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**This document represents a tentative agreement between the parties. Jeff Clark, Labor Negotiator. 9/22/2021**

## MEMORANDUM OF AGREEMENT

By and Between

THE CITY OF SEATTLE

and

SIGNATORY UNIONS

This Memorandum of Agreement (hereinafter called "Memorandum" or "MOA") is entered into between the City of Seattle ("City") and those individual unions that are signatory to this MOA ("Signatory Unions"), including members of the Coalition of City Unions ("Coalition") and other unions not affiliated with the Coalition, including the International Brotherhood of Electrical Workers – Local 77, the International Association of Machinists and Aerospace Workers, District Lodge 160 - Local 79, and the Seattle Parking Enforcement Officers Guild (SPEOG). Collectively, the City, the Coalition, and other union signatories to this Memorandum shall be known as "the Parties".

WHEREAS, the Mayor issued a Proclamation of Civil Emergency on March 3, 2020, in response to the COVID-19 pandemic; and,

WHEREAS, the Mayor issued Mayoral Directive #9 on August 9, 2021, mandating that effective October 18, 2021, all City of Seattle Executive branch employees must be fully vaccinated against COVID-19 (SARS-CoV-2) to promote public health and safety during this once-in-a-century public health emergency, reduce the spread of COVID-19, and protect our workers and those in the community with whom we interact and serve in response to the COVID-19 pandemic; and,

WHEREAS, an employee is deemed "fully vaccinated against COVID-19" two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA (e.g., Pfizer-BioNTech or Moderna) or two weeks after they have received a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA (e.g., Johnson & Johnson (J&J)/Janssen); and,

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WHEREAS, the COVID-19 vaccination requirement applies to all full-time, part-time, temporary, intermittent, including work/study, student, and intern and seasonal employees Executive branch employees regardless of tenure, physical working location, or regular/temporary status. Employees who previously contracted COVID-19 are subject to the vaccination requirement; and,

WHEREAS, the Parties agree that time is of the essence both when responding to the pandemic and in providing necessary services to the public during this time of civil emergency; and,

WHEREAS, the City and union's the Signatory Unions have meet in good faith to bargaining the impacts of the vaccination mandate; and,

NOW THEREFORE, the Parties stipulate and agree that the following provision shall apply to all Signatory Unions:

**1. Proof of Vaccination Incentive:**

- A. **Incentive Time** - The City agrees to provide 8 hours of paid time off (pro-rated for part time employees) for each employee who, on or before October 5, submits a completed Vaccination Confirmation Form with acceptable proof of vaccination showing they will be fully vaccinated by October 18, 2021. Employees who do not submit a completed Vaccination Confirmation form with acceptable proof of vaccination on or before October 5, 2021 will not receive the 8 hours of leave. Department HR professionals or other designated representatives will be available, as needed, to assist employees with submitting information electronically.
- B. **Usage of Incentive Time** - Employees will be eligible to use these 8 hours of paid time off from the date they receive it through December 31, 2022. These hours are eligible to be used for any personal reason and can be taken in four-hour increments. Any leave hours not used by December 31, 2022 will be forfeited (use it or lose it). These 8 hours of paid time off cannot be cashed out at any time under any circumstances.
- C. **Verification Requirements** - Employees must submit one of the following documents as acceptable proof of vaccination:
  - a. Centers for Disease Control & Prevention COVID-19 vaccination card;

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- b. MyIR COVID-19 Vaccine Certificate;
- c. State immunization record; or
- d. Documentation of vaccination from a health care provider or electronic health record

## **2. Compliance Procedures.**

- a. Notice Process for Employees.** On October 6, 2021 a letter proposing separation will be issued to employees who fail to show acceptable evidence (i.e., vaccine record) that they will be fully vaccinated by October 18, 2021 (i.e., the employee must have received their final vaccination by October 4). A copy of the letter will be sent to the employee's union via email. Employees will be kept in pay status after October 18 if the Loudermill process is not completed.
- b. Compliance in Process for Employees.** If by October 18 an employee has at least one vaccination by October 18, and shows proof (i.e., vaccine record), and states an intent to be fully vaccinated, the decision to separate them will be conditionally held in abeyance provided they are fully vaccinated by December 2. Beginning October 19, the employee can elect to go on paid or unpaid leave and must make their leave election by October 18 and may use applicable leave or unpaid leave. They cannot use sick leave. The paid and/or unpaid leave ends December 2.
- c. Notice and Compliance Process for Employees.** On October 20, a letter proposing separation will be issued to employees who fail to show acceptable evidence (i.e., vaccine record) that they were fully vaccinated by October 18. However, if the employee provides proof (i.e., vaccine record) that they received the first dose of vaccination by October 18 and states an intent to be fully vaccinated by December 2 (i.e., the employee must have received their final vaccination by November 18), the decision to separate them will be conditionally held in abeyance. The employee will be permitted to use applicable leave (not sick leave) or unpaid leave until they are fully vaccinated. Once fully vaccinated they are able to return to work. A copy of the letter will be sent to the employee's union via email.

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- d. **Employees Currently on Leave of Absence.** An employee scheduled to return to work from a paid or unpaid leave of absence by October 18 is subject to the terms of this agreement, provided that the City has notified the employee via email and certified letter. An employee scheduled to return to work after October 18 from a paid or unpaid leave of absence must be fully vaccinated prior to their return and show evidence (i.e., vaccine record) or fill out an exemption form. Until they have been able to be fully vaccinated or able to be accommodated they will be permitted to use applicable leave (not sick leave).

### 3. Accommodation for Medical and Religious Exemptions

A. Employees may request an exemption and reasonable accommodation for not receiving the vaccine for two reasons:

- a. **Medical Reason** – An employee who is unable to be fully vaccinated due to a disability or medical contraindication will be required to submit documentation from an appropriate licensed health care practitioner substantiating the employee’s medical inability to receive the Pfizer, Moderna, or Johnson & Johnson vaccine. Depending on the sufficiency of the documentation and current CDC guidance on contraindications, the City will determine whether to grant the employee an exemption or whether additional information or a second opinion is needed. If an exemption is approved, the City will engage in an interactive process to determine if a reasonable accommodation can be provided. *Employees must complete Part 1 and ensure an appropriate health care practitioner completes Part 2.*

- **Attachment 1** - COVID-19 Vaccination Medical Exemption Part 1 Employee
- **Attachment 2** - COVID-19 Vaccination Medical Exemption Part 2 Appropriate Health Care Practitioner

- b. **Sincerely Held Religious Belief or Practice** –A Sincerely Held Religious Belief, Practice, or Observance – An employee who objects in good faith that vaccination violates their sincerely held religious belief may seek an exemption/accommodation by submitting documentation of their religious objection to the practice of vaccination or use of the COVID-19 vaccination. Depending on the sufficiency of the employee’s

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written statement, the City will determine whether to grant the employee an exemption or whether additional information is needed. If an exemption is granted, the City will engage in an interactive process to determine if a reasonable accommodation can be provided. A religious exemption/accommodation will not be provided to individuals who object to getting vaccinated for personal, secular, or philosophical reasons that do not constitute a sincerely held religious belief, practice, or observance.

- **Attachment 3** - Employees must complete COVID-19 Vaccination Religious Exemption Form (Employee).
- B. **Reasonable Accommodation** - The City may not be able to accommodate all those who request accommodation. For example, medical accommodations need not be granted where they cause undue hardship or pose a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The City shall follow Title VII and EEOC guidance when processing each accommodation. Even after implementation, reasonable accommodations will be subject to continuous review and evaluation depending on guidance from the CDC and other public health authorities. Reasonable accommodations may need to be changed or modified as circumstances change.
- C. **Representation** - Employees can choose to have a union representative participate during the accommodation process. For a medical accommodation the employee must submit a written release to the Department Human Resources Representative to allow a union representative to participate in the accommodation process. Having such representation shall not unduly delay the accommodation process. Representatives are present to support and observe the process, and shall allow the accommodation process to proceed. It is the employer's decision to make the final determination on the accommodation so long as it is effective and reasonable.
- D. **Retaliation or Harassment** – Retaliation or harassment of an employee who cannot get the COVID-19 vaccine due to a documented medical condition or sincerely held religious belief, practice, or observance will not be tolerated.

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- E. **Exemption Form Due Date** - Employees seeking an exemption must complete and submit the appropriate vaccine exemption request form(s) no later than Wednesday, September 22, 2021.
  
- 2. **Exemption Process:** The City and the Unions agree that when employee submits an exemption form it will be reviewed by two reviewers that are not from employee's department and do not include the employee name to the best extent practical. Employees who seek a medical or religious exemption and (1) are denied an exemption, (2) are unable to be reasonably accommodated, or (3) refuse the reasonable accommodation offered by the City and decide to comply with the vaccine requirement, must submit to the City acceptable proof of their first dose of the COVID-19 vaccine within two weeks from the date the City notifies the employee of their exemption denial or accommodation determination (if City unable to accommodate or employee declines reasonable accommodation provided). In addition, these employees must submit acceptable proof of their second COVID-19 vaccine dose (if applicable) within eight weeks after the date the City denies their exemption or issues an accommodation determination. During this time, if reporting to a worksite, these employees may be required to comply with special workplace safety requirements, such as regular COVID-19 testing, PPE, and social distancing. Alternatively, these employees may be required to use their own qualifying paid or unpaid leave starting on October 18, 2021, until they are fully vaccinated. Whether the employee is required to comply with special workplace safety requirements or use their own leave will be within the sole discretion of their management.
  
- 3. **COVID-19 Supplementary Paid Time:**
  - A. As soon as practical after the effective date of this Agreement, all represented employees will be granted a total of 40 hours (pro-rated for part-time employees) of use-it-or-lose-it COVID-19 Supplementary Paid Leave to be used for specific qualifying leave reasons related to COVID-19.
  
  - B. As soon as practical after effective date of this Agreement, all represented employees who are verified by the City to have achieved full vaccination by October 18, 2021, will be granted an additional 40 hours (pro-rated for part-time employees) of use-it-or-lose-it COVID-19 Supplementary Paid Leave to be used for specific qualifying leave reasons related to COVID-19.

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- C. COVID-19 Supplementary Paid Leave shall be used when an employee is unable to work, including telework, due to the following qualifying reason related to COVID-19:
  - a. the employee has been directed by your medical provider or manager to quarantine; or
  - b. a qualifying household member under the employee's care has been directed to quarantine due to actual or suspected exposure to COVID-19; or
  - c. the employee is experiencing COVID-19 symptoms; or,
  - d. the employee is experiencing COVID-19 vaccine side effects; or,
  - e. the employee is caring for their dependent child whose school or place of care is closed or the child is sent home for COVID-19 related reasons or whose childcare provider is unavailable for reasons related to COVID-19.
  
- D. The COVID-19 Supplementary Paid Leave hours provided in Sections 4(A) and 4(B) above must be used or forfeited by December 31, 2022. COVID-19 Supplementary Paid Leave hours cannot be cashed out under any circumstances.
  
- E. During the time period January 1, 2021 through execution of this agreement an employee covered by this agreement shall be able to request the restoration of up to three sick leave days (or vacation if they used that in lieu of sick leave because they had previously exhausted all their sick leave) they used due to the employee experiencing side effects from a COVID-19 vaccine . The employee must submit their proof of vaccination to the City on or before October 18, 2021 and their request to retroactively apply the three COVID-19 Supplementary Leave days by November 10, 2021.
  
- 4. **Vaccination Appointment:** Employees who schedule a vaccination appointment during their regular work hours will be permitted to use up to three hours of regular paid time (pay code AA) per vaccination administration, subject to the work needs of the unit and the prior approval of their supervisor/manager. Managers must exercise maximum flexibility to allow unvaccinated employees to attend a vaccination appointment during regular work hours. Employees who require more than three hours to get vaccinated during work time should talk to their supervisor/manager. Employees who choose to schedule a vaccination appointment outside their regular work hours are not eligible for paid work time or overtime.

**5. Retirement Considerations:**



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- A. If an employee has chosen not to get fully vaccinated by October 18, 2021 they are required prior to October 18, 2021 to meet with the Seattle City Employees Retirement System (SCERS) office, choose their options and date of retirement and have submitted the notarized form of their intent to retire before December 31, 2021. The City will not immediately separate the employee from employment for non-compliance with the vaccine mandate, subject to the following conditions:
  - a. The employing department shall have sole discretion to decide, based on safety and business reasons, whether the employee is permitted to continue to perform work, either at the worksite or remotely, and the conditions under which the employee is permitted to continue to work;
  - b. If the employee is no longer permitted to continue to perform work, the employee is permitted to use applicable leave (not sick leave) or unpaid leave until December 31, 2021.; and
  - c. The employee must be retired before December 31, 2021, or the employee will be separated from employment.
- B. If, through no fault of their own, the employee is unable to retire on the date they intended to retire prior to December 31, 2021 due solely to SCERS inability to fulfill its responsibilities, the employee's department may authorize a reasonable extension and contact SCERS to expedite the process.

## **6. Employee Separations:**

- A. **Workers Compensation** - If an employee wants to file a workers' compensation claim related to COVID-19 vaccination side effects, the City's Workers' Compensation Unit will provide the employee with an application for workers' compensation benefits. Claim eligibility is adjudicated by the Washington State Department of Labor & Industries.
- B. **Leave Cash-Out** - The City agrees to allow separated employees to cash out paid leave as allowable under current CBAs/Personnel Rules.

## **Contractors and Vendors:**



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A. The City is assessing the timeline of applying the vaccine requirement to contractors who physically report to a City worksite or work in close proximity to City employees. The City, *where feasible*, will *communicate to* contractors no later than September 27, 2021 of its intent to require proof of vaccination in accordance with the mandate. The City shall also immediately notify the signatory Unions of the results of its feasibility assessment, including timelines for implementation and the impacts to City employees.

**7. Other Terms and Conditions:**

- A. The City considers the submission of forged or fraudulent vaccination or exemption documentation to be a major disciplinary offense and will recommend offending employees for termination.
- B. All Parties acknowledge and agree that they have fulfilled their bargaining obligations with respect to Mayoral Directive #9 regarding the COVID-19 vaccination mandate in reaching the terms and conditions provided under this MOA.
- C. No action taken by the City or agreed to by any signatory union in this MOU shall establish any precedent or past practice for any Party with regard to any subject herein.
- D. By mutual agreement between the City and one or more of the signatory Unions, the City, the Coalition of City Unions (“CCU”), and individual non-coalition unions may reopen and negotiate the terms of this MOU, provided that the CCU must negotiate any reopener to this MOA collectively and no individual CCU member unions signatory to this Agreement may individually demand to reopen and negotiate the terms of this MOA.
- E. Where direct conflicts exist or arise between provisions of this MOA and provisions of a collective bargaining agreement between the City and a signatory union, the provisions of this MOA will prevail.
- F. Should any dispute arise regarding the application of this Agreement, the Parties agree, upon receipt of written notice, to discuss the issue and use best efforts to resolve it as soon as possible. Disputes over the interpretation, application, or

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enforceability of the provisions of this Agreement shall be addressed during labor management meetings convened and held for all signatory unions, upon request by any Party, and shall not be subject to the grievance procedure set forth in the Parties' collective bargaining agreements.

**8. TERM OF AGREEMENT:**

- A. This MOA shall remain in effect until December 31, 2022. However, this MOA may be extended or terminated by mutual agreement of the City and the Signatory Unions.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

FOR THE CITY OF SEATTLE

\_\_\_\_\_  
Jenny A. Durkan, Mayor

\_\_\_\_\_  
Kimberly Loving, Interim SDHR Director

Jeff Clark, Labor Negotiator

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FOR CITY UNIONS