

**LABOR MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE
DISPUTE RESOLUTION AGREEMENT BETWEEN THE CITY OF LA VERNE
AND THE LA VERNE POLICE OFFICERS ASSOCIATION**

THIS LABOR MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ("Agreement") is entered into by and between the City of La Verne ("City") and the La Verne Police Officers Association Local 3507 ("POA"). This Agreement is created pursuant to California Labor Code §3201.7(a) (3) (c).

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, Labor Code §4850 benefits, or medical treatment fully paid by the employer and otherwise provided for in Division 4 of the Labor Code. Nothing in this agreement denies any covered employee the right to representation by counsel at all stages during this alternative and expedited resolution process.

The City of La Verne and POA negotiated this agreement by forming a partnership known as the Joint Labor Management team (JLM); this team is comprised of Executive Management, TPA and staff members. The Labor Team is comprised of the POA Board President, or designee. The Labor Representatives will be appointed by the Union President or designee.

The purpose of the Joint Labor Management team (JLM) is to 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.

Article I: Purpose

The purposes of this Agreement are:

1. To provide active employees claiming compensable injuries and retirees who claim a presumptive injury as defined by California Labor Code Section 3212 et seq; under Division 4 of the California Labor Code (“Workers’ Compensation Law”) with an expedited procedure to resolve disputes in accordance with the provision of this Agreement and to facilitate those employees’ prompt recovery and return to work.
2. To reduce the number and severity of disputes between the CITY and covered employee, when those disputes relate to workers’ compensation.
3. To provide workers’ compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs for the CITY.

These purposes will be achieved by:

Utilizing an exclusive list of medical providers to be the sole and exclusive source of medical-legal evaluations for disputed issues surrounding covered employees in accordance with Labor Code §3201.7(c).

Now, therefore, in consideration of the mutual terms, covenants, and conditions herein, the parties agree as follows:

Article II: Term of Agreement

The CITY and POA enter into this Agreement with the understanding that the law authorizing this Agreement is new and evolving. The parties further understand that this Agreement governs a pilot program and that it shall become effective after it is executed by the parties, submitted to the Administrative Director of the State of California, Department of Industrial Relations, Division of Workers’ Compensation in accordance with Title 8, California Code of Regulations §10202(d), and accepted by the Administrative Director as evidenced by the Director’s letter to the parties indicating approval of the Agreement. This

Agreement shall be in effect for two years from the date of the Administrative Director's letter of acceptance to the parties. Thereafter, it shall continue and remain in force from year to year unless terminated by either party as provided for below. Any claim arising from an industrial injury 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 at any time for good cause, by mutual agreement or by act of the Legislature. The terminating party must give thirty (30) calendar-days written notice to the other party of the intent to terminate. Upon termination of this Agreement, the parties shall become fully subject to the provisions of the applicable Labor Code provisions to the same extent as they were prior to the implementation of this Agreement, except as otherwise specified herein.

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 as "Covered Individuals" 1) active employees; 2) retirees, who claim a presumptive injury as defined by California Labor Code Section 3212 et seq. 3) active employees and retirees who file a petition to reopen of an existing claim to seek new and further disability. This agreement does not apply to any other retired employees.

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

C. This Agreement is restricted to establishing an exclusive list of medical providers to be used for medical and medical-legal dispute resolution for the above covered employees in accordance with California Labor Code section 3201.7(c).

D. For purposes of this Agreement a “claimed injury” is one for which either a (1) DWC-1 workers’ compensation claim form or (2) an Application for Adjudication of Claim has been filed with the Workers’ Compensation Appeals Board (“WCAB”).

Article IV. Expedited Medical-Legal Process

A. Physicians who serve in the capacity as Independent Medical Examiner (“IME”) pursuant to this Agreement will receive enhanced compensation for services performed as outlined in the physician contract in exchange for expedited examinations and report preparation.

B. This Agreement does not constitute a Medical Provider Network (“MPN”). Physicians who act as a Covered Individual’s treating physician or have provided treatment to the Covered Individual shall not act as the Independent Medical Examiner (IME) in the Covered Individual’s claim. Pre-designation of a physician must comply with the requirements set forth in Labor Code section 4600(d) (1).

C. All employees with a disputed medical issue as described in Article IV, Paragraph E must be evaluated by an approved physician from the exclusive list of IME’s. Should the employee claim injuries requiring more than one medical specialist, the employee shall be provided an IME appointment in each area of specialty. Attached hereto as Exhibit A is an exclusive list of IMES agreed upon by the parties. If the IME requires the opinion of an additional sub-specialist, the IME shall refer the employee to a physician of the IME’s choice, who need not be on the IME list or in the MPN. The consulting specialist charges are subject to the Official Medical Fee Schedule (OMFS). The IME may not refer the employee to his treating physician for this purpose.

D. The exclusive list of IME’s shall include the specialties as agreed upon by the parties.

E. An IME shall be used for all medical disputes that arise in connection with a workers' compensation claim including but not limited to:

- 1) The determination of AOE/COE causation.
- 2) The nature and extent of TTD/4850.
- 3) The nature and extent of permanent disability and apportionment.
- 4) Work restrictions.
- 5) Ability to return to work, (including transitional duty); and
- 6) All medical treatment denials or modifications from UR.
- 7) All Future Medical treatment issues.

The parties agree that the covered individual 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), as set forth herein.

F. 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 E above. For example, a delay notice to the claim will trigger the IME process. Objections from the CITY or TPA shall be sent to the employee with a copy to the employee's legal representative if represented. Objections from the employee or employee's legal representative shall be sent to the employee's assigned claims examiner with a copy to the CITY's legal representative, if applicable.

G. Objections shall be sent within thirty (30) calendar days of receipt of a medical report or a utilization review decision addressing any of the issues set forth above. A letter delaying acceptance of the claim automatically creates a dispute; further, all denials and or delays of benefits including a denial of the claim automatically creates a dispute. 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 dispute resolution process set forth in this Agreement.

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

I. The parties hereby agree that from time to time the exclusive list of IME's may be amended. For either party to propose adding an IME to the exclusive list of medical providers, 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 medical providers if s/he breaches the terms and conditions of the contract with the CITY or by written mutual agreement of the parties. The list shall be reviewed quarterly by the JLM from the execution date of the Agreement and quarterly thereafter for additions and deletions of newly selected or deleted IME'S. Any IME proposed for consideration of addition or deletion after the review period will be reviewed at the next interval review period of the JLM unless there is a breach of the terms and conditions of the Agreement or by mutual written agreement of the parties.

J. Appointments.

1. The TPA shall schedule appointment(s) with the IME and provide notice of the appointment within ten (10) calendar days of the date of receipt of the objection issued by any party subject to the terms and provisions of this Agreement. The notice of the appointment location, date and time shall be sent to the employee and to his legal representative, if there is one.

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

hours. In the event, if an employee misses the IME appointment the parties will need to meet and confer on the reason for the missed evaluation and will reset the evaluation. If the employee continues to miss the IME evaluation, the TPA may file a motion with the WCAB to suspend proceedings and seek costs for the missed exam.

3. Compensation for attending medical appointments under this Agreement shall be consistent with CITY practice.

4. Mileage reimbursement to covered employees shall be in accordance with Labor Code § 4600(e) (2) unless transportation is provided by the CITY or TPA.

5. For purposes of appointments, TPA shall select the IME(s) by starting with the first name from the exclusive list of approved medical providers within the pertinent specialty, and continuing down the list, in order, until the list is exhausted, at which time the TPA will resume using the first name on the list.

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

K. The CITY or TPA is not liable for the cost of any medical examination used to resolve the parties' 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 Labor Code Section §4605.

L. 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.

M. 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 one party objects to the provision of any nonmedical records to the IME, the party shall object within twenty (20) calendar days of the service of records. Objection 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 Labor Code.

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

O. All communications with the IME shall be in writing and shall be served on the opposing party. This provision does not apply to oral or written communications by the employee or, if the employee is deceased, the employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination, or to administrative communications with the IME's staff.

P. Ex parte communication with the IME is prohibited. If a party communicates with the IME in violation of paragraph O and P 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 list pursuant to paragraph J, (5). If a new examination is required, the party making the communication prohibited herein may be liable for the cost, pursuant to Labor Code §5811, or as ordered by the WCAB.

Q. If either party disputes a medical or medical-legal finding of the IME, they shall notify the other party of this dispute by way of written objection within thirty (30) 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.

Article V: Discovery

A. Covered Individual shall provide the City or TPA with fully executed medical releases, and any other documents and information reasonably necessary for the City or the TPA to resolve the employee's claim, when requested. If the employee fails to return the release and it is determined that the medical information is not sufficient for the IME to provide a comprehensive evaluation, the parties shall meet within 30 calendar days to resolve the issue(s) prior to setting an evaluation. This Article does not supplant or diminish the parties' rights to pursue or contest discovery issues pursuant to the remedies provided in the Labor Code, through the WCAB. If a deposition is being conducted in lieu of a statement as part of the discovery process, the timeframes in setting the IME's may be extended to complete the discovery.

B. This Agreement does not preclude a formal deposition of a covered employee or an IME when necessary. Attorney's fees for depositions of covered employees shall be paid at the rate of \$385 per hour, consistent with Labor Code §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. The deposition rate under Labor Code section 5710 may be modified by the JLM.

Article VI: 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.

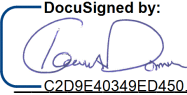
C. This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing signed by the parties which expressly refers to this Agreement. Any dispute regarding the terms of the agreement will be resolved by the Joint-Labor Management Committee.

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

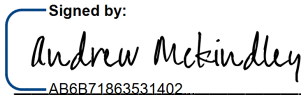
E. This Agreement may be executed in counterparts.

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

as follows:

By: 
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Ken Domer, City Manager
City of La Verne

By: 
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Andrew McKindley, President
La Verne Police Officer Association

APPROVED AS TO FORM:

By: DocuSigned by:
Kimberly Hall Barlow, La Verne City Attorney
3731745232CE44A...

Kimberly Hall Barlow, City Attorney

By: DocuSigned by:
[Signature]
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Ferrone Law Group
Attorney for the Association