LABOR MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH AND THE HUNTINGTON BEACH FIRE MANAGEMENT ASSOCIATION

This Labor Management Alternate Dispute Resolution Agreement ("Agreement") entered into by and between the City of Huntington Beach ("City") and the Huntington Beach Fire Management Association ("HBFMA") is created pursuant to California Labor Code Section 3201.7(a)(3)(c).

Nothing in this Agreement diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, or medical treatment fully paid by the employer as otherwise provided in Division 4 of the Labor Code. Nothing in this Agreement denies to any employee the right to representation by counsel at all stages during the alternative dispute 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 medical disputes in accordance with Article IV, Section D of this Agreement to facilitate their prompt return to work at either full duties or a transitional duty assignment;
2. To provide retirees claiming a presumptive injury as defined by California Labor Code (hereinafter "Labor Code") section 3212 et seq. with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of the Agreement;
3. To reduce the number and severity of disputes between the City and covered employees, when those disputes relate to workers' compensation; and
4. To provide workers' compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs to the City.

These purposes will be achieved by utilizing an exclusive list of medical providers to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7©.

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

Article II. Term of Agreement

The City and HBFMA enter into this Agreement with the understanding that the law authorizing this Agreement is new, untested and evolving. The parties further understand that this Agreement governs a pilot program and that it will 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, Section 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 eighteen (18) months from the date of the implementation of the program. Thereafter, it shall be reviewed and, if found to be effective will continue and remain in force from year to year unless terminated by either party. 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. Any medical issue resolved under this Agreement shall be final and binding.

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) days written notice to the other party. The parties agree to meet and confer in good faith to try and resolve the issues underlying the termination during the thirty day period prior to the termination of the Agreement. Upon termination of this Agreement, the parties shall become fully subject to the provisions of the California law 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, claims by 1) active employees; 2) retirees who claim a presumptive injury as defined by California Labor Code Section 3212 et seq.; 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 the purposes of petitions to reopen a pre-existing claim unless covered under A(2). 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 establishing an exclusive list of medical providers to be used for medical dispute resolution for the above-covered employees in accordance with California Labor Code Section 3201.7(c).

Article IV. Medical Provider

A. This Agreement does not constitute a Medical Provider Network ("MPN"). 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

will serve as an IME. 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. The exclusive list of approved medical providers will be established when the Agreement has been approved by all parties.

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

D. 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 will use the originally chosen IME for all subsequent disputes under this Agreement. In the event that said IME is no longer available, then the parties shall utilize the next specialist on the list pursuant to Article IV G d (below). The IME process will begin when either party gives the other written notice of an objection. Objections from the City will be sent to the employee with a copy to the employee's legal representative if represented and a copy to HBFMA. Objections from the employee or employee's legal representative will be sent to the employee's assigned Claims Examiner with a copy to the Claims Manager. Objections will be sent within thirty days of receipt of a medical report or a utilization review decision. A letter delaying decision of the claim automatically creates a dispute. A subsequent acceptance of the claim and/or resolution of the dispute issue eliminates the need for completion of the dispute resolution process set forth in this Agreement.

E. 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.

F. The parties hereby agree that from time to time the exclusive list of approved medical providers may be amended. For either party to add 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 will be made. In the event there is an objection, the physician will not be added to the list. A physician may only be deleted from the exclusive list of medical providers if he/she breaches the terms and conditions of the contract with the City or by mutual agreement of the parties.

G. Appointments.

   a. The Claims section of the Workers' Compensation Division shall make appointment(s) with the IME within ten days of the date of the objection and/or notification of delay for employees covered under this Agreement.

   b. The employee shall be responsible for providing the Claims staff with his/her work schedule prior to an appointment being made so that appointments can be made during an employee's nonworking hours or the first or last hour of his/her workday. The amount of time allotted for hours spent at a physician's appointment during working hours will be subject to verification and will be allowed accordingly.

c. Mileage reimbursement to covered employees shall be consistent with City policy and in accordance with Labor Code Section 4600 (e)(2) unless transportation is provided by the City.
d. For purposes of appointments, the Claims staff will 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 the Claims staff will resume using the first name on the list.
e. 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 cannot be obtained outside of this Agreement for disputes covered by this Agreement.
f. Both parties shall be bound by the opinions and recommendation of the IME selected in accordance with the terms of this Agreement.

Article V. Discovery

A. Employees covered by this Agreement shall provide the Claims staff with fully executed medical, employment and financial releases and any other documents reasonably necessary for the City to resolve the employee's claim, when requested.
B. The parties agree they have met and conferred on the language of the medical/financial/employment releases to be used under this Agreement. If said releases cause undue delay and/or unforeseen adverse impact(s) to the City and/or the HBFMA and/or its members, then either party may request a meet and confer regarding said under delay and/or adverse impact(s). The parties shall meet and confer within 30 days of a party's request to meet and confer.
C. Employees shall cooperate in providing a statement.
D. This Agreement does not preclude a formal deposition of the applicant or the physician when necessary. Attorney's fees for employee depositions shall be covered by Labor Code section 5710. There will be no attorney's fees for doctor's depositions.

Article VI. General Provisions

A. The 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. Notice required under this Agreement shall be provided to the parties as follows:

F. 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.

Huntington Beach Fire Management Association

3/14, 2013 by: _____

HBFMA President

City of Huntington Beach, a municipal corporation

4-1, 2013 by: _____

City Manager, Fred Wilson

This agreement is approved as to form on 3.19, 2013.

Jennifer McGrath, City Attorney

By: _____