AGREEMENT NO. 15-003

LABOR-MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT

THIS AGREEMENT is made and entered into on JAN 07 2015, by and between the **CITY OF BAKERSFIELD,** a municipal corporation ("CITY" herein), and **BAKERSFIELD POLICE OFFICERS ASSOCIATION** ("BPOA" herein).

RECITALS

WHEREAS, pursuant to Labor Code § 3201.7, BPOA has Petitioned the Department of Industrial Relations, Division of Workers' Compensation Administrative Director and received authorization as of January 27, 2014 to negotiate a Collective Bargaining Agreement with CITY and enter into an Alternative Dispute Resolution program; and

WHEREAS, BPOA represents BPOA has the authority to act and enter into this Agreement on behalf of its members; and

WHEREAS, this Agreement is created pursuant to California Labor Code section 3201.7(a)(3)(c); and

WHEREAS, 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 California Labor Code ("Labor Code"); and

WHEREAS, for purposes of this Agreement, "covered employees" includes those members of the BPOA subject to the collective bargaining agreement between the CITY and the BPOA and employees defined by section 3.1 of this Agreement; and

WHEREAS, nothing in this Agreement denies any covered employee the right to representation by counsel at all stages during this alternative and expedited resolution process.

NOW, THEREFORE, incorporating the foregoing recitals herein, CITY and BPOA (collectively "Parties") mutually agree as follows:

1. **PURPOSE.** The purpose of this Agreement is:

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1.1 To provide covered employees claiming compensable injuries under Division 4 of the California Labor Code ("Workers' Compensation Law") with an expedited procedure to resolve enumerated disputes in accordance with sections 3, 4, 5, and 6 of this Agreement and to facilitate those employees' prompt return to work;

1.2 To provide covered employees claiming an injury presumed to be compensable by Labor Code § 3212 et seq. with an expedited procedure to resolve medical disputes in accordance with sections 3, 4, 5, and 6 of this Agreement;

1.3 To reduce the number and severity of disputes between the CITY and covered employees, when those disputes relate to workers' compensation; and

1.4 To provide workers' compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces dispute resolution costs and expenses for the CITY; and

1.5 These purposes will be achieved by: utilizing an exclusive list of medical providers - Independent Medical Examiner ("IME") - to be the sole and exclusive source of medical-legal evaluations for disputed issues in regards to covered employees in accordance with Labor Code § 3201.7(c).

2. TERM OF AGREEMENT AND TERMINATION.

2.1. The Parties understand that this document governs the Alternative Dispute Resolution Agreement 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.

2.2. 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 herein.

2.3. 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 by

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way of Stipulations and Award and do not include disputes arising from a timely Petition to Reopen filed subsequent to a Stipulations and Award settlement.

2.4. The Parties reserve the right to terminate this Agreement at any time. 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.

3. SCOPE OF AGREEMENT.

3.1. This Agreement applies only to injuries, as defined by Workers' Compensation Law, claimed by: (1) active police officers; (2) active police officers and retirees who claim a presumptive injury as defined by Labor Code § 3212 et seq., including post retirement claims of injury and amendments to existing claim(s); and (3) active police officers 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 previously settled claim by way of Stipulations and Award alleging new and further disability, or in the event of a petition to reduce a prior Award of permanent disability of a covered employee by the CITY unless covered under section 2 above. This Agreement applies only to covered employees and does not apply to any other retired employee claiming a Labor Code § 3212 et seq. presumptive injury(ies) or non-covered employees.

3.2. Covered employees who are covered under this Agreement remain covered during the entire period of active employment, including post retirement claims outlined above in section 3.1.

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

3.4. This Agreement is restricted to establishing an exclusive list of medical providers to be used for medical-legal dispute resolution of covered employees.

3.5. This Agreement applies only to injuries claimed on or after the effective date, 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").

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4. EXPEDITED MEDICAL-LEGAL PROCESS.

4.1. All employees shall utilize the CITY's Medical Provider Network ("MPN") for accepted claims or delayed status claims for medical treatment purposes during the time the CITY maintains and utilizes the MPN. The MPN is governed by Labor Code § 4616 et seq. and applicable provisions of Title 8 of the California Code of Regulations ("8 CCR"). Physicians who act as a covered employee's Independent Medical Examiner ("IME") under this Agreement shall not act as the employee's Primary Treating Physician ("PTP") or Secondary treating physician as defined by 8 CCR § 9785 even if the physician has been properly pre-designated by the covered employee pursuant to Labor Code § 4600(d)(1) or 8 CCR § 9767.12 as the employee's treating physician, unless otherwise mutually agreed by the Parties.

4.2. All employees with a disputed medical issue as described below in section 4.4 must be evaluated by an approved physician from the exclusive list of approved medical providers. Said approved medial providers shall serve as the IME. If the IME needs the opinion of a different specialist, the IME shall advise the Parties who shall then select an approved medical provider from the list in the manner prescribed to act as the IME in the requested specialty.

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

4.4. Notwithstanding the Labor Code provisions set forth in § 4605, an IME from the list of approved medical providers 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 impairment 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 § 4062(b). The Parties agree that the ill or injured employee shall use the originally selected 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 section 4.9.4, as set forth herein.

4.5. 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 impairment and/or apportionment, work restrictions, ability to return to work, including transitional duty, future medical care, or resolution of a dispute arising from utilization

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review, including the need for spinal surgery pursuant to Labor Code § 4062(b). 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.

4.6. Objections shall be sent within thirty (30) calendar days of receipt of a medical report with which one Party disagrees or a utilization review non-certification or modification addressing any of the issues set forth above. Decisions to delay a claim based on legal dispute shall not trigger the IME process as subsequent acceptance of the claim and/or resolution of the legal dispute may eliminate the need for activation of the dispute resolution process set forth in this Agreement.

4.7. 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 as described in section 4.5 above.

4.8. The parties hereby agree that they will meet quarterly to address changes regarding the exclusive list of approved IMEs. For either party to propose adding an IME to the exclusive list of IMEs, the party must provide notice, in writing, to the other party of its intent to add a physician to the list. Absent a written objection to the proposing party within thirty (30) calendar days of mailing of the written proposal, the addition shall be made at the next quarterly meeting. A physician may be removed from the exclusive list of IMEs for any the following reasons: (1) notice, in writing, to the other party of a party's intent to delete a physician from the list. Absent written objection to the proposing party within thirty (30) calendar days of mailing, the deletion shall be made at the next quarterly meeting; (2) breach of the terms and conditions of the contract with the physician; or (3) by mutual agreement of the parties.

5. Appointments.

5.1. Risk Management or the Third Party Administrator ("TPA"), (Acclamation Insurance Management Services ("AIMS")), 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/or to the union representative if the covered employee is unrepresented by an attorney.

5.2. Compensation for medical appointments under this Agreement shall be consistent with CITY policy.

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

5.4. For purposes of appointments, Risk Management or the TPA shall select the IME by starting with the first name from the exclusive list of approved IMEs within the appropriate specialty, and continuing down the list, in order, and until the list is exhausted, at which time Risk Management or the TPA will resume using the first name on the list.

5.5. 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 including those obtained pursuant to Labor Code § 4605.

5.6. Both Parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement.

5.7. 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, not including personnel records maintained by the CITY which shall be procured, and will be provided, only pursuant to a properly executed and served subpoena duces tecum. If one party objects to the provision of any non-medical records being sent to the IME, the party shall object within ten (10) calendar days from receipt of the records served by the other party. 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 a complete and accurate history. There shall be no objection to the provision of medical records to the IME, subject to the Labor Code.

5.8. The CITY or the Third Party Administrator (TPA) shall provide to the IME records prepared or maintained by the employee's PTP or Secondary treating physician(s) and medical and non-medical records relevant to the determination of the medical issue(s). The CITY shall serve a copy and a listing of all records provided to the IME on the employee and/or to his/her attorney of record.

5.9. 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

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employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination.

5.10. Ex parte communication with the IME is prohibited. If a party communicates with the IME in violation of section 4.12 above, 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 section 4.9.4. If a new examination is required, the party making the communication prohibited by this section shall be liable for the cost of the additional medical evaluation.

5.11. 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. 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 or other proposed resolution of the medical treatment or medical-legal finding.

6. DISCOVERY.

6.1. Covered employees shall provide Risk Management or the TPA with fully executed medical, employment and financial releases and any other documents reasonably necessary for the CITY to conduct discovery or to resolve the employee's claim, when requested.

6.2. The Parties agree to the use of medical release authorizations to be used in discovery under this Agreement. If said releases are not provided to the requesting party or the discovery being requested causes undue delay and/or could potentially cause adverse impact to the CITY, BPOA, its members, or the covered employee, then the party requesting the discovery may request a review of the document(s) causing said undue delay and/or claimed potential adverse impact. The Parties shall jointly review the document(s) in question within thirty (30) calendar days of a party's request for review unless protected by a claimed privilege or other provision of law which shall be communicated to the party requesting the discovery.

6.3. Covered employees shall cooperate in providing a written or recorded statement to a CITY investigator, Risk Management or the TPA.

6.4. This Agreement does not preclude a formal deposition of a covered employee or an IME when necessary pursuant to the right of discovery in accordance with applicable provisions of law. Attorney's fees for depositions of covered employees shall be paid at the rate of $350.00 per hour, consistent

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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.

7. GENERAL PROVISIONS.

7.1. Merger and Modification. This Agreement sets forth the entire agreement between the Parties and supersedes all other oral or written representations. This contract may be modified only in writing and signed by all Parties.

7.2. Governing Law. The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Kern County, California.

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

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

7.5. Counterparts. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument.

7.6. Notices. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The Parties shall be addressed as follows, or at any other address designated by notice:

CITY: **CITY OF BAKERSFIELD**
CITY HALL
1600 Truxtun Avenue
Bakersfield, California 93301

BPOA: **BAKERSFIELD POLICE OFFICERS ASSOCIATION**
P.O. Box 2501
Bakersfield, California 93302
Telephone: (661) 464-2362

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6.7 Authority. Each individual signing this Agreement on behalf of entities represents and warrants that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

6.8 Execution. This Agreement is effective upon execution. It is the product of negotiation and all Parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, the day and year first-above written.

"CITY"
CITY OF BAKERSFIELD

By: _____
HARVEY L. HALL
Mayor

"BPOA"
BAKERSFIELD POLICE OFFICERS ASSOCIATION

By: _____

Type or Print Name: TODD DICKSON

Title: PRESIDENT

APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By: _____
JOSHUA H. RUDNICK
Deputy City Attorney

Insurance: n/a

APPROVED AS TO CONTENT:
BAKERSFIELD POLICE DEPARTMENT

By: _____
GREG WILLIAMSON
Chief of Police

COUNTERSIGNED:

By: _____
NELSON SMITH
Finance Director

JHRlsc
Attachment: Exhibit A – Approved Medical Providers List

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