

**ALTERNATIVE DISPUTE RESOLUTION AGREEMENT
BETWEEN CITY OF CHULA VISTA AND
CHULA VISTA POLICE OFFICER'S ASSOCIATION**

This Workers' Compensation Alternative Dispute Resolution Agreement ("Agreement") is entered into by and between the City of Chula Vista ("City") and the Chula Vista Police Officer's Association ("POA") (collectively, "parties"). This Agreement is created pursuant to California Labor Code Section 3201.7(a)(3)(C). The Parties, after meeting and conferring in good faith, hereby agree to the following:

Nothing in this Agreement diminishes the entitlement of a covered employee to compensation payments for total or partial permanent disability, total or partial temporary disability, or medical treatment fully paid by the employer as otherwise provided for in Division 4 of the California Labor Code ("Workers' Compensation Law"), nor to California Labor Code Section 4850 benefits. Nothing in this Agreement denies to any covered employee or the City the right to representation by counsel at all stages during this alternative dispute resolution process.

Article I: Purpose/Joint Labor Management Committee

A. The purpose of the Agreement is to provide Covered Employees, as defined in Article III, paragraph A below, claiming compensable injuries under Workers' Compensation Law, with an alternative dispute resolution process with the intent of expeditiously resolving disputes.

This purpose will be achieved by utilizing an exclusive list of agreed-upon medical providers ("Independent Medical Evaluators" or "IMEs") to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7(a)(3)(C).

B. The City and POA agree to form a Joint Labor Management Committee ("JLMC"). This committee will be comprised of two (2) to three (3) City staff members to be determined and designated City in writing to the POA by the Human Resources Director and two (2) to three (3) POA representatives to be determined and designated in writing to the City by the POA President.

The purpose of the JLMC is to develop and maintain a list of the exclusive Independent Medical Examiners, develop policy and procedures of the Alternative Dispute Resolution program; to review implementation and the progress of the program and address any issues at time frames agreed to by the committee; and to ensure that the program terms and conditions are administered in harmony with this Agreement. Additionally, the JLMC shall quarterly and prior to the termination of this Agreement review claims data for claims administered prior to the implementation of

this Agreement with claims data for claims administered under the provisions of this Agreement to examine the effectiveness of this program.

Article II: Term of Agreement

The parties understand that this Agreement governs a pilot program and that this Agreement shall become effective on or after January 1, 2021 after it is approved by the Chula Vista City Council, executed by the parties, submitted to the Administrative Director (“Director”) of the State of California, Department of Industrial Relations, Division of Workers’ Compensation, in accordance with Title 8, California Code of Regulations, Section 10202(d), and accepted by the Director as evidenced by the Director’s letter to the parties indicating approval of the Agreement. This Agreement shall remain in effect for one year from the date of the Director’s letter of approval to the parties. Any claim arising from an industrial injury that is covered by this Agreement and sustained before the termination of this Agreement shall continue to be covered by the terms of this Agreement, until all medical issues related to the pending claim are resolved.

The parties reserve the right to terminate this Agreement during the term of this Agreement at any time for good cause, by mutual agreement, or by act of the Legislature. The terminating party must give at least 30 calendar days written notice to the other party of the intent to terminate, including an explanation of the good cause. Upon termination of this Agreement, the parties shall become fully subject to the provisions of the applicable California Labor Code provisions.

Article III: Scope of Agreement

A. This Agreement applies only to injuries, as defined by Workers’ Compensation Law, claimed by the following (referred to herein collectively as “Covered Employees”): (1) active City employees who represented by the POA bargaining group and (2) active City employees whose classification is represented by the POA, who have filed a claim, and are in the ADR program, but subsequently retire before the claim is resolved.

B. Active employees with an existing claim filed prior to the effective date of this agreement (pre-existing claim) that have not already had a medical-legal evaluation under the State’s AME/QME system may request to resolve their claim under the provisions of this agreement. Such requests should be made in writing to the City’s third-party claims administrator (TPA). The decision to accept a pre-existing claim into the alternative dispute resolution program will lie with both the City and the POA. If a request is made to utilize the alternative dispute resolution program for a pre-existing claim and that request is approved, all future disputes on said claim must be resolved according to the provisions of this agreement. Use of the alternative dispute resolution

program may not be used to relitigate previously resolved or adjudicated issues. The scope of this agreement does not apply to retirees that have a future medical dispute that is outside the five-year statute of limitations or Labor Code Section §5804.

C. Injuries occurring and claims filed after termination of this Agreement are not covered by this Agreement.

D. This Agreement is restricted to 1) establishing an exclusive list of IMEs to be used for medical dispute resolution of covered employees, and 2) establishing a process for informal legal discovery in accordance with Article V. For purposes of this Agreement, a “claimed injury” is one for which either a Workers’ Compensation Claim Form DWC-1 or an Application for Adjudication of Claim has been filed with the Workers’ Compensation Appeals Board (“WCAB”).

Article IV: Expedited Independent Medical Evaluator Process

A. This Agreement does not constitute a Medical Provider Network (“MPN”). However, all covered employees must utilize the City’s MPN, if applicable, for treatment purposes during the time the City maintains and utilizes the MPN. The MPN is governed by California Labor Code Section 4616 et seq and the City’s TPA will provide authorization for all initial medical treatment consultations and medical treatment consistent with the Labor Code. Physicians who act as a covered employee’s treating physician or have provided treatment to the covered employee shall not act as the IME in the covered employee’s claim. Pre-designation of a physician must comply with the requirements set forth in California Labor Code Section 4600(d)(1)-(2)(C).

B. All covered employees with a disputed medical issue as described in Article IV, paragraph D below must be evaluated by an approved physician from the exclusive list of IMEs. Attached hereto as Exhibit A is the exclusive list of IMEs agreed upon by the parties. Should the covered employee claim injuries requiring more than one IME specialist, the covered employee shall be provided an IME appointment in each area of specialty, if necessary. If the IME requires the opinion of an additional sub-specialist, the IME shall advise the claims examiner, who shall then select an approved medical provider in the requested specialty from the agreed-upon IME list. The IME may not refer the covered employee to the covered employee’s treating physician for this purpose. The consulting sub-specialist’s charges are subject to the Official Medical Fee Schedule promulgated by the California Division of Workers’ Compensation administrative director.

C. The exclusive list of IMEs shall include the IMEs’ respective specialties as agreed upon by the parties. If an IME for a specialty is not listed on the aforementioned list, the JLMC shall identify an IME for said specialty by mutual agreement.

D. An IME shall be used for all medical disputes that arise in connection with a workers’ compensation claim including, but not limited to, determination of

causation, the nature and extent of an injury, a *Rolda* analysis (if applicable), the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work (including transitional duty), resolution of all disputes arising from utilization review (UR), and future medical care, including the need for spinal surgery. The parties agree that the covered employee shall use the originally chosen IME for all subsequent disputes and injuries claimed arising under this Agreement. In the event that said IME is no longer available, the parties shall utilize the next specialist on the list pursuant to Article IV, paragraph I(5) below.

E. The IME process described above will be triggered when either party provides the other written notice of an objection in connection with any issues set forth in Article IV, paragraph D above. A delay letter to the claim gives the covered employee the basis to file a written objection thereby triggering the IME process. A delay letter without objection, will not automatically trigger the IME process. Objections from the City shall be sent to the covered employee with a copy to the covered employee's legal representative, if represented, and if the covered employee/legal representative gives notice to the City that the covered employee is represented. Objections from the covered employee or covered employee's legal representative shall be sent to the covered employee's assigned claims examiner with a copy to the City and City's legal representative, if applicable.

F. Objections shall be sent within 30 calendar days of receipt of a medical report addressing any of the issues set forth above. Delayed decisions based on legal issues shall not trigger the IME process. A subsequent acceptance of the claim and/or resolution of the disputed issue may eliminate the need for completion of the IME process set forth in this Agreement.

G. The exclusive list of IMEs shall serve as the exclusive source of medical evaluations for all disputed medical issues arising from a claimed injury, unless otherwise agreed to by the parties in writing.

H. The parties hereby agree that from time to time the exclusive list of IMEs may be amended. For either party to propose adding an IME to the exclusive list of IMEs, the party must provide notice, in writing, to the other party of its request to add a physician to the list. The parties must mutually agree in writing to the addition of physicians to the IME list. A physician may only be deleted from the exclusive list of IMEs if that physician breaches the terms and conditions of his/her contract with the City or by written mutual agreement of the parties. The exclusive list of IMEs shall be reviewed quarterly, or as otherwise agreed upon, by both parties for proposed additions and/or deletions of IMEs. Any physician proposed for addition or deletion after the quarterly review period will be reviewed at the next scheduled quarterly review period.

I. Appointments

1. The City's Third-Party Administrator ("TPA") shall schedule any appointment(s) between the IME and covered employee and provide notice of the appointment(s) to the covered employee within 10 business days after the receipt of the objection and when all relevant records have been received by the TPA. The notice of the appointment shall include the location, date, and time of the appointment.

2. The covered employee shall be responsible for providing the City's TPA with his/her work schedule prior to an appointment being made, so that appointments can be made, if possible, during a covered employee's non-working hours.

3. Compensation for attending medical appointments under this Agreement shall be consistent with California Labor Code requirements.

4. Mileage reimbursement to covered employees shall be in accordance with California Labor Code Section 4600(e)(2) unless transportation is provided by the City.

5. For purposes of appointments, the City's TPA shall select the IME(s) by starting with the first name listed on the exclusive list of IMEs within the appropriate specialty, and continuing down the list, in order, until the list is exhausted, at which time the City's TPA will resume using the first name on the list. Said list of IMEs shall be organized in alphabetical order by the IMEs' last names. IMEs that cannot meet the appointment timeframes designated in the Physician Contract shall be bypassed for the next available IME on the list. The TPA will maintain a log of the number of disputed claims, the type of disputes, the type of body part claimed, the time frames for setting IME appointments and receiving the IME report and the dispute outcomes.

6. The IME shall submit the medical reports 30 calendar days following examination of the covered employee, pursuant to the terms of the IME's contract, unless a longer period of time is agreed to by the parties.

J. The City is not liable for the cost of any medical examination used to resolve disputes governed by this Agreement where said examination is furnished by a medical provider that is not authorized by this Agreement. Medical evaluations shall not be obtained outside of this Agreement for disputes covered by this Agreement, notwithstanding California Labor Code Section 4605.

K. Both parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement, subject to legal challenges brought by the parties, before the WCAB.

L. Either party who receives records prepared or maintained by the treating physician(s), or records, either medical or nonmedical, that are relevant to the determination of the medical issue, shall serve those records on the other party immediately upon receipt. If a party objects to the provision of any nonmedical

record(s) to the IME, the party shall object within 10 calendar days of the service of record(s) to the other party. Objecting to the provision of nonmedical records may result in the denial of the claim on the basis that the IME did not have complete and accurate information. There shall be no objection to the provision of medical records to the IME, subject to the provisions of the California Labor Code.

M. The City's TPA shall provide to the IME records prepared or maintained by the covered employee's treating physician(s) and medical and nonmedical records relevant to the determination of the medical issue(s). The City's TPA shall prepare a list of all documents provided to the IME and shall serve a copy of the list on the covered employee and/or on his/her legal or other representative.

N. All communications with the IME shall be in writing and shall be served on the opposing party. This provision does not apply to routine discussions between the covered employee and the IME during the examination but may be reported in the IME's report.

O. Ex parte communication with the IME is prohibited. If a party or their legal representative communicates with the IME in violation of paragraph N and/or O of Article IV, the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from the next IME chosen from the exclusive list of IMEs pursuant to Article IV, paragraph I(5) above. If a new examination is required, the party making the communication prohibited herein shall be liable for the cost of the initial medical evaluation.

P. If either party disputes a medical finding of the IME, they shall notify the other party of this dispute by way of written objection within 14 calendar days of actual receipt of the IME's report. All disputes of this nature shall be resolved either by way of supplemental interrogatory and report or by way of deposition.

Q. If additional records are discovered either prior to the IME report or after the IME report is sent to the parties, the following procedures will be followed, subject to objection as set forth in Article IV, Paragraph L above: (1) if discovered prior to the IME report being sent to the parties, such records will be provided to the IME and the IME report will consider the records as part of the report; or (2) if discovered after the IME report is sent to the parties, such records will be provided to the IME doctor and a supplemental report will be issued with the records being considered.

Article V: Discovery

A. Covered employees will cooperate and provide the City's TPA with fully executed medical, employment and concurrent employment releases, disclosure statements, and any other documents and information reasonably necessary for the City to resolve the covered employee's claim, when requested, subject to the limitations set forth in the CCP and Labor Code. If the covered employee fails to return the executed releases and it is determined that the medical information is not sufficient for the IME to

provide a comprehensive evaluation, the parties shall meet to resolve the issue(s) within 14 calendar days prior to setting a medical evaluation. This Article does not supplant or diminish the parties' rights to pursue or contest discovery issues pursuant to the remedies provided in the California Labor Code or by the WCAB.

B. This Agreement does not preclude a formal deposition of a covered employee or IME when necessary pursuant to the right of discovery in accordance with applicable provisions of law. The need for a formal deposition may delay the scheduling of an appointment with an IME until the deposition has been completed. Attorney's fees for depositions of covered employees shall be paid at a rate consistent with California Labor Code Section 5710. This rate of reimbursement for attorney's fees for depositions of covered employees is subject to an annual review to determine if adjustments to said rate of reimbursement should be made. There shall be no attorney's fees for depositions of IMEs or other physicians. The current rate will be \$375/ hour.

Article VII: General Provisions

A. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

B. This Agreement shall be governed and construed pursuant to the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the City of Chula Vista, State of California, or any other appropriate court in such City.

C. This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing signed by the parties which expressly refers to this Agreement.

D. If any portion of this Agreement is found to be unenforceable or illegal the remaining portions shall remain in full force and effect.

E. This Agreement may be executed in counterparts.

F. Notice required under this Agreement shall be provided to the parties as follows:

CITY: Courtney Chase
Director of Human Resources/Risk Management
City of Chula Vista

POA: John A. Ferrone, Esq.
Adams, Ferrone & Ferrone

Executed at San Diego, California.

CITY OF CHULA VISTA:

DocuSigned by:
[Redacted Signature]
By: _____
CD85333F5BB34BD...
Courtney Chase, Director of Human Resources/Risk Management
Date: 12/7/2020

CHULA VISTA POLICE OFFICER'S ASSOCIATION:

DocuSigned by:
[Redacted Signature]
By: _____
514CA28DD278434...
David Martinez
Date: 12/7/2020

APPROVED AS TO FORM:

DocuSigned by:
[Redacted Signature]
By: _____
062BED7C0386456...
City Counsel Mary Casillas Salas, Mayor
Date: 12/7/2020
