Workers Compensation Carve Out & Alternative Dispute Resolution ("ADR") Agreement

by & between
City of Los Angeles
and the
Service Employees International Union (SEIU) Local 721
Unit #4, Unit #14, Unit #15, and Unit #18

This Agreement is made and entered into this 7th day of March 2008, by and between City of Los Angeles (hereinafter referred to as "CITY") and SEIU Local 721 (hereinafter referred to as "UNION"). The term "parties" as used herein shall refer to City and Union.

“Carve-out” programs allow employers and unions to create their own alternative system for workers' compensation benefit delivery and dispute resolution under a collective bargaining agreement. Eligibility of parties to participate in a program must be approved by the Administrative Director of the Division of Workers' Compensation.

ARTICLE I

PURPOSE

1.1 It is the intent of this Agreement to provide covered employees who claim compensation for personal injuries and occupational diseases (hereinafter referred to as “injuries”) under the California Workers' Compensation Law (hereinafter referred to as the “Law”) with a workers’ compensation alternative dispute resolution (ADR) pilot program. By utilizing the provisions of SB 899 Chapter 35 of the 2005 session of the State of California Legislature (Labor Code Section 3201.7), it is the intent of this Agreement to establish a dispute prevention and resolution program which may be used by any employer working in the State of California who is signatory to this Agreement (or a Memorandum of Understanding agreeing to be bound by the terms of Agreement) and to a collective bargaining agreement with the Union in California. The goals of the proposed ADR are as follows: 1) Reduce litigation; 2) Improve claim resolution time; 3) Reduce workers' compensation claim costs; and 4) Increase injured workers' satisfaction.

1.2 This labor-management Agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
ARTICLE II

SCOPE OF AGREEMENT

2.1 This Agreement shall apply only to injuries as defined by the Law sustained by employees covered by SEIU Local 721: Units 4, 14, 15 and 18 collective bargaining agreements ("Employees") during their employment by CITY during the term of this Agreement.

2.2 This Agreement represents the complete understanding of the parties with respect to the subject matter dealt with herein.

2.3 In any instance of conflict, the provisions of this Agreement shall take precedence over provisions of the Law, so far as permitted by the provisions of Labor Code 3201.7 of the State of California.

2.4 This Agreement shall remain in effect for a period of eighteen (18) months from the date of its execution by the parties, six (6) months past the one-year pilot end date to allow the City and Union to analyze the effectiveness of the program and determine if the program should be continued. Either party desiring to terminate this Agreement must notify the other, and HRemedy Business Solutions (hereinafter referred to as the "CONTRACTOR") in writing, by giving thirty (30) days written notice.

2.5 This labor-management Agreement is restricted to the establishment of the terms and conditions necessary to implement Labor Code Section 3201.7

2.6 Nothing in this labor-management Agreement diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, or medical treatment fully paid by CITY as otherwise provided in Labor Code Section 3201.7

2.7 The term "claims administrator" used herein shall refer to "CITY" as it is self-insured and acting as its own administrator.

ARTICLE III

ADR CARVE-OUT CONTRACT PROVIDER

3.1 CITY, self-insured for all of its workers' compensation obligations, awarded CONTRACTOR a one-year contract, with two one-year options, to provide ADR services in compliance with Section 3201.7 of the California Labor Code to injured workers.
3.2 CONTRACTOR will prepare and obtain certification of the ADR Program and will provide the services of ombudsmen, nurse advocates, mediators, and arbitrators and will work with CITY and UNION to: 1) apply to the State for approval of its ADR program; 2) design and organize ADR services; 3) market the program to SEIU employees; and 4) provide training to CITY and SEIU staff.

3.3 CONTRACTOR will provide a written evaluation of the pilot program at six and twelve months into the program, a facet of which will be a closing report identifying savings in order to determine if a broader (Los Angeles Citywide) program is justified. This evaluation should include how the pilot program performed in reducing litigation, improving claims resolution, reducing workers' compensation claim costs, increasing injured workers' satisfaction, and notifying CITY and UNION of any trends in quality of care, frequency and type or location of accidents within a department.

ARTICLE IV

ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM

4.1 The parties hereto acknowledge that the ADR program is implemented to improve the speed and quality of medical benefits, improve claim resolution time, reduce workers' compensation claim costs, and increase injured workers' satisfaction. In recognition of the foregoing, the parties hereby establish the exclusive ADR program set forth below.

4.2 The ADR program established by this Agreement will consist of four components:

- Ombudsman
- Nurse Advocate
- Mediation
- Arbitration

4.3 This program shall replace all dispute resolution processes provided by workers' compensation law to the maximum extent permitted pursuant to California Labor Code Section 3201.7, subject to the following exceptions:

Disputes between a party to this Agreement and a person or entity who is not subject to the provisions of this Agreement by subscription or law, unless such third party or entity agrees in writing to submit to the jurisdiction of this ADR program.

All workers' compensation claims shall be subject to this Agreement including, but not limited to, claims under Labor Code sections 4650, 5814 and 4553. Any claim subject to this Agreement filed with the Workers' Compensation Appeals Board (WCAB) for resolution will immediately be removed and placed within the ADR program established by this Agreement. This is the sole means of dispute
resolution and no dispute shall proceed to the California WCAB until it has completed the ombudsman, mediation and arbitration processes defined by this Agreement.

4.4 The Ombudsman shall have experience and knowledge of the workers' compensation industry. CITY shall report all lost-time injuries to the Ombudsman. The Ombudsman shall contact the Employee within 24 hours of said notification. Any Employee with a work-related injury may initiate contact with the Ombudsman. The Ombudsman shall provide the Employee with orientation as to the mechanics of the ADR program and offer assistance in attempting to resolve any disputes with the CITY subject to this Article. The Ombudsman shall present their response to the Employee in written terms readily understandable by the Employee. The Ombudsman shall assist Employee in completing and filing requests for mediation and arbitration related to alleged work-related injuries subject to this Article and shall assist Employee with any other questions, concerns, or problems that arise related to Employee's claim and may refer if need be, the Employee to a Nurse Advocate to help with treatment issues. The CITY and UNION shall be allowed to contact the Ombudsman to request information or assistance in resolving a dispute.

4.5 If Employee has a dispute regarding workers compensation benefits that cannot be resolved to the Employee's satisfaction within ten (10) working days of the claims administrator's denial of benefits, the Ombudsman shall assist with completion and filing of mediation request form. The Ombudsman shall file the mediation request form and explain the mechanics of the mediation process to the Employee (and to the CITY if requested). No issue will proceed to mediation without first being presented to the Ombudsman. The Ombudsman will maintain a log recording all Ombudsman activity, including the date of each notification and the date of each response.

4.6 Any application for mediation shall be assigned to a mediator selected under this Agreement within three (3) working days of Ombudsman's receipt of a request. The mediator will contact the parties to the dispute, including the CITY, and shall take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.

4.7 The mediator subject to this Agreement shall be from the list mutually agreed to by the parties to this Agreement and shall have experience and knowledge of the workers' compensation industry. This list is attached hereto and marked Attachment I. As needed, this list may be modified by the CONTRACTOR with the approval of the parties to this Agreement. The Mediator will be selected and paid for by the CONTRACTOR.

4.8 Mediation shall be completed in not more than ten (10) working days from the date of referral, except that in no event shall an issue be permitted to proceed
beyond mediation until the mediation process is completed, or if both the Employee and CITY mutually agree to an extension.

4.9 Within thirty (30) calendar days after the completion of the mediation process, any party not satisfied with the outcome shall file with the CONTRACTOR a request that the matter be referred for arbitration. In all cases, within ten (10) calendar days after completion of the mediation process, the Ombudsman will contact Employee by phone and regular mail to offer assistance in requesting arbitration if Employee so desires and to explain the mechanics of the arbitration process to Employee. Upon receipt of such a request for arbitration, the CONTRACTOR shall immediately refer the matter for arbitration as provided herein. The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel. The Arbitrator will be selected and paid for by the CONTRACTOR.

4.10 The CONTRACTOR shall assign the arbitrator for such purpose, from the list of Arbitrators agreed to by the CITY and UNION, a copy of which will be attached hereto and marked Attachment II. As needed, this list may be modified by the CONTRACTOR with the approval of the parties to this Agreement. In any case which has been regularly assigned to an Arbitrator for hearing hereunder, the Arbitrator shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case. The decision of the Arbitrator is subject to review by the Workers' Compensation Appeals Board (WCAB) in the manner required by Labor Code Section 3201.7, and shall have the same force and effect as an award, order, or decision of a workers' compensation judge. Any disputes to the arbitration findings will be referred to WCAB.

4.11 Arbitration will be conducted pursuant to the rules of the American Arbitration Association using the Arbitrator assigned by the CONTRACTOR. Unless the parties to the matter otherwise agree, arbitration proceeding shall be completed within thirty (30) days after referral, and an arbitration decision rendered within ten (10) working days of the completion of the proceedings. The Arbitrator's decision shall be written in a form consistent with the WCAB practices.

4.12 No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.

4.13 The parties may submit a proposed settlement to the CONTRACTOR at any time for assignment to an Arbitrator for expeditious issuance of award and/or order. Any such settlement shall be in the form of a Compromise and Release Agreement or in the form of Stipulation with Request for Award. The settlement shall be filed on a pre-printed form approved by CONTRACTOR.
4.14 Certain claims by injured workers must be handled outside the ADR program. The Ombudsman will identify these potential claims and advise the injured worker on where to go for assistance. The following type claims must be handled outside the ADR Carve-Out program:

- Discrimination in Workers' Compensation
- Disability Rights
- Family and Medical Leave

ARTICLE V

ROLE AND RESPONSIBILITY OF UNION

The Union will promote and support with all appropriate resources, the aims and goals of the Alternative Dispute Resolution process. It will train, advocate, educate, and support, through ongoing worksite meetings, bulletins, the Internet and through trained referral by its front office staff, use by its members of the process. The Union will lend all participants whatever assistance is required in order to guarantee the success of the program.

ARTICLE VI

ROLE AND RESPONSIBILITY OF CITY

Per City Contract with HRemedy contract number C-112599.

ARTICLE VII

JOINT LABOR MANAGEMENT

Whatever report that is generated out of the ADR program will be shared with the Joint Labor Management Committee as established in the Union's MOU.

ARTICLE VII

MISCELLANEOUS ISSUES

7.1 Upon termination of the pilot ADR Program, all unresolved claims will remain with the assigned Workers' Compensation Analyst for further resolution. The Workers' Compensation Analyst will advise any unrepresented City injured worker of their right to contact the local Information and Assistance Officer for further guidance.
7.2 If any provision of this Agreement or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

FOR THE CITY OF LOS ANGELES

By: [Signature]

Date: 3-11-08

FOR THE UNION SEIU 721

By: [Signature]

Date: 3/7/08
FIRST AMENDMENT TO

WORKERS' COMPENSATION CARVE OUT &
ALTERNATIVE DISPUTE RESOLUTION (“ADR”) AGREEMENT

By & Between
City of Los Angeles
and
Service Employees International Union (SEIU) Local 721
Units #4, 14, 15 and 18

This First Amendment to the Workers’ Compensation Carve Out & Alternative Dispute Resolution (“ADR”) Agreement by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as “CITY”) and SEIU Local 721 (hereinafter referred to as “UNION”) is entered into with reference to the following:

RECITALS

1. California Labor Code Section 3201.7 allows employers and unions to create their own ADR system for delivery of workers’ compensation benefits under a labor-management agreement; and

2. On March 7, 2008, CITY and UNION entered into a labor-management agreement to provide covered employees who claim compensation for occupational injuries and illnesses under California workers’ compensation law with an ADR pilot program; and

3. This labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees; and

4. This labor-management agreement remains in effect for a period of eighteen months, terminating on September 6, 2009; and

5. On July 1, 2008, CITY and UNION implemented the one-year pilot program; and

6. An evaluation of the ADR program at nine months shows the program is meeting its goals of reducing litigation, improving claim resolution time, reducing workers’ compensation claim costs, and increasing workers’ satisfaction. However, it is too early in the program to see if the trends are permanent and will be applicable to the claims filed under the ADR program but still being processed; and

7. An extension of the current program through May 7, 2010 will allow further analysis of program performance to determine if a broader and perhaps Citywide program may be warranted.
NOW, THEREFORE, CITY and UNION hereby covenant and agree to amend Agreement as follows:

1. Amend Article II, Section 2.4 to read as follows:

This Agreement shall remain in effect through May 7, 2010, to allow the ADR program to continue to this date, and to allow CITY and UNION to analyze the effectiveness of the program.

2. Amend Article III, Section 3.3 to read as follows:

CONTRACTOR shall assist CITY in producing a written evaluation of the pilot program at eighteen months into the program, a facet of which will be a closing report identifying savings in order to determine if a broader (Los Angeles Citywide) program is justified. This evaluation should include how the pilot program performed in reducing litigation, improving claims resolution, reducing workers’ compensation claim costs, increasing injured workers’ satisfaction, and notifying UNION of any trends in quality of care, frequency and type or location of accidents within a department.

CITY OF LOS ANGELES
By: MARGARET WHELAN
General Manager
Personnel Department
Date: 6/21/09

SEIU LOCAL 721
By: James Lauderdale
Date: 8/3/09
SECOND AMENDMENT TO
WORKERS’ COMPENSATION CARVE OUT &
ALTERNATIVE DISPUTE RESOLUTION ("ADR") AGREEMENT

By & Between
City of Los Angeles
and
Service Employees International Union (SEIU) Local 721
Units #4, 14, 15 and 18

This Second Amendment to the Workers' Compensation Carve Out & Alternative Dispute Resolution ("ADR") Agreement by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "CITY") and SEIU Local 721 (hereinafter referred to as "UNION") is entered into with reference to the following:

RECITALS

1. California Labor Code Section 3201.7 allows employers and unions to create their own ADR system for delivery of workers' compensation benefits under a labor-management agreement; and

2. On March 7, 2008, CITY and UNION entered into a labor-management agreement to provide covered employees who claim compensation for occupational injuries and illnesses under California workers' compensation law with an ADR pilot program; and

3. The labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees; and

4. The labor-management agreement was for a period of eighteen months, terminating on September 6, 2009; and

5. On July 1, 2008, CITY and UNION implemented the one-year pilot program; and

6. On August 21, 2009, the pilot program was extended through May 7, 2010 to allow further analysis of program performance to determine if a broader and perhaps Citywide program may be warranted; and

7. An evaluation of the pilot program at 17 months showed the program is meeting the overall goals of reducing litigation and claims costs. As such, CITY and UNION desire to amend the labor-management agreement to continue the ADR program through May 7, 2011 or upon termination of CITY'S contract with HRemedy Business Solutions.

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NOW, THEREFORE, CITY and UNION hereby covenant and agree to amend Agreement as follows:

1. Amend Article II, Section 2.4 in its entirety and replace with the following:

   This Agreement shall remain in effect until May 7, 2011 or upon termination of Contract No. C-112599 between the CITY and HRemedy Business Solutions (hereinafter referred to as "CONTRACTOR").

2. Amend Article IV, to add the following:

   4.15. Although injured workers have the right to representation by counsel at all stages during the ADR process, the CITY is not liable for the payment of attorney fees unless ordered by a WCAB judge. Furthermore, anytime a medical evaluation is required to resolve disputes related to compensability of claim, permanent disability evaluations, and all other disputes per Labor Code Sections 4060, 4061, and 4062, such evaluation shall be completed by a qualified medical evaluator (QME) as specified in Labor Code Section 4062.1. Upon the injured worker or CITY'S request for a medical evaluation by a QME, CONTRACTOR shall provide in writing to the injured worker and CITY a panel of three QME's (selected from the CONTRACTOR'S QME list based on specialty) from which injured worker can select one.

CITY OF LOS ANGELES

By: __________________________
    MARGARET WHELAN
    General Manager
    Personnel Department

Date: 5/7/10

SEIU LOCAL 721

By: __________________________
    Julie Butcher

Date: 05/01/10
THIRD AMENDMENT TO
WORKERS' COMPENSATION CARVE OUT & ALTERNATIVE DISPUTE RESOLUTION ("ADR") AGREEMENT

By & Between
City of Los Angeles
and
Service Employees International Union (SEIU) Local 721
Units #4, 14, 15 and 18

This Third Amendment to the Workers' Compensation Carve Out & Alternative Dispute Resolution ("ADR") Agreement by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "CITY") and SEIU Local 721 (hereinafter referred to as "UNION") is entered into with reference to the following:

RECAPITULATIONS

1. California Labor Code Section 3201.7 allows employers and unions to create their own ADR system for delivery of workers' compensation benefits under a labor-management agreement;

2. On March 7, 2008, CITY and UNION entered into a labor-management agreement to provide covered employees who claim compensation for occupational injuries and illnesses under California workers' compensation law with an ADR pilot program;

3. The labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees;

4. The labor-management agreement was for a period of eighteen months, terminating on September 6, 2009;

5. On July 1, 2008, CITY and UNION implemented the one-year pilot program;

6. On August 21, 2009, the pilot program was extended through May 7, 2010 to allow further analysis of program performance to determine if a broader and perhaps Citywide program may be warranted;

7. An evaluation of the pilot program at 17 months showed the program is meeting the overall goals of reducing litigation and claims costs. As such, CITY and UNION amended the labor-management agreement to continue the ADR program through May 7, 2011 or upon termination of CITY'S contract with HRemedy Business Solutions;
8. CITY'S contract with HRemedy expires May 7, 2011, and HRemedy has agreed to continue providing ADR services under the same contract terms until CITY executes a new contract for ADR services; and

9. CITY and UNION desire to amend the labor-management agreement to continue the ADR program.

NOW, THEREFORE, CITY and UNION hereby covenant and agree to amend Agreement as follows:

1. Amend Article II. SCOPE OF AGREEMENT, Section 2.4 in its entirety and replace with the following:

   This Agreement shall remain in effect as long as CITY continues to procure a vendor to provide ADR services to UNION'S covered Employees in accordance with California Labor Code Section 3201.7.

2. Amend Article VI. ROLE AND RESPONSIBILITY OF CITY in its entirety and replace with the following:

   Per City Contract Number C-112599 with HRemedy Business Solutions or successor contract(s) for the provision of ADR services to UNION'S covered Employees in accordance with California Labor Code Section 3201.7.

3. Effective May 8, 2011, all references to "HRemedy Business Solutions" within this Agreement shall be replaced with "CITY'S vendor for the provision of ADR services to UNION'S covered Employees in accordance with California Labor Code Section 3201.7."

CITY OF LOS ANGELES

By: ____________________________
   MARGARET WHELAN
   General Manager
   Personnel Department
   Date: 5-7-11

SEIU LOCAL 721

By: ____________________________
   ____________________________
   Date: 05/05/11
FOURTH AMENDMENT TO

WORKERS' COMPENSATION CARVE OUT & ALTERNATIVE DISPUTE RESOLUTION ("ADR") AGREEMENT

By & Between
City of Los Angeles
and
Service Employees International Union (SEIU) Local 721
Units #4, 14, 15 and 18

This Fourth Amendment to the Workers' Compensation Carve Out & Alternative Dispute Resolution ("ADR") Agreement by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "CITY") and SEIU Local 721 (hereinafter referred to as "UNION") is entered into with reference to the following:

RECATALS

1. California Labor Code Section 3201.7 allows employers and unions to create their own ADR system for delivery of workers' compensation benefits under a labor-management agreement;

2. On March 7, 2008, CITY and UNION entered into a labor-management agreement to provide covered employees who claim compensation for occupational injuries and illnesses under California workers’ compensation law with an ADR pilot program;

3. The labor-management agreement has been negotiated separately and apart from any collective bargaining agreement covering affected employees;

4. On May 7, 2010, CITY and UNION amended this Agreement to use qualified medical examiners to resolve medical disputes;

5. On May 11, 2011, CITY and UNION extended this Agreement for as long as the CITY continues to procure a Contractor to provide ADR Services to UNION'S covered employees;

6. CITY and Union desire to use agreed medical examiners to resolve medical issues; and

7. CITY and UNION desire to carry on this Agreement as amended unless terminated by one of the parties by giving sixty (60) days written notice to the other party.
NOW, THEREFORE, CITY and UNION hereby covenant and agree to amend Agreement as follows:

1. Amend Article II Scope of Agreement, Section 2.4 in its entirety and replace it with the following:

   2.4  This Agreement shall remain in effect unless terminated by one of the parties by giving sixty (60) days written notice to the other party.

2. Amend Article IV Alternative Dispute Resolution (ADR) Program, Section 4.15, which was added in the Second Amendment, in its entirety and replace it with the following:

   4.15. Although injured workers have the right to representation by counsel at all stages during the ADR process, the CITY is not liable for the payment of attorney fees unless ordered by a WCAB judge.

   Any time a medical evaluation is required to resolve disputes related to compensability of claim, permanent disability evaluations, and all other disputes per California Labor Code Sections 4060, 4061, and 4062, such evaluation shall be completed by an Agreed Medical Examiner (AME).

   Upon the injured employee's or City's request for a medical evaluation by an AME, the Contractor shall provide in writing to the injured employee and City a panel of AMEs, selected from the Contractor's AME list based on specialty, within two (2) business days, from which the injured employee may select one. The selected AME shall be required to conduct the examination of the injured worker within thirty (30) days of the panel issue date. Additionally, the AME report shall be forwarded to the Workers' Compensation Analyst within thirty (30) days of the exam.

CITY OF LOS ANGELES

By: WENDY G. MACY
    General Manager
    Personnel Department
    Date: 6/17/17

SEIU LOCAL 721

By: DAVID SANDERS
    Regional Director, SEIU
    Date: 6/5/2017