Kern County
Agt. # 931-2013

LABOR MANAGEMENT WORKERS' COMPENSATION EXPEDITED RESOLUTION PROCESS AGREEMENT BETWEEN THE COUNTY OF KERN AND THE KERN LAW ENFORCEMENT ASSOCIATION

THIS LABOR MANAGEMENT WORKERS' COMPENSATION EXPEDITED RESOLUTION PROCESS AGREEMENT ("Agreement") is entered into by and between the County of Kern ("County") and the Kern Law Enforcement Association ("KLEA"). 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 to any covered employee the right to representation by counsel at all stages during this alternative and expedited resolution process.

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 Article IV of this Agreement and to facilitate those employees' prompt return to work;

2. To provide retirees claiming a presumptive injury as defined by California Labor Code (hereinafter "Labor Code") §§3212 et seq. with an expedited procedure to resolve medical disputes in accordance with Article IV of this Agreement;

3. To reduce the number and severity of disputes between the County and covered employee, when those disputes relate to workers' compensation;

4. To provide workers' compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs for the County;

5. To provide the County and covered employees with access to nurse case managers to further reduce the number and severity of disputes and conflict, arising from medical disputes relating to workers' compensation; and

6. To provide the County 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) and b) maintaining a list of nurse case managers and mediators to assist in carrying out the purposes and goals of this Agreement.

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

Article II: Term of Agreement

The County and KLEA 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 1) active employees; 2) retirees who claim a presumptive injury as defined by Labor Code §§3212 et seq., including post retirement amendments; and 3) active employees who file a claim and subsequently retire before the claim is resolved. Retirees who filed claims while they were active employees are covered under this Agreement only for purposes of a petition to reopen a pre-existing claim to seek new and further disability or to reduce a prior award of permanent disability unless covered under A (2), above. This Agreement does not apply to any other retired employees. This Agreement does not cover post-retirement amendments to active claims.

B. Employees who are covered under this Agreement remain covered during the entire period of active employment.

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 medical providers to be used for medical and medical-legal dispute resolution of covered employees, 2) establishing an exclusive list of mediators to be used for legal dispute resolution of covered employees, and 3) establishing an exclusive list of nurse case managers to be used for medical treatment dispute resolution of covered employees in accordance with Labor Code §3201.7(c).

E. This Agreement applies only to injuries claimed on or after January 1, 2014, regardless of the date of injury. For purposes of this Agreement a "claimed injury" is one for which either a DWC-1 workers' compensation claim form has been filed or where an Application for Adjudication of Claim has been filed with the Workers' Compensation Appeals Board ("WCAB").

Article IV. Expedited Medical-Legal Process

A. This Agreement does not constitute a Medical Provider Network ("MPN"). However, all employees must utilize the County's current MPN for treatment purposes during the time the County maintains and utilizes the MPN. The MPN is governed by Labor Code §4616 et seq. Physicians who act as a covered employee's independent medical examiner ("IME") under this Agreement shall not act as the same employee's treating physician even if the physician has been pre-designated as the employee's treating physician, unless otherwise mutually agreed by the parties. Pre-designation of a physician must comply with the requirements set forth in Labor Code section 4600(d) (1).

B. All employees with a disputed medical issue as described below in Section D must be evaluated by an approved physician from the exclusive list of approved medical providers. Said physician shall serve as an IME. Attached hereto as Exhibit A is an exclusive list of approved medical providers agreed

upon by the parties. If the IME needs the opinion of a different specialist, the IME shall refer the employee to a physician of the IME's choice even if that doctor is not on the approved list or in the MPN.

C. The exclusive list of approved medical providers shall include the specialties as agreed upon by the parties.

D. Notwithstanding the Labor Code provisions set forth in section 4605, 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, future medical care, and resolution of all disputes arising from utilization review, including need for spinal surgery pursuant to Labor Code section 4062(b). The parties agree that the ill or injured employee shall use the originally chosen IME for all subsequent disputes 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, subdivision (I)(5), as set forth herein.

E. The IME process described above will be triggered when either party gives the other written notice of an objection in connection with any issues 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, future medical care, or resolution of a dispute arising from utilization review, including the need for spinal surgery pursuant to Labor Code section 4062(b) . Objections from the County shall be sent to the employee with a copy to the employee's legal representative if represented and a copy to KLEA. Objections from the employee or employee's legal representative shall be sent to the employee's assigned claims examiner with a copy to the Claims Manager.

F. 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 decision of the claim automatically creates a dispute; further, all denials and or delays of benefits including a denial of the claim, disputes regarding the scope of medical treatment, disputes regarding the nature and extent of the 4850-TTD/PD, and the ability to return to work all trigger the IME process without the need for any formal objection. Delayed decisions based on legal disputes 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.

G. The exclusive list of approved medical providers shall serve as the exclusive source of medical-legal evaluations as well as all other disputed medical issues arising from a claimed injury.

H. The parties hereby agree that from time to time the exclusive list of approved medical providers 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 intent to add a physician to the list. Absent a written objection to the other party within thirty (30) calendar days of receipt of the written proposal, the addition shall be made. In the event there is an objection, the physician shall not be added to the 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 County or by mutual agreement of the parties.

I. Appointments.

1. Kern County Risk Management shall make appointment(s) with the IME 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, to his legal representative, if there is one, and to the union representative.

2. The employee shall be responsible for providing Kern County Risk Management 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.

3. Compensation for medical appointments under this Agreement shall be consistent with County policy.

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

5. For purposes of appointments, Kern County Risk Management 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 Kern County Risk Management will resume using the first name on the list.

J. The County 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.

K. Both parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement. A notice of the results of the examination will be sent to the employee, to his or her legal representative, if there is one, and to the union representative.

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 one party objects to the provision of any nonmedical records to the IME, the party shall object within ten (10) calendar days of the service of the 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 a complete and accurate history. There shall be no objection to the provision of medical records to the IME, subject to the Labor Code.

M. The County 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 County shall serve a copy of the listing of all records provided on the employee and/or on his/her 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 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.

O. Ex parte communication with the IME is prohibited. If a party communicates with the IME in violation of subdivision L., 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 provision I(5). If a new examination is required, the party making the communication prohibited by this section shall be liable for the cost of the initial medical evaluation.

P. 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 twenty (20) 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. The party objecting to the IME's report shall, as part of its objection, notify the other party of its desired method of supplemental discovery.

Article V. Mediation

A. 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.

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

C. 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, whether an apportionment opinion is valid, disputes over either parties estimate as to a permanent disability rating, disputes over occupational group numbers, whether a pain add on is

appropriate, 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§132a, discovery disputes, and questions involving jurisdiction.

D. 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 subdivision C is 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 this Agreement.

E. 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 this fifteen (15) calendar day period, the request shall be deemed to have been rejected. Any response to a request to mediate from the County shall be sent to the employee with a copy to the employee's legal representative, if represented, and a copy to KLEA. 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 Claims Manager.

F. 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. Attached hereto as Exhibit B is the Mediator Panel that was agreed upon by the County, and the KLEA.

G. For purposes of selecting a mediator, Kern County Risk Management 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 Kern County Risk Management shall resume using the first name on the list. Kern County Risk Management shall notify all parties of the selection and assignment of a mediator within ten (10) calendar days of such assignment having been made.

H. Mediators will be paid at the rate of $300.00 per hour. All costs associated with the mediation shall be paid by the County.

I. Within fifteen (15) calendar days of the selection of a mediator, the selected mediator shall be notified by the County of his/her selection. The selected mediator shall then schedule the date, time, and location of the mediation with the parties.

J. The mediation must take place within forty-five (45) calendar days of notification having been sent to the mediator of his/her selection. If the selected mediator is either unable or unwilling to schedule the 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 subdivision G.

K. 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.

L. 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. Mediation briefs may be formatted and submitted as either a formal pleading or in an informal letter brief format. Any mediation brief submitted should discuss the following issues:

1. A brief statement of the facts of the case;
2. A listing or other description of the factual and/or legal issues being mediated;
3. A history or description of any attempts made by the parties to resolve theses issues prior to mediation;
4. A description of each parties respective position in regards to these issues; and
5. The medical, legal, or factual authority being relied upon by each party in support of its respective position.

M. If a mediation brief is prepared by the County, a copy of this brief shall be sent to the employee with an additional copy to the employee's legal representative, if represented, and a copy to KLEA. If a mediation brief is submitted by the employee or employee's legal representative a copy of this brief shall be sent to the employee's assigned claims examiner with a copy to the Claims Manager.

N. If the mediation is successful at resolving the dispute, a summary of the mediation shall be prepared by the County. This summary shall identify the mediator used, the specific issues that formed the basis for the mediation, a general description of how the mediation was conducted, the length of time of the mediation, and the resolution or settlement reached. A copy of this Mediation Summary shall be served upon the mediator, the employee, the employee's legal representative, if represented, to KLEA, to the employee's assigned claims examiner, and to the Claims Manager.

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

P. 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 Workers' Compensation Appeals Board until completion of the mediation process, as set forth above.

Article VI: Nurse Case Management

A. Any party subject to the provisions of this Agreement may request the involvement of a nurse case manager in accordance with the provisions set forth herein.

B. Nurse case management is voluntary and either side may request the assignment of a nurse case manager to a particular covered claim. For purposes of this Agreement a "covered claim" is a claim that is subject to the terms of this Agreement, as set forth herein.

C. The purpose of nurse case management includes, but is not limited to, coordinating and facilitating medical care for covered employees, to be proactive with respect to intervention and facilitation of recovery of the covered employee, to assist and guide the covered employee through the medical treatment process and, if practical, resolve treatment disputes between the primary treating physician, secondary treating physicians and utilization review. The nurse case manager shall not attend the actual medical examination of the covered employee without consent of the employee.

D. Upon receipt of an official request for nurse case management, the non-requesting party will have a period not to exceed fifteen (15) calendar days within which to object to said request. If no response is provided within this fifteen (15) calendar day period, the request shall be deemed to have been accepted. Any response to a request for nurse case management from the County shall be

sent to the employee with a copy to the employee's legal representative, if represented, and a copy to KLEA. Any response to a request for nurse case management from the employee or employee's legal representative shall be sent to the employee's assigned claims examiner with a copy to the Claims Manager.

E. If both parties agree, either expressly or by lapse of the aforementioned time frame, to the request for nurse case management, within ten (10) calendar days of such agreement being reached, a nurse case manager shall be assigned from the approved Nurse Case Management Panel. Attached hereto as Exhibit C is the Nurse Case Management Panel that was agreed upon by the County, and the KLEA.

F. For purposes of selecting a nurse case manager, Kern County Risk Management shall select the nurse case manager by starting with the first company from the Nurse Case Management Panel and continuing down the list, in order, until the list is exhausted, at which time Kern County Risk Management shall resume using the first name on the list. Kern County Risk Management shall notify all parties, including the selected nurse case manager, of the selection and assignment of the nurse case manager within ten (10) calendar days of such assignment having been made.

G. If the selected nurse case manager is either unable or unwilling to serve as the designated nurse case manager, a new nurse case manager shall be selected from the Nurse Case Management Panel from the next nurse case management company available on the list, pursuant to the provisions of subdivision F.

H. Nurse case management reports shall be prepared as per the usual custom and practice of the designated nurse case management company. A copy of these reports shall be served upon the employee, the employee's legal representative if represented, to KLEA, to the employee's assigned claims examiner, and to the Claims Manager.

I. Although the nurse case management process is completely voluntary, it is expected that the parties' shall cooperate with each other, and act in good faith, to accomplish the stated goals of the nurse case management process. If, at any time, the non-requesting party wishes to object to the continuation of nurse case management to a particular covered employee, they shall notify the other party, in writing, of their intent to terminate nurse case management on a particular covered claim. Within ten (10) calendar days of such notice being served, nurse case management shall terminate immediately. Notification of the termination of nurse case management on a covered claim shall be served upon the employee, the employee's legal representative if represented, to KLEA, to the employee's assigned claims examiner, and to the Claims Manager

J. All costs involved in nurse case management for a covered employee or covered claim shall be borne by the County.

Article VII: Discovery

A. Covered employees shall provide Kern County Risk Management with fully executed medical, employment and financial releases and any other

documents reasonably necessary for the County to resolve the employee's claim, when requested.

B. The parties agree to the use of releases to be used under this agreement. If said releases cause undue delay and/or unforeseen adverse impact(s) to the County, and/or KLEA and/or its members then either party may request a review of the document(s) causing said undue delay and/or adverse impact(s). The parties shall review the document(s) in question within thirty (30) calendar days of a party's request for review.

C. Covered employees shall co-operate in providing a written or recorded statement.

D. 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 $325.00 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 IMEs.

Article VIII: 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.

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:

County: Kelci Andersen, Disability Management Coordinator
1115 Truxtun Ave., 4th Floor
Bakersfield, CA 93301

KLEA: John Ferrone, Attorney at Law
4333 Park Terrace Dr., Ste. 200
Westlake Village, CA 91361

G. In the event that there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorney's fees.

COUNTY OF KERN:

By: _____ DEC 1 0 2013
Mike Maggard, Chairman, Board of Supervisors

By: _____
~~Employee Relations Officer~~
ELISSA D. LADD, ASSISTANT COUNTY ADMINISTRATIVE OFFICER

KERN LAW ENFORCEMENT ASSOCIATION:

By: _____
Marc Haiungs, President KLEA

APPROVED AS TO FORM:

By: _____
Margo Raison, Deputy County Counsel
Chief