



**Application for Certification Of An
Alternative Dispute Resolution (ADR) Carve-Out
Program**

by and between

**City of Los Angeles Personnel Department Workers'
Compensation Division**

and the

**Service Employees International Union (SEIU) Local 721
Unit #4, Unit #14, Unit #15, and Unit #18**

Submitted By:

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Senior Vice President
HRemedy Business Solutions, Inc.**

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ATTACHMENT 1

LABOR CODE SECTION 3201.7

3201.7. (a) Except as provided in subdivision (b), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any labor-management agreement that meets all of the following requirements:

(1) The labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.

(2) The labor-management agreement is restricted to the establishment of the terms and conditions necessary to implement this section.

(3) The labor-management agreement has been negotiated in accordance with the authorization of the administrative director pursuant to subdivision (d), between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(A) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(B) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(C) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(D) Joint labor management safety committees.

(E) A light-duty, modified job, or return-to-work program.

(F) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) (1) Nothing in this section shall allow a labor-management agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages during the alternative dispute resolution process. The portion of any agreement that violates this paragraph shall be declared null and void.

(2) The parties may negotiate any aspect of the delivery of

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medical benefits and the delivery of disability compensation to employees of the employer or group of employers that are eligible for group health benefits and non-occupational disability benefits through their employer.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000) or more, and employing at least 50 employees, or any employer that paid an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000), and employing at least 50 employees in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of five hundred thousand dollars (\$500,000) or more.

(3) Employers or groups of employers, including cities and counties, that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(d) Any recognized or certified exclusive bargaining representative in an industry not covered by Section 3201.5, may file a petition with the administrative director seeking permission to negotiate with an employer or group of employers to enter into a labor-management agreement pursuant to this section. The petition shall specify the bargaining unit or units to be included, the names of the employers or groups of employers, and shall be accompanied by proof of the labor union's status as the exclusive bargaining representative. The current collective bargaining agreement or agreements shall be attached to the petition. The petition shall be in the form designated by the administrative director. Upon receipt of the petition, the administrative director shall promptly verify the petitioner's status as the exclusive bargaining representative. If the petition satisfies the requirements set forth in this subdivision, the administrative director shall issue a letter advising each employer and labor representative of their eligibility to enter into negotiations, for a period not to exceed one year, for the purpose of reaching agreement on a labor-management agreement pursuant to this section. The parties may jointly request, and shall be granted, by the administrative director, an additional one-year period to negotiate an agreement.

(e) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the labor-management agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the labor-management agreement.

(3) The name, address, and telephone number of the contact person of the employer.

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(4) Any other information that the administrative director deems necessary to further the purposes of this section.

(f) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, where such filing is required by law, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(g) Commencing July 1, 2005, and annually thereafter, the Division of Workers' Compensation shall report to the Director of Industrial Relations the number of labor-management agreements received and the number of employees covered by these agreements.

(h) By June 30, 2006, and annually thereafter, the administrative director shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.

(7) Safety history.

(8) The number of workers participating in vocational rehabilitation.

(9) The number of workers participating in light-duty programs.

(10) Overall worker satisfaction.

The division shall have the authority to require employers and groups of employers participating in labor-management agreements pursuant to this section to provide the data listed above.

(i) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (f) and (g) based on the labor-management agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis, the administrative director shall make available an updated list of employers and unions entering into labor-management agreements authorized by this section.

ATTACHMENT 2

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 HRRemedy 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

FOR THE UNION SEIU 721

By: Margaret Mella

By: [Signature]

By: _____

By: _____

Date: 3-11-08

Date: 3/7/08

ATTACHMENT 3