

**SAN DIEGO COUNTY WATER AUTHORITY**  
**EMERGENCY STORAGE PROJECT LABOR AGREEMENT**

**Appendix B**

**Workers' Compensation.**

1. The Contractor and the Union parties to the Emergency Storage Project Labor Agreement (the "Parties") jointly recognize the importance of an effective and efficient program to provide a workers' compensation delivery system for the benefit of the employees covered by this Agreement. The Parties will therefore work together, utilizing the provisions of Section 3201.5 of the California Labor Code (the "Code"), to implement a dispute resolution procedure that will reduce disputes arising out of the workers' compensation delivery system established for this Project and that will provide fair and expeditious methods for resolving such disputes. Additionally, the Parties will work together to broaden and improve the workers' compensation process to include optimum access to delivery of medical care and disability benefits for covered employees affected by occupational injury or disease and covered under this Agreement. Finally, the Parties agree that abuses of the system will not be tolerated and will cooperate in any investigation of a claim of abuse.

2. To accomplish the goals of 1 above, the Parties have agreed,

a. That all employees working under this Appendix shall be covered to the fullest extent required by the workers' compensation provisions of the Code, and that nothing in this Appendix diminishes the entitlement of an employee covered by this Appendix to compensation benefits for disability or medical treatment and other benefits as required by California law fully paid for by the employer through the purchase of a policy of workers' compensation insurance from an insurer authorized to issue such a policy in the State of California; and

b. To implement a medical and benefits delivery system complemented by an alternative dispute resolution process, hereby established, in cooperation with a Joint Labor-Management Workers' Compensation Committee, created under this Appendix.

3. Workers' Compensation Committee. There is hereby established a Joint Workers' Compensation Committee to review, oversee, consult and advise all parties involved with the development, implementation and provision of benefits and procedures for workers' compensation covered under the Code and this Appendix, with particular reference to the workers' compensation provisions of this Appendix. Such Committee shall participate in the selection of the providers and other personnel as set forth in Section 7, below. The power of the Committee may only be exercised through the agreement of the Union and Contractor parties,

with each such party having one vote, for a total of two. The Project Contractor shall designate no more than five (5) Contractor representatives, and each local union or District Council signatory to the Project Labor Agreement may appoint a representative (but not more than one per trade), with the signatory State and Local Building Trades Councils each having one representative. The Contractor and Union parties shall each determine their own internal rules of procedure with regard to decision-making. The Committee shall be jointly chaired by a representative of the Project Contractor (or designee) and an official of the signatory local Building Trades Council (or designee). The Committee shall meet at least once each calendar quarter, or more often as necessary on the call of the joint chairs. The joint chairs shall rotate the position of meeting chairman on a calendar quarter basis. The ombudsperson and representatives of the Owner, Carrier and/or providers of medical care shall be available to attend the Committee meetings and furnish such information as is requested by the Committee. The Committee may recommend to the Project Contractor, Owner and/or Insurance Carrier, as appropriate, changes in the procedural and substantive delivery of medical care and services and ADR processing as it believes appropriate to fulfill the parties' goal to make effective use of the revisions to Section 3201.5. Any dispute between the Union and Contractor parties with regard to the power of the Committee shall be referred to the Arbitrator designated under Section 12(c), below.

4. The Parties will jointly designate, under the auspices of the Joint Workers' Compensation Committee herein established,

- a. A preferred provider network of health care providers,
- b. Organizations providing prescription medicine, which may be affiliated with b, above,
- c. Vocational rehabilitation evaluator/service organizations,
- d. Mediators (who shall be familiar with and experienced in the California State Workers' Compensation System and related medical issues), and
- e. Arbitrators (who to the extent available shall possess experience as referees and/or judges under the State Workers' Compensation System and, at a minimum, qualified as arbitrators under the Code).

5. If the Parties are unable to agree on the organizations in (a) - (c) above or the individuals to serve in the positions listed in (d) - (e) above, in the numbers deemed necessary by the insurance carrier for the efficient operation of the Workers' Compensation Delivery System (including ADR), or in the numbers otherwise established in this Appendix, appointments shall be made by the neutral arbitrator established under Section 12(c), below, after he/she has heard recommendations and arguments in favor of their respective positions from the Parties to the Project Labor Agreement. Once selected, the individuals and/or organizations may be removed by agreement of the Joint Workers' Compensation Committee, or for cause. Unless otherwise specifically stated, reference to a "medical provider" is to an individual providing treatment.

6. Ombudsperson. The Owner shall appoint the ombudsperson from candidates reviewed and recommended by the Joint Workers' Compensation Committee. The person appointed shall have, at a minimum, the following qualifications: five years of work experience which shall have provided him/her with knowledge and understanding of the workers' compensation laws and familiarity with workers' compensation claims and case management and/or be experienced and certified in Occupational Health practice; and shall not have had an employment relationship with any party to the Project Labor Agreement, the Owner, the Owner's insurance broker, or the insurance carrier, or with any direct affiliate of these organizations or of a party to the Project Labor Agreement (an affiliate is one in which a party has or shares control or retains for the provision of business services).

Should the Owner appoint a person whom the union members of the Joint Workers' Compensation Committee believe does not meet these minimum qualifications, they may file a grievance with the Arbitrator appointed under Section 12(c), below to seek removal of such person.

7. Medical Care and Treatment for Occupational Injury and Disease.

a. Authorized Medical Providers. The providers designated under this Appendix shall be the exclusive source of all medical treatment required under Code Section 4600.

a(1). All medical and hospital services, except for first aid and other emergency type services only, required by employees subject to this Appendix as the result of a compensable injury or disease, shall be furnished by health care professionals and facilities selected by the employee from a list of health care professionals and facilities agreed to by the parties to this Appendix and available to each employee upon his initial employment at the site. The list may be changed at any time by mutual agreement of the parties. In no event shall the deletion of a provider disrupt the ongoing treatment of an employee receiving treatment from that provider at the time of the decision. The authorized provider organization(s) shall have on their rosters individual Board Certified providers in their respective specialties available for selection by employees for treatment, or for referral from other individual providers, or to act as evaluators. This designation of providers pursuant to Section 3201.5 of the Labor Code replaces all other provisions regarding the selection of medical providers located elsewhere in the Code.

a(2). In case of an emergency requiring treatment covered by this Appendix when no authorized provider is available, the employee may seek treatment from a health care professional or facility not otherwise authorized by this Appendix, to provide treatment during the emergency and such treatment shall be compensated for in reasonable amounts by the carrier as if provided by providers authorized under this Appendix. Responsibility for treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.

a(3). After selecting an authorized provider to furnish treatment for a particular

injury, an employee may change to other authorized providers. When referred by the authorized provider to another provider in a particular specialty, the employee may also change to other authorized providers in such specialty.

a(4). The Insurance Carrier shall not be responsible for the cost of medical services furnished by a health care professional or a facility not authorized pursuant to this Appendix, nor for care not required by the Code.

a(5). The list of authorized providers administered by the authorized provider organization shall contain sufficient providers for each of the specialties which the parties to this Appendix believe are required to respond to the needs of employees subject to this Appendix, at least some of whom, in each specialty, shall be Board Certified. This shall include, but not be limited to providers within the following specialties:

- |                   |                       |
|-------------------|-----------------------|
| Orthopedics       | Radiology             |
| Neurology         | Chiropractic          |
| Neurosurgery      | General Practice      |
| Ophthalmology     | Psychiatry            |
| Cardiology        | Pulmonary/Respiratory |
| Internal Medicine | Occupational Medicine |
| Dermatology       | Oncology              |

In the event that an authorized provider furnishing treatment to an employee determines that treatment or consultation is necessary from a specialty for which no authorized provider has been selected through this Appendix, or in the event the distance makes it impractical for treatment from the authorized provider, the authorized provider shall select the additional specialist or additional provider who offers treatment at a practical distance for the employee.

a(6). All prescription medicines furnished by virtue of injuries subject to this Appendix shall be furnished by the Insurance Carrier through a jointly-agreed upon medical prescription provider organization or organizations, except in those instances in which an authorized medical provider determines that due to time constraints or other valid medical reasons, use of another prescription source is required.

a(7). Evaluation - the Carrier and the employee may each request a second opinion from an authorized provider regarding diagnosis or a treatment evaluation of a related issue. Only one such second opinion shall be permitted by either party for any issue. Such evaluations shall be secured in a manner consistent with, and utilized for the purposes described in, Division 4, Part 1, Chapter 7, Article 2 of the Code. It is not the intent of the parties to the Project Labor Agreement in this section or in any other portion of this Appendix to add to or diminish the rights of the respective parties to a workers' compensation dispute to introduce evidence or be prohibited from introducing evidence in an arbitration proceeding in any different manner than they would otherwise be allowed to do in a proceeding before an Administrative

Law judge of the WCAB.

a(8). The Carrier and the employee shall each be bound by the opinions and recommendations of the authorized provider selected in accordance with this Appendix. In the event of disagreement with the authorized provider's findings or opinions, the sole recourse shall be to obtain a second opinion from another authorized provider in a manner consistent with Chapter 7, Article II of the Code, and to present the second opinion through the Alternative Dispute Resolution Program established in this Appendix.

8. Authorized Vocational Rehabilitation Service Providers.

a. All vocational rehabilitation evaluator services to which an employee may be entitled under the Labor Code and within the jurisdiction of this Appendix as the result of an occupationally incurred compensable injury, including occupational disease, shall be furnished by a vocational rehabilitation service provider selected by the employee from a list of vocational rehabilitation service providers jointly selected by the parties to this Appendix, hereinafter referred to as "authorized rehabilitation providers." A list of the authorized rehabilitation providers shall be available to all employees. The list can be changed at any time by mutual agreement of the Joint Workers' Compensation Committee.

9. Alternate Dispute Resolution Program.

a. This Alternative Dispute Resolution Program ("ADR" or "Program") shall be used in place of and to the exclusion of the Division of Workers' Compensation hearing and disputes resolution procedures affecting a covered employee's benefits to the full extent permitted by Section 3201.5 of the Labor Code, recognizing the continuing authority of the Workers' Compensation Appeals Board ("WCAB") and the California State Courts of Appeal to review all actions taken hereunder in a manner consistent with Section 3201.5. The carrier shall provide to the members of the Joint Workers' Compensation Committee within twenty (20) calendar days of the issuance by the Owner of the first work specification containing this Appendix, a statement of dispute resolution procedures, if any, and issues relating to the workers' compensation proceedings under the Code (such as third party claims) which are not intended to be covered by the ADR procedure established herein. If a majority of the Union members of the Committee object to the failure to preempt any particular procedure or issues, and the objection is not resolved within fifteen (15) calendar days of the receipt of the list from the carrier, the Union may initiate a grievance with the arbitrator established in Section 12(c) below as to whether such failure is consistent with the goal of the Parties to the Appendix in utilizing the revised §3201.5 of the Code.

The Program shall be used in place of the filing of an Application for Adjudication of Claim with the WCAB. Any claim subject to this Appendix filed with the WCAB for resolution will immediately be removed on Motion of the carrier and placed within the Program established by this Appendix. The Program shall not affect any covered employee's eligibility for, or her/his amount of, workers' compensation benefits, as set forth in the Workers' Compensation Provisions of the Labor Code.

This Program shall apply to all compensable, work-incurred injuries, including occupational disease, as defined by the Code, sustained by employees while working under and covered by this Project Labor Agreement, as a result of their employment on the Project, on and after the effective date of this Project Labor Agreement and during the term of this Project Labor Agreement. Upon the termination of the Project Labor Agreement, any dispute involving a date of injury occurring during the term of this Project Labor Agreement for which a timely claim is filed within ninety (90) calendar days after the termination of the Project Labor Agreement shall continue to be subject to the terms of this Program for the duration of the case. Any claim for a compensable injury or illness filed after such ninety (90) calendar days shall be processed as though revised §3201.5 does not apply.

b. The Program shall consist of three components: Ombudsperson; Mediation; and Arbitration.

b(1). The Ombudsperson will be selected by the Owner pursuant to Section 4 above and compensated directly or indirectly by the Owner. The Ombudsperson will be familiar with workers' compensation procedures and practices; and may also serve as the Administrator of the Program. He/she shall be available at reasonable times, upon reasonable notice, at the Project site for the convenience of the employees. The Mediator(s) and the Arbitrator(s) will be selected in chronological rotation from a permanent panel not to exceed six of each to be established by joint agreement of the parties pursuant to Section 7, above. Each shall be knowledgeable regarding the medical and legal aspects of workers' compensation procedures in California. The Division shall provide a list of persons knowledgeable and experienced in workers' compensation procedure and practice. The compensation of the Mediators and Arbitrators shall be provided by the Insurance Carrier.

Pending such agreement, should there be a need for a Mediator and/or Arbitrator to undertake proceedings required by these provisions, such shall be requested from and appointed pursuant to the rules of the Division of Industrial Relations with regard to the appointment of Arbitrators under the Code for workers' compensation matters.

b(2). When an employee's workers' compensation benefits are denied, reduced or terminated, or otherwise affected, the employee shall be provided with written Notice ("Notice") of such action, in a procedural and substantive format similar to those prescribed in Section 4061 of the Code, by the Insurance Carrier, by certified mail. The Notice shall include a summary of the reasons for the action, in terms reasonably calculated to be understandable by the employee.

Within thirty (30) calendar days of the employee's receipt of such Notice, or whenever an employee believes that he/she is not receiving the benefits to which he/she is entitled, including medical and hospital services, the employee shall notify the Ombudsperson. The Ombudsperson shall explain to the employee the response to any employee question/complaint in terms which understandable by the employee. The Ombudsperson shall

maintain a record of all activity affecting any individual employee with whom he/she is involved by reason of these provisions or where he/she becomes aware or reasonably should become aware that such employee should be involved in these procedures, including the date of each notification and request for intervention of the Ombudsperson, the date of each response, the receipt of a form requesting mediation, and the date of reference of that form to the Mediator. All records kept by the Ombudsperson shall be kept in a form consistent with record-keeping requirements under the Act, if any.

b(3). If the issue cannot be resolved to the satisfaction of the insurance carrier, the employee and the employer within the fifteen (15) business days after the date of notification to the Ombudsperson, either party may apply for mediation on the form available from the Ombudsperson. Such form shall be filed with the Ombudsperson, who shall promptly notify the appropriate Mediator and furnish the Mediator with a copy of the Notice. The parties may extend the fifteen (15) business day period by mutual agreement, but no issue shall proceed to mediation without first being presented to the Ombudsperson.

10. Mediation. Application for mediation shall be made not more than twenty-five (25) business days after the Ombudsperson has responded to the request for assistance. Failure to timely request mediation will bar any further right to adjudicate the issue. The parties intend that such mediation will be a meaningful informal, non-adversarial effort to resolve all legitimate claims fairly without resort to adversary proceedings or unnecessary procedures. The Mediator will contact the parties to the dispute (the employee, the insurance carrier or the employer) and take whatever steps he/she deems necessary to bring the dispute to an agreed conclusion. At any mediation, the carrier, the employee (and an advisor to the employee), and/or employer may be present. The mediation must be attended by persons with authority to resolve the dispute.

The mediation shall be held in a location convenient to the parties to the dispute as determined in the sole discretion of the Mediator, but unless otherwise agreed by the parties to the dispute, no further than fifty (50) miles from the employee's residence at the time he/she was/is working under the Project Labor Agreement.

Mediation shall be completed not more than fifteen (15) business days from the date of referral, unless otherwise agreed by the parties to the dispute, including the Mediator, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the Mediator and the mediation process. The Parties to the dispute may agree in writing to extend such time for a period certain. Neither party will be permitted to be represented by legal counsel at mediation. The fact that the employee or the workers' compensation insurance carrier's representative has had legal training or is a licensed attorney shall not bar such person from acting as an advisor to their respective principal at the mediation session. No such person shall participate on the basis of a lawyer/client relationship. All communication between the Mediator and the parties shall be directly with the parties to the dispute, unless disability or linguistics dictate the need for a surrogate.

If, after the completion of the mediation process, the parties to the dispute are

unable to reach agreement, either the employee or the carrier may file with the Ombudsperson, within thirty (30) business days of the completion of the process, a request that the matter be referred to Arbitration. Immediately upon receipt of the request, the Ombudsperson shall notify the appropriate Arbitrator from the Panel designated by the parties to this Agreement, as well as all parties to the dispute, that a request for Arbitration has been received and the Arbitrator shall set a date for a hearing, to be commenced no later than forty-five (45) business days after the Arbitrator has received Notice of the Request for Arbitration.

11. Arbitration. The Arbitration proceeding will be conducted pursuant to the rules and regulations applied by workers' compensation judges under the Code (including rules of evidence and burden of proof), and the Arbitrator shall have the same powers and authority as such judges (and, as appropriate, referees), except as such rules, regulations or powers are specifically modified or supplemented by this Appendix or otherwise in writing by the parties to this Project Labor Agreement. The arbitration proceeding shall be completed within ten (10) business days of its commencement unless otherwise ordered by the Arbitrator, in his/her sole discretion, to further the interest of fairness to all parties to the dispute and/or completeness of the record. Except in extraordinary circumstances, such extension shall not exceed forty-five (45) business days. The Arbitrator shall render a decision within ten (10) business days of the completion of the proceedings. The Arbitrator's decision shall be written in a form consistent with WCAB practices and his/her findings of fact, award, order or decision shall have the same force and effect as that of a workers' compensation judge and be subject to enforcement proceedings and/or review as provided in Section 3201.5(a)(1) of the Code. No written or oral offer or recommendation made during the mediation process by any party or the Mediator shall be admissible in the Arbitration proceeding.

(1). The hearing shall be held in a location convenient to the parties to the dispute as determined in the sole discretion of the Arbitrator, but unless otherwise agreed by the parties to the dispute, no further than fifty (50) miles from the employee's residence at the time he/she was/is working under the Project Labor Agreement. The proceeding shall be electronically recorded.

(2). At the request of either party, the Arbitrator in his/her sole discretion, may allow depositions of treating physicians. Cost of medical depositions submitted by either of the parties shall be at their own expense; if the Arbitrator requests the deposition of a treating physician, or otherwise appoints an authorized health care professional to assist in the resolution of any medical issue, the expense will be borne by the carrier.

(3). The decision of the Arbitrator, including his findings of fact, award, or order, shall have the same force and effect as an award, order, or decision of a workers' compensation judge, and shall be subject to review by the Workers' Compensation Appeals Board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by such judge pursuant to the procedures set forth in Article I (commencing with Section 5900) of Chapter 7 of Part IV of Division 4, in the Court of Appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part IV of

Division 4.

(4). Any and all settlements and/or compromises between an employee and an insurance carrier involving a workers' compensation claim arising on this Project and under this Appendix shall be subject to the same appeals and review by the Arbitrator as if he were sitting as a referee under the Code, and appealed to the WCAB to the extent permitted by the Code

12. General Provisions.

a. All payments required to be made by Contractors pursuant to Sections 5 and 6 of this Appendix, shall, in accordance with California law, be made by the Workers' Compensation carrier. Similarly, all actions required by law to be undertaken by the Insurance Carrier rather than the Contractor shall be performed by the Workers' Compensation insurance Carrier. The Carrier and/or the Ombudsperson will provide all notices to the employees and/or applicants, and in such form, as are required to be issued or otherwise referenced in the workers' compensation provisions of the Code.

b. If any provisions of Sections 1 - 11 of this Appendix or their application to any person or circumstances are held to be invalid, the invalidity shall not affect other provisions or application of such Section or of the remainder of this Appendix that can be given effect without the invalid provision or application, and to implement this provision it is understood that the provisions of Sections 1 and 2, as with the remainder of this Appendix are declared to be severable. Further, in the event of legal action contesting the legality of Sections 1 - 11 of this Appendix, or any portion of them, the parties agree to jointly defend such provision and such Sections, and shall actively assist each other in such defense.

c. It is the intent of the parties to meet the spirit and letter of the requirements of Section 3201.5 of the Labor Code. To the extent that the Department of Industrial Relations, Division of Workers' Compensation, succeeds in enjoining or otherwise preventing the application of part or all of the Program and provisions as contained in Sections 2(b) and 3, above, by an order of the final court of competent jurisdiction, the parties shall meet expeditiously to adjust their Appendix to meet the requirements of the Code, and failing to reach agreement within thirty (30) calendar days after notification of such failure to comply by the Division, the matter shall be referred to *Howard S. Block, Esq.* for development of an appropriate provision or provisions consistent with the spirit of this Appendix.

d. No employee shall be denied the right to consult and/or be advised by legal counsel of his/her choice, if desired at any time during the processes established herein. However, it is recognized that the ADR Program here established is intended to be a non-adversarial, and until an arbitration is requested by a covered employee, no attorney shall participate in the system as counsel of record for either the employee, the carrier or the employer. Counsel fees until and unless awarded as part of an arbitration proceeding shall be the sole responsibility of the person retaining the attorney.

