

MEMORANDUM OF UNDERSTANDING

The parties to this Memorandum of Understanding are the City of Portland (City), and Laborers' International Union of North America (LIUNA) Local 483, and its Members (Union).

BACKGROUND

1. The City and the Union are parties to a collective bargaining agreement (CBA) effective July 1, 2022, to June 30, 2026.
2. The City and the Union began successor negotiations on March 22, 2022, and reached a tentative agreement on February 4, 2023.
3. During successor negotiations, the parties agreed to create a Memorandum of Understanding to provide a maximum of forty (40) hours of accrued vacation to be cashed out per employee, one time per calendar year beginning on January 1, 2023, through December 31, 2025.
4. The parties signed an MOU with the last signature dated March 23, 2023 (March 23, 2023, MOU).
5. The March 23, 2023, MOU specifically states that constructive receipt of income will be at the time the employee accrues the vacation, even if the employee does not receive any cash.
6. The purpose of this MOU is to supersede the March 23, 2023, MOU to avoid constructive receipt of vacation accruals.

AGREEMENT

The parties agree:

1. A regular or temporary PCL Member (member(s)) that wants to cash-out vacation accruals in the following calendar year must make an irrevocable election to cash-out vacation leave in the calendar year *preceding* the year in which the leave is cashed out with the following restrictions (e.g., someone that wants to cash out vacation in 2024 must make the election in 2023):
 - a. An eligible member must complete the Cash-in-Lieu-of-Leave-Hours Election/Waiver form and submit to Central Payroll by December 31st, and either elect or waive the right to receive cash in lieu of vacation. This election will be irrevocable.
 - b. A member that fails to timely and accurately complete the Cash-in-Lieu-of-Leave-Hours Election/Waiver form will have irrevocably elected to receive vacation, rather than cash, in the subsequent calendar year.
 - c. A member may only elect to cash-out vacation accrued in the year in which leave is cashed out, meaning a member may not cash-out vacation accrued during a prior calendar year (e.g., 2023).

- d. The maximum amount of vacation a member may elect to cash out in a subsequent calendar year is forty (40) hours.
 - e. A member must specify the exact number of hours they elect to receive as cash in lieu of vacation and not exceeding forty (40) hours. A member that fails to timely and accurately specify the exact number of hours they elect to receive in cash in lieu of vacation will have irrevocably elected to receive vacation, rather than cash.
 - f. To request a cash out of the hours elected, after the hours have been accrued in the subsequent calendar year, the member will complete and submit a Request for Payment of Cash in Lieu of Leave Hours Form.
 - g. Any elected hours that remain uncashed by December 1st will be automatically paid out to the employee on the last paycheck of the calendar year to the extent that an employee has accrued leave available on the last paycheck of the calendar year.
2. Any and all disputes about the interpretation or application of this MOU will be subject to the grievance and arbitration process in the parties collective bargaining agreement.
 3. This MOU supersedes and replaces all prior agreements and understandings, oral or written, between the parties regarding the cash out of vacation.
 4. This MOU will sunset and expire upon the parties' successor agreement. As such, 2025 will be the last calendar year a member is able to elect to cash-out vacation leave in the subsequent year. Members that elect to cash-out vacation leave in 2025 will receive the cash out through December 31, 2026, pursuant to the process in this MOU.
 5. The parties have had a full opportunity to bargain over all mandatory and permissive subjects related to the cashing out of vacation time, including the impacts of the bargain and expiration of the benefit. Any further bargaining over the matters contained in this MOU can only be required if both parties agree. Either party may plead this MOU as an absolute defense to any claim, action, or suit alleging a failure to bargain or implementation of a unilateral change.
 6. If any part, term or provision of this MOU is held to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the part, term or provisions held to be illegal or invalid.
 7. Each party has had the opportunity to be represented by counsel in these negotiations and to have counsel review this MOU prior to signing. As a result, the normal rules of construction where any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this MOU.

For the City:

Cathy L. Bless 11/30/2023
Cathy Bless Date

For LIUNA Local 483:

Ryan Sotomayor 11/28/23
Ryan Sotomayor Date

Approved as to Form:

Teri Gale 11/30/2023
City Attorney Date