

**LABOR-MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE
RESOLUTION AGREEMENT BETWEEN THE CITY OF RIALTO AND THE RIALTO
POLICE BENEFIT ASSOCIATION**

THIS LABOR-MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ("Agreement") is made and entered into this First day of July, 2015, by and between the Rialto Police Benefit Association ("RPBA") and the City of Rialto ("City"). This Agreement is pursuant to California Labor Code §3201.7(a)(3).

Nothing in this agreement diminishes the entitlement of a covered employee to compensation payments for total or partial permanent 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 to any covered employee the right to representation by counsel at all stages during this alternative and expedited resolution process.

RPBA and City negotiated this Agreement by forming a partnership committee known as the Joint Labor-Management team (JLM); the management team is comprised of: two (2) City Council members, one (1) Executive Management staff member, one (1) Human Resources Manager, and one (1) Administrative Analyst; the labor team is comprised of: one (1) RPBA Board President and three (3) Labor representatives. The Labor representatives will be appointed by the Union and may be subject to reappointment during election periods.

The purpose of the 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 JLM 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 under Division 4 of the California Labor Code ("Workers' Compensation Law") with an expedited procedure to resolve disputes in accordance with the provision of the Agreement and to facilitate those employees' prompt recovery and return to work;

2. To reduce the number and severity of disputes between RPBA, 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 Public Safety and City;

4. To provide RPBA and covered employees with access to mediators so that legal disputes can be resolved informally and more expeditiously.

These purposes will be achieved by:

(a) 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 RPBA 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 one (1) year 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

1. This Agreement applies only to injuries, as defined by Workers' Compensation Law, claimed by the following referred to herein as "Covered Individuals" a) active employees, b) retirees, and c) active employees and retirees where a petition to reopen a pre-existing claim to seek new and further disability or to reduce a prior award is filed after the effective date of this agreement. Existing medical treatment disputes prior to the date of this Agreement, may be included within the Program on a case-by-case basis, and determined by the JLM. 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 §5804.

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

3. This Agreement is restricted to a) establishing an exclusive list of medical providers to be used for medical and medical-legal dispute resolution of Covered Individuals, b) establishing an exclusive list of mediators to be used for legal dispute resolution of Covered Individuals, c) establishing a process for informal legal discovery in accordance with Article VI.

4. For purposes of this Agreement a "claimed injury" is one for which either a) DWC-1 workers' compensation claim form has been filed with the City and Third Party Administrator ("TPA") or b) an Application for Adjudication of Claim has been filed with the Workers' Compensation Appeals Board ("WCAB").

Article IV: Expedited Medical-Legal Process

1. Physicians who serve in the capacity as Independent Medical Examiners ("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.

2. This Agreement does not constitute a Medical Provider Network ("MPN"). However, all employees must utilize the City's current MPN for treatment purposes during the time the City maintains and utilizes the MPN. The MPN is governed by Labor Code

§4616 *et seq.* 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 §4600(d) (1).

3. All employees with a disputed medical issue as described in Article IV, Paragraph 5 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. 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 Fees Schedule (OMFS). When using the services of an additional sub-specialist the agreed-upon thirty (30) day for appointments and thirty (30) day for reporting timeframes do not exist. The parties will make an effort to expedite the examination dates for the sub-specialist. The IME may not refer the employee to his treating physician for this purpose.

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

5. 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, the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work (including transitional duty), current and future medical care, and resolution of all disputes arising from utilization review, pursuant to Labor Code 4062(b). 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 (10)(e), as set forth herein. The parties agree that if the covered member has different claimed parts of body, the appropriate IME in specialty will be utilized to address the different parts of body.

6. 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 5 above. Objections from the City 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 and City's legal representative, if applicable.

7. 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 utilization review decisions from modifying or denying medical treatment, 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.

8. 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.

9. The parties hereby agree that during the quarterly JLM review meetings, 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 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 internal review period of the JLM unless there is a breach of terms and conditions of the Agreement or by mutual written agreement of the parties.

10. Appointments:

a) City Risk Management/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 applicable.

b) The employee shall be responsible for providing City Risk Management/TPA with his/her work schedule prior to an appointment being made.

c) Compensation for attending medical appointments under this Agreement shall be consistent with existing City MOU and policy and practice.

d) Mileage reimbursement to covered employees shall be in accordance with Labor Code §4600(e) (2), unless City provides transportation.

e) For purposes of appointments, City Risk Management/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 City Risk Management/TPA will resume using the first name on the list.

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

11. The City 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 §4605.

12. 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.

13. Either party who receives records prepared or maintained by the treating physician(s) or records, either medical or non-medical, 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 non-medical records to the IME, the party shall object within twenty (20) calendar days of the service of the records. Objection to the provision of non-medical 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 provision of the Labor Code.

14. The City's 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 issues(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 employee and/or on his/her representative.

15. 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.

16. Ex parte communication with the IME is prohibited. If a party communicates with the IME in violation of Paragraph 15 and 16 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 10(e). 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.

17. 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: Mediation

1. Any party subject to the provisions of this Agreement may request mediation in accordance with the provisions set forth herein. Mediation is an informal, confidential process in which a neutral party assists the other parties in understanding their own interests, the interests of the other party, and the practical and legal realities each party faces. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of the dispute. The parties agree that WCAB retains jurisdiction to approve all settlements, awards, and orders achieved through mediation.

2. Mediation is voluntary and both parties must agree to mediate a particular issue or matter in order for mediation to proceed.

3. The mediation process shall only be triggered when both parties are represented; the mediation process shall be triggered when one party gives the other written notice of their desire to engage in mediation in connection with any issue including, but not limited to, any purely factual or legal defense involving a determination of causation, applicability of a presumption, whether a medical report constitutes substantial evidence, disputes involving average weekly wage or the rate of pay for Labor Code §4850 benefits, temporary disability benefits, whether an apportionment is valid, disputes over a permanent disability rating, disputes over occupational group numbers, credits for claimed overpayment of benefits, determination of dependency status in death claims, penalties, issues involving alleged serious and willful misconduct, issues involving potential violations of Labor Code §132(a), discovery disputes, and questions involving jurisdiction.

4. It is the specific intent and desire of the parties that the mediation process set forth herein be flexible and is designed as a means to resolve factual and/or legal disputes that are not amenable to resolution through the expedited medical-legal process. The potential issues listed in Paragraph 3 of Article V are not meant to be all-inclusive but is merely a listing of issues likely to be the most common particularly suited for mediation. Upon mutual agreement of the parties, any issue typically encountered in the California Workers' Compensation system can be deemed appropriate for mediation in accordance with the provisions of the Agreement.

5. Upon receipt of an official request to mediate, the non-requesting party shall have a period not to exceed fifteen (15) calendar days within which to either accept or reject the request to mediate. If no response is provided within the fifteen (15) calendar day period, the request shall be deemed to have been rejected. Any response to a request to mediate from the City shall be sent to the employee with a copy to the employee's legal representative. Any response to a request to mediate from the employee or employee's legal representative shall be sent to the employee's assigned claims examiner with a copy to the City and City legal representative.

6. If both parties agree to mediate an issue or issues, within fifteen (15) calendar days of such agreement being reached, mediation of said issues will be assigned to a mediator from the approved Mediator Panel.

7. For purposes of selecting a mediator, City Risk Management/TPA shall select the mediator by starting with the first name from the Mediator Panel and continuing down the list, in order, until the list is exhausted, at which time City Risk Management/TPA shall resume using the first name on the list. City Risk Management/TPA shall notify all parties of the selection and assignment of a mediator within ten (10) calendar days of such assignment having been made.

8. Mediators will be paid at a rate of \$300.00 per hour, unless a different rate has been mutually agreed upon by the parties. All costs associated with the mediation shall be paid by the City.

9. Within five (5) calendar days of the selection of a mediator, the selected mediator shall be notified by the City Risk Management/TPA of his/her selection. The selected mediator shall then schedule the date, time, and location of the mediation with the parties.

10. The mediation must take place within forty-five (45) calendar days of notification having been sent to the mediator of his/her selection, unless this time limit is waived by both parties. If the selected mediator is either unable or unwilling to schedule mediation within this forty-five (45) calendar day period, a new mediator shall be selected from the Mediator Panel from the next mediator available on the list, pursuant to the provisions of Paragraph 7.

11. The procedure, process, format, general nature of the mediation, the issues to be mediated, and the manner in which the mediation shall be conducted will be within the sole discretion of the mediator.

12. Mediation briefs shall not be mandatory but are strongly recommended and shall be a useful tool to assure that the mediator fully understands the issues involved and each party's respective positions in regards to each issue. Mediation briefs should be submitted to the mediator no later than ten (10) calendar days prior to the mediation. No specific format for a mediation brief is required. Mediations briefs may be formatted and submitted as either a formal pleading or in an informal letter brief format.

13. If the mediation is successful at resolving the dispute, a summary of the mediation shall be prepared by the Mediator, setting forth the specific issues presented for the mediation, a general description of how the mediation was conducted, length of time of the mediation, and the resolution or settlement reached. A copy of this Mediation Summary shall be served upon the employee, the employee's legal representative, to the employee's assigned examiner, and to City Risk Management and the City's legal representative.

14. If the mediation is unsuccessful at resolving the dispute, either party may seek to have the issue or issues adjudicated by the WCAB by filing a Declaration of Readiness to Proceed, in accordance with the Rules and Regulations governing WCAB hearings, as set forth in the Labor Code and the California Code of Regulations.

15. Although the mediation process is completely voluntary, it is expected that if the parties mutually agree to mediate an issue or issues, both parties shall abstain from filing a Declaration of Readiness to Proceed, with respect to said issue or issues, with the WCAB until completion of the mediation process, as set forth above.

Article VI: Discovery

1. Covered individual shall provide City Risk Management/TPA with fully executed medical, employment, and concurrent employment releases, disclosure statement, and any other documents and information reasonably necessary for the City 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 to resolve the issue(s) prior to setting an evaluation. This Article does not supplant or diminish the parties' right to pursue or contest discovery issues pursuant to the remedies provided in the Labor Code, through mediation or the WCAB.

2. 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 \$325 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 physicians or IME's.

Article VII: General Provisions

1. 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.

2. This Agreement shall be governed and construed pursuant to the laws of the State of California.

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

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

5. This Agreement may be executed in counterparts.

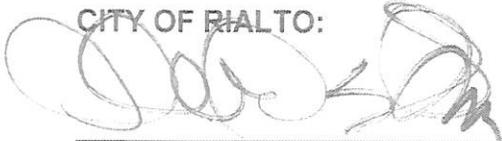
6. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

City: George Harris (or designee)
Director of Administrative & Community Services
150 S. Palm Ave, Rialto, CA 92376

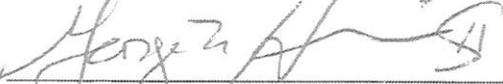
RPBA: Richard Royce (or designee)
Rialto Police Benefit Association
150 S. Palm Ave, Rialto, CA 92376

This Agreement shall become effective upon ratification by the City Council and the RPBA:

CITY OF RIALTO:

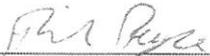


Michael E. Story

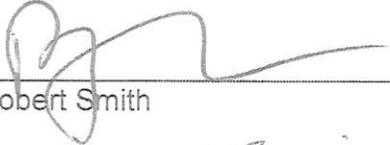


George N. Harris II,

RIALTO POLICE BENEFITS ASSOCIATION:



Richard Royce



Robert Smith



Robert Muir

DATE: May 5, 2015