

1 **COVID -19 VACCINATION MANDATE**

2 **LETTER OF AGREEMENT**

3 The parties to this Agreement are the City of Portland (City) and the following unions
4 (collectively, “Unions”): The District Council of Trade Unions (DCTU), Laborers’ International
5 Union of North America (LiUNA) Local 483; and Professional Technical Employees, Local 17
6 (PROTEC-17).

7 **BACKGROUND**

- 8 1. On March 8, 2020, Oregon Governor Kate Brown declared a State of Emergency in response to
9 the increasing concern with Coronavirus (COVID-19) within the state.
- 10 2. On August 25, 2021, Oregon Governor Kate Brown issued a temporary ~~administrative order,~~
11 which was later adopted as an administrative rule by the Oregon Health Authority, to help prevent
12 and slow the spread of COVID-19, requiring all health care personnel and healthcare staff who
13 work in healthcare settings across the State of Oregon be vaccinated against COVID-19 or
14 request a medical or religious exception on or before October 18, 2021.
- 15 3. On August 30th, 2021, City of Portland Mayor Ted Wheeler and City Council Commissioners
16 announced a new policy requiring all City of Portland employees to be fully vaccinated for
17 COVID-19 or receive a medical or religious exception by Monday, October 18th, 2021.

18 **AGREEMENT**

19 The parties hereby agree as follows:

20 **1. Definition:**

- 21 a. “Fully vaccinated” means having received both doses of an approved two-dose COVID-
22 19 vaccine or one dose of a single-dose COVID-19 vaccine and at least 14 days have
23 passed since the individual’s final dose of COVID-19 vaccine. Approved COVID-19
24 vaccines are those authorized for use in the United States or those listed for emergency
25 use by the World Health Organization.

27 **2. Exception Requests:**

28 a) For purposes of this LOA, the terms “exemption” and “exception” are interchangeable and are
29 considered to mean an avenue process by which an employee qualifies to engage in a process
30 of accommodation in lieu of being vaccinated.

31 b) Employees seeking a religious or medical exception can submit their request for exception at
32 any time prior to October 18th, 2021 but are asked to submit their initial request to their Human
33 Resources Business Partner by no later than September 17, 2021.

34 c) The City will consider medical exceptions corroborated by a document signed by a medical
35 provider as well as religious exceptions which document a sincerely held religious belief and
36 includes a statement describing the way in which the vaccination requirement conflicts with
37 the religious observance, practice, or belief of the individual. Human Resources will assess
38 exception requests and issue approvals or denials.

39 For those employees who are granted an exception, the City will make every effort to provide
40 reasonable accommodations as required by law, including a temporary accommodation where
41 necessary, for requesting employees to maintain employment without creating a direct threat
42 to the safety or health of themselves or others in the workplace.

43 **3. Retention of Employment.**

44 **a. Employees on Leave of Absence.** Notifications will be sent to all employees who are out
45 on leave that they must provide documentation of compliance with the City’s vaccine
46 mandate before they are allowed to return to work. Employees on an approved or protected
47 leave of absence who return after October 18th and have expressed an intent to become fully
48 vaccinated will be given a leave not to exceed fifty (50) calendar days, to allow for choice
49 of the vaccine. Employees may use accrued leave (excluding sick leave), and their City
50 sponsored health care coverage will continue during their allowed leave. Any required
51 employee premium contribution will be paid by the employee upon an employee’s return
52 to paid status.

53 **a.b. Employees in Two-Week Waiting Period on October 18, 2021.** Employees who have
54 received the final vaccination by October 18, 2021, but who have not completed the two-
55 week waiting period for full immunity, shall be provided with options similar to those
56 provided as accommodations under the ADA and First Amendment for religious

57 [accommodations for the remainder of the waiting period beyond October 18, 2021. The](#)
58 [Compliance in Process section of this agreement is also an option for these employees.](#)

59 4. **New Hires.** New hires will be required to submit appropriate documentation of their Covid-19
60 vaccination or [request an](#) exception in advance of their first day of employment following October 18,
61 2021.

63 5. **Hiring In Process.** Employees in the process of being hired, will provided at least fifty (50) days to
64 come into compliance with the vaccine mandate from the date of first being informed of said
65 mandate.

66 6. **Compliance, Incentives, Immunization Impacts and COVID Impacts.**

67 a. Employees who are vaccinated through a City sponsored-vaccination location or through
68 other locations or providers during their regularly scheduled work hours, operations
69 permitting, will receive up to two (2) hours paid time off, including travel time and time to
70 get vaccinated. For COVID-19 vaccinations that require two doses, each employee may be
71 granted up to two (2) hours paid time off for each dose.

72 b. **Compliance In Process.** Any employee that has received at least one [dose of a](#) vaccination
73 as of October 18, 2021 and has expressed an intent to become fully vaccinated by
74 November 30th, 2021 will be placed on a leave of absence. The employee can choose to
75 take this leave unpaid or to use their accrued leave banks, (excluding sick leave) through
76 November 30, 2021 to become fully vaccinated and retain the right to return to their
77 previous position or a vacant position in the same job class at their work location, provided
78 the employee has become fully vaccinated and the City has not permanently filled their
79 previous position. This provision expires on December 1, 2021.

80 Any employee who has submitted their attestation and/or exception request by September
81 30th, and through no fault of the employee, their employment status has not been
82 determined by the City by October 18, 2021, the City will place the employee on a paid
83 leave of absence until the employee's employment status is determined. Employees whose
84 exception requests are denied after October 18th, 2021, [but](#) who have expressed an intent
85 to become fully vaccinated [after the denial](#) will be given an appropriate leave extension to
86 allow for choice of the vaccine and to become fully vaccinated, not to exceed fifty (50)
87 calendar days. Employees may use accrued leave (excluding sick leave).

88 c. **Side Effects of Immunization.** Any employee who experiences an adverse or allergic
89 reaction from the vaccine that requires medical treatment may file a workers' compensation
90 claim. If the claim meets statutory requirements, sick time will be restored in accordance
91 with the procedures for processing workers compensation claims. The City will not contest
92 workers' compensation claims once validated to be due to vaccine side-effects, as long as
93 all other baseline requirements for a valid workers' compensation claim are met.

94 d. **COVID Emergency Paid Sick Leave Bank:** All employees will be eligible for eighty
95 (80) hours of leave for COVID-19 related absences that would have otherwise met the
96 requirement of the Family First Coronavirus Response Act (FFCRA). At the employee's
97 request, this leave can be made retroactive to July 1, 2021. Use of COVID Emergency Paid
98 Sick Leave during any period of authorized leave shall be considered under FFCRA
99 qualifying event requirements only. The parties shall meet and confer prior to June 30,
100 2022 on any extension of this benefit.

101 **7. The Separation Process.**

102 a. Employees that do not become fully vaccinated for COVID-19 or approved for a religious
103 or medical exception by or before October 18, 2021 will be deemed to no longer meet the
104 minimum requirements for employment at the City of Portland and will be separated.

105 b. **Separation Notification and Hearing.** The City must issue a Pre-Separation Notice
106 ("Notice") at least seven (7) days in advance of separation to any employee that it intends
107 to separate from employment as a result of not meeting a vaccination mandate requirement.
108 The Notice will be provided to the employee, and the employee's Union by email, and
109 regular mail. The Notice will provide the employee information as to how they may request
110 a separation hearing prior to separation.

111 c. **Union Representation.** If the employee elects to have a Union representative present, that
112 right shall be afforded, and the City shall accommodate ~~any~~ reasonable requests to adjust
113 the hearing date.

114 d. **Non-Misconduct, Retention of Benefits.** Any separation of employment due to the employee not
115 complying with the vaccine mandate shall be regarded as a non-disciplinary separation for not
116 meeting minimum qualifications for their position, and the employee shall suffer no loss of leave
117 entitlements than they would if they have voluntarily resigned.

118 e. **Retirement or Resignation Option.** As an alternative to separation due to the employee not
119 complying with the vaccine mandate, any employee may elect to retire or resign employment on
120 any date prior to October 18, 2021.

121 f. **Respectful Separation.** It is in the interest of all parties to ensure that the process of separating
122 from the City is as respectful as possible and recognizes their service to the City.

123 g. **Non-Discrimination and No Retaliation Notification.** Upon adoption of this [Agreement](#), the
124 City will notify all employees that discrimination or retaliation based on an employee seeking an
125 exemption is strictly prohibited as a matter of City policy.

126 h. **Unemployment.** As of the date of signing of this LOA, the Oregon Employment Department is
127 barring employees separated as a result of a vaccine mandate from receiving unemployment. If, at
128 a future date, the Oregon Employment Department allows employees separated as a result of a
129 vaccine mandate to receive unemployment, the parties will reconvene to bargain the impacts.

130 i. **Health Insurance.** With a timely, completed, and signed COBRA election form, the City will
131 maintain the healthcare coverage for any employee (and their eligible dependents whom they
132 have elected to continue coverage) who retirees, resigns or is separated by the City because of the
133 mandate, following the final date of signature to this LOA, through November 30, 2021.

134 j. **Right To Reinstatement.** Any employee separated due to choosing not to be vaccinated shall
135 retain a right to reinstatement as outlined under HRAR 7.07, [except as modified by this](#)
136 [Agreement](#), if at a later date the employee becomes fully vaccinated or the City no longer
137 mandates vaccination as a condition of employment. A separated employee who held status in
138 multiple positions can be reinstated in any of positions in which they have held status if vacant.

139 Employees returning to the City cannot bump or displace other employees. Employees returning
140 to the City within three (3) years of separation will retain all previous rights as outlined in HRAR
141 7.07 and all other applicable rights and benefits required by a recall from the employee's CBA.

142 [Employees who are eligible for priority consideration for rehire under Section 7.k. of this](#)
143 [Agreement shall be subject to those terms for rehire, and not the terms of HRAR 7.07.](#)

144 In the event the City ends the vaccine mandate, this clause of the LOA will remain in effect until
145 November 30th, 2024.

146 **k. Right To Priority Consideration for Rehire.** Any employee separated due to choosing not to be
147 vaccinated shall retain a limited right to be rehired as described in this section. If the employee
148 becomes fully vaccinated within six months of separation, the separated employee may be placed
149 on a priority consideration list to be rehired. The process for the priority consideration list is as
150 follows:

- 151 • Once a separated employee becomes fully vaccinated, they may contact BHR's
152 designated representative to notify the City of their interest in returning to employment
153 with the City and provide documentation of vaccination and request to be placed on the
154 priority consideration list. Separated employees will not be placed on the priority
155 consideration list until the City has received verification of the separated employee's
156 fully vaccinated status.
- 157 • Separated employees on the priority consideration list may be considered for a vacant
158 position comparable with the position in which the employee held status prior to
159 separation before to the position is posted for a competitive recruitment. A separated
160 employee who held status in multiples positions can be considered for any of the
161 positions in which they have held status. Employees on the priority consideration list who
162 are eligible for the vacant position shall be contacted by the Bureau Director (or
163 designee) or BHR to inquire as to whether the employee would like to be considered for
164 the vacant position. The Bureau Director (or designee) may request an updated resume
165 from the separated employee(s).
- 166 • If only one employee on the priority consideration list who is eligible for the vacant
167 position expresses interest, the Bureau Director (or designee) may choose to conduct an
168 interview limited in scope to inquiring about the separated employee's knowledge, skill,
169 and abilities to perform the job.-
- 170 • If multiple employees on the priority consideration list who are eligible for the vacant
171 position express interest, the Bureau Director (or designee) will conduct interviews
172 limited in scope to inquiring about the separated employee's knowledge, skill, and
173 abilities to perform the job with each interested separated employee and shall apply
174 veterans' preference in accordance with HRAR 3.07.
- 175 • When considering separated employees for rehire under this process, the Bureau Director
176 shall have sole discretion as to whether or not to hire a separated employee.

- 177 • If no separated employee is selected for rehire, the vacant position will then go through
178 the normal recruitment process. Employees on the priority consideration list, including
179 any who expressed interest in the position but were not selected for rehire, may apply.
- 180 • Should a separated employee who expressed interest in a vacant position not be selected
181 for rehire, they will remain on the priority consideration list for other vacant positions
182 until the list closes.
- 183 • The priority consideration list and the process for selection for rehire off that list
184 described herein shall remain in place until May 31, 2022. Thereafter, the separated
185 employee retains a right to reinstatement as outlined [in Section 7.J. of this Agreement](#)
186 [under HRAR-7.](#)

187
188 In the event the City ends the vaccine mandate, this clause of the LOA will remain in effect until
189 November 30th, 2024.

190 8. **Vaccine Records.** ~~Vaccine Records.~~ Information provided is maintained in a confidential [and secure
191 repository] and is not generally subject to release without the employee’s authorization. All
192 information is processed and maintained [by authorized personnel] in the Bureau of Human
193 Resources. This information will be reasonably protected from theft and cyber theft through cyber
194 security measures and maintenance of records in a safe, secure area. [In keeping with City compliance
195 standards and safeguards, stringent] efforts will be made to limit the number of individuals who have
196 access to this information and to avoid sharing this information with bureau management [except on a](#)
197 [need-to-know basis.](#)

198 9. **Grievance Procedure.** Any dispute related to enforcement of terms of this [A](#)greement is subject to
199 the grievance procedure as described in the applicable Union’s collective bargaining agreements.

200 10. If any provision of this agreement, or the application of any provision within this [A](#)greement, is
201 found to be invalid by court order, administrative ruling or existing or subsequent legislation, the
202 remaining parts of this [A](#)greement shall remain in full force and effect.

203 11. The provisions of this LOA shall expire on June 30, 2022, unless otherwise specifically stated in
204 this [A](#)greement, and may be renewed upon mutual agreement of the parties.

205 For AFSCME, Local 189:

206

207

208

209 Bao Nguyen, Council Representative

Date

210

211 For IBEW Local 48:

212

213

214

215 Jennifer Bazner, Business Representative

Date

216

217

218 For PROTEC-17:

219

220

221

222 Rachel Whiteside, Union Representative

Date

223

224

225 For LiUNA Laborers' Local 483:

226

227

228

229 Farrell Richartz, Business Manager

Date

230

231 For the District Council of Trade Unions:

232

233

234 Rob Martineau

Date

235 Council President

236

237 For the City:

238

239

240 Cathy Bless

Date

241 Director of the Bureau of Human Resources

242

243

244 Approved as to Form:

245

246

247

248 City Attorney Office

Date