum addressed to Bus Drivers not later than two (2) days before the memorandum is posted in the Bus Drivers' room.

I. LOCKOUT AND STRIKE

1. No lockout of Bus Drivers shall be instituted by the City during the term of this MOU.

2. No unlawful strikes, or work stoppages of City employees, as defined in FMC Section 3-624, shall be caused, instigated, encouraged, condoned, participated in, or honored by ATU or its members during the term of this MOU.

J. UNILATERAL ACTION

In the event the meet and confer process for a successor MOU results in an impasse, the City shall not take unilateral action regarding wages, hours, and other terms and conditions of employment prior to completion of the impasse resolution procedures as identified in FMC 3-617 or as modified in the ground rules.

K. BUS OPERATION

Bus equipment in revenue service operated by, owned by or registered to, the City shall be staffed by Operators covered by this MOU. The City acknowledges that bus exchanges are a part of this Unit's usual work, and exceptions to this practice shall be for unusual and exceptional circumstances. The application of this section does not apply to the par transit service provided under contract to the City, nor does it apply to the training of student bus drivers which occurs on bus equipment in revenue service.

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## ARTICLE V

## SCOPE OF REPRESENTATION

A. GENERAL

1. "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.

2. ATU is the exclusive representative of all Bus Drivers holding a permanent position within the class described in Article IV Section E.

3. Subject to the provisions of FMC Section 3-620 and Article VI hereof, the parties recognize that membership in ATU is not compulsory, that Bus Drivers have the right to join, not join, maintain, or drop their membership in ATU, and that neither party shall exert any pressure on or discriminate against a Bus Driver regarding such matters.

4. ATU agrees to represent all of the Bus Drivers in the Unit fairly and equally without regard to whether or not a Bus Driver is a member of ATU. The terms of this MOU have been made for all Bus Drivers within the Unit and not only for members of ATU, and this MOU has been executed by the City after it has satisfied itself that ATU is the choice of a majority of the Bus Drivers in the Unit, subject to revocation as specified in FMC Sections 3-612 and 3-613.

B. EMPLOYEE REPRESENTATION

1. ATU may represent Bus Drivers covered by this MOU on grievances under any City grievance procedure and on Bus Driver appeals allowed by City code or rule.

2. ATU Officers and Stewards shall have the same right of access to personnel files as does the Bus Driver represented by such Officer or Steward, provided that the Bus Driver either accompanies the representative or authorizes such access in writing. Copies of disciplinary letters will be released to the Union representative if the Bus Driver affirmatively requests that it be done by signing the Release included at the bottom of any Notice of Proposed Disciplinary Action.

3. ATU Officers and Stewards designated under Article IV B. of this MOU shall be excused without loss of regular compensation from their regular duties for such time as is necessary to attend and represent ATU members at grievance hearings, beginning at the first level of supervision

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and for such other representational hearings as are provided by City Code or rule.

4. ATU officers (i.e., president and executive board members) will be allowed time off without pay to attend to Union business up to a maximum of 2,350 hours in a fiscal year. ATU may request and FAX will consider a request for additional time off without pay for union business in any fiscal year where additional time is deemed necessary by the Union. No more than three (3) representatives will be allowed off at a time for these purposes. Where practical, FAX will be provided with at least five (5) calendar days, but no less than one (1) calendar day (24 hours), advance notice. A fourth ($4^{th}$) representative will be allowed time off to attend the Union's executive board meeting and/or Union meetings. In addition, a fourth ($4^{th}$) Union representative may be allowed additional time off with one (1) calendar day (24 hours) advance notice and approval by the Operation Manager or designee. It is understood that time-off granted as a result of the annual vacation sign-up shall not be cancelled by the application of this subsection.

5. No ATU officer or executive board member shall lose any benefits as a result of time taken off without pay to attend to Union business.

C. GENERAL REPRESENTATION

1. The City recognizes the right of Bus Drivers in this Unit to be represented by ATU in their employer-employee relationship with the City. A Bus Driver in this Unit has the right to be represented by an Officer or Steward of ATU when called by management to discuss or review any action by the Bus Driver when such discussion or review may result in any adverse action. Should any Bus Driver request such representation, no further discussion or review may occur until a representative is present, except that no unreasonable delay shall result from such request.

2. This section does not apply to the normal ongoing employment relationship or supervisor/subordinate relationship between the City and its employees, when such matters as, including but not limited to, work direction, scheduling, and non-disciplinary counseling or performance evaluation, are the subjects of the discussion or review.

D. GRIEVANCE PROCEDURE

1. A grievance is a dispute concerning the interpretation or application of any existing City policy, written rule or regulation governing personnel practices or working conditions, including this MOU, and may, but is not limited to, include such matters as daily working assignments, equipment, safety or health hazards, and treatment of Bus Drivers under any rule or regulation. This procedure shall not apply to any dispute for which there is

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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. The grievance procedure relates only to existing rights or duties, not to the establishment of a right or duty or as outlined below.

2. A written grievance must set forth the specific rule, regulation, policy or 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, or it will be returned to the grievant for appropriate completion within the time lines set forth in Step One, which shall be the amount of existing time left to file the grievance when the grievance was originally submitted but in no case less than one (1) day. 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 Grievance Advisory Committee shall rule on the dispute before proceeding with the hearing. The Committee will be bound by the agreement of the parties regarding timeliness.

3. ATU may represent grievants covered by this MOU on grievances under the grievance procedure.

4. The grievant and designated representative shall be excused without loss of compensation from regular duties for such time as is necessary to attend and represent the grievant at grievance hearings, beginning at the first level of supervision.

5. The grievant (and/or designated representative) shall be entitled to request the release from duty of no more than three (3) Bus Drivers of this Unit, at any one time, to appear as a witness at the grievance hearing (Step Three). Each such Bus Driver shall be excused without loss of compensation from their regular duties for such time as is necessary to attend the grievance hearing. However, each such Bus Driver shall not be entitled to overtime compensation from FAX or the City to due to their attendance at the grievance hearing.

6. The procedure and sequence in filing and processing a grievance shall be as follows:

<u>Step One</u>

a. The Bus Driver (and/or designated representative) shall discuss the issue with the Bus Driver's group supervisor or designee before a written grievance may be filed. The designee shall be determined by any available Transit Supervisor II. In the event the designee is not available, any available Transit Supervisor will meet the requirement of Step One.

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(1) If the issue 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 Operations Manager or designee. A written grievance must be filed, with a copy being sent to the Labor Relations Division, 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, except that the Bus Driver shall have seven (7) additional calendar days at each step of the grievance procedure if the grievance is co-signed by an ATU Officer.

(2) Upon receipt of a written grievance, the Operations Manager or designee shall give the grievant a written reply within twenty-one (21) calendar days.

Step Two

a. Should the grievant not be satisfied with the answer received from the grievant's Operations Manager, or designee, the grievant may within fourteen (14) calendar days, file an appeal to the Transit General Manager or designee. The Transit General Manager or designee 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 Transit General Manager or designee may confer with the grievant (and/or designated representative) and appropriate supervisors in an attempt to bring about a harmonious mutually acceptable solution.

b. The City, the grievant, (and/or the designated representative) may, by mutual agreement, waive steps one (1) and two (2) and proceed directly to hearing by the Grievance Advisory Committee when the issue is one over which the grievant's Operations Manager or Transit General Manager has no jurisdiction.

Step Three

a. If the grievant is not satisfied with the decision of the Transit General Manager or designee, the grievant may within seven (7) calendar days after receipt of the written reply, file a request for a review of the Transit General Manager's or designee's decision to the Grievance Advisory Committee.

b. The City, the grievant (and/or the designated representative) may, by mutual agreement, seek resolution of the grievance through mediation using the services of the State Mediation and

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Conciliation Service prior to hearing by the Grievance Advisory Committee. Time limits for processing of the grievance are automatically extended for as long as the mediation is in process.

c. The Grievance Advisory Committee shall be comprised of three (3) members: one selected by ATU, one selected by the City, and the chairperson. The chairperson may be chosen either by mutual agreement of ATU and the City, or by the "strike" method from a list of neutrals provided by the State Mediation and Conciliation Service. If the Chairperson is selected by the strike method from the list of neutrals provided by the State Mediation and Conciliation Service, then the Grievance Committee shall be comprised exclusively of the selected neutral.

Fees and expenses of the chairperson shall be paid half by the City and half by ATU; provided however, that the Grievance Advisory Committee may recommend that the City or ATU pay the total of such fees and expenses, should it find that, but for the unreasonableness of that party's posture, the convening of the Committee would not have been necessary. The City, the grievant (and/or the designated representative) shall make a reasonable effort to select a chairperson within fourteen (14) calendar days of receipt of the grievance requesting review by a Grievance Advisory Committee by the Labor Relations Division.

d. The neutral and 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 neutral and Grievance Advisory Committee shall define the precise issues from those submitted by the parties and shall have no authority to consider any other issue(s) not so submitted. The neutral and 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.

e. From the date a grievance otherwise meeting all criteria for the filing and processing of a grievance reaches the Labor Relations Division, every effort will be made to convene the Grievance Advisory Committee within thirty (30) calendar days in order to hear the grievance.

f. All time limits herein may be extended by mutual agreement of the parties.

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g. The Grievance Advisory Committee shall talk to the grievant and supervisor involved to set forth in writing the facts of the particular situation and recommend a solution to the City Manager or designee within thirty (30) calendar days of its last meeting.

h. The City Manager or designee shall review the decision of the Transit General Manager or designee 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.

i. Failure of the grievant to file an appeal within the specified time limit 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.

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## ARTICLE VI

## DUES DEDUCTION

### A. GENERAL

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

### B. DUES CHECK-OFF

Rules governing dues check-off are set forth in FMC Section 3-620.

1. The City shall deduct the dues or benefit premiums, or both, upon proper authorization by ATU 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 ATU. ATU shall neither require a non-member of ATU to make any payment to the Committee on Political Action (COPE), nor shall ATU include as a part of the Service Fee an amount to be used for political purposes.

4. In the event a Bus Driver covered hereunder does not authorize deduction of either ATU dues or a Service Fee from the Bus Driver's paycheck or does not make such payment directly to ATU, ATU shall provide a certification to the City of such failure. Prior to such certification, ATU shall notify the Bus Driver of its intent to provide certification to the City**.** Within seventy-two (72) hours of receipt of the notice of such failure from ATU, the appointing authority shall place the Bus Driver on leave without pay. The Bus Driver will have thirty (30) days to provide certification to the City. If no certification is received within the thirty (30) day period, it will constitute grounds for termination by the appointing authority.

5. A Dues Deduction Authorization may be revoked by a member in the Unit, and the dues or benefit deduction cancelled, only during the months of November and December of any year. If a member in the Unit desires to

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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 and at the Personnel Services Department.

6. Upon written authorization by a retired member of ATU, the City shall deduct credit union payments and ATU dues and benefits from the retirement check of such retired member and forward same to the credit union or ATU as designed in such authorization.

C. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION CARD

The 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 in a non-pay status for an entire pay period, no dues deduction shall be made from future earnings to cover that pay period, nor may the member be required to deposit the amount which would have been deducted if the member had been in a 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 bimonthly to:

Amalgamated Transit Union
1221 Van Ness Avenue, Suite 304
Fresno, California 93721

Should ATU elect to have the deduction check transmitted to an address other than that set forth hereinabove, ATU shall so indicate by written notice to the City's Finance Department, with a copy to 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:

AMALGAMATED TRANSIT UNION

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# ARTICLE VII

## DISCIPLINARY ACTIONS

### A. DISCIPLINARY ACTIONS

1. Management shall respond to Bus Drivers within 42 calendar days after discovery of incidents that may lead to disciplinary action excluding actions subject to review by the Accident and Safety Review Committee (ARC). If management is unable to respond to the Bus Driver within this time frame, the Union and the Bus Driver will be notified. If management fails to respond and/or notify the union within the time frame mentioned above, the matter will be dismissed.

2. The President, Vice-President and the Secretary-Treasurer of the Union may, with a signed release by the Bus Driver, review documents related to disciplinary actions involving Bus Drivers represented by ATU.

3. Use of a Hearing Officer in Disciplinary Action Initiated by City: Bus Drivers may elect the alternate appeal procedure before a hearing officer instead of a hearing before the Civil Service Board as provided in FMC Section 3-283.

### B. REPORTING LATE FOR DUTY (MISS-OUTS)

1. Each Bus Driver should bear in mind their responsibility and should report punctually for assigned duty in order for the department to maintain the best possible balance of effectiveness and economic efficiency.

2. All Bus Drivers reporting for duty shall sign on not later than the scheduled reporting time (Example: Report time is 6:00 a.m., Bus Driver late at 6:01 a.m.). Any Bus Driver reporting after the scheduled sign-on time shall be considered "late" and charged with a miss-out for that day. A Bus Driver who is not able to report to work as needed will be charged with an incident consistent with the Attendance Policy, Addendum I, and will be considered absent without pay, unless the Bus Driver was prevented from reporting to the division by circumstances beyond the Bus Driver's control as determined by the Transit General Manager or designee. Any Bus Driver who fails to sign on and has left the FAX yard performing their job duties will be charged with a miss-out. In such a case, the Bus Driver shall be allowed to complete their scheduled work assignment for that day as well as receiving a miss-out. No Bus Driver shall be charged with a miss-out and an incident for the same occurrence. In the event the sign-on sheet is not available, it is FAX's responsibility to provide an alternative method for Bus Drivers to confirm their attendance.

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3. Disciplinary action for reporting late for duty (miss-out) in any six (6) month period, in addition to working the extra board as set forth in Article VIII, Section C, shall be:

First offense - Written reprimand, in addition to which the Bus Driver shall be placed at the bottom of the extra board on the day in which the miss-out occurs at their regular/base rate of pay or, at the discretion of FAX, sent home. A Bus Driver who is sent home has the option of using vacation leave, compensatory time off, or leave without pay. However, this option will be nullified when a Bus Driver is sent home, but is scheduled to return later in the day, and fails to report for any reason. Such failure to report to work will be considered an absence without pay and will be processed as an incident under the Attendance Policy, Addendum I.

Second offense - Written reprimand, in addition to which the Bus Driver shall be placed at the bottom of the extra board on the day in which the miss-out occurs at the Bus Driver's regular/base rate of pay or, at the discretion of FAX, sent home. A Bus Driver who is sent home has the option of using vacation leave, compensatory time off, or leave without pay. However, this option will be nullified when a Bus Driver is sent home, but is scheduled to return later in the day, and fails to report for any reason. Such failure to report to work will be considered an absence without pay and will be processed as an incident under the Attendance Policy, Addendum I.

Third offense - One day suspension or a one hundred twenty-five dollar ($125) fine to be determined at the discretion of the Bus Driver, in addition to which the Bus Driver shall be placed at the bottom of the extra board on the day in which the miss-out occurs at the Bus Driver's regular/base rate of pay or, at the discretion of FAX, sent home. A Bus Driver who is sent home has the option of using vacation leave, compensatory time off, or leave without pay. However, this option will be nullified when a Bus Driver is sent home, but is scheduled to return later in the day, and fails to report for any reason. Such failure to report to work will be considered an absence without pay and will be processed as an incident under the Attendance Policy, Addendum I.

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Fourth offense - Two day suspension or a two hundred dollar ($200) fine to be determined at the discretion of the Bus Driver, in addition to which the Bus Driver shall be placed at the bottom of the extra board on the day in which the miss-out occurs at the Bus Driver's regular/base rate of pay or, at the discretion of FAX, sent home. A Bus Driver who is sent home has the option of using vacation leave, compensatory time off, or leave without pay. However, this option will be nullified when a Bus Driver is sent home, but is scheduled to return later in the day, and fails to report for any reason. Such failure to report to work will be considered an absence without pay and will be processed as an incident under the Attendance Policy, Addendum I.

Fifth offense - Ten day suspension or a seven hundred fifty dollar ($750) fine to be determined at the discretion of the department, in addition to which the Bus Driver shall be placed at the bottom of the extra board on the day in which the miss-out occurs at the Bus Driver's regular/base rate of pay or, at the discretion of FAX, sent home. A Bus Driver who is sent home has the option of using vacation leave, compensatory time off, or leave without pay. However, this option will be nullified when a Bus Driver is sent home, but is scheduled to return later in the day, and fails to report for any reason. Such failure to report to work will be considered an absence without pay and will be processed as an incident under the Attendance Policy, Addendum I.

Sixth offense - The Bus Driver may be dismissed or other such disciplinary action as may be appropriate, in addition to which the Bus Driver shall be placed at the bottom of the extra board on the day in which the miss-out occurs at the Bus Driver's regular/base rate of pay or, at the discretion of FAX, sent home. A Bus Driver who is sent home has the option of using vacation leave**,** compensatory time off, or leave without pay. However, this option will be nullified when a Bus Driver is sent home, but is scheduled to return later in the day, and fails to report for any reason. Such failure to report to work will be considered an absence without pay and will be processed as an incident under the Attendance Policy, Addendum I.

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4. Any Bus Driver who fails to sign on by the scheduled sign on time and who fails to call FAX shall be considered on unauthorized leave and subject to disciplinary action, unless the Bus Driver was prevented from signing on and/or calling the Division by circumstances beyond the Bus Driver's control, as determined by the Transit General Manager or designee.

5. The Transit General Manager may, in the manager's exclusive discretion, find that good cause exists for the miss-out and that a Bus Driver should not be considered late, provided that the Bus Driver makes a written or documented oral request for such consideration within 72 hours of the miss-out. The Transit General Manager shall respond to such a request within ten (10) work days. Should the miss-out be excused, the Bus Driver may, with the approval of the Transit General Manager, take earned vacation or sick leave, as appropriate, for the day of the miss-out.

## C. USE OF VIDEO IN DISCIPLINE

**The Union agrees that the City has a legitimate interest in the use of video surveillance cameras, for purposes related to safety and security of employees, City property, and the public.**

**The City agrees to provide advance notice before any additional surveillance cameras are installed in areas in which bargaining unit employees work.**

**The parties further agree that the information obtained by use of such cameras may be used for the purpose of addressing safety violations, criminal conduct, or conduct in violation of established City policies. The information obtained by the use of cameras will not be used for performance evaluations, nor will the information be used for the purposes of initiating corrective action unless such action is based on safety violations, or the commission of criminal acts; or, for corrective action for established City policies when there is a triggering incident such as a complaint, an inquiry, a claim for damages, or an accident.**

**In the event that disciplinary action is proposed consistent with this Agreement, the City agrees to share the information obtained by the use of the surveillance camera(s) with the employee or with a representative of ATU Local 1027, if so requested by the employee or his/her representative in writing.**

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## ARTICLE VIII

## FAX RULES AND REGULATIONS

These rules are included herein for informational purposes only, and in no way shall they infringe upon the City's rights as specified in Article III. Included herein by reference is the Department's Guidelines Instruction for Bus Drivers as they may be amended from time to time, after consultation with ATU.

A. DEFINITIONS

1. The following words or phrases wherever used in this Article shall have the following meaning unless a different meaning is clearly required by the context:

   a. "Applicable Hourly Rate" is the rate of pay, whether regular/base rate or time and one-half, which applies to the work in question.

   b. "Deadhead Time" is time spent driving the bus to or from the Transit yard or between routes when the bus and the Bus Driver are not in revenue service. This time is included in the platform time.

   c. "Driving Time" is the elapsed time from departure of a bus from the garage or time of take over on relief to the time when the bus is returned to the garage or surrendered to a relief Bus Driver.

   d. "Extra Board" is the procedure by which extra Bus Drivers are assigned to fill open regularly scheduled runs for any cause or work assignment other than regular runs.

   e. "Extra Board Driver" is a Bus Driver who through seniority has elected to have work assignments made through the extra board or who through seniority has been assigned to the extra board, and who for purposes of overtime work, is still an extra board driver on scheduled day off.

   f. "Fill" is a scheduled or unscheduled piece of work that is usually assigned to and worked by an extra board Bus Driver, or a regular Bus Driver when the need arises, and may be worked as an extra or additional piece of work.

   g. "Hold Down" is a regularly assigned piece of work performed by an extra board Bus Driver when a regularly scheduled run becomes vacant or during the term of absence of the regular Bus Driver who

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is unable to perform the regularly scheduled run for five or more consecutive work days or 4-10 work schedule.

h. "Holiday Schedule" is a regular schedule having a reduced number of runs due to a declared holiday or as established by the Transit General Manager when transit service demands will be at a reduced level.

i. "Light Duty" is work other than driving that may be assigned to a Bus Driver by the Transit General Manager in the event the Bus Driver is incapable of driving due to medical disability caused by an on-the-job injury.

j. "Mark Down" is the process in which the Transit General Manager may cause a correction or modification of a past sign-up by allowing only those Bus Drivers that may be affected to bid in accordance with their seniority on the open regularly scheduled run or open extra board position as may be caused by the correction or modification.

k. "Mark Up" is the process by which a Bus Driver who did not pickup or was not assigned a run may bump Bus Drivers with less seniority already assigned.

l. "Miss-Out" shall mean a failure by a Bus Driver to report for duty and sign on within one minute of the designated sign on time.

m. "Pay Time" is the actual time paid to a Bus Driver at the regular/base monthly or hourly rate for time worked.

n. "Platform Instructor" is a Bus Driver temporarily assigned from a list of qualified Bus Drivers approved by the Transit General Manager based on the Bus Driver's accident record, complaints, sick leave, disciplinary actions, and work record for the performance of special instructional service of one or more student Bus Drivers or the retraining of Bus Drivers.

o. "Platform Time" is the amount of time that Bus Drivers spend driving a bus on a scheduled or unscheduled run.

p. "Pull In Time" is the time that Bus Drivers properly park the bus in the transit parking lot; reflected on the run guide.

q. "Pullout Time" is the exact time the Bus Driver is scheduled to pull out of the transit yard as printed on the run guide under the heading of "Out" and indicated in the Block Paddle.

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r. “Recovery Time” or “Layover” is that portion of the regularly scheduled run at a point designated by the Transit General Manager that will allow the Bus Driver the opportunity for a rest break if the run is on schedule. It is intended primarily, however, to provide the Bus Driver the opportunity to regain regularly scheduled time points during periods when traffic conditions, congestion, loading, etc., cause the run to fall behind the scheduled points. Recovery time shall not be used to extend the line.

s. "Regular Driver" is a Bus Driver who has seniority to bid and does bid a regularly scheduled run or work assignment. A regular driver working on a day off is not to be considered an extra board driver for rotation purposes.

t. "Regular/Base Hourly Rate" shall be the equivalent of the base monthly salary for Bus Driver, as provided in this MOU, multiplied by 12 months then divided by 2,080 hours.

u. "Regularly Scheduled Run" shall mean a daily work assignment that is of not less than eight (8) hours pay time which is included by the Transit General Manager in a posted breakdown of operating schedules and which contains regular working time and regular pay time. It may be made up of regularly occurring pieces of work which when combined, constitute eight (8) hours or more pay time.

v. "Relief Time" or "Travel Time" for Bus Drivers, not including charter Bus Drivers, is the elapsed time between the Bus Driver’s pull out time and actual commencement of scheduled work or from the Bus Driver’s relief point, or end of the Bus Driver’s scheduled work to the garage. (Travel time to a relief point shall include adequate time for relieving the Bus Driver to perform a brief safety check of the equipment.)

w. "Report Time" is that period of time between sign-on time and pull out time when the Bus Driver shall gather supplies pertinent to this work and make a "Determination of Equipment Condition" as required by Title 13, California Highway Patrol, Motor Carrier Safety Regulations.

x. "Sign-on Time" is the time at which a Bus Driver is to be on duty as determined and posted on the run break-down sheets and daily sign-on sheets.

y. "Sign-up" is that process by which the Transit General Manager will provide a listing of regularly scheduled runs for which the Bus Drivers may bid by seniority for their work assignments.

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z. "Split Shift" is a regularly scheduled run having a break in driving time: provided however, that a break in driving time of less than one-half hour shall not be considered a split shift and shall be paid as time worked.

aa. "Spread Time" for a Bus Driver is the total elapsed time from "sign on" on the Bus Driver's first run of a day to the time of completion of the Bus Driver's last run operated on the same day.

bb. "Squawk Card" is the form used by a Bus Driver to provide information to the maintenance supervisor that the equipment that the Bus Driver is operating requires corrective maintenance.

cc. "Standby Bus Driver" 1) an extra board Bus Driver, day off Bus Driver or regular Bus Driver scheduled to report at a specific time to protect the extra board for possible substitution in the event another Bus Driver fails to report as assigned; 2) an extra board Bus Driver may be assigned to stand by when their previously assigned run for the day is filled by the regularly assigned Bus Driver. When this occurs that Bus Driver shall be paid either the amount of work time originally scheduled or the time actually worked, whichever is greater; 3) a regular Bus Driver may be assigned to standby when any portion of their regular assignment is not available.

dd. "Student Driver" is a trainee employee who will not achieve permanent status as a trainee, and who must be trained and instructed on all lines and bus equipment of the system until in the opinion of the Transit General Manager the trainee employee is capable of performing the duties of a regular or extra board Bus Driver.

ee. "Temporary Vacancy" is a run or shift vacated temporarily through illness, industrial injury, leave of absence, suspension or vacation.

ff. "Time Point" is the time when a Bus Driver is due to depart a specific location while performing a work assignment as shown on the Bus Driver's printed schedules for Transit service.

gg. "Transit General Manager" shall mean the person in charge of FAX and shall include those persons designated to act in the Transit General Manager's behalf (e.g., Operations Manager, Transit Maintenance Manager, etc.).

hh. "Travel Time" for charter Bus Drivers is the elapsed time from the garage to the point of pick-up or the time from the charter release point to the garage for regular Bus Drivers. (See the definition of "Report Time", above.)

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ii. "Tripper" is a regularly occurring piece of work less than four (4) hours not incorporated into a regular run which may be bid by regular Bus Drivers, Permanent Part Time Bus Drivers or assigned to the extra board.

jj. "Work Assignment" may be pieces of work, fills, charters, or replacement work as necessary to be assigned in order to accomplish all work for the day, or other duties assigned. Other duties would not include refueling vehicles or restocking of schedules and transfers. Bus Drivers may be assigned work including telephone answering, public relations, transport of other Bus Drivers, coach preparation, radio operation, passenger counts, road calls, training and conference meetings.

kk. "Vacancy" is a run or shift permanently vacated due to retirement, resignation or termination from City service.

ll. "Vacation Block" is a minimum of (5) five or more consecutive Bus Driver work days, exclusive of scheduled days off.

mm. “G.P.S.” is a global positioning satellite system which will not serve as the sole basis for disciplinary action. Any alleged schedule adherence violation must be supported by at least two (2) verifiable sources such as, but not limited to, GPS, video, or supervisor observation in order for FAX to take any corrective action. A complaint by a member of the public may be used to initiate an investigation, but will not be used as one of the verifiable sources.

nn. “Rest Break” is defined as employees who work at least 3.5 hours in a day, excluding standby, will be entitled to a five (5) minute break. Employees who are assigned at least 7 hours of work in a day, excluding standby, will be entitled to two breaks of five (5) minutes duration. A break is defined as time the bus is parked along the route, or at the end of the line (including any layover point on a looped route turn around) where a driver has the option to secure the bus, get out of the seat, and/or use a nearby facility for food, or shelter with or without passengers on board. Time at the downtown station stops (Shelters A, B and L) or at Manchester Center will not be counted towards break time.

B. ASSIGNMENTS AND PAY TIME

1. Bus Drivers shall select their assignment to regularly scheduled runs and regularly scheduled trippers, or to work from the extra board, on the basis of seniority. Bus Drivers without sufficient seniority to qualify for regularly scheduled runs shall be assigned to the extra board. Not more than 25

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trippers may be reserved for PPT Bus Drivers who shall bid among themselves for such trippers. Driving assignments selected or assigned shall not exceed state and federal driving statutes/requirements. The City and ATU may agree upon rules and regulations regarding a four ten-hour day work schedule. At the request of ATU, FAX agrees to maintain a minimum of 14 midday runs (i.e., runs with sign-on times beginning at 7:00 a.m. and ending no later than 12:00 p.m.), which have Saturday and Sunday as the days off; however, the City retains the right to set levels of service, which if reduced, the City agrees to meet and confer solely on the effects of such a reduction.

2. A regular Bus Driver may be relieved from an assignment so as to provide an eight (8) hour rest period if said assignment would preclude the Bus Driver from assuming the next day's regular scheduled work, provided that the relief is not made more than nine (9) hours prior to the commencement of the next day's assignment. In the event the Bus Driver is not relieved, the Bus Driver will assume his next regular day's assignment as soon as the Bus Driver is legal to drive. Such an assignment will not result in a reduction in the amount of pay time for that day.

3. The City shall pay overtime to its regular Bus Drivers as follows:

   a. For work performed in excess of eight (8) hours in one day, one and one-half (1 1/2) times the regular/base hourly rate.

   b. For work voluntarily performed on any regularly scheduled day off, one and one-half (1 1/2) times the regular/base hourly rate, except that, on any given work week, a Bus Driver who has not had forty (40) hours of actual work time and has not been available for work on the Bus Driver's regular work day for any reason other than an approved leave (i.e., leave time pre-arranged, approved, and authorized) shall be paid at straight time for work voluntarily performed on a regularly scheduled day off. For purposes of this provision, union business shall be considered approved leave. The Bus Driver shall be eligible for overtime if forced to work by the Department or has worked over forty hours in a work week.

   c. For work performed in excess of a 12-hour spread on a regularly assigned split run, one and one-half (1 1/2) times the regular/base hourly rate. The City will make a reasonable effort to eliminate the number of runs with spread times of 13 hours or more. Bus Drivers with spread runs greater than 13 hours will be compensated at double the regular/base hourly rate for work performed in excess of 13 hours. However, the compensation received under this subsection shall not be applicable to regular Bus Drivers who selected (i.e., during the sign-up process) "trippers" as part of their regular work assignment.

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d. Except for absences due to injury on the job, time off (e.g., non-productive hours such as miss-outs, vacation, sick leave, doctor's appointments, etc.) shall not count toward the calculation of daily overtime.

e. There shall be no "pyramiding" of overtime or other premiums. "Pyramiding" shall refer to the times when multiple qualifications for overtime or other premiums exist.

f. Bus Drivers who are unable to work the day immediately preceding their regularly scheduled days off for any reason, excluding union business, may be precluded from working their days off.

4. The City shall pay overtime to its extra board Bus Drivers as follows:

a. For work performed in excess of eight (8) hours in one day, one and one-half (1 1/2) times the regular/base hourly rate, provided the guarantee requirement in paragraph C.3., Guarantee, (MOU page 3**5**) below has been met.

b. For work voluntarily performed on any regularly scheduled day off, one and one-half (1 1/2) times the regular/base hourly rate, except that, on any given work week, a Bus Driver who has not had forty (40) hours of actual work time and has not been available for work on the Bus Driver's regular work day for any reason other than an approved leave (i.e., leave time pre-arranged, approved, and authorized) shall be paid at straight time for work voluntarily performed on a regularly scheduled day off. For purposes of this provision, union business shall be considered approved leave. The Bus Driver shall be eligible for overtime if forced to work by the Department or has worked over forty hours in a work week.

c. For work performed in excess of a 12-hour spread one and one-half (1 1/2) times the regular/base hourly rate. (It is expressly understood that an extra board Bus Driver is required to accept the "tripper" that is part of the regular Bus Driver's bid.

d. Except for absences due to injury on the job, time off (e.g., non-productive hours such as miss-outs, vacation, sick leave, doctor's appointments, etc.) shall not count toward the calculation of daily overtime.

e. Bus Drivers who are unable to work the day immediately preceding their regularly scheduled days off for any reason, excluding union business, may be precluded from working their days off.

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5. Standby time shall be paid at the applicable hourly rate, and for the purpose of computing overtime, shall be included in the total number of hours worked in the pay period in which the standby time occurs.

6. Layover time shall be paid for at the applicable hourly rate, and for the purpose of computing overtime, shall be included for round-trip charters less than 100 road miles from the garage.

7. a. A Bus Driver called back to work after completing work assignments for the day and having left the property or on a day not scheduled to work, will be paid for the actual time worked or for two (2) hours, whichever is greater. A Bus Driver called into work may be assigned one or more pieces of work for that day, however the two (2) hour minimum will apply only once for that day.

   b. A Bus Driver called in to work before the Bus Driver's initial regular work assignment for the day shall be paid a minimum of two (2) hours or for actual work, whichever is greater.

8. Report back refers to a standby Bus Driver who during the course of the day is released from duty, and directed to return later that same day. FAX will limit the number of report backs to no more than three (3) occurrences in a day, which includes the initial standby assignment for the same day.

   In the event FAX requests a fourth report back, the standby Bus Driver will have the right to refuse. If the standby Bus Driver chooses to accept the fourth report back request, the standby Bus Driver will receive the applicable regular/base rate of pay for actual hours worked, plus all applicable premiums. In the event the standby Bus Driver refuses to accept the fourth report back request, FAX may, at its discretion, place the standby Bus Driver on standby, and assign the standby Bus Driver to the assignment that was the subject of the fourth report back.

   In the event the fourth report back assignment is changed through no fault on the part of the standby Bus Driver, the standby Bus Driver will be paid the applicable regular/base rate of pay for the number of hours of the fourth report back assignment, or the number of hours actually worked, whichever is greater.

9. Each Bus Driver assigned to duty as a Platform Instructor of a Student Driver shall be paid for one hour at straight time in addition to scheduled hours, for each full shift worked as a Platform Instructor, regardless of the number of students instructed. Such one hour shall not be considered as time worked nor for calculation of any overtime due, nor shall it be considered as a part of the "guarantee" for an extra board Bus Driver. A list of Bus Drivers eligible for instructor duty shall be kept by FAX and

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instructor duty shall be equitably assigned, consistent with the needs of the service.

10. Notwithstanding any other provision of this MOU, a Bus Driver assigned to a round trip charter in connection with emergency duty with fire, police, armed forces, etc., shall be paid at the applicable hourly rate for all driving time and at straight time hourly rate for any other compensable time.

11. Any Bus Driver required to take a City-ordered physical examination (not including D.M.V. required physical) shall be compensated at the applicable hourly rate for the time actually required to take the examination.

12. The number of regularly scheduled split runs shall not exceed 46% of the total number of regularly scheduled runs, calculated on a weekly basis.

13. Any Bus Driver who is assigned to perform work normally performed by an employee in a lower class due to injury, illness, light duty or other reason, shall be paid at the Bus Driver's rate of pay subject to the provisions of Article IX, Section B. Pay for provisional appointments and acting pay shall be governed by the applicable provisions of the FMC and salary resolution.

14. Whenever a regular run includes a scheduled coach pull-in, five (5) minutes sign-off time will be included in the pay time. Whenever a regular run includes an in-service relief, five (5) minutes sign-on time will be included in the pay time.

15. A Bus Driver assigned to training will be paid for actual hours spent in training plus any time worked that day. Bus Drivers paid for eight (8) hours training may be given additional work at the discretion of the dispatcher.

C. EXTRA BOARD

1. Assignment of Work From the Extra Board

This procedure defines the method by which extra board personnel are assigned to the board and the procedure to be followed in assigning work to extra board Bus Drivers.

a. Assignment to the Board

(1) Bus Drivers shall bid for extra board positions at each sign up in order of seniority.

(2) Extra board Bus Drivers shall have two regularly scheduled days off per week. Extra board days off shall be determined

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by the needs of the system and bid on by extra board Bus Drivers in order of their board seniority. Split days off will be kept to a minimum.

b. Assignment of Work Hours

(1) Extra board Bus Drivers on days off shall have first choice of available day off work or first right of refusal of available day off work. However, if no Bus Driver accepts the offer of extra work, the least senior extra board day off Bus Driver will be assigned. In the event extra board Bus Drivers have been exhausted, any Bus Driver, in inverse seniority, shall be assigned that work to meet the needs of the system. (See Article VIII C. 1. c. (3) (e).)

(2) Should there be no extra board Bus Driver available for extra work or unfilled work, a regular Bus Driver shall be assigned to meet the needs of the system. However, on the day of work, should a piece of work become available one hour prior to sign on time and there are no standby Bus Drivers or working extra board Bus Drivers available, any Bus Driver who is available may be used to meet the needs of the system.

(3) All Bus Drivers, except extra board Bus Drivers, desiring work on their days off will indicate so by signing the extra work list provided at each sign up.

(4) All regular Bus Drivers desiring extra work on their scheduled work days will indicate so by signing the extra work list provided at each sign up.

(5) All extra board Bus Drivers desiring to work on their scheduled days off will indicate so by signing the extra board days off weekly overtime selection form.

(6) Extra board Bus Drivers may drive any combination of regular runs, details or any other duty provided such an assignment will not violate California Highway Patrol Rules and Regulations.

(7) If a Bus Driver is unable to report to work as assigned due to the previous day's assignment, the Bus Driver will be placed in the proper rotation of standby when legal to drive. If two or more Bus Drivers are legal to drive at the same time, standby order will be determined according to the position on the extra board rotation order for that day.

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c. Work Assignments: Day Before Operating Day

(1) The rotation line shall be established above the first Bus Driver with the greatest seniority at each sign up. The rotation line shall move two (2) positions down the board for each day of service. This rotation rate may be changed by mutual agreement. This number shall include the positions of Bus Drivers who are on days off, on sick leave, vacation days, suspensions, hold downs, or not working for any reason. It is expressly understood that an extra board Bus Driver is required to accept the tripper that is part of the regular Bus Driver's bid.

(2) (a) The posting of daily assignments shall be accomplished no later than 3:00 p.m. the day before the work is performed. Extra board Bus Drivers shall call in after 4:00 p.m. to ascertain their assignment for the next day. Whenever assignments must be changed after 4:00 p.m., FAX shall notify all affected Bus Drivers.

(b) Mis-assignments may be corrected by 4:00 p.m. After that time, FAX has the option of paying for the error under Section C. 2. (e) below, or of changing the assignments and notifying all Bus Drivers affected. A Bus Driver who discovers an error in the Board should bring that error to the attention of the supervisor on duty responsible for the Board as soon as the error is discovered.

(c) Any other work becoming available after the Board is posted, regardless of the time, shall be treated as a fill and shall be assigned to a standby Bus Driver on the day of work.

(d) ATU shall be furnished a copy of the first daily assignment sheet, then the finished copy if revised, to include corrections to mis-assignments.

(e) Any Bus Driver who is assigned work not consistent with the terms and conditions of the MOU shall be paid for the work the Bus Driver should have performed, subject to the following:

(i) Only the first Bus Driver originally mis-assigned shall be compensated.

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(ii) Pay shall be only at the regular/base hourly rate, which shall count towards weekly overtime.

(iii) For a mis-assignment of day off work, the Bus Driver will be paid for the actual hours mis-assigned, in increments of one-tenth of an hour, or four (4) hours, whichever is less at the regular/base hourly rate. This shall be the full compensation for a mis-assignment of day off work.

(iv) Payment for a mis-assignment must be requested within seven (7) calendar days from the date the assignment in dispute was posted. If payment is requested within seven (7) calendar days, the department shall have fourteen (14) calendar days from receipt of the request to provide a response to the dispute. If the department fails to respond to the dispute or denies the payment within the fourteen (14) calendar days, the Bus Driver must utilize the grievance procedure for any payment due to a mis-assignment. The time for submitting such a grievance, if necessary, will commence on the date the department's response is delivered to the driver or on the fourteenth ($14^{th}$) day, whichever is sooner.

(f) If ATU or a Bus Driver alleges that an error in assignment has been made, the Bus Driver shall work the assignment and may grieve the assignment afterwards as described in (iv), above.

(g) Changing of the extra board rules may be made by mutual agreement of both parties.

(3) FAX retains the exclusive right to determine combinations of work for the extra board based upon the needs of the system. This procedure defines the method by which extra board personnel are assigned to the board and the procedure to be followed in assigning work to extra board Bus Drivers.

(a) Extra board work will be assigned daily from the rotation line down the board in the following manner:

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(i) Available daylight runs, with most hours first, available midday runs with most hours second, available night runs with most hours third, available split runs, with most hours fourth.

(ii) Combinations of work totaling as close to eight (8) hours as practicable, but not less than seven (7) hours, combinations of work with most hours will be assigned first. Combinations of work are not regular runs and details, but pieces of work other than regularly scheduled runs. They can be a combination of details, fills, etc.

Details not assigned may be added to regularly scheduled runs worked by extra board Bus Drivers, as needed on a most pay time basis.

(iii) Standby assignment for regular extra board Bus Drivers (total number determined when all other work is assigned).

(iv) Details, Trippers and Fills less than seven (7) hours with most hours first.

(v) Assignments of equal hours with earliest sign-off first.

(b) Bus Drivers who volunteered to work overtime will be assigned in the following order:

1st - Extra board Bus Drivers on their day off.

2nd - Extra board Bus Drivers on hold downs on their days off.

3rd - Regular Bus Drivers who signed up for overtime on their regular work day.

4th - Regular Bus Drivers who signed up for overtime on their days off.

5th - Bus Drivers who volunteer to work while on vacation, in the order of seniority**,** subject to the provisions of Article VIII, D.2.I..

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(c) Bus Drivers who volunteered for overtime work on days off must notify the dispatcher by 10:00 a.m. the day before their days off, of their intent to refuse any extra work. Any extra time refused by regular Bus Drivers will be documented and tracked as red time as if it were actually worked.

(d) Bus Drivers not working on their sixth day, but working on their seventh day, must be contacted by dispatch before being assigned any work. Dispatch must contact the Bus Driver in person or in person by phone (telephone answering machines or third parties do not constitute contacting the Bus Driver).

(e) No extra board or regular driver will be forced to work on their seventh day. For purposes of forced work, the seventh day will be the drivers second scheduled day off (i.e., drivers that have Sundays and Mondays as days off, Monday will be considered the seventh day). If a driver is to be forced to work on their sixth day, dispatch must contact the bus driver in person or by phone (telephone answering machines or third parties do not constitute contacting the bus driver).

(f) Any Bus Driver forced to work on their sixth day will be notified by 4:00 p.m., or earlier, the day the extra board is posted.

d. Work Assignments: The Day of Operation

(1) Should a piece of work become available on the day of operation and there are no standby Bus Drivers or any scheduled to report prior to sign on time, work will be assigned in the following order, except as provided for in Article VIII C.1.b.(2) and Article VIII C.1.c.(3)(e):

1st - Extra board Bus Drivers on their regular work day, including those Bus Drivers assigned to a hold down.

2nd - Extra board Bus Drivers on a day off who signed up for overtime.

3rd - Extra board Bus Drivers on hold downs on days off who signed up for overtime.

4th - Regular Bus Drivers who signed up for overtime on their regular work day.

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5th - Regular Bus Drivers on days off who signed up for overtime.

6th - Bus Drivers who volunteer to work while on vacation, in the order of seniority.

7th - Regular Bus Driver on a regular work day that did not sign up for overtime when it becomes necessary to maintain the service.

8th - Extra board Bus Drivers on a day off who did not volunteer for overtime with the least seniority.

9th - Regular Bus Driver on a day off who did not volunteer for overtime with least seniority.

(2) In the event there are two or more Bus Drivers standing by, the first Bus Driver shall take the assignment that signs on first (first up, first out). However, if two assignments sign on at the same time, the first Bus Driver will take the assignment which contains the most number of hours. If the assignments are of equal pay time, the first Bus Driver will take the assignment with the earliest sign off time. If standby extra board Bus Drivers are to be cut off (released), such cut offs shall be from first sign on time. However, if standby Bus Drivers sign on at the same time, release will be from the bottom of the list.

2. Hold Down Work Assignments

a. When it becomes known that a regular run will be open for a period of five (5) or more working days or 4-10 work schedule the run will be designated a hold down. Such open runs shall be made available to extra board Bus Drivers on a seniority basis. Hold downs will be posted for bidding for three work days following the day of posting. Bidding cutoff will be at 8:00 P.M. and hold downs will be assigned on the day prior to the extra board being completed. Such assignment shall last for the dates originally posted or until such time as the regular Bus Driver returns or the next sign-up.

b. Bus Drivers working hold downs, will assume the days off of the hold down.

c. (1) A hold down will not start until the Bus Driver has actually worked the hold down; i.e., pulled out the bus. If the Bus Driver assigned the hold down fails to pull out the run on

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the first day (except as provided in c. (2) or c.(3) below, the hold down will be assigned to the next Bus Driver in seniority who bid the hold down providing the hold down lasts for at least five (5) more working days or 4-10 work schedule. However, if the piece of work lasts for only four (4) more working days, it will be filled day by day off the extra board in the normal rotation and not be considered a hold down.

(2) Notwithstanding c. (1) above, a Bus Driver that bids a hold down who fails to pull out the run on the first day only, due to vacation, City business, union business, jury duty, sick leave, medical appointment, military leave, or state and federal mandates, shall retain the hold down. Failure to pull out the run on the first day of the run for any other reasons shall result in loss of the hold down. Missing the first two days of the hold down shall result in the loss of the hold down, regardless of the reason for the absence. Bus Drivers who have been absent 40 hours or more when the hold down is scheduled to start will not be forced on the hold down on their first regular day of work. However, if there are five (5) or more days or 4-10 work schedule left on the hold down, the next available least senior Bus Driver returning from an absence will be assigned that hold down. With the exception of the condition above, Bus Drivers forced on hold downs will not lose the hold down.

(3) An Extra Board Bus Driver who is successful in bidding or forced on a hold down assignment will not report to work until such time that the Bus Driver is legal to drive. Upon reporting to work, the Bus Driver will then be given the hold down assignment. After completing the hold down assignment for the first day, if the driver has not worked at least eight hours for the day, the dispatch supervisor may assign the driver, according to Article VIII, C., 1, d., (1) or if determined by the dispatcher supervisor that the extra board driver is not needed, the extra board driver shall be released from any further work for the day and will be paid the guaranteed eight (8) hours.

d. In the event no Bus Driver bids the hold down (or no other Bus Driver has bid the run in the situation described in c. [1] above), it shall be assigned to the extra board Bus Driver with the least seniority. The assignment shall be for the dates originally posted or until such time as the regular Bus Driver returns or the next sign up or markdown which-ever occurs first. A hold down may be reassigned to the same Bus Driver if the Bus Driver is still least in seniority.

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e. Forced hold downs with indefinite ending dates, shall expire on the last day of each month and will be re-posted to be effective the first working day of the following month.

3. Guarantee

Each extra-board Bus Driver shall be guaranteed pay equivalent to eight (8) hours at the regular/base rate of pay on each of the Bus Driver's regular work days, provided the Bus Driver actually works all of their assignment(s) for that day.

D. GENERAL RULES FOR ALL BUS DRIVERS

1. Sign-Ups

a. Upon implementation of a two week pay period, sign-ups will be adjusted to coincide with the biweekly pay periods. There shall be five complete sign-ups per year:

(1) January

(2) March

(3) June

(4) August

(5) November

b. If it becomes necessary to have an emergency sign-up, the above sign-ups will still be held.

c. If there is a change in the pay hours in any regularly scheduled run or bid trippers exceeding fifteen (15) minutes, the Department and the Union shall meet to determine how the matter will be resolved. Such resolution may include, but shall not be limited to, providing alternate work to keep employees whole or reassignments. If the parties are unable to reach mutual agreement on resolution within seven (7) calendar days of notice of the change in pay hours, there shall be a new sign-up or mark down as required to allow seniority to prevail in the selection of work assignments.

d. FAX will notify the membership thirty (30) days in advance of the effective date of the next bid sign-up. A sign-up roster shall be posted ten (10) days prior to the day of a sign-up, except in emergencies or other instances beyond the control of FAX. A copy shall be provided to ATU. Bus Drivers may leave a written proxy

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with the dispatcher, and the dispatcher and the ATU President or designee will work jointly to select a run for the Bus Driver according to the proxy. Choices on the proxy shall be ranked in numerical order of priority (e.g., 1=first choice, etc.). If the run or runs specified in the proxy are not available, the run or runs will be selected by the ATU President or designee. Sign ups will be conducted over a twelve (12) hour period with the first bid to be submitted and posted no later than 6:00 a.m. and concluding at 6:00 p.m. Bus Drivers selecting assignments within the first three (3) hours (6:00 a.m. to 9:00 a.m.) will be allotted fifteen (15) minutes for the purpose of selecting assignment(s) and then every twenty-five (25) minutes thereafter.

The ATU President or designee when performing duties in association with this provision will be considered on City business during the time the sign-up process is scheduled by the Department. Such time shall be compensable at the applicable hourly rate for all hours during and until the bid sign-up is concluded. However, if the bid sign-up concludes earlier than the scheduled time, the ATU President or designee shall be assigned alternative duties to assure no loss of scheduled pay occurs.

The ATU President or designee who is assigned a partial day to conclude the sign-up process shall be assigned alternative duties, at the discretion of the Department, to assure the person is compensated for no fewer hours than would have been received on that day if not assigned to the sign up.

The ATU President or designee shall not be scheduled to perform the bid sign-up process on their scheduled days off.

e. Sign up procedures may be modified by mutual agreement between the City and ATU.

**f. The parties agree to a limited reopener of this MOU on bidding or assignments to Bus Rapid Transit. The parties shall meet promptly on request of either the City or the Union. Any changes to this provision of the MOU require mutual agreement.**

2. <u>Annual and Daily Vacation</u>

a. Vacation shall be accrued at the following rates:

less than five (5) years of service, eight (8) hours per month; between five (5) years and eight (8) years, ten (10) hours per

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month; between eight (8) years and twenty (20) years, 11.33; and more than twenty (20) years, 14.66 hours per month.

b. Daily vacation is that earned vacation (or leave used for vacation purposes) time off not assigned upon the basis of seniority.

c. Bus Drivers are encouraged to utilize earned leave for vacation purposes on a scheduled basis.

d. Approval for daily vacation may be granted in minimum increments of one (1) hour when said vacation will not interfere with the operations of FAX and when such vacation can be granted without the necessity of paying undue overtime for replacement personnel. Daily vacation, when granted, must be on a first come, first serve basis, except in the event the Transit General Manager determines emergency or other unusual circumstances exist.

e. Daily Vacation Leave - Within ninety (90) to thirty (30) calendar days advance request, FAX will grant daily vacation leave requests of five (5) consecutive days or less to the first four (4) Bus Drivers who request such time.

**Before a request will be approved, Bus Drivers must have sufficient time in their leave bank to cover the requested daily vacation. A Driver who has sufficient leave when daily vacation is initially approved but does not have sufficient leave before the scheduled leave will be advised that the leave is cancelled. If a Driver is inadvertently allowed to take the day off when out of leave, an incident will not be charged. This paragraph will go into effect on July 6, 2015.**

It is expressly understood that the requested daily time of five (5) consecutive days or less must be taken within ninety (90) calendar days of said request. Cancellations require four (4) calendar days advance notice to FAX. FAX shall give four (4) calendar days advance notice to Bus Drivers of cancellation of daily vacation due to an emergency. An emergency is defined as circumstances beyond the control of FAX, and shall not include staffing shortages. **Should the number of Bus Drivers reach 300, daily vacation will be allowed for the first five (5) Bus Drivers who request such time in accordance with the same terms herein.**

f. Annual vacation shall be bid on the basis of seniority.

g. Annual vacation bids shall start the first Monday in November for the following calendar year. The vacation calendar listing the Bus Driver names and seniority numbers will be posted five days prior

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to the commencement of the vacation bidding. Vacation sign-ups will be conducted Monday through Friday until each Bus Driver has had an opportunity to submit a bid according to the procedure in h. below.

h. In accordance with seniority, eight (8) Bus Drivers per day, Monday through Friday, will be scheduled to submit their vacation block bids by 4:00 p.m. of the scheduled day on a vacation bid form and awarded according to the Bus Driver's seniority. Vacation bids will not be held up for any Bus Driver. Should a Bus Driver submit a vacation bid after the Bus Driver's scheduled time period, it shall be accepted at that time for the vacation time slots available at the time submitted. In accordance with seniority, Bus Drivers may submit bids for as many time blocks of vacation that is equal to their annual accrual, plus thirty percent (30%) of their vacation balance at the time of the sign up. (Note: Holiday leave is not counted as annual leave accrual for annual vacation bid, but will be considered as part of the leave bank for the purpose of determining the additional 30% of hours that can be bid.) The number of Bus Drivers allowed on scheduled vacation blocks at any one time period will be determined by the Operations dispatching supervisory staff according to manpower requirements.

(1) It is understood that permitting the blocking of vacation in segments greater than seven (7) consecutive days or more which includes two days off may result in the fragmentation of blocks, in which event Bus Drivers who have yet to make their vacation selection will need to bid on those remaining segments in blocks of six (6) consecutive days or less.

(2) All Bus Drivers shall be allowed to sign up for the amount of annual accrued vacation, except as provided in paragraph (6), below.

(3) Bus Drivers shall have only one opportunity to select vacation time, or times, of their choice during the bidding period. Once all eligible Bus Drivers have exercised their right to bid on vacation time, there shall be no second time around to sign-up.

(4) Bus Drivers will be allowed to select any amount of consecutive vacation days not less than a minimum of seven (7) consecutive days or more which includes two (2) days off (example: 5, 6, 7, 8, or 9).

(5) In the event there are no vacation blocks of seven (7) consecutive day blocks left, which include two (2) days off,

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the Bus Drivers may choose any partial blocks left, not to exceed their annual accrued vacation time. Example: For a two (2) week accrual, the Bus Driver could pick any blocks left that add up to ten (10) days.

(6) Additional fragmentation of vacation blocks will be allowed to enable a Bus Driver to bid all his accrued vacation time for that year. This will only be allowed if the Bus Driver's remaining days do not fit a fragmented vacation block.

(7) FAX and ATU agree to meet no later than October of each year during the term of this MOU to review the vacation procedure. As a result of this meeting, the parties may mutually agree on modifications to the procedure or to revert to the vacation bid practice in place in the 1993-96 MOU.

It is the Bus Driver's responsibility to verify that they have adequate vacation hours accrued prior to starting any vacations.

i. A Bus Driver may cancel scheduled vacation with seven (7) or more calendar days advance notice, and less than seven (7) calendar days if an emergency as determined by the Transit General Manager or designee.

j. When a vacation block has been vacated due to retirement or termination from employment, it shall be put up for a seniority bid. When a vacation block has been vacated for any other reason, it may be put up for a seniority bid. Vacated vacation blocks will be posted on a vacation bid form for a period of five days and will be pulled for assignment at 8:00 p.m. on the fifth day. It will be all Bus Drivers' responsibility to periodically check the posting board for any pieces of work that may be available or vacations that may be available.

Bus Drivers desiring to bid on posted vacated vacation blocks must indicate so by signing on the posted form for the entire vacation block. This block may be in addition to their already scheduled vacation providing that they have the time available for both vacations or they may give up their previously bid vacation and it will then be considered vacant and may be bid according to the vacated vacation block procedure.

k. It is each Bus Driver's responsibility to monitor their vacation accrual hours. Bus Drivers with less than 20 years of service are allowed to accrue 340 hours of vacation. Bus Drivers with 20 or more years of service are allowed to accrue 420 hours. During the term of this MOU, Bus Drivers who have reached maximum

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accrual, and have bid at least two weeks of scheduled vacation, may request from the department an additional 20% accrual for a period of 90 days. If the Bus Driver is unable to reduce their vacation accrual balance by the end of the extension period, the Bus Driver shall have all excess hours above the maximum accrual cashed out at the Bus Driver's regular/base rate of pay.

l. At the discretion of management, Bus Drivers on scheduled vacation leave may be permitted to work by notifying the department of their desire to work prior to the beginning of the scheduled vacation. A Bus Driver who fails to operate a run as a result of a request to work while on scheduled vacation, will be subject to any established disciplinary action

m. Exchange of regular scheduled vacation blocks may take place between drivers by mutual agreement during calendar year that the vacations were bid. The exchange will be in equal days with a minimum exchange of seven (7) consecutive days. Notice must be given within seven (7) or more calendar days of exchange taking place.

3. <u>Alternative Workweek Work Schedules</u>

It is expressly understood that the parties have concluded the meet and confer process on this Subsection.

a. Alternative workweek work schedules may be necessary in order to provide minimum staffing, and/or based upon the service needs of the public, and/or other operational efficiency requirements. It is expressly understood that work assignments are determined and established by FAX based upon these requirements.

b. If established, Bus Drivers shall select a 5/8 or 4/10 assignment based on the applicable MOU provisions contained in Article VIII, D.1., Sign-Ups.

c. The hours for Bus Drivers working a 5/8 will consist of five (5) eight (8) hour days with two (2) consecutive days off. The hours for Bus Drivers working a 4/10 will consist of four (4), ten (10) hour days with three (3) consecutive days off. The number of 4/10 assignments will initially be limited to no more than sixteen (16), although the number and type of 4/10 assignments can be expanded by mutual agreement by the parties. Generally, days off will either be Friday through Sunday or Saturday through Monday, with no more than five of all 4/10 assignments with consecutive days off other than those listed in this provision.

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d. FAX may discontinue alternative workweek work schedules at any time if it is determined by management that they detrimentally affect department operations and services. A thirty (30) day advance notice will be given in writing to affected Bus Drivers, ATU Local 1027, and the Labor Relations Division. The decision to discontinue alternative workweek work schedules is neither appealable nor grievable. If FAX discontinues alternative workweek work schedules established under this provision, a new sign-up will be held and Bus Drivers will revert to 5/8 standard/normal workweek work schedules in accordance with Article VIII, D.1., Sign-Ups.

e. Except as detailed directly below, applicable MOU provisions, Salary Resolution, FMC, and Administrative Order Sections concerning alternative workweek work schedules (i.e., 4/10) limitations on OT, holidays, leave accrual and usage, sick leave accrual and usage, and night shift premium pay will govern.

(1) OT - Work in excess of ten (10) hours in one (1) day, or on days off in a workweek shall be compensated at one and one-half (1 1/2) times the base rate of pay.

Ten (10) hours of work on a holiday, which is a regular workday, shall be compensated at normal base pay, plus eight (8) hours of straight time/base pay for the holiday.

(2) Holidays - Bus Drivers working a 4/10 shall receive 12 holidays of eight (8) hours, plus their birthday of eight (8) hours. Bus Drivers off on a holiday which falls on a regular workday shall receive eight (8) hours of base pay for the holiday, and may elect to take two (2) hours vacation or CTO to provide for a full ten (10) hours of pay, or may elect to take two (2) hours leave without pay.

(3) Sick Leave - Bus Drivers working a 4/10 shall accumulate the same number of hours of sick leave per month as under the 5/8 standard.

(4) Vacation - Bus Drivers working a 4/10 shall accumulate the same number of vacation hours per month as under the 5/8 standard.

f. In the event FAX decides to discontinue the 4/10 alternative workweek work schedules, a new sign-up will be held using run-cuts substantially similar to those in effect at the time this agreement is ratified. The run-cuts to be bid will include a percentage of daylight, midday, and night runs, with days off similar to those in effect at the time this agreement is ratified.

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4. Sick Leave

a. Full-time Bus Drivers shall accrue sick leave at the rate of eight (8) hours for each completed calendar month of employment * * *. **Effective May 1, 2015, sick leave shall accumulate up to a maximum of eight hundred (800) hours. Employees with leave in excess of six hundred fifty (650) hours as of implementation of this MOU shall have all leave over six hundred fifty (650) hours placed in a special bank which may be used for any purpose sick leave is used.**

A supervisor shall have the right to require that a Bus Driver provide a physician's verification of personal illness at any time the supervisor suspects that the request for sick leave may not be legitimate. (See 4.d. for Family Sick Leave verification.) In the event of a disagreement, the matter will be referred to the Transit Operations Manager or designee for final determination. FAX will provide the Bus Driver with a written explanation outlining the reason(s) for said request. Failure to comply with a request by a supervisor to provide a physician's verification of illness will be grounds for corrective action, up to and including termination.

Sick Leave Policy for Fax Bus Operators, P2-3 and P2-4, Doctor's Verification, shall no longer apply to members of this Unit. * * * Attendance Policy, Addendum I, incorporated into this MOU by reference 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, the provisions of the Attendance Policy, shall apply.

* * *

b. Notwithstanding the provisions in the Attendance Policy, the following shall apply:

(1) A Bus Driver subject to disciplinary action that results in a suspension without pay or imposition of a fine shall have the option to request either the suspension without pay or in lieu of the suspension, a fine pursuant to FMC Sections 3-280 and 3-281.

(2) Bus Drivers are encouraged to schedule all routine medical and/or dental appointments outside of regular work hours when practical. Routine medical and/or dental appointments will not be considered an incident provided the Bus Driver notifies dispatch before 10:00 a.m. the day prior to the

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appointment, written verification of the appointment is provided upon the Bus Driver's return to work, and the Bus Driver works a minimum of four (4) hours on the day in which the appointment occurred.

The parties acknowledge that there may be situations in which it will not be reasonable to schedule a doctor's appointment that would allow a Bus Driver to return to work in less than four (4) hours (e.g., Bus Driver has a 5:00 a.m. sign on time and the doctor does not schedule appointments until 9:00 a.m.). In those cases in which notice of the routine medical and/or dental appointment was given before 10:00 a.m. the day prior to the appointment, the Bus Driver can request the use of vacation leave to cover the time between the appointment and the sign on time. If approved, this time will be considered as pre-approved leave and will not be counted as an incident. An exception to this provision is if multiple doctor's appointments are scheduled for the same day.

All doctor's appointments of four (4) hours or less that are made during work hours without notice given before 10:00 a.m. the day prior to the appointment, will be considered an incident unless the Bus Driver provides written verification from the treating physician that the illness/injury was an emergency that required immediate medical care.

(3) A partial incident is when a Bus Driver reports for work as required, and remains at work as scheduled for a minimum of four (4) hours, and for PPTs a minimum of fifty percent (50%), of their assignment for the day. Two (2) partial incidents equal one (1) incident in a rolling twelve (12) month period. If the partial incident continues into the next working day(s), the Bus Driver shall incur only one (1) incident for the absence.

(4) In the event a Bus Driver does not return to work following an approved leave under the Attendance Policy, the Bus Driver will be charged with an incident. However, the incident may be submitted to Transit General Manager or designee for review.

c. Appointment cards are not acceptable forms of verification.

d. Full-time Bus Drivers shall be allowed up to forty-eight (48) hours of accumulated sick leave per fiscal year for Family Sick Leave.

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Family Sick Leave shall be used only for those purposes defined in the California Labor Code. Use of Family Sick Leave shall be authorized and recorded by a department head or designee.

The number of hours used for Family Sick Leave will be applied in all situations in which the utilization of Family Sick Leave is requested (e.g., when a Bus Driver is "forced" to work on their day(s) off pursuant to the provisions of this MOU.) If the use of Family Sick Leave includes a doctor's appointment, a supervisor shall have the right to require verification from the treating physician.

A Bus Driver who utilizes Family Sick Leave shall fill out a separate form attesting to the fact that the use of Family Sick Leave was made in accordance with the provisions of the California Labor Code. A Bus Driver who falsifies this information shall be subject to disciplinary action up to and including immediate termination.

e. Bus Drivers returning from sick or injury pay who fail to notify Dispatch before 10:00 a.m. the day prior to their return may be given any available work or sent home, as determined by the Department.

f. Bus Drivers who are subject to a 6th Incident under the Attendance Policy will receive a written reprimand and counseling to be served only by the Transit General Manager or Transit Operations Manager.

g. The Attendance Policy shall be applied on a rolling twelve month period * * *. In the application of the Attendance Policy, it is understood that Section II, paragraph 2, shall be applied to mitigate rather than increase the applicable disciplinary action.

[§ deleted]

5. <u>Holidays</u>

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

(1) January 1.

(2) The third Monday in January.

(3) The third Monday in February.

(4) The last Monday in May.

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(5) July 4.

(6) The first Monday in September.

(7) September 9. Effective calendar year 1994, the parties have agreed that the Day before Christmas will be the holiday in place of Admissions Day, with FAX's prerogative to operate at either Saturday or Sunday level service.

(8) November 11.

(9) Thanksgiving Day in November.

(10) The Friday after Thanksgiving Day in November.

(11) December 25.

(12) Bus Driver's Birthday.

[§ deleted]

Any day or part of a day declared by the Council, ordinance or resolution, to be a holiday.

**b**. 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.

**c**. All Bus Drivers will receive eight (8) hours compensation for the above holidays with the following exceptions:

(1) Work performed on a holiday which is a scheduled work day, a Bus Driver shall receive regular salary plus the applicable hourly rate for the hours worked on that day.

(2) When a holiday falls on a regularly scheduled day off, Bus Drivers in this unit will * * * **receive** (8) hours of holiday * * * **leave**.

(3) Bus Drivers who are called in or scheduled to work a holiday, which is their regularly scheduled day off, will be compensated at time and one-half for a minimum of two hours or, for actual hours worked, whichever is higher.

(4) Bus Drivers who are on leave without pay prior to a holiday will not receive compensation **or leave** for the holiday unless

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they actually work the holiday.

(5) Bus Drivers will be credited with eight hours of vacation in recognition of their birthday.

(6) Holiday leave may be used for the same purpose and in the same way as approved vacation except as noted in (7) and (8) below.

(7) Employees may request payment and be compensated for up to 48 hours or 25% of their holiday leave balance, whichever is greater, each fiscal year during the term of this MOU.

(8) Holiday leave is not counted as annual leave accrual for annual vacation bid, but will be considered as part of the leave bank for the purpose of determining the additional 30% of hours that can be bid.

6. Return to Service or Position

a. For leaves of absence approved by the City and not exceeding one year, seniority for the purpose of bidding runs only shall continue to accumulate. Leave taken under the California Family Rights Act of 1991 (CFRA) and/or the Federal Family and Medical Leave Act of 1993 (FMLA) will not affect a Bus Driver's seniority accrual.

b. Any Bus Driver who is promoted, transferred, or demoted, except for disciplinary reasons, who returns to a position in the class of Bus Driver within one year of such action, shall be considered as maintaining seniority for the purposes of bidding for runs only. For periods exceeding one year, return to a position in the class of Bus Driver shall be considered as new employment for the purposes of bidding runs**.**

c. Former and current employees who return to service as a Bus Driver from a reinstatement list or as a result of involuntary demotion due to layoff shall, at the time of return to service as a Bus Driver, be placed at the bottom of the seniority list for the purpose of bidding for runs in the order of return to service. Thereafter, the reinstated Bus Drivers shall move up the seniority list as new or reinstated full time Bus Drivers are added.

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7. Complaints/Inquiries

a. Complaints received from members of the public about individual Bus Drivers will be treated as inquiries, unless an "Inquiry/Complaint Form" is actually signed by the complaining party.

b. A complaint which is not verified by a witness or put in writing and signed by the complainant, or communicated to FAX within sixty (60) days of the alleged occurrence, shall be considered an inquiry and not be placed in the Bus Driver's personnel file, but may be kept by the Transit Department for not more than six (6) months. Any inquiry shall be brought to the attention of that Bus Driver by a supervisor.

c. An "Inquiry/Complaint Form" signed by the complaining party that says "see attached" and attaches a letter or statement regarding the complaint meets the requirements of the MOU. If the complainant is physically unable to sign the "Inquiry/Complaint Form," the complaint can be taken verbally. FAX is not prohibited from assisting complainants. Complaints shall be brought to the attention of the Bus Driver by a supervisor. FAX management shall provide a Bus Driver with a written copy of every complaint made by a member of the public against that Bus Driver as soon as practical, but not more than ten (10) calendar days after the complaint is received by the Department. The copy of the complaint shall not include the name of the complainant. Signature on the "Inquiry/Complaint Form" by a Bus Driver is not an admission of guilt but only proof that the Bus Driver has seen the "Inquiry/Complaint Form" and has had the opportunity to respond to it.

d. FAX management shall promptly investigate all complaints. Upon completion of the investigation of a complaint, FAX management shall indicate on the "Complaint/Inquiry Follow-up Form", along with any other comments deemed appropriate, the disposition of the complaint using one of the following designations: "sustained," "unsubstantiated," "exonerated," or "unfounded". The "Complaint/Inquiry Follow-up Form" shall state the specific reasons which FAX management relied upon in making the determination that a complaint has been determined to be "sustained," "unsubstantiated," "exonerated," or "unfounded". The reasons, including any known evidence, for reaching such determination shall be stated on the "Complaint/Inquiry Follow-up Form" in detail, explaining clearly the decision, and if sustained, shall state the FAX policies, rules, or established procedures claimed to have been violated.

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(1) A copy of the determination will be provided to the Bus Driver.

(2) If the complaint is determined to be "sustained," upon receipt of the determination, the Bus Driver may, within ten (10) calendar days, respond, in writing, to the allegations contained therein and said response will be attached to the complaint.

Any complaint not timely processed in accordance with this procedure shall not be made part of the Bus Driver's record.

For purposes of this provision, the following definitions shall apply:

Sustained: The evidence and written determination establishes, to the satisfaction of the Transit General Manager or the Transit Operations Manager, that the allegation in the complaint did occur and constitutes a violation of FAX policies, rules, or established procedures.

Unsubstantiated: The evidence and written determination is, to the satisfaction of the Transit General Manager or the Transit Operations Manager, insufficient to prove or disprove the allegation in the complaint.

Exonerated: The evidence and written determination establishes, to the satisfaction of the Transit General Manager or the Transit Operations Manager, that the conduct alleged in the complaint occurred but was within FAX policies rules or established procedures.

Unfounded: The evidence and written determination establishes, to the satisfaction of the Transit General Manager or the Transit Operations Manager, that the allegation in the complaint is either false or not supported by the evidence.

For the purpose of this provision, any days during the ten (10) calendar day period under subsections c. and d. (2), above, on which the Bus Driver is absent for any reason shall not be counted.

8. Accidents/Incidents

Any Bus Driver required by the City to complete an accident or incident report before or after normal working hours shall be paid at the applicable hourly rate for fifteen (15) minutes or the time actually required to complete the report. Bus Drivers shall complete accident/incident reports before the close of the business day on the day of the accident/incident

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unless physically incapable of doing so. Bus Drivers who do not complete the accident/incident reports before the close of the business day on the day of the accident/incident will be subject to discipline.

The Bus Driver can be required to complete the report in an area designated by management. If requested, Bus Drivers will be allowed to consult with a representative of their choice while completing an accident/incident report.

It is the Bus Driver's responsibility to request a representative and obtain one (although FAX will make reasonable efforts to contact representatives who are working). The representative will not be paid during time spent representing Bus Drivers; however, a representative on stand-by may assist without loss of compensation, but may have to leave if assigned work.

The Bus Driver may choose to wait for a particular representative, but will not be paid while waiting. A Bus Driver who chooses to leave and return later, before the close of the business day to fill out the report, will be paid as if the Bus Driver had filled out the report at the end of the normal shift. A Bus Driver cannot create an entitlement to any form of premium pay by exercising the option to leave and return later to fill out the report. A supervisor can be present with the Bus Driver and representative while the report is being completed.

<u>When a Bus Driver is charged with a preventable accident</u>**:**

**a.** The Bus Driver shall have seven (7) calendar days to appeal the charge to the Accident Review and Safety Committee (ARC). Not more than thirty-one (31) days from the date of the appeal, the ARC shall review the charge and make recommendations. If no such review is conducted, through the fault of the City, the charge shall be dismissed.

**b.** A request for postponement by either party beyond the next scheduled ARC hearing date may be granted by by majority decision of the ARC if good cause exists. If no postponement is requested or granted by majority decision of the ARC, and/or the Bus Driver does not appear at the hearing, the decision of the ARC shall become final on the hearing date.

ATU shall have the right to conduct its own investigation of accidents and incidents. It may interview witnesses, preserve evidence, etc. Union representatives must make it clear that they are not representing the City when engaging in this activity. They cannot be in FAX uniform. They must make it clear that they are acting on behalf of the Bus Driver as an individual.

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9. Accident Review and Safety Committee (ARC)

a. The ARC shall be comprised of two (2) Bus Drivers selected by ATU and two (2) FAX Management employees selected by the Transit General Manager. The Chair shall be mutually selected by FAX and ATU and shall be a City employee familiar with safety procedures and practices. All members, including the Chair, shall serve for a minimum of six months. The City and ATU representatives may be removed and a new member(s) selected with fifteen (15) days prior notice to the other party.

b. An appeal by either party to the final decision of the ARC must be made to the Transit General Manager within fourteen (14) calendar days of the decision of the ARC.

c. The Transit General Manager will make a decision within twenty-eight (28) calendar days of receipt of the appeal. If no decision is made within that time, the decision of the ARC shall be final.

d. The decision of the Transit General Manager, or a final decision of the ARC:

(1) May be appealed to the City Manager within fourteen (14) calendar days of a decision by the Transit General Manager.

(2) If the Transit General Manager does not render a decision, an appeal to the City Manager may be made within twenty-eight (28) calendar days of receipt of the appeal made to the Transit General Manager.

e. The ARC may also address other areas involving safety as may be determined appropriate, including the amount of time necessary for sign-on, bus inspection, travel time, relief time, and pull-in time.

f. The ARC shall meet at least once monthly.

g. Such bus maintenance records and information as may be pertinent to the ARC's findings shall be made available if requested at least three (3) working days in advance of the ARC's hearing date. All information distributed at the ARC meetings for review of accidents/incidents may be kept by ATU representatives.

A Bus Driver may be represented by ATU at the ARC hearing, and may show a pertinent video to explain their side of the case. The video will not include interviews of witnesses. It is understood that the video will be short in length (3-5 minutes).

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FAX equipment will not be used to "stage" an incident unless approved by the FAX Operations Manager. A representative may ride a FAX bus, in revenue service and under normal circumstances, with a video camera.

All safety rules must be followed while on board the bus. If a video is presented to the ARC, management has the right to delay a decision on the case while additional follow-up is conducted.

Any delay as a result of a video, will automatically extend any time lines on any possible action taken. A Bus Driver may present a witness' written account of what they saw, but witnesses are not allowed at the ARC.

The ARC will view all videos and will not screen some and not others.

E. BENEFITS FOR PERMANENT PART TIME (PPT) BUS DRIVERS

1. General

Bus Drivers occupying PPT allocated positions shall be members of the recognized ATU unit. The terms and conditions set forth in the current MOU apply to Bus Drivers occupying PPT allocated positions, in addition to those set forth in this agreement and FMC, administrative orders, policies, procedures, rules and regulations.

2. Additional Departmental Rules and Regulations

a. PPT Bus Drivers shall not be part of the extra board, but at each sign-up period shall be allowed to bid one (1) or more work assignments by seniority from assignments designated by management as regular PPT work assignments. PPT Bus Drivers shall not be allowed to bid or be assigned more than thirty-two (32) hours of work per week, except in an acting capacity. PPT Bus Drivers who are assigned to drive more than thirty-two (32) hours per week will be paid one and one-half (1 1/2) times the applicable hourly rate except for those situations that are beyond the control of the Department. Examples of these situations may include vehicle breakdown, traffic conditions and passenger loads, etc.

b. Spread time provisions shall not apply to PPT Bus Drivers.

c. In addition to any prescribed forms of discipline, PPT Bus Drivers receiving miss-outs may receive work for the day of the miss-out at the discretion of management. Work so received shall not exceed the number of hours the PPT Bus Driver was scheduled to work for the day of the miss-out.

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3. Recruitment and Retention

a. PPT Bus Drivers shall be recruited, hired, employed, and disciplined as permanent employees pursuant to the FMC, administrative orders, policies, procedures, rules, regulations, the MOU, and as may be provided in this agreement.

b. The following shall apply to PPT Bus Drivers hired before July 1, 2006:

PPT Bus Drivers shall serve a probationary period consisting of one thousand-forty (1,040) hours of non-overtime work from the date of appointment to a PPT allocated position. A Bus Driver who completes a PPT probationary period shall not serve an additional probationary period if appointed to a permanent full-time allocated Bus Driver position as long as such employment as a PPT Bus Driver has been continuous up to appointment to a permanent full-time allocated Bus Driver position.

If a PPT Bus Driver is appointed to a permanent full-time allocated Bus Driver position, the Bus Driver shall complete the balance of the required probationary period as a PPT. This is calculated by subtracting the number of non-overtime hours worked as a PPT Bus Driver from one thousand-forty (1,040) hours, dividing the remainder by forty (40) hours, which equals the number of weeks remaining in the probationary period to be served in the permanent full-time position appointment (e.g., 1,040 - number of non-overtime hours = remainder ) 40 hours = # of weeks remaining in the probationary period to be served). Any hours spent on paid or unpaid leave shall not be credited toward calculating the completion of the probationary period.

c. The following shall apply to PPT Bus Drivers hired on or after July 1, 2006:

All PPT Bus Drivers hired on or after July 1, 2006, shall serve a probationary period consisting of nine (9) months from the date of appointment to a PPT allocated position. A Bus Driver who completes a PPT probationary period shall not serve an additional probationary period if appointed to a permanent full-time allocated Bus Driver position as long as such employment as a PPT Bus Driver has been continuous up to appointment to a permanent full-time allocated Bus Driver position.

If a PPT Bus Driver is appointed to a permanent full-time allocated Bus Driver position, the Bus Driver shall complete the balance of the required probationary period. Any PPT Bus Driver who Is

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absent for any reason from work for five (5) consecutive regular work days (four (4) consecutive regular work days for those on a four (4) day work week) shall have their probationary period extended by one (1) week for each consecutive five (5) regular work days absence (four (4) consecutive regular work days for those on a four (4) day work week).

d. Appointments to vacant permanent full-time allocated Bus Driver positions shall be made from Bus Drivers holding positions as PPT Bus Drivers. The Bus Driver having the greatest seniority as a PPT Bus Driver shall be offered the vacant position which the City may in its sole discretion, decide to fill. Seniority only for the purpose of promotion shall be reduced twenty-one (21) calendar days for each twenty-one (21) consecutive calendar days that the PPT Bus Driver is not doing platform work, provided, however, that loss of seniority under this provision shall not apply in the case of scheduled vacation, leave for jury duty or military leave. In the event all PPT allocated Bus Driver positions are vacant, appointments shall be made from a Bus Driver eligible list. Service as a PPT shall not be counted toward seniority as a permanent full-time Bus Driver, except where length of service of two (2) or more permanent full-time Bus Drivers is identical.

e. In the event of a reduction in work force or lay off, PPT Bus Drivers shall be separated from city service before any permanent full-time Bus Driver as defined in the FMC.

f. The parties agree that Bus Drivers occupying permanent full-time positions may transfer to vacant PPT allocated positions, and will receive the benefits provided in paragraph 4 of this agreement. In order to establish the terms and conditions under which such transfers will be accomplished, the parties have agreed to a side letter setting out the details under which such transfers will be accomplished.

g. Management will limit the number of PPT Bus Drivers to not more than fifteen percent (15%) of the total allocation of permanent, full-time Bus Drivers.

4. <u>Benefits</u>

a. <u>Uniform Allowance</u> - PPT Bus Drivers shall receive the same uniform allowance as that set forth in MOU Article IX (E).

b. <u>Jury Duty/Court Attendance</u> - PPT Bus Drivers shall be compensated for jury duty attendance and court attendance in accordance with applicable FMC provisions.

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c. Workers' Compensation – Workers' Compensation benefits shall be those amounts established by the State of California Workers' Compensation regulations.

d. Overtime - PPT Bus Drivers shall receive overtime compensation at the applicable hourly rate of hours worked in excess of forty (40) hours in a week, and for hours worked on a holiday.

e. Holidays - PPT Bus Drivers shall receive paid leave for holidays at a rate proportionate to a permanent full-time employee (FTE) occupying the class of Bus Driver.

f. Sick Leave - PPT Bus Drivers shall accumulate sick leave at a rate proportionate to a permanent FTE occupying the class of Bus Driver.

g. Family Sick Leave - PPT Bus Drivers shall be allowed up to 38.4 hours of accumulated sick leave per fiscal year for Family Sick Leave. Family Sick Leave shall be used only for those purposes defined in the California Labor Code.

h. Vacation - PPT Bus Drivers shall accumulate vacation leave at a rate proportionate to a permanent FTE occupying the class of Bus Driver.

i. Retirement - PPT Bus Drivers shall not be members of the Employees' Retirement System, and shall be enrolled in the Social Security program. This retirement paragraph does not apply to Bus Drivers who transfer from permanent full-time Bus Driver positions to PPT allocated positions, and who were in the Employees' Retirement System at the time of the transfer. Such Bus Drivers shall remain in the Employees' Retirement System, make prorated contributions based on the number of hours worked, and shall receive prorated service credits.

j. Health and Welfare - PPT Bus Drivers shall receive health and welfare benefits as set forth herein. A PPT who declines to participate in the health plan at employment may elect to participate each year thereafter. Participation at any time shall be by deduction from the Bus Driver's paycheck.

PPT Bus Drivers - the City shall contribute, toward the premium required by the Fresno City Employees Health and Welfare Trust, an amount of money on behalf of the Bus Driver in proportion to the number of hours scheduled for that position, as reflected in the adopted budget. The City shall make such contribution only on the

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condition that the Bus Driver agrees to contribute to the Fresno City Employees Health and Welfare Trust the difference between such City contribution and the amount required by the Fresno City Employees Health and Welfare Trust for the level of benefits provided. If the Bus Driver does not so agree, then the City shall make no contribution for health and welfare for such Bus Driver. Election to pay such difference shall be made within thirty (30) days of appointment.

F. RUN EXCHANGES

1. Extra board Bus Drivers are excluded from participating in run exchanges. The exchange must be between regular Bus Drivers only and must be completed by the end of the sign up in which it was created. The process for allowing the exchange of runs will be reviewed periodically and FAX management may, at its discretion, extend the process to include Bus Drivers' days off.

2. The exchange must be documented on a form, signed by both Bus Drivers, and approved by FAX management at least 48 hours before the exchange is to take place and/or 24 hours before the board is posted.

3. The City shall incur no additional liability due to such exchanges nor shall the City assume any responsibility regarding "pay back" of the exchange. The hours worked by the substitute Bus Driver will be excluded by the City in the calculation of the hours for which the substitute Bus Driver would otherwise be entitled to overtime compensation under the Fair Labor Standards Act. When one Bus Driver substitutes for another, each Bus Driver will be compensated as if they worked their normal scheduled run.

4. When one Bus Driver substitutes for another, the Bus Driver being substituted for will be credited as if the Bus Driver had worked their normal schedule for that shift. If the substituting Bus Driver wishes to be compensated for the substitute shift worked at the base/straight time rate of pay, then the Bus Driver being substituted for shall transfer the applicable number of vacation or CTO hours to the substituting Bus Driver's "like" account. (Note: The Bus Driver being substituted for may only select one account from which to take hours for transfer, and those hours shall only be transferred to the volunteer substitute's "like" account. If the substituting Bus Driver's selected account is at the maximum allowable balance, the substituting Bus Driver shall be compensated at the base/straight time rate of pay from the transferred hours. An internal processing form has been established to accomplish this transfer.)

5. Any Bus Driver who fails to operate a run as a result of an exchange, will be subject to any established disciplinary action, and will not be permitted to engage in future exchanges for a period of one year.

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6. The privilege of allowing run exchanges as outlined above will be under review and may be terminated with thirty (30) days written notice to the Labor Relations Division and ATU if in the opinion of management the process has adversely affected scheduled operations or has resulted in Bus Driver abuse. This subparagraph shall terminate effective midnight June 30, 2004.

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# ARTICLE IX

## COMPENSATION AND BENEFITS

A. GENERAL

1. 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

1. Effective July 1, 2006, an "F" step will be added to Exhibit A, representing a five percent (5%) increase above "E" step. A Bus Driver is required to be in the "E" step range for one (1) year prior to advancement to the "F" step. Bus Drivers currently at "E" step who have been in "E" step for at least one (1) year will automatically move to the "F" step.

2. **Effective April 6, 2015,** the base rate of pay of all Bus Drivers in this unit (i.e., salaries) will be **restored to the rate in effect prior to** * * * December 31, 2012 in accordance with the attached Schedule A. **This is approximately three percent (3%) increase in base pay for Bus Drivers.**

3. **The base rate of pay of all Bus Drivers in this unit (i.e., salaries) will be increased by two percent (2%) effective July 1, 2015, in accordance with the attached Schedule A.**

4. **The base rate of pay of all Bus Drivers in this unit (i.e., salaries) will be increased by two percent (2%) effective July 1, 2016, in accordance with the attached Schedule A.**

5. **Employees in Unit 6 hired on or after April 6, 2015, shall make an additional contribution equal to one and one-half percent (1.5%) of their pensionable compensation to the City of Fresno Employees Retirement System, reducing the City contribution by a corresponding amount. In accordance with Internal Revenue Code Section 414(h)(2) and related guidance, the City shall pick-up and pay the contribution by salary reduction in accordance with this provision to the City of Fresno Employees Retirement System. The employee shall have no option to receive the one and one half percent (1.5%) contribution in cash. The one and one-half percent (1.5%) contribution paid by the employee will not be credited to an employee's accumulated contribution account, nor will it be deposited into a member's Deferred Retirement Option Program ("DROP") account.**

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C. FRESNO CITY EMPLOYEES HEALTH AND WELFARE TRUST

1. The City and ATU 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 Bus Drivers represented by ATU. **Effective May 1, 2015, the** City's contribution for * * * Bus Drivers will be * * * **seventy-five percent (75%)** of the premium established by the Fresno City Employees Health and Welfare Trust Board **through June 30, 2015**. **Effective July 1, 2015, increases to the health and welfare premium will be split so that 50% will be absorbed by the City and 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%).** Bus Drivers may opt to contribute the amount necessary to make up the difference through payroll deductions, or accept a reduced coverage option. * * *

   **In order to achieve compliance with the Affordable Care Act (ACA) (U.S. Public Law 111-148 and 111-152) and ACA regulations, if an employee in this Unit would otherwise be required to pay more than 9.5% of the employee's total base salary and earned premium pays (other than overtime) for a calendar month for health care premiums for a health insurance plan that provides minimum essential coverage, the City will pay an additional amount towards the health insurance premium necessary to reduce the employee health insurance contribution so the employee's contribution is no more than 9.5% of total base salary and earned premium pay for a calendar month. The additional amount shall not exceed the minimum required amount by the ACA to maintain affordability. The City shall determine the amount of additional payment. Such payment will not be provided if the cost of an available health insurance plan that provides minimum essential coverage does not exceed the 9.5% of the employee's total base salary and earned premium pay for the month even if the employee does not elect to enroll in that plan.**

   **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 written request, the City will meet with the Union to match that benefit.**

   **The City may meet with ATU and other City bargaining units to discuss an alternative health care plan and/or to modify the Health**

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**and Welfare Trust agreement, and to ensure compliance with the Affordable Care Act.**

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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. BUS PASSES

Free bus passes shall be provided to members of this Unit, covering the Bus Driver, registered domestic partner, spouse, dependent children eighteen years of age or younger, and disabled children. To be eligible for the free pass, the family member must also be eligible to be enrolled as a dependent in the City Health & Welfare Plan. The passes must be renewed every fiscal year and issued to each Bus Driver.

It is the responsibility of the Bus Driver to ensure that bus passes are not abused by family members, however, Bus Drivers will not be penalized for unknown dependent misuse of bus passes. Misuse of bus passes by dependents may result in loss of pass privileges for the dependent for a period not to exceed six (6) months. Any Bus Driver who knowingly allows the abuse of free bus passes by family members may have the privilege of bus passes revoked for all members, including the Bus Driver, for a period not to exceed six (6) months.

Bus passes will be provided to retired motor coach operators. The passes will require annual renewal and are intended for use by the retired Bus Driver only.

E. UNIFORM PURCHASE AND MAINTENANCE ALLOWANCE

1. Uniform Purchase and Maintenance Allowance

Bus Drivers shall receive a voucher credit for $250 per year as a uniform purchase available each January 1. The voucher can only be used at the uniform vendor selected by the Department. Proration of the uniform voucher will be based upon the number of days actually worked (vacation and light duty are considered days worked) during the previous year in accordance with the following proration guidelines:

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| No. Days Worked | % $ To Receive |
|---|---|
| 180 days or more | 100% |
| 144 to 179 days | 75% |
| 109 to 143 days | 50% |
| 71 to 108 days | 25% |
| 35 to 70 days | 10% |
| Less than 35 days | 0% |

**The voucher program shall end effective December 31, 2015.**

Bus Drivers shall receive $280 per year as a uniform maintenance allowance prorated and paid in semi-annual installments (by separate check) on the first pay date following each January 1 and July 1 with proration of the uniform maintenance allowance based upon the number of days actually worked (vacation and light duty days are considered days worked) during the previous six (6) month period in accordance with the following proration guidelines. **The amount shall be increased from $280 per year to $530 per year effective January 1, 2016.**

| No. Days Worked | % $ To Receive |
|---|---|
| 90 days or more | 100% |
| 72 to 89 days | 75% |
| 54 to 71 days | 50% |
| 36 to 53 days | 25% |
| 18 to 35 days | 10% |
| Less than 17 days | 0% |

2. Uniform application and enforcement to be consistent with uniform policy as developed by FAX.

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F. PROBATIONARY PERIOD

The probationary period for new Bus Drivers in the Unit hired before July 1, 2006 shall be six (6) months, such period to begin after the training period has been satisfactorily completed.

The probationary period for new Bus Drivers hired on or after July 1, 2006 shall be nine (9) months. Such period to begin after the training period has been satisfactorily completed. For Bus Drivers hired on or after July 1, 2006, any Bus Driver who is absent for any reason from work for five (5) consecutive regular work days (four (4) consecutive work days for those on a four (4) day work week) shall have their probationary period extended by one (1) week for each absence of consecutive five (5) regular work days (four (4) consecutive regular work days for those on a four (4) day work week).

G. LEAVE WITHOUT PAY

Leave without pay may be granted for a period not to exceed 120 days and may be extended by the City Manager, subject to the provisions of FMC Section 3-104.

Leave taken under the Family Rights Act of 1991 will not affect a Bus Driver's seniority accrual.

H. UNAUTHORIZED LEAVE AS RESIGNATION

A Bus Driver who without prior approval is absent or fails to perform their duties for three (3) consecutive working days shall be considered to have resigned their position, effective upon the first day of absence. FMC Section 3-115 controls the applicability and administration of this section.

I. WORKERS' COMPENSATION

1. Notwithstanding the provisions of FMC Section 3-118, effective * * * **May 1, 2015**, a Bus Driver who suffers an injury/illness in the course and scope of City employment shall receive * * * **66.67% of average weekly earnings in the fifty-two (52) weeks prior to the injury** of the Bus Driver's full wages or salary * * *. **Should the State mandated Workers' Compensation rate of payment be adjusted, the City and the Association will have a limited reopener to adjust the rate accordingly.**

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

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(1) the Bus Driver is hospitalized as an inpatient for at least twenty-four (24) hours;

(2) the Bus Driver is absent from work 14 days or more;

(3) the Bus Driver is placed on light duty at any time during the first three (3) days.

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

3. At the Bus Driver's option, in the event work related injury/illness pay from the City is not provided during the first three (3) days of absence due to the work related injury or illness, the Bus Driver may take sick leave, vacation, holiday, or compensatory time off (CTO), for that period.

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

5. If a Bus Driver is placed on sick leave, vacation, holiday, or CTO pending determination as to whether the injury or illness is industrial, and the injury or illness is determined to be industrial, sick leave, vacation, holiday or CTO shall be restored and the Bus Driver placed on work related injury/illness leave as provided herein.

6. If a Bus Driver is placed on sick leave, vacation, holiday, or CTO 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, holiday or CTO shall not be restored and the absence will be considered an incident as outlined in Administrative Order 2-19.1.

7. Retirement benefits shall not be reduced as a result of the level of compensation established herein. Changes in contribution by the City and Bus Driver shall be in accordance with applicable retirement code sections.

8. Taxes shall not be withheld on compensation which is paid due to an injury or illness sustained in the course and scope of employment with the City. In the event a court of competent jurisdiction, or other competent authority, finds this Section invalid, the provisions of Article X of this MOU

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shall apply. Any subsequent agreement reached by the City and ATU on a replacement for this Section shall be made effective back to the date of the determination of the invalidity of this Section.

J. RETIREMENT

1. The parties agree that during the term of this MOU they will continue to meet and confer with respect to those enhanced retirement benefits currently being explored by the Retirement Board, as well as with respect to those issues related thereto. It is understood that this does not commit the parties to a particular outcome; only to continue meet and confer on this subject during the term of this agreement.

2. The parties agree that upon final resolution of the litigation known as *Fresno Organization of Retired City Employees, et al. v. City of Fresno Retirement Board, et al.*, (Fresno County Superior Court Case No. 03 CE CG 02595), each will take those steps necessary to implement the results of said final resolution.

K. HEALTH REIMBURSEMENT ARRANGEMENT (HRA)

The City currently maintains a Health Reimbursement Arrangement (HRA) that qualifies as a "health reimbursement arrangement" as described in Internal Revenue Service (IRS) Notice 2002-45 and other guidance published by the IRS regarding HRAs. ATU and the City of Fresno mutually agree that the HRA will be in effect for one (1) year as a trial period, and, if both parties agree, will be extended for the term of the MOU. Eligibility to participate will begin July 1, 2006 and will not occur until after Council approves the amendment to the Plan document.

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

- The number of accumulated sick leave hours in excess of 240 hours at the time of retirement multiplied by 40% of the Bus Driver's then current hourly base rate of pay.

- The hourly base rate of pay shall be the equivalent of the monthly salary for a Bus Driver as reflected in Exhibit A, multiplied by twelve (12) months then divided by 2,080 hours.

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The HRA accounts shall be book accounts only – no actual trust account shall be established for any Bus Driver. Each HRA book account shall be credited on a monthly basis with a rate of earnings equal to the yield on the City's Investment Portfolio (provided that such yield is positive).

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

While this provision is in effect, Bus Drivers shall not be allowed to cash out any accumulated or accrued sick leave at retirement.

L. TEMPORARY ASSIGNMENT TO PERFORM DUTIES OF ABSENT BUS DRIVERS

1. All temporary assignments shall be in accordance with FMC Sections 3-256, 3-257, 3-258, 3-259 and 3-260.

2. Notwithstanding the fact that such Bus Drivers may retain permanent status in their positions in this Unit, in the event a Bus Driver previously holding a position in this Unit is assigned to perform the duties of a position outside this Unit, such Bus Driver shall not be deemed to be included in this Unit during such assignment.

M. FEDERAL DRUG POLICY (FEDERAL OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT)

<u>Policy</u>

1. The parties agree that a policy entitled "Controlled Substances and Alcohol Testing Regulations" summarizing the federal regulations required by the Federal Omnibus Transportation Testing Act (ACT) was formally adopted by the City Council at a public hearing on December 20, 1994.

2. The parties acknowledge that subsequent to the adoption of the City's current policy, the U.S. Department of Transportation, Federal Transit Administration issued a "Best Practices Manual: FTA Drug and Alcohol Testing Program" to be applied by entities with employees subject to the regulations of the ACT. The Best Practices Manual further requires said entities to adopt a policy incorporating procedures to be utilized to assure compliance of the ACT, as described therein.

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3. The parties agree that it was necessary to revise and amend the City's current policy, now amended and entitled "Controlled Substances and Alcohol Testing Regulations, Fresno Area Express", to include the recommendations and requirements contained in the Best Practices Manual.

4. The parties agree that the policy has now been revised and amended to sufficiently summarize the current federal regulations required by the ACT. The amended policy will be distributed to every affected Bus Driver of this Unit, and at the time of training and orientation.

5. The parties agree that the Medical Review Officer (MRO), the Substance Abuse Professional (SAP) and the rehabilitation treatment program and facilities used for this purpose will be those designated by the respective employees health and welfare trusts and that employees referred to these services as a result of the application of this policy will be tracked separately and the charges billed directly to the City through the Risk/Safety Manager. The Risk/Safety Manager will be responsible for receiving all information related to the implementation of this policy and directing the applicable disciplinary action in coordination with the Labor Relations Manager.

N. VERIFIED TRANSIT TRAINING (VTT)

FAX will provide VTT as required by the State of California. FAX will notify Bus Drivers of their scheduled training time(s).

Training will be treated as a regular assignment and will be subject to the rules regarding an assignment. Training time under this provision will be considered hours worked for the purposes of calculating overtime.

O. BILINGUAL CERTIFICATION PROGRAM

1. The bilingual certification program consists of a City administered examination process whereby Bus Drivers may apply for bilingual examination, and if certified by the examiner, receive bilingual premium pay for interpreting and translating. * * *

   a. The Bilingual certification examinations will be conducted 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 examinations**,** applications must be received by the Human Resources

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Division during the month of November, but no later than the last regular business day in November.

(2) Bilingual examination application deadlines are not appealable or grievable.

b. Bilingual certification examinations are conducted for Cambodian, Hmong, Laotian, Punjabi, Hindi, Sign, Spanish and Vietnamese languages.

(1) Certified Bus Drivers 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 Bus Driver's Transit General Manager or designee.

(2) Certified Bus Drivers shall not refuse to interpret/translate while on paid status. Refusal may result in appropriate disciplinary action. Certified Bus Drivers may be assigned to any situation, and may be required to prepare written reports/materials related to the situation.

c. Effective the first Monday pay period following Council approval of this MOU, the bilingual premium pay rate for Bus Drivers will be as follows:

(1) Seventy-five dollars ($75.00) per month regardless of how many languages for which an employee is certified.

P. AMERICANS WITH DISABILITIES ACT, FMLA, AND CFRA

The City and the Union are aware of the passage of the Americans with Disabilities Act, the Federal Family and Medical Leave Act of 1993 (FMLA), and the California Family Rights Act of 1991 (CFRA). As of the effective date of this Memorandum of Understanding, leave taken under the FMLA and (CFRA) is governed by Administrative Order 2-21.

Q. HOURS PREMIUM PAY

Each permanent full-time equivalent Bus Driver who is scheduled to work P.M. hours that occur between the hours of 8:00 p.m. and 4:00 a.m. shall receive P.M. hours premium pay, in addition to the Bus Driver's base rate of pay, at the rate of one and 75/100 dollars ($1.75) per hour for all actual hours worked**,** that fall solely within the 8:00 p.m. to 4:00 a.m. time period.

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R. MOVEMENT BETWEEN STEPS

Bus Drivers hired into classes which have step increases will move from Step “A” to Step “B” on the anniversary date which is twelve (12) calendar months from the date the Bus Driver was appointed to the current class.

s. PAY FOR PERFORMANCE

It is agreed between the parties to continue to discuss and consider during the term of this agreement a pay for performance plan. Such pay for performance plan will only be implemented upon mutual agreement between ATU and the City.

T. STATE DISABILITY INSURANCE (SDI)

1. Employees who are in bargaining Unit 6, Bus Drivers represented by the Amalgamated Transit Union, Local 1027, shall be enrolled in the State Disability Insurance (SDI) coverage plan. Enrollment shall occur as soon as is practicable through the filing of the City of Fresno’s (City) Application for Elective Coverage with the State Employment Development Department (EDD). Within a minimum of six (6) months following submission and approval by the EDD director of the City’s Application for Elective Coverage an employee shall be eligible to file a valid claim.

   Employees eligible for SDI benefits are those who are defined by Section 2601, et seq. of California Unemployment Insurance Code.

   Eligible employees covered under the SDI program shall receive benefits pursuant to California Unemployment Insurance Code Section 2655.

2. Employees shall file claims in the same manner as required under the SDI Plan.

3. The City shall maintain SDI through employee payroll deductions to be funded by employee contributions.

4. Employees who are absent from duty and are receiving SDI benefits who are eligible to use sick leave, vacation leave, holiday leave, or compensatory time off, shall be eligible to integrate the payment of SDI benefits with such City-paid leave benefits.

   a. Integrating leave balances is defined as the SDI benefit and the monetary value of the employee’s leave balances added together to provide a regular bi-weekly income.

`

b. Integrating leave balances with SDI benefits will continue only if leave balances are available and the employee remains eligible to receive SDI benefits.

c. The intent of the provision providing for integration of benefits is to provide a combined biweekly adjusted net income not to exceed, 100% of regular bi-weekly income as long as such eligible disability qualifies and available leave balances exist. Other employee authorized deductions shall continue to be deducted from pay. Pay, including SDI benefits and bi-weekly pay, shall not exceed 100% of regular pay. If SDI benefits equal or exceed 100% of the regular pay, no City payment shall be made.

5. Eligible employees may use the following accrued City leave balances in conjunction with SDI benefits and in accordance with #6 below:

- Sick Leave
- Vacation Leave
- Holiday Leave
- Compensatory Time Off (CTO)
- Donated time, when all other leave balances have been exhausted.

6. An employee eligible for SDI benefits shall be limited to the use of Sick Leave at thirteen (13) hours per week to be posted at the beginning of each work week. The employee has the option of requesting use of Vacation Leave, Holiday, or CTO. Request of and approval of Vacation Leave, Holiday, or CTO will be per City policy. When approving such leave, supervisors and managers should be aware that leave could result in payment of more than an employee's regular salary when combined with SDI. If the employee chooses not to utilize Leave time other than Sick Leave or has none, then the employee will be in a Leave Without Pay (LWOP) status. An employee who has exhausted all other leave balances may apply for donated time in accordance with City policies. Use of donated time shall be limited to thirteen (13) hours per week. Time for Permanent Part-Time employees should be prorated in accordance with the employee's particular schedule.

7. Initiating the integration of the above accrued leave balances with SDI benefits shall be subject to the following conditions:

a. The employee contacts their department's payroll clerk to establish a date to begin use of leave. In the event that an employee is unable to notify the department, contact from the employee's spouse, parent, or other close family member will be sufficient.

b. Upon contacting their department, the employee shall immediately file a claim for SDI benefits with EDD.

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c. If the employee chooses not to contact their department as outlined in subsection (7.a.) above, use of leave balances will not occur until the City receives notification of eligibility from EDD.

d. If the City does not receive the appropriate notification from EDD prior to the end of the employee's disability status, the City shall modify the use of any leave balances to reflect appropriate use of leave in accordance with the MOU and City policies/procedures.

(1) When the employee's eligibility has been established, the City shall make leave payments to the employee in the usual manner in accordance with the MOU and City policies/procedures.

(2) Any period of absence during which an employee is receiving SDI benefits but is not receiving leave payments shall be deemed a leave of absence without pay.

(3) Service credits toward seniority, step increase eligibility, and probation periods shall be in accordance with the MOU and City policies/procedures.

(4) If an employee exhausts all available leave balances but continues receiving SDI benefits, the City's compensation shall cease.

(5) The City shall continue contributions toward the employee's health and welfare benefits and retirement contributions in accordance with established laws and practices during the pay periods that include leave payments by the City. The employee shall be responsible for payment of premiums required to maintain health and welfare benefits when City contributions cease in accordance with established laws, policies and practices.

(6) In the event the City determines that legislative, administrative or judicial determinations cause changes which in any way restricts, reduces or prohibits any provision of this Agreement, the parties shall immediately meet to discuss necessary amendments and/or modifications.

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## U. PRODUCTIVE TIME

The Union and the City have agreed to new provisions on leave, overtime, and holiday pay which are expected to reduce absenteeism and overtime pay, and increase productive time (i.e., actual time a Bus Driver is at work). Productive time at the start of the MOU averages about 1,550 hours per employee per fiscal year. The goal is to increase productive time to at least 1,700 hours average per employee per fiscal year. FAX will provide data on productive time at least every two (2) months during the term of this agreement. The Union and FAX agree to meet on a regular basis to discuss productive time and means to improve time at work.

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# ARTICLE X

## 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 specifically specified in the court's decision, and upon issuance of such a decision, the City and ATU 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 any such matters are hereby superseded, and terminated in their entirety. With respect to side letter agreements, any not attached to this MOU are hereby terminated in their entirety. Side letter agreements attached to this MOU shall continue in force subject to the terms contained therein, or in the absence of specified terms the side letters shall terminate upon the expiration of this MOU. Any side letter agreements entered into during the term of this MOU shall continue in force subject to the terms and conditions set forth within each 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. LIMITED REOPENER

**The parties agree to a limited reopener on work rules contained in this MOU. The parties agree to meet promptly to discuss the work rules at the request of either the City or the Union. Any change to work rules in this MOU require mutual agreement by the parties.**

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## ARTICLE XI

## TERMINATION

This MOU shall be in full force and effect from * * * **April 6, 2015**, through * * * **June 30, 2017**, subject to the Sections A., B., C., and D. below.

A. This MOU shall become effective only after ratification by the members of ATU, 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, 2017**.

B. During the life 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 such modification shall request in writing to meet and confer on the item, which item shall be specified in writing.

C. During the life of this MOU, either party may refuse such request without explanation if the item is directly related to or is an item directly considered herein, or if the item was included in a written proposal * * * **from the** party **making the request** during the meet and confer process which led to this MOU.

D. Nothing in this Article shall preclude the City from entering into a Joint Powers Authority or Regional Transit District during the term of this agreement with written notice to ATU. Following said notice, the parties agree to discuss the impact of such decision on the members of this unit.

`

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

FOR ATU, LOCAL 1027:

_____
RICK STEITZ
President/Business Agent

_____
AL MUNOZ
Vice-President

_____
VINCENT CASELLA
Secretary-Treasurer

FOR THE CITY OF FRESNO:

_____
KENNETH G. PHILLIPS
Labor Relations Manager

_____
JIM SCHAAD
Assistant Director of Transportation

_____
ELIZABETH WATLINGTON
Transit Operations Manager

_____
LORI NAJERA
Senior Human Resources Analyst

_____
STEVEN SHUBIN
Payroll Manager

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

BY: _____
Supervising Deputy

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## SCHEDULE A

**FY15**
**Bus Drivers - Unit 6**
**Effective December 31, 2012**
**(restore 3% salary reduction effective April 6, 2015)**

| STEP | A | B | C | D | E | F |
|---|---|---|---|---|---|---|
| Bus Driver - Monthly | 2,883 | 3,211 | 3,367 | 3,527 | 3,861 | 4,055 |
| Bus Driver - Hourly | 16.632692 | 18.525000 | 19.425000 | 20.348076 | 22.275000 | 23.394230 |

**FY16**
**Effective July 1, 2015**
**(2% salary increase)**

| STEP | A | B | C | D | E | F |
|---|---|---|---|---|---|---|
| Bus Driver - Monthly | 2941 | 3276 | 3435 | 3598 | 3939 | 4137 |
| Bus Driver - Hourly | 16.967308 | 18.900000 | 19.817308 | 20.757692 | 22.725000 | 23.867307 |

**FY17**
**Effective July 1, 2016**
**(2% salary increase)**

| STEP | A | B | C | D | E | F |
|---|---|---|---|---|---|---|
| Bus Driver - Monthly | 3000 | 3342 | 3504 | 3670 | 4018 | 4220 |
| Bus Driver - Hourly | 17.307692 | 19.280769 | 20.215385 | 21.173077 | 23.180769 | 24.346154 |

ADDENDUM I

| Subject: Attendance Policy (Applicable to ATU Unit 6) | Number: 2-19.2 |
|---|---|
| | Date Issued/Revised: May 20, 2003 |
| Responsible Department: Personnel Services | Approved: |

## Purpose

To establish a Citywide attendance policy.

## Policy and Procedures

This policy is to be construed on a rolling 12-month period following the effective date. A primary requirement for continued employment is regular attendance. While the City recognizes some absences may be unavoidable, City departments and the employees have an obligation to the public that demands regular and prompt attendance. It is the employees' responsibility to maintain their physical and mental well being and to achieve a maximum level of productivity.

Although it is recognized that excessive absenteeism is a proper reason for corrective/disciplinary action, up to and including termination of employment, it is the policy of the City to identify problem areas by keeping proper records, exploring avenues of available assistance, and encouraging compliance with attendance standards.

This attendance policy was developed to establish guidelines to further efforts to provide service to the public, and is designed to be a no-fault program. The pervasive problems stemming from inordinate absences are the focus of this policy, not the nature of the absences.

Authorized leaves and statutorily protected leaves (e.g., Family and Medical Leave Act, California Family Rights Act, Military leave, jury duty and subpoenas and court appearances, bereavement leave, vacation leave, FMC leave of absences, suspension, union business, etc.) are outside the scope of this attendance policy.

In the event of a serious illness or injury to the employee requiring the employee's absence during a future period of time, or a serious illness or injury to the employee's spouse, dependent minor children, or parents requiring the employee's absence during a future period of time, the applicable City department, the employee and applicable recognized bargaining unit may agree to a plan for the employee's absence(s) over a specified period of time. If such plan is agreed upon, absences under such plan shall not be subject to this policy.

**DEFINITIONS AND RULES - SECTION I:**

1. Excluding the authorized and statutorily protected leaves discussed above, an absence or absenteeism is defined as any failure to show up for or remain at work as scheduled regardless of the reason. Any employee who fails to show up for work, or remain at work as scheduled, will be charged with an incident of absence under this policy.

(a) Approved leaves (i.e., scheduled leave time prearranged, approved, and authorized) shall not be considered an incident.

(b) A day or days of continuous absence shall be considered one incident.

(c) Employees who are absent for an indefinite period due to illness must keep dispatch informed as to the status of their absence, including specifying any tentative return date if requested by their supervisor or designee.

2. Any employee who does not report to work in person or by telephone will be considered absent without leave, and subject to disciplinary action as provided in the applicable provisions of the Fresno Municipal Code, as the same may be amended from time to time.

**DISCIPLINE LEVELS - SECTION II:**

1. Excessive absenteeism by an employee shall subject said employee(s) to disciplinary action. Excessive absenteeism for purposes of this policy shall be defined as four (4) or more occurrences (i.e., incident) of absence within any consecutive 12-month period beginning with the effective date of this policy. The 12-month period referred to in this policy shall mean a "rolling" 12-month period.

2. The disciplinary levels under this policy are noted in the table below.

| Incident | Employee Optional Levels | | |
|---|---|---|---|
| 4th | Verbal Warning | | Verbal Warning |
| 5th | Letter of Understanding | | Letter of Understanding |
| 6th | Written Reprimand | | Written Reprimand |
| 7th | $100 Fine | OR | 2 Working Days Suspension |
| 8th | $300 Fine | OR | 5 Working Days Suspension |
| 9th | 10 Working Days Suspension | | 10 Working Days Suspension |
| 10th | Termination | | Termination |

The City reserves the right to deviate from this table of progressive disciplinary levels under mitigating circumstances. An example of a mitigating circumstance is a case where an employee with an otherwise exemplary prior history of good attendance [three (3) to five (5) years] experiences an unexpected problem, which causes inordinate temporary absenteeism, or whenever there is a pattern of abuse of time off.

3. For every 90-calendar-day period, an employee who has perfect attendance shall have his or her number of incidents reduced by one (1). The incident to be removed shall be the oldest in the rolling 12-month review period.

**ADDENDUM II**

Employee Performance Evaluation Form

Date: _____

Employee Name: _____

Rating Period: From _____ to _____

Type of Evaluation: ☐ Annual ☐ Probationary (Mid-Probation/End of Probation)

Rater's Name: _____ Rater's Title: _____

*Rating Categories: 1) Unsatisfactory/Needs Improvement, 2) Average, 3) Above Average, 4) Superior*

## Values (ACT IT)

**Accountability:** Take personal responsibility for actions.
**Compassion:** Care about and respect people.
**Trust:** Believe in each other.
**Innovation:** Seek new and creative ways to improve our business.
**Teamwork:** Work together to achieve the City Vision.

| Category | Rating | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| **Attendance** – Attendance is within acceptable guidelines. | | | | |
| **Observance of work hours** – Reports to work on time. | | | | |
| **Compliance with rules** – Complies with FAX rules and regulations. | | | | |
| **Responsibility** – Completes assignments in a responsible manner. Takes responsibility for actions on the job.. | | | | |
| **Safety practices/Operation of and care of equipment** – Demonstrates general observance of safety practices and safety rules. | | | | |
| **Public contact** – Demonstrates positive contacts with public. | | | | |
| **Interpersonal skill** – Gets along with peers, supervisors and other staff. | | | | |
| **Job knowledge, skills and proficiency** – Demonstrates an understanding of the scope of assigned duties and the ability to perform those duties as directed. | | | | |
| **Judgement** – Handles day to day problems. | | | | |
| **Deadlines** – Runs schedules within guidelines. | | | | |
| **Overall Score** | | | | |

**ADDENDUM III**

Employee Performance Evaluation Form

Based on the ratings given above, rate the employee on Key Objectives below:

## Key Objectives

| Category | Rating | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| **Customer Satisfaction**: Works well with the public. | | | | |
| **Employee Satisfaction:** Works well with co-workers, supervisors. | | | | |
| **Financial Management:** Uses available resources effectively. | | | | |

**Comments on Ratings by Rater**

**Employee Comments**

***Note: Attach current Success Plan.***

Rater: This report is based on my best judgment of the of the rated employee's performance.

Signature: _____ Date: _____

Reviewer: _____ Date: _____

For final Probation reports only: I do ☐, I do not ☐ recommend this employee be granted permanent status.

Employee: I certify that this report has been discussed with me. I understand that my signature does not necessarily indicate agreement.

☐ I wish to discuss this report with the reviewer.

Signature: _____ Date: _____

ADDENDUM III

**2006 SIDE LETTER OF AGREEMENT**
**BETWEEN AND FOR THE**
**CITY OF FRESNO**
**AND**
**AMALGAMATED TRANSIT UNION, LOCAL 1027**
**(Bus Drivers-Unit 6)**

**WAGE ORDER No. 9-2001 SIDE LETTER AGREEMENT**

1. It is agreed between the parties hereto that given the nature of the work provided by the members of the bargaining unit, such members cannot be relieved of all duty, as contemplated by Section 11.C. of Wage Order No. 9. In view of this fact, the parties have entered into this Side Letter Agreement providing that, commencing July 1, 2006, the employees in the Bus Drivers' Unit (Unit 6) may receive an on-the-job paid meal period rather than a duty-free meal period.

2. It is further agreed between the parties hereto that this Agreement expressly provides for rest periods for the employees covered by this Agreement, and that the employer will make reasonable efforts to provide rest periods during the work period but it is understood that such rest periods may be delayed. In instances when such rest periods must be delayed, such periods may, at the direction of the employer, be aggregated and/or provided at the end or the beginning of the employee's work shift.

3. It is agreed that, unless this Side Letter Agreement is terminated as provided in Article IX, Section B.2., of the FY07-FY09 MOU between the City and Local 1027, this Side Letter Agreement will remain in effect perpetually.

4. It is agreed between the parties hereto that starting July 1, 2006, and continuing thereafter, even if this Agreement is terminated as provided in Article IX of the FY07-FY09 MOU, the base pay for all bargaining unit employees will be increased by $0.41 per hour. It is further agreed that, provided this Side Letter Agreement is not terminated as provided in Article IX, Section B.2., of the FY07-FY09 MOU between the parties, every five (5) years thereafter, i.e., starting July 1, 2011, the base pay for bargaining unit employees will be increased by an amount equal to the increase in the annual consumer price index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 12-month percent change, multiplied by $0.41.

5. It is further agreed that should this Side Letter Agreement be terminated, as provided in Article IX, of the FY07-FY09 MOU, ATU Local 1027 will no longer be bound by its agreement with the City, and the City will be obligated to abide by all applicable aspects of Wage Order No. 9 including, but not limited to, the provisions of sections 11 & 12 thereof.

6. If it is subsequently determined, by any court of competent jurisdiction, that the City is liable for penalties with respect to the meal period and/or rest period provisions of

IWC Wage Order No. 9, in spite of the existence of this Side Letter Agreement, the Side Letter will expire, ATU Local 1027 will no longer be in agreement with the City to allow on the job paid meal periods and/or rest periods as provided by the Side Letter Agreement, and Local 1027 and the City will meet and confer in an effort to discuss mutually agreeable options at that time.

7. It is agreed between the parties hereto that any disputes pertaining to the matters set forth in this Side Letter Agreement shall be submitted to the grievance procedure set forth in the Memorandum of Understanding to which this Side Letter Agreement is attached, except that final and binding arbitration, as described below, shall replace the "Grievance Advisory Committee" described at Step Three of that procedure. The final and binding arbitration shall be heard by an arbitrator selected from a panel of seven (7) arbitrators provided by the California State Mediation and Conciliation Service. Said arbitrator, once selected, shall convene the parties for a hearing as soon as practical. The arbitrator shall not have the authority to amend, alter or change any provision of the Side Letter Agreement. A written award on the merits shall be final and binding on the parties. Compensation for the arbitrator shall be shared equally between the parties.

8. The parties further acknowledge that it is understood and agreed that this Side Letter of Agreement has the full force and effect of any other provision of the current MOU, and that this Side Letter of Agreement will be treated, for all purposes, as if it were an integrated portion of the current MOU.

**AMALGAMATED TRANSIT UNION, LOCAL 1027**

RICK STEITZ
President

DATE: 10-30-06

**FOR THE CITY OF FRESNO**

KENNETH G. PHILLIPS
Labor Relations Manager

DATE: October 16, 2006

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: Victoria Parkhurst
Deputy City Attorney

**Side Letter of Agreement**
**Between**
**City of Fresno**
**And**
**Amalgamated Transit Union, Local 1027**

**AB1522, Healthy Workplace Healthy Family Act of 2014**

The City and the Amalgamated Transit Union (ATU), Local 1027 have met and conferred over the impact of AB1522, Healthy Workplace Healthy Family Act of 2014 and agrees to add the following provisions to Article VII, Section D., Subsection 5. – Sick Leave.

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:

**a.** Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee;

**b.** 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,

**c.** 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 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 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.

These provisions will be effective July 1, 2015.

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

___Original Signed_____
RICK STEITZ
ATU, Local 1027 President

**FOR THE CITY OF FRESNO:**

___Original Signed_____
KENNETH G. PHILLIPS
Labor Relations Manager

Date: ___June 30, 2015_____

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: __Original Signed_____
Supervising Deputy