

# **DUTY TO ACCOMMODATE FRAMEWORK AGREEMENT**

## **PARTIES**

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THIS AGREEMENT IS BETWEEN:

THE CITY OF EDMONTON

*("the City")*

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1007

EDMONTON POLICE SERVICE SENIOR OFFICERS' ASSOCIATION

CITY OF EDMONTON MANAGEMENT ASSOCIATION

CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 30

CIVIC SERVICE UNION 52

AMALGAMATED TRANSIT UNION LOCAL 569

EDMONTON FIRE FIGHTERS' UNION

THE EDMONTON POLICE ASSOCIATION

*("the Unions and Associations")*

*(collectively called "the participants")*

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## **GENERAL FRAMEWORK**

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- 1.1 This agreement is negotiated and entered into under the auspices of the City of Edmonton - Civic Union Working Relationship Agreement.
- 1.2 The City and the Unions and Associations, respectively as employer of and as representatives of employees of the City, ("the participants") all have the legal duty to ensure that employees are not discriminated against in their employment on the basis of physical or mental disability. These duties include the duty to accommodate disabilities to the point of undue hardship.
- 1.3 The participants agree to adopt a proactive and collaborative approach to the administration of these duties. This includes:
  - 1.3.1 Recognizing the City of Edmonton's multi-union environment when designing and administering procedures to handle cases where the question of accommodation may arise;
  - 1.3.2 Recognizing that participants are all subject to legislative restrictions on the use, storage or dissemination of personal and health care information.
  - 1.3.3 Providing for consents and administrative procedures that balance the need to share information when necessary with those required to consent to or participate in accommodation measures with privacy and confidentiality rights;
  - 1.3.4 Agreeing to processes for obtaining independent testing and expert opinions in appropriate circumstances and to the use of the resulting reports or opinions;
  - 1.3.5 Signing Letters of Understanding under their collective agreements incorporating a specialized grievance procedure for duty to accommodate issues that includes an expedited and informal dispute resolution option and that provides status in arbitration for any other affected union;
  - 1.3.6 Committing to continuing training within the workplace about issues and procedures related to discrimination and the duty to accommodate disabilities; and

1.3.7 Meeting periodically to review, improve, and update these processes as necessary, and to provide notice of any disagreements over the operation of these understandings and procedures in order to seek consensus on their continued operation before withdrawing from further participation.

1.4 The parties recognize that some addictions qualify as disabilities and may call for accommodation measures. Because addictions raise unique accommodation issues; rarely involve any need to move employees between bargaining units, and often arise in disciplinary contexts, disputes about the duty to accommodate in such situations will continue to be dealt with through the ordinary grievance and arbitration provisions of each Union's collective agreement and not through the specific grievance procedures in this agreement.

## **IMPLEMENTING THIS AGREEMENT**

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- 2.1 These undertakings will be implemented in the following forms:
- 2.2 The City of Edmonton and each Union and Association signatory to this agreement will upon entering into this agreement execute a letter of understanding in the form set out in SCHEDULE 3.
- 2.3 The City of Edmonton will, in administering its terms and conditions of employment for opted out or excluded employees, apply the process and procedures set out in this agreement as far as practicable. Where those opted out or excluded employees are represented by a voluntary association that is not a bargaining agent, that Association may participate in these processes and procedures in a similar manner to the Unions or Associations, subject to the wishes of the employee and to the willingness of that Association to accept the obligations provided for in this agreement for the purposes of that representation.
- 2.4 The general understandings reached during this process, as recorded in SCHEDULE 1, will be used to provide a reference point for future discussion of, and modifications to, these understandings, and as an aid to interpreting the more specific agreements, policies or procedures.
- 2.5 The City has adopted and will maintain the Administrative Directive and Procedures A1126 recognizing its human rights and anti-discrimination obligations under its various collective agreements and under the *Alberta Human Rights Act*.
- 2.6 Days in this agreement will be counted on the basis of Mondays to Fridays, excluding statutory holidays.

## **RESOLVING ACCOMMODATION ISSUE DIFFERENCES**

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- 3.1 Participants recognize that, despite the advantages of a collaborative approach to accommodation issues, clear and timely decisions are required in order to:
  - 3.1.1 Avoid unnecessary delay and uncertainty; and
  - 3.1.2 Allow parties to decide whether to pursue dispute resolution steps.
  
- 3.2 Participants recognize that, as they attempt to consider and fulfill their duties to accommodate employees, issues may arise that require expert examination. They accept that such issues should be resolved primarily through the informed use of expertise acceptable to all those parties who may be required to take action or give consent based upon the results of that expert examination.
  
- 3.3 Participants further recognize that consultation with each other prior to seeking expert advice is the preferred method for obtaining professional opinions in that it allows:
  - 3.3.1 Some assurance that the expert's opinion will be accepted as neutral and objective;
  - 3.3.2 A mechanism for discussing in advance, the appropriate parameters of the sought after opinion and of obtaining preliminary expert advice on those parameters should there be differences of view;
  - 3.3.3 A more cost effective and timely approach that recognizes the prejudice caused by unnecessary delay to the individual involved and others affected;
  - 3.3.4 An agreement in advance that the results of the examination will be accepted as *prima facie* evidence in any proceedings in which the question upon which the advice was sought is in issue.
  
- 3.4 Participants adopt and agree to abide by SCHEDULE 2 - Procedures for Obtaining Expert Opinions.

3.5 The following questions (called "decision points" in this agreement) may arise in relation to any request for accommodation or accommodation measures:

- 1. Does the employee have (or continue to have) a disability in need of accommodation?**

*(This is usually a question the City must answer but sometimes it will be an issue for a Union asked to consent to an accommodation measure )*

- 2. What restrictions or requirements arise from the employee's disability?**

*(This can be an issue for the City or the Unions involved)*

- 3. Which of the possible steps that might be undertaken to accommodate the employee's needs in their existing job or some other job (whether modified or not) is the City prepared to accept?**

*(This is a decision the City has to make following discussions with all affected parties)*

- 4. Whether the employee will accept the City's position as a reasonable accommodation or as a reasonable refusal to accommodate due to undue hardship?**

*(This is a decision the employee must make with the risk being that a refusal may mean the City's obligation to accommodate them is exhausted)*

- 5. Where its consent is necessary, whether a Union required to give consent to any aspect of the City's proposal will give that consent? This includes a proposal to assign an employee to a different bargaining unit, and any terms or conditions attached to that assignment.**

*(This is the Unions' decision to make)*

- 6. Whether any trial period for an accommodation measure has succeeded?**

*(This is usually the City's decision to make, but on occasion it may arise when an employee or receiving union feels the accommodation does not work)*

- 3.6 Before making a decision on a decision point, the Disability Management Consultant, the Unions or Associations involved, and such other persons whose presence may be appropriate to the decision will meet for a full and frank discussion in an attempt to reach agreement on the question involved. Following that discussion they will either:
- 3.6.1 Continue to assess the matter in an agreed upon manner, or
  - 3.6.2 Where they disagree on a question of disability, functional capacity, or physical job requirements, initiate the process for obtaining an independent report on the issue (as set out in SCHEDULE 2 - Procedures for Obtaining Expert Opinions), or
  - 3.6.3 The party required to make the decision on the decision point will advise the other parties of their decision in writing and within a reasonable time, and in any event within 15 days of a formal request for a decision.
- 3.7 If a decision on a decision point is agreed to, it will be implemented forthwith, according to its terms. If no dispute is initiated under clause 3.7 within 15 days following the decision, it will be treated as agreed upon and any proposed action may be implemented unilaterally.
- 3.8 Disputes arising out of decisions on decision points will be resolved by the dispute resolution process described in Article 4 below and the Letters of Understanding entered into in accordance with this agreement.
- 3.9 Unions assisting employees in accommodation matters should ensure they have sufficient authorizations to obtain and release medical information to the City and to any other Union that may be asked to consent to accommodation measures for the employee. Unions will collaborate on suitable and common forms of release, designed to allow each of them to share information as necessary with any other affected Union.
- 3.10 Participants receiving medical information about an employee for the purposes of accommodation agree to respect the terms of confidentiality under which it is released. Where releases are in



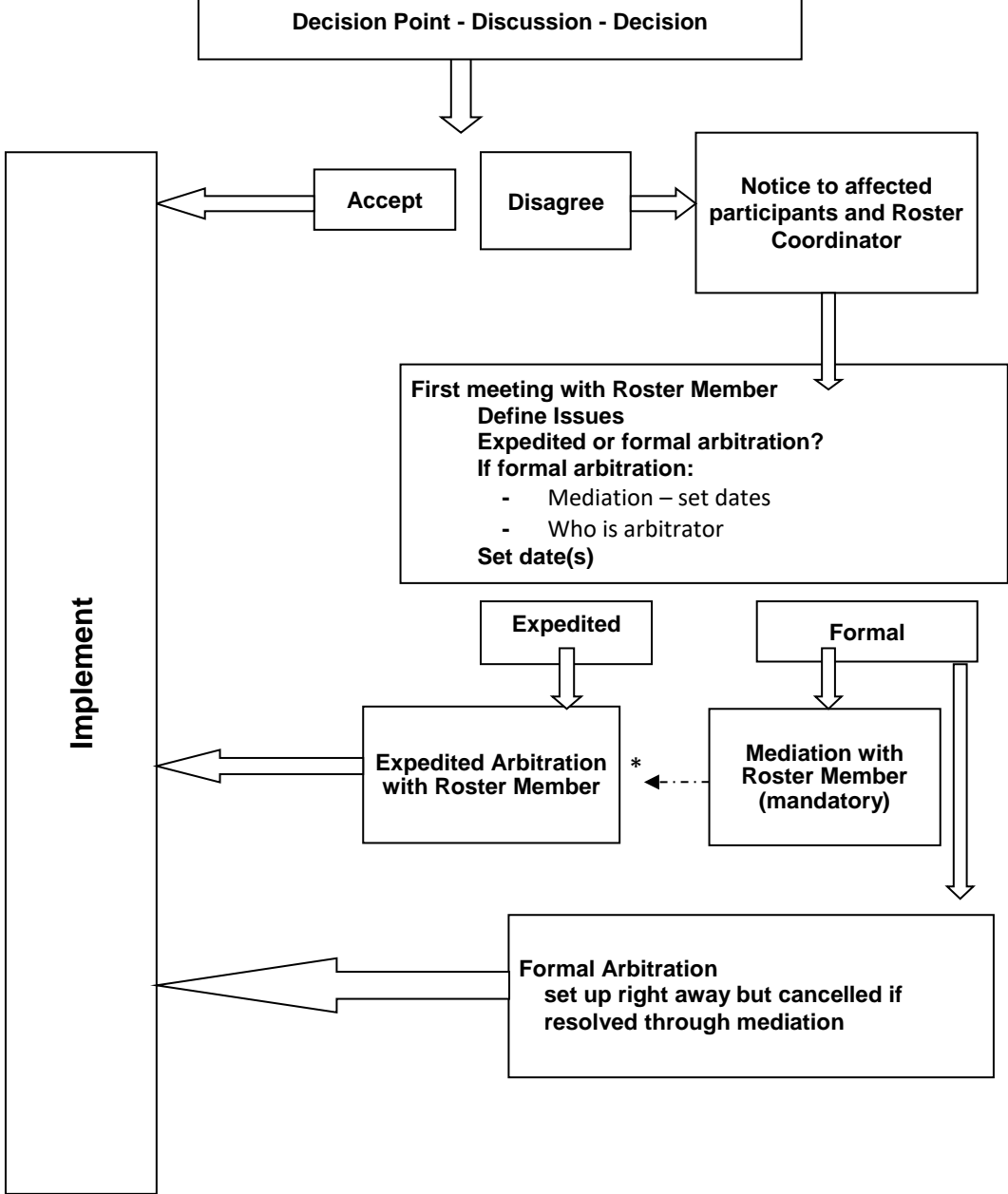
place, the Disability Management Consultant will promptly notify the union representing the employee seeking accommodation when medical information is received concerning the claim.

## **GRIEVANCE PROCEDURE LETTERS OF UNDERSTANDING**

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- 4.1 The flow chart below will be used to provide general guidance in administering the specific duty to accommodate dispute resolution procedures provided for in this agreement.
- 4.2 The City and each Union will enter into a letter of understanding under their respective collective agreements providing for a modified grievance and arbitration procedure to give effect to these understandings.
- 4.3 The letters of understanding will be in the form set out in SCHEDULE 3 of this agreement, modified as necessary for each particular collective agreement in so far as is necessary to prevent conflicts with that collective agreement's terms that do not affect the underlying purpose of the letter of understanding.
- 4.4 The letters of understanding will not apply to a grievance or a claim of discrimination arising after an employee has been terminated nor will they apply to any grievance about the duty to accommodate an employee alleged to suffer from any addiction said to constitute a mental or physical disability.
- 4.5 Where an arbitrator or arbitration board, appointed under any collective agreement entered into between two participants, finds that the matter or any part of the matter arising in that arbitration properly falls within the scope of clause 3.7, that arbitrator or arbitration board may direct the parties to pursue the matter in accordance with the provisions of this agreement.
- 4.6 The arbitrator or arbitration board may make any directions as to timeliness or other procedural issue that appears just in all the circumstances. An application under this clause may be made by any participant that is directly affected by the issue in question whether or not that participant is a party to the collective agreement in question. No such application may be made by an individual employee.

# Duty to Accommodate Dispute Resolution Flow Chart



\* If mandatory mediation settles the dispute the agreement reached can be made a consent award of the Roster Member

- 4.7 The participants will establish and maintain the roster of persons to act as mediators and expedited arbitrators under this process, one of whom will be designated as the roster coordinator. The panel will consist of:
- Deborah Howes (Roster Coordinator )
  - Roger Gunn
  - Mia Norrie
  - James Casey
  - Such other persons agreed to or appointed under this Agreement from time to time.

- 4.8 Requests to invoke the expedited decision-making process will be sent to the roster co-coordinator and to all the affected participants. Unless all the affected participants agree on a roster member to hear the matter in dispute, the roster coordinator will designate a roster member for that matter. If no roster member is available, the Roster Coordinator may designate a member of the formal arbitrators list to act.

- 4.9 The participants will establish and maintain a separate list of persons agreed upon to act as formal arbitrators. The panel will consist of:
- Andrew C.L. Sims, Q.C.
  - Deborah Howes
  - Lyle Kanee
  - Thomas Jolliffe
  - Such other persons agreed to or appointed under this Agreement from time to time.

The City and all the affected Unions for a given case may agree to any one of the listed arbitrators to hear that case. Failing such agreement, arbitrators will be assigned to chair formal arbitrations, in rotation, in the above order. An agreed upon appointment will not affect the order of rotation to apply to cases where no agreed appointment is made.

- 4.10 The formal arbitration process, subject to specific provisions in this agreement including mandatory mediation, multi union and separate employee representation where necessary, shall follow the same process for arbitration as provided for in the City collective agreement with the affected employee's bargaining agent.

- 4.11 Where the participants do not agree on a single arbitrator, the parties will try to agree upon a nominee to sit as the nominee of the union or unions involved. In the event the unions cannot agree upon a suitable nominee, a nominee will be selected by the roster member assigned to mediate the case.
- 4.12 The cost of the Roster Coordinator's administrative duties shall be paid by the City of Edmonton. The cost of the mediation or expedited arbitration duties of the panel members will be shared jointly between the City of Edmonton and the Union or Unions involved in individual cases. Where there is more than one Union involved in a particular case, the Union half of the costs shall be divided equally between them unless the mediator or expedited arbitrator orders some different apportionment.
- 4.13 The costs of a formal arbitration shall be shared jointly between the City of Edmonton and the Union or Unions involved in a particular case. Where there is more than one Union involved in a particular case, the Union half of the costs, and the costs of any Union nominee, shall be divided equally between them unless the arbitrator or arbitration board orders some different apportionment.

## **SCOPE AND DURATION OF ACCOMMODATION ISSUES**

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- 5.1 Participants recognize that persons are entitled to employment free from discrimination beginning when they apply for a position with the City and continuing throughout their career. An employee's need for accommodation may change based on the current state of any disability and the employee's needs due to that disability. The ability of participants to accommodate an employee's disability and the point at which undue hardship is reached may similarly change over time.
- 5.2 Existing employees seeking promotion are entitled to be considered for promotional opportunities on the basis that, if they are the successful candidate, their needs for accommodation within that position will be met up to the point of undue hardship. Employees applying for a promotion, through a job posting or otherwise, are entitled to be considered for the position equally with other applicants and without the need for measures to accommodate them (short of undue hardship) being a factor in the decision on the promotion.
- 5.3 The Unions and Associations agree to provide the City with reasonable extensions of time when it is necessary for the City to consider any accommodation that may be needed by applicants for positions.
- 5.4 In administering an employee's return to work following an illness or disability (including employees on WCB coverage), the participants' administration of the various benefit plans and of the return to work process will be the same as if the individual involved had requested that the participants accommodate their disability.
- 5.5 Issues that arise concerning an employee's return to work and the participants' accommodation of their disabilities shall be dealt with in accordance with the procedures set out in this agreement. This provision does not replace processes, testing, or rehabilitative steps covered by the Worker's Compensation Act or by third-party benefit or insurance plans. Similarly, it is not intended to have the participants take over the costs of such processes, testing, or rehabilitative steps when covered elsewhere.

## **INTER BARGAINING UNIT ISSUES**

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### ***Length of Accommodation and Bargaining Unit Allocation***

- 6.1 The length of any necessary accommodation depends upon whether the employee's needs are temporary, uncertain, or of a permanent nature.
- 6.2 Participants recognize and agree that short term accommodation (including accommodation measures arising upon an employee's return to work from an absence due to illness or injury), may require the employee to be assigned and perform work that, if performed routinely in circumstances other than an accommodation situation, might call into question the appropriateness of their bargaining unit allocation.
- 6.3 Participants agree that, for *bona fide* accommodation purposes, including not extending beyond one year or any extension specifically agreed to, they will not seek to have the employee's bargaining unit allocation changed. This includes foregoing grievance and arbitration proceedings to declare a person in a different bargaining unit and Labour Relations Board applications for a similar declaration.
- 6.4 Participants agree not to use the fact that employees are assigned any particular set of duties for accommodation purposes to argue that other employees are or ought to be within a different bargaining unit.
- 6.5 An employee performing other than their normal work due to an accommodation should remain in their existing bargaining unit until a decision is made to change their position and bargaining unit assignment on the basis that the assignment is permanent, or sufficiently long term and uncertain as to be considered permanent. All such changes should be documented and each bargaining agent should know that the reallocation is being made and as of what date it is to be effective. Until that change is made:
- a) The bargaining agent for the employee's original bargaining unit will remain as the employee's bargaining agent;
  - b) Union dues will be collected on behalf of and remitted to that original bargaining agent;

- c) The employee will be covered by the terms of the original union's collective agreement subject to any modified terms, as agreed, to reflect the accommodation;
  - d) Neither the City nor any Union will use the accommodation assignment or the performance of work covered by that assignment to argue that there has been a change in bargaining unit; and
  - e) The original Union will maintain responsibility for the employee's representation and for fulfilling the duty of fair representation.
- 6.6 When an employee is assigned to work in any new area, the bargaining agent representing employees in that area will be advised of the assignment so that the Union can explain the nature of and necessity for the assignment in advance. This advice will be provided whether or not a change in bargaining units is involved.
- 6.7 When, due to a change in assignment as contemplated by this document it is agreed that a person's bargaining agent will change, that change will be documented in a jointly signed agreement and will specify the effective date of the change. The actual change in bargaining units will be deemed to occur on that date. Thereafter, all dues, agreement terms and representational rights and responsibilities will change to the new Union, subject to any specific agreed upon arrangements.
- 6.8 Where the City and the Union or Unions involved do not agree on the terms of such an assignment the City will give a notice of the proposed change and proposed terms which it will implement on an interim basis, subject to the right of any affected Union to challenge those terms under the duty to accommodate dispute resolution provisions.

***Allowance in lieu of dues***

- 6.9 Where an employee is accommodated in an established position that ordinarily falls within the jurisdiction of another Union, but without a change in bargaining units, the City will pay to that other Union an allowance. This will be equivalent to, but in lieu of, Union dues for each month in excess of one year that the employee occupies that position while they are still deemed to be in their original Union's bargaining unit.



### ***Change of Bargaining Units***

6.10 When, as a result of a permanent accommodation, an employee changes bargaining units, the City and the Unions involved will set out in an agreement covering that employee how the transition between bargaining units is to be achieved. The terms of that agreement may vary with the circumstances and will include items such as:

- 1) Seniority;
- 2) Entitlement to annual vacation;
- 3) Rates of pay;
- 4) Description of any modifications to position, job duties etc. due to the accommodation measures
- 5) Transition between benefit plans and benefit plan eligibility including any indemnity or other agreement of the type referred to in clause 6.12 below;
- 6) The carry over of any disciplinary record;
- 7) Banked overtime;
- 8) Any reversionary rights to seek employment in their initial bargaining unit based on prior service or experience in that unit (for consideration primarily where a disability is temporarily accommodated pending longer term treatment or training).

6.11 Unless specifically covered, the employee's terms and conditions of employment will be as provided for in the collective agreement covering the bargaining unit to which the employee is assigned.

6.12 If, as a result of the condition of an employee changing bargaining units, it is predictable that their leaving one employee benefit plan and joining another will improve the financial position of the plan they leave and create a potential burden on the plan to which they move, indemnity or other agreements may be entered into to fairly apportion the financial impact of that person's benefits between the two plans. Such agreements will recognize that the person has paid into the former plan prior to their disability. Any indemnity or similar agreement should not extend to new medical issues or injuries unrelated to the reasons for which they are being accommodated.

## **CHANGES TO THIS UNDERSTANDING**

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- 7.1 The participants will meet annually to discuss and review this understanding and any related policies or procedures related to the duty to accommodate mental and physical disabilities in the workplace.
- 7.2 A steering committee of eight persons, selected by the participants and equally representative of the City of Edmonton and the Unions and Associations, will meet quarterly with a mandate to:
- monitor the implementation of this Agreement;
  - arrange for the annual meeting;
  - provide a report to that meeting of difficulties encountered, proposals for improvement, changes or additions to the arbitrators and agencies retained pursuant to the agreement, and
  - address any administrative matters that arise between annual participant meetings.
  - add a person to the roster of mediators and expedited arbitrators or the panel of formal arbitrators but only when it is necessary to do so due to the inability of any of the other roster or panel members to act. Any such addition is subject to confirmation at the next annual meeting.
  - select agencies under Section 5 of Schedule 2 where it is necessary to do so subject to confirmation at the next annual meeting.
- 7.3 Any participant wishing to change this agreement will provide all other participants with notice, at least 30 days in advance of the annual meeting, of its proposals for change and the justification for those proposed changes.
- 7.4 Any participant may withdraw from participation in this agreement, or any specified part of this agreement, by providing all other participants with six months notice of their intention to withdraw. A meeting of all participants will be held within two months of the receipt of a notice to withdraw in order to attempt to resolve any issues that relate to, or may arise from, the proposed withdrawal.

## **SCHEDULE 1: GENERAL UNDERSTANDINGS**

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The Participants recognize that:

- All City of Edmonton employees have a right not to be discriminated against on the basis of physical or mental disability;
- The City of Edmonton and the Unions as representatives of employees, have a legal duty to accommodate the needs of those physically or mentally disabled in respect to their employment, to the point of undue hardship;
- Employees seeking accommodation have a legal obligation to cooperate and to participate actively in the accommodation process;
- All City employees may be required to accept changes designed to accommodate the needs of others and to create a barrier free workplace;
- The participants' legal duties and the interests of employees are best met when issues over the duty to accommodate are resolved in a timely and collaborative way;
- Raising the general level of understanding about the rights, responsibilities and process related to the duty to accommodate will help reduce employment discrimination affecting those with disabilities;
- Obligations in this multi-union environment are best met using jointly agreed processes, protocols and dispute resolution procedures.

### ***Political Pressures - Unions and Members***

Participants recognize that accommodating disabled persons is not always popular. This may be particularly so when other employees must modify their own working arrangements or waive collective agreement provisions in order for a disabled employee to be suitably accommodated. Participants accept that Unions sometimes face a dual, and on occasion conflicting, role as they help employees with a disability achieve their rights to be accommodated and yet protect employees' collective rights unless undue hardship can be demonstrated.

The participants commit to reduce these difficulties by raising the awareness of all affected persons about anti-discrimination laws that sometimes require interests to be modified to achieve a discrimination free workplace. Participants commit to working to overcome opposition to accommodation measures where undue hardship is not demonstrated and to resolve efficiently those cases where undue hardship is alleged. Participants commit that they will seek to avoid merely deflecting their own political difficulties with proposed accommodations to other departments or bargaining agents rather than accepting

proposed modifications that fall short of undue hardship. Participants claiming undue hardship accept the responsibility to give explicit and objectively valid reasons based on an assessment of the legal rights involved for any such claims.

***Financial Pressures - Employer***

It is recognized that managers in the City, subject to limited budgets and pressures to achieve efficiency within those budgets, may be tempted to resist accommodating employees within their own areas or departments for fear that they will suffer and have to absorb efficiency losses if they do so. The City will take appropriate steps to counteract this tendency by:

- a) Making clear that every work group and department is responsible for accommodation;
- b) Considering the advantages of creating a central fund to cover the costs of some accommodation measures;
- c) Requiring that efforts to accommodate an employee within their workgroup or department be fully explored before options for assignment elsewhere are considered; and
- d) Raising awareness within City management that viewing disabled employees as "problems" is itself a source of discriminatory attitudes that overlook the true contribution employees with disabilities make through employment.

## **SCHEDULE 2: PROCEDURES FOR OBTAINING EXPERT OPINIONS**

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1. These procedures will be used to obtain professional opinions about:
  - a) whether a person suffers from a disability and if so what;
  - b) the restrictions or changes necessary to accommodate a person's disability;
  - c) an employee's capacity to perform available work either in its original or modified form, or other available work (functional capacity evaluation); or
  - d) the abilities or capacities needed to perform an existing or modified set of duties (job audit).
  - e) resolving questions or uncertainties in a prior opinion, or obtaining any necessary follow-up opinion due to changed circumstances. This provision is not for the purpose of simply obtaining a second opinion on the same subject unless the parties agree that such a second opinion is necessary in the circumstances.
2. Any opinions on the matters listed in clause 1 will be obtained through the agencies agreed to by the participants from time to time as set out below.
3. Participants agree that they will solicit an agency's preliminary review as to the appropriate scope of the opinion before requisitioning that full expert opinion. In preparing that review, the agency will consider the preliminary views advanced by the City, the Unions or Associations involved, and any pertinent information provided by the employee's own health care providers.
4. If a difference arises about whether certain information in a medical report is relevant to the issues of accommodation, or ought to be kept confidential as not relevant, any party may require that the appointed agency review the report and give directions as to what should be released and what should be expunged from the report as not relevant to the accommodation issue involved.
5. In any proceedings involving the participants, where the subjects covered by a report are in issue, any professional opinion or report obtained under these procedures will be accepted as prima facie proof of the opinions given or factual report made.

***Selection of Agencies through which reports will be obtained.***

6. Participants will select agencies to provide
  - a) Opinions about items 1 (a) and (b) listed above, and
  - b) Opinions about items 1 (c) and (d) listed above.In addition, the participants will select one or more agencies to act as a back-up if the principal agency is inappropriate or unable for some reason to provide the requested opinion.
7. The agencies, once selected, will serve for an initial trial period of one year and then, if satisfactory to the parties, for further fixed term periods of three years. The initial agencies are:
  - Viewpoint Medical Assessment Services (Independent Medical and Functional Capacity)
  - CIRA Health Solutions (Independent Medical)
8. The initial selection and every renewal of an agency's contract shall require the consent of all participants. The selection criteria will include the agency's willingness to accept the joint labour management nature of their role and the need to maintain acceptability to all participants; timeliness; economy; and appropriateness of their methods of selecting specialists and testing contractors.
9. If a party is dissatisfied with an agency during the term of its contract it may:
  - a) require that the other agency or the back-up agency be used for its cases;
  - b) raise for consideration with the participants at their next regular participants' meeting or steering committee meeting any basis on which it feels the agencies' contact should be terminated for cause.

## **SCHEDULE 3: TEMPLATE - LETTER OF UNDERSTANDING**

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<p>Letter of Understanding</p> <p>Duty to Accommodate Process</p>
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***Introduction:***

The parties to this collective agreement are participants in the City of Edmonton - Civic Union Workplace Relationship Agreement and the Duty to Accommodate Framework Agreement ("the Framework Agreement") entered into under the auspices of the Working Relationship Agreement.

In the Framework Agreement, the participants agree to establish specialized grievance and arbitration mechanisms to resolve disputes over the duty to accommodate, modifying, or in lieu of, the grievance and arbitration provisions in their collective agreements. The reasons and purposes for such specialized processes include recognition that:

- The duty to accommodate can involve obligations and remedies that transcend bargaining unit boundaries, and thus involve a need for dispute resolution where additional parties can participate so as to avoid multiple proceedings;
- The duty to accommodate is a process not just a result; that it is time sensitive; and that the rights and obligations can change over time; all of which can favour informal, expedited and specialized processes.
- While statutory human rights procedures exist, collective agreement arbitration provides a parallel procedure which, if suitably adapted, offers a more flexible and timely way of resolving accommodation issues for the civic workforce; and
- Although expedited procedures will normally be the chosen option for resolving such disputes, parties may at times choose instead to follow their more formal arbitration procedures, which they should remain free to pursue, subject to modifications for individual and affected union participation and a pre-arbitration mediation process.

*Therefore:*

The parties to the collective agreement agree to use the following alternative grievance and arbitration procedure for cases falling within the scope of this letter of understanding.

### **Scope**

- 1.1 This procedure applies to grievances concerning the duty to accommodate employees on the basis of physical or mental disability.
- 1.2 This procedure does not apply to:
  - 1.2.1 Cases where employees seek accommodation as a result of an addiction said to be a physical or mental disability, or
  - 1.2.2 Cases where employees raise accommodation issues only after being terminated by the City of Edmonton.

### **Initiating a grievance**

- 2.1 Grievances may be initiated during the course of an accommodation process to obtain a decision on a particular decision point in that process even though other steps remain to be taken.
- 2.2 A grievance may concern:
  - 2.2.1 Whether an employee seeking accommodation has a mental or physical disability that gives rise to a need for accommodation;
  - 2.2.2 What, if any, restrictions or requirements arise from the employee's disability;
  - 2.2.3 A decision by the City of Edmonton not to accept a measure that might be undertaken to accommodate the employee's needs in their existing job or some other job (whether modified or not), whether based on undue hardship or any other reason;
  - 2.2.4 A decision by an Employee or the Union to decline to accept as a reasonable or suitable accommodation a measure proposed by the City of Edmonton;
  - 2.2.5 The failure or refusal by any Union or Association to give any necessary consent to any aspect of a proposed measure that might be undertaken to accommodate an



employee's needs, whether that failure or refusal is based on conflicting collective agreement provisions, undue hardship, or otherwise;

2.2.6 The assignment of an employee to a position within a different bargaining unit or any terms and conditions attached to that assignment; or

2.2.7 Whether any trial period for an accommodation measure has succeeded.

2.3 In these procedures, "parties" mean the parties to this collective agreement and any other affected Union or Unions. It does not include an individual with a right to be represented or heard separately during any arbitration procedure.

2.4 Prior to filing a grievance under Article 2.2 the party will follow the provisions for precipitating a decision on a decision point in the Framework Agreement and shall first advise all affected parties of their wish for a decision on the issue.

2.5 On receipt of a request for a decision, the City's Disability Management Consultant, the Union or Unions involved and such other persons whose presence may be necessary or appropriate to the decision will meet for a full and frank discussion in an attempt to reach agreement on the question.

2.6 If the initial request or, following discussion, the agreed upon issue, is a question of the employee's disability, capacity, or the requirement of any job or proposed job, the parties will initiate the process of obtaining an independent report on the issue in accordance with the procedures in the Framework Agreement. Any professional opinion or factual report obtained as a result of those processes shall be accepted as prima facie proof in any subsequent arbitration proceedings.

2.7 The party requesting a decision and the party whose decision is sought may agree in writing to continue to assess the matter in an agreed upon manner.

2.8 Following the meeting referred to in Article 2.4, and unless Articles 2.5 and 2.6 apply, the party required to make a decision will provide that decision in writing within 15 days of the initial request.

2.9 If a decision on a decision point is agreed to, it will be implemented forthwith, according to its terms. If no grievance disputing the decision is initiated within 15 days following the decision, it will be treated as agreed upon and any proposed action may be implemented unilaterally. A grievance over any decision described in Article 2.2 may be filed by the parties to this collective agreement or by another Union affected by the decision.

***Separate Representation:***

3.1 Where an individual is directly affected by the subject matter of a decision, and their interests may conflict with the position being advanced by their bargaining agent, they may be separately represented in any arbitration process. The form of that separate representation shall be determined by their bargaining agent. Separately represented employees shall not have the authority to advance a matter to arbitration or to insist on formal rather than expedited arbitration.

***Expedited Arbitration:***

4.1 All grievances will be heard initially by a member of the expedited arbitration roster. Unless the parties agree to a particular member of the roster, the roster coordinator will assign a member to hear the grievance as specified in the Framework Agreement.

4.2 The members of the expedited arbitration roster are:

- Deborah Howes (Roster Co-ordinator)
- Roger Gunn
- Mia Norrie
- James Casey
- Such other persons agreed to or appointed under the Duty to Accommodate Framework Agreement from time to time.

4.3 The roster member assigned to hear the grievance will convene a meeting of the parties and any individual entitled to separate representation. The purpose of that meeting will be to:

4.3.1 Ensure the issues in dispute are defined;

4.3.2 Determine whether the parties agree to expedited arbitration or wish to have all or part of the issue resolved by a formal process;

- 4.3.3 If the parties accept expedited arbitration, to set a time, date and place for an expedited arbitration hearing with that roster member;
  - 4.3.4 If a party selects formal arbitration, set a time, place and date for a without prejudice pre-arbitration mediation with the roster member or any other agreed upon mediator;
  - 4.3.5 Discuss any other matter that, in the opinion of the roster member, is appropriate;
  - 4.3.6 Unless formal arbitration has been selected, grant interim orders where there are substantial reasons for doing so and where the order can be made in a manner that accords with the Framework Agreement.
  - 4.3.7 Where the parties agree, do anything at the first meeting that might be done at the expedited arbitration or mediation stages.
- 4.4 The meeting referred to in Article 4.3 will be held within 10 days of the grievance and may be in person or, with the consent of the affected parties, by teleconference. A failure to hold the meeting within 10 days will not constitute a loss of jurisdiction.
- 4.5 The Roster member will provide participants with minutes of the first meeting including any agreements reached along with directions for a mediation meeting or an expedited arbitration hearing.

***Expedited Arbitration:***

- 5.1 The Roster member shall hear the grievance informally and expeditiously, providing the parties and any separately represented member the opportunity to adduce evidence and be heard, following which the member will issue a summary award on the grievance. The award will be provided in writing.
- 5.2 The parties will implement the award forthwith, according to its terms.
- 5.3 Awards under the expedited process will be confined to the issue raised in the grievance on the particular decision point. Any further issues that arise in respect to the duty to accommodate that same individual will be dealt with through a continuation or resumption of the Framework Agreement processes and if needed, by a further grievance on any subsequent decision point, rather than through the expedited arbitrator remaining seized with the matter.

***Grievance Mediation:***

- 6.1 Where the parties have selected formal arbitration, the arbitration board will be appointed and scheduling commenced following the first meeting referred to in Article 4.3. At the same time, the parties and any separately represented employee will participate in a without prejudice mediation meeting with the roster member or another agreed upon mediator.
- 6.2 Participants in the mediation will each be represented by a person or persons familiar with the matter who will make good faith efforts to resolve the matter and who have decision making authority.
- 6.3 Settlements reached through informal mediation shall, where they resolve the full issue, be incorporated into a consent award of the roster member as an arbitrator, or where they resolve some issues only, be incorporated into an agreed statement of facts or position to be placed by consent before the formal arbitrator or arbitration panel.
- 6.4 Other than the documents referred to in Article 6.2, the discussions during informal mediation shall be privileged and shall not be referred to in any subsequent arbitration or other proceeding.

6.5 The cost of the Roster Coordinator's administrative duties shall be paid by the City of Edmonton. The cost of the mediation or expedited arbitration duties of the panel members will be shared jointly between the City of Edmonton and the Union or Unions involved in individual cases. Where there is more than one Union involved in a particular case, the Union's half of the costs shall be divided equally between them unless the mediator or expedited arbitrator orders some different appointment.

***Formal Arbitration:***

7.1 Where a party insists on formal arbitration, that arbitration will be established and conducted in accordance with the arbitration procedure in this collective agreement, modified as necessary to comport with the Framework Agreement.

7.2 Where, in addition to the Union under this collective agreement, there is another affected Union in respect of the dispute, the following provisions will apply:

.2.1 The decision of the arbitration board will be final and binding on all parties;

7.2.2 Except to the extent this agreement provides for or the parties agree upon a single arbitrator, the Unions will attempt to agree upon a single nominee, failing which a Union nominee will be selected by the roster member assigned to conduct the informal mediation.

7.2.3 The costs of any nominee, and of the Chair, will be shared by the Unions equally, unless the arbitrator or arbitration board awards some different apportionment.

7.3 In addition to any other powers provided by law or by the Collective Agreement, the arbitrator or arbitration board may, on the request of any affected party, by interim order, direct what ought to be done, or not be done, pending the arbitration hearing or ruling. Interim orders shall only be granted where there are substantial reasons for doing so, and shall be made in a manner that best accords with the provisions of the Framework Agreement.

7.4 Arbitrators shall be selected from the following list of arbitrators, either by agreement, or on the basis of the rotation provided for in the Framework Agreement:

- Andrew C.L. Sims, Q.C.
- Deborah Howes

- Lyle Kanee
- Thomas Jolliffe
- Such other persons agreed to or appointed under the Duty to Accommodate Framework Agreement from time to time.

7.5. Where an arbitrator or arbitration board, appointed under this collective agreement, finds that the matter or any part of the matter arising in that arbitration properly falls within the scope of this letter of understanding, the arbitrator or arbitration board may direct the parties to pursue the matter in accordance with the provisions of this letter of understanding.

7.6 The arbitrator or arbitration board may make any directions as to timeliness or other procedural issue that appears just in all the circumstances. An application under this clause may be made by any party affected by the issue in question whether or not that party is a party signatory to the collective agreement. No such application may be made by an individual employee.

7.7 Notwithstanding anything in the parties' collective agreement concerning the calculation of days for timeliness in a grievance process, for the purpose of grievances under this agreement, and to ensure uniformity between the participating parties, days shall mean Mondays to Fridays excluding statutory holidays.

## **SCHEDULE 4 - ACCOMMODATION POSSIBILITIES CHECKLIST ①**

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This checklist is for use in searching out and assessing steps that might be taken to accommodate an employee's physical or mental disability.

### **Basic Points**

- ☐ You are not searching for the perfect accommodation; just a reasonable accommodation.
- ☐ Begin the search closest to the employee's existing workplace; look further afield only when necessary.
- ☐ Accommodation is not just a one-time measure; an employee with a disability is entitled to a career that progresses through several phases just like other employees.
- ☐ Accommodation, particularly beyond short term situations, involves finding productive work that the employee can do. It is not about "make-work" projects.
- ☐ Separate the search for possibilities from the question of undue hardship. Only once you have clearly identified the possibilities should you assess the question of hardships, and if and how they might be overcome. Focusing on undue hardship issues first often rules out possibilities prematurely.
- ☐ Document the considerations you give to each step, at the time, and in a way that will explain and support the decision later.

### **Consider the likely duration of any need for accommodation**

- ☐ Is the employee's condition permanent?
- ☐ Is the employee's need for accommodation likely to increase over time?
- ☐ Is the employee's need for accommodation likely to decrease over time?
- ☐ Is the need for accommodation intermittent or ongoing?

*Discussing these issues will help determine any question of undue hardship. It will also assist in setting any appropriate time frames within which to review any accommodation measures to see if they have been successful and remain necessary. This also reinforces the fact that accommodation is often not a "one-time solution", but rather an ongoing duty and need, requiring periodic reassessment.*

## **Review the Employee's skills, abilities, training and capacities**

- ☐ What skills, capacities, training and qualifications does the employee possess, whether used in their current position or not?
- ☐ What potential does the employee have for retraining, obtaining additional qualifications or adapting to other technologies?
- ☐ What technologies does the employee possess or have the ability to use in dealing with their disability?
- ☐ What limitations is the employee perceived to have that might limit their ability to achieve a suitable accommodation?

*Discussing these issues at the outset forces a look at the employee's situation not as a person with a disability, but as a person with a range of abilities, including the potential to develop new abilities with suitable support. An inquiry into existing perceptions brings out into the open for objective review, perceptions that may assume limitations from the fact of a disability that do not, in fact, exist. It also brings forward objective limitations that are real and may preclude accommodation options that might otherwise be worth exploring.*

## **Exploring Options**

Have you considered all the options? There is no exhaustive list; all possibilities should be given some consideration even if, at first, they seem unlikely to succeed. Consider possibilities not only for the employee's existing job but for other jobs. In each case, think beyond jobs as they exist now. Consider how the employee's existing job, or any existing work, might be performed by the employee if suitable modifications could be worked out. Take the same imaginative approach for every possible work area that you consider. Leave for later whether that suggestion might be too difficult on management or other workers.

Consider the following suggestions and any similar suggestions that might fit the employee's needs.

### ***Tools and environment***

- Altering the work station or working environment
- Having the work done elsewhere in a more suitable environment



- Locating tools available to help overcome the employee's limitations (for example providing a trolley to move heavy objects)
- Is there a co-worker nearby who could assist with a few limiting tasks (for example, lifting heavy deliveries onto a trolley)
- Providing fans, barriers or ventilated rooms

***Hours of Work and Endurance Issues***

- Would a change in hours assist?
- Can occasional breaks, staggered hours or split shifts be used to allow breaks, appointments etc.?
- Where special shifts are needed can you find a partner willing to swap shifts to yield regular coverage between the two of them?

***Duties or Tasks that Exceed the Individual's Capacity***

- Are the tasks essential to the position?
- Can those tasks be performed by others in the same workgroup?
- Can those tasks be performed another way?
- Can the tasks performed by the workgroup be redistributed (rebundled) in a way that provides yields a position within the individual's capacities?

***Qualification and Training Issues***

- Is the employee qualified to perform the work, or sufficient aspects of the work, to make a development assignment feasible?
- Are there courses the employee might take to become qualified?
- Are there exceptions allowed to any necessary qualifications in exceptional circumstances?
- Is there someone available who could mentor and assist the employee in becoming qualified?
- Are there statutory, professional or similar qualifications for a job being considered as an accommodation that the employee could not meet under any circumstances?

*These are just examples of options that might be explored in some cases. The possible solutions to a need for accommodation are as varied as the disabilities people encounter.*

### **Looking in the Employee's own Bargaining Unit First**

Before looking elsewhere in the City's workforce, consideration must first be given to positions which fall within, or by the nature of the reconfigured duties would ordinarily be allocated to, the employee's existing bargaining unit. Assess possibilities in the following order.

- ☐ Can the employee's needs be accommodated by altering their existing job?
- ☐ Is there another existing job within the employee's work area in which their needs could be met?
- ☐ Is there another existing job within the employee's employing department in which their needs could be met?
- ☐ Is there another existing job anywhere within the bargaining unit, but outside their current department, within which their needs might be met?

As you consider each of these possibilities, assess and document,

- ☐ Not only existing positions, but the possibility of modifying existing jobs or bundling work and reassigning duties to yield a meaningful job ;
- ☐ Give preference, between possible options, to those that provide the employee with pay and terms and conditions closest to their existing levels;
- ☐ Give preference, between possible options, to possibilities that will put the employee on a viable career path for someone with their limitations

### **Looking beyond the Employee's own bargaining unit**

Do not consider positions in a different bargaining unit until all reasonable options within the employee's existing bargaining unit have been assessed and found unsuitable. Again, start close to home and move further away if and when necessary.

- ☐ First, consider positions within the employee's work area;
- ☐ Second, consider positions within the employee's own department;
- ☐ Third, consider jobs anywhere in the City.

Once again, for each of these possibilities, assess and document,

- ☐ Not only existing positions, but the possibility of modifying existing jobs or bundling work and reassigning duties to yield a meaningful job ;

- ☐ Give preference between possible options to those that provide the employee with pay and terms and conditions closest to their existing levels;
- ☐ Give preference, between possible options, to possibilities that will put the employee on a viable career path for someone with their limitations

### **Trial Periods and Ongoing Assessment**

The best way to achieve a successful accommodation may be to experiment with a solution or set up a trial period. Discuss and try to agree on the circumstances by which the success of the accommodation measure or trial period is to be judged.

In designing and assessing any trial period it is important to:

- a) Create, as far as possible, a receptive climate in the employee's work area;
- b) Not allow others, whether managers, co-workers or clients, to frustrate legitimate accommodation efforts for personal, discriminatory, or financial reasons;
- c) Be sensitive to discriminatory barriers that may themselves taint the assessment of the accommodation.

Some disabilities, and the needs or limitations they impose, will predictably change over time. When designing an accommodation consider that possibility at the outset.

Discuss when and how the accommodation measure will be reassessed

- ☐ How will it be decided when needs have changed?
- ☐ How will any trial period be assessed to see if it is working out, in need of modification, or if it is not working?
- ☐ Whose responsibility will it be to monitor, report on, or assess any change in needs?
- ☐ What will be done to ensure that the accommodation does not last longer than the need created by the disability?

*Major barriers to people's cooperation in accommodation arise from fear of the unknown and the suspicion that employees are seeking some kind of benefit that they will later be reluctant to relinquish. Discussing, at the outset, how accommodation measures will be evaluated, modified and ended if no longer needed helps calm such fears. It also helps mold expectations for the future and establishes roles and responsibilities. It can reduce the notion that accommodation is a "one-time thing".*

### **Assessing Barriers to Accommodation and Undue Hardship**

Once you have listed possibilities for accommodating the employee's needs then you need to look at any barriers to those measures being accepted. This should happen at each step as you consider positions progressively further away from the work unit, bargaining unit and department. Consider, for each group of possibilities:

- ☐ Are any perceived adverse consequences real or just imagined?
- ☐ What are the alleged adverse consequences on:
  - Management?
  - Co-workers in the work unit?
  - The public or customers served by the position?
  - Workgroup productivity including safety issues?
  - Other bargaining unit members whose collective rights may be affected?
- ☐ Can the adverse consequences be reduced, and if so how?
- ☐ Are the adverse consequences primarily due to timing (for example, is a new position about to be created, or an existing position vacated, allowing the employee to fill that position but only after an acceptable wait)?
- ☐ What is it about any adverse consequences that might put them into the realm of "undue hardship"?
- ☐ Are there outside resources that could be used to reduce the level of hardship or disruption?
- ☐ Are there ways the performance expectations for the manager or workgroup could be adjusted, or the budget adjusted, to overcome the perception of hardship?
- ☐ Are there measures that could be taken to readjust any perceived disruption of collective agreement rights (like seniority or equitable shift rotations) for co-workers as a result of the accommodation (for example a first option on another position for an employee who loses an expected transfer or promotion)?