Workers’ Compensation Alternative Dispute Resolution Program Agreement

Between the City of Los Angeles and

Service Employees International Union (SEIU) Local 721
(MOUs 4, 8, 14, 15, 17, 18, 36, and 63)
City of Los Angeles and SEIU LOCAL 721

Workers' Compensation Alternative Dispute Resolution (ADR)
Program Agreement

This Workers' Compensation Alternative Dispute Resolution (ADR) Program Agreement ("Agreement") is entered into by and between the City of Los Angeles ("City") and the Service Employees International Union ("SEIU" or "Union Party") Local 721 (MOUs 4, 8, 14, 15, 17, 18, 36, and 63) on behalf of its represented members, hereinafter referred to as parties to this Agreement pursuant to the authority granted to the parties in California Labor Code Section 3201.7.

I. PREAMBLE

Whereas, the parties to this Agreement are desirous of entering into this Agreement whereby represented employee members of SEIU will receive benefits and resolve all disputes for claims arising under Division 4 of the California Labor Code ("Workers' Compensation Law") pursuant to the process and procedures authorized under California Labor Code Section 3201.7; and,

Whereas, the parties to this Agreement acknowledge that this ADR Program is implemented to improve the processing and quality of workers' compensation medical benefits, improve claim resolution time, reduce workers' compensation claim costs, return injured employees back to work in a timely manner, and increase injured employees' satisfaction with the process; and,

Whereas, the parties to this Agreement will make every good faith effort to apply the terms of this Agreement consistent with the intent of the parties as expressed herein; and,

Whereas, the parties to this Agreement acknowledge that American Federation of State, County & Municipal Employees (AFSCME) Council 36, Locals 3090 (MOU 3), 2626 (MOUs 6 and 16), 741 (MOU 7), 2006 (MOU 10), 901 (MOU 11), and 3672 (MOU 37), International Brotherhood of Teamsters (Teamsters) Local 911 (MOU 34), International Union of Operating Engineers (IUOE) Local 501 (MOUs 9 and 62), Laborers International Union of North America (LIUNA) Local 777 (MOU 12), Los Angeles/Orange County Building & Construction Trades Council (MOUs 2 and 13), and Service Employees International Union (SEIU) Local 721 (MOUs 4, 8, 14, 15, 17, 18,
36, and 63), hereinafter referred to collectively as the Coalition of City Unions (Coalition), will be part of this ADR Program through separate ADR Agreements with each Local and the Trades Council, and this ADR Program will be overseen collectively as provided herein; and,

Whereas, the parties to this Agreement acknowledge that nothing in this Agreement shall be interpreted in a manner to diminish in any way the statutory rights of the parties under California law; except as otherwise specifically set forth below; and,

Whereas, this labor-management Agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees; and,

Wherefore, in recognition of the foregoing, the parties to this Agreement hereto establish the exclusive ADR Program as set forth below and agree as follows:

II. GOALS OF THE ADR PROGRAM

1. Improve the quality and timeliness of medical care provided to the injured employee.

2. Provide an efficient and effective method of dealing with disputes that arise from the administration of workers’ compensation benefits.

3. Return the injured employee to full duty or reach a determination that the injured employee is unable to return to work in a timely manner.

4. Assist and facilitate the early return of the injured employee to alternate or modified work while the injured employee is recovering from his/her injury, consistent with medical evidence and the City’s current Return to Work Program or as amended by the parties hereafter.

5. Promptly make maximum effort to engage in the interactive process and explore reasonable accommodation options, with the goal of placing the injured employee in a position consistent with the medical evidence and the City’s current Reasonable Accommodation Process or as amended by the parties hereafter when the injured employee has reached Maximum Medical Improvement, at which time the employee’s condition is stabilized and unlikely to change substantially in the next year, with or without medical treatment.
6. Settle workers' compensation claims within two years from the date the claim form is received by the Personnel Department consistent with quality medical care, and unless the facts otherwise warrant.

III. TERM OF AGREEMENT

This Agreement shall become effective on May 1, 2018, subject to approval by the City and by SEIU, and Recognition of Agreement by the California Department of Industrial Relations Administrative Director of the Division of Workers' Compensation, hereinafter referred to as DIR.

This Agreement shall remain in effect, except as set forth in Section VI. Obligations of the Parties upon Termination, below.

IV. REVIEW AND MODIFICATION OF ADR PROGRAM

Commencing May 1, 2020, the parties to this Agreement shall have six (6) months through October 31, 2020, to analyze the effectiveness of the ADR Program and make changes to the ADR Program as needed. The parties to this Agreement agree that this analysis will be conducted annually after the initial review with representatives of the Coalition of City Unions to review that analysis and make changes to the ADR Program as needed.

V. REVIEW AND MODIFICATION OF ADR AGREEMENT

The parties agree that the terms of this Agreement may be modified at any time by mutual written consent only.

VI. OBLIGATIONS OF THE PARTIES UPON TERMINATION

Any party to this Agreement may terminate its participation in this Agreement upon giving sixty (60) days written notice to the other party. Any claimants in the terminated ADR Program will continue to receive workers' compensation benefits and resolve all disputes for claims arising under Division 4 of the Labor Code and the procedures set forth therein.

The claims administrator shall notify all claimants affected by such termination and the steps needed to continue his or her claim(s).
If the Union Party to this Agreement terminates its participation in this Agreement, it is also terminated from this ADR Program. The remaining ADR Agreements (as acknowledged in the Preamble) shall remain in effect.

Unless otherwise specifically noted in this Agreement, any reference to "days" shall mean calendar days not working days.

VII. **SEVERABILITY CLAUSE**

If any provision of this Agreement or its application is held invalid, the invalidity will not affect other provisions or applications of this Agreement that can be given without the invalid provisions or applications, and thus the provisions of this Agreement are deemed to be severable.

VIII. **ADR PROGRAM JURISDICTION**

As to all claims with dates of injury on or after the effective date of this ADR Program, as agreed to by the City and SEIU, it is the intent of the parties to replace all dispute resolution procedures set forth in the California Labor Code with those dispute resolution procedures outlined herein to the greatest extent allowed by law. In any conflict, the provisions of this Agreement shall take precedence over the provisions of the California Labor Code, but only so far as permitted by Labor Code Section 3201.7. This ADR Program shall be used in place of the filing of an application with the Workers' Compensation Appeals Board (WCAB) for any injuries or claims that would otherwise be subject to the initial jurisdiction of the WCAB. This ADR Program is the sole means of dispute resolution and no dispute shall proceed to the WCAB until it has completed the processes defined and established by this Agreement.

The terms of this Agreement shall apply only to the City's active/retired employees, who are or upon retirement were members of SEIU Local 721 at the time of their claim(s).

All claims currently covered by SEIU Local 721 with Recognition of Agreement dated April 15, 2008 and any amendments thereto for MOUs 4, 14, 15, and 18 will be transferred into this ADR Program upon the effective date of this Agreement and subject to the terms of this Agreement.

IX. **ELEMENTS OF THE ADR PROGRAM**

This ADR Program consists of: 1) ombudspersons, 2) a mediation process, 3) an arbitration process, 4) utilization of Agreed Medical Examiners, 5) permanent
disability raters, 6) medical provider network, 7) language interpreters, and 8) an ADR Program Manager.

X. JOINT LABOR MANAGEMENT COMMITTEE (COMMITTEE)

The Committee shall be operational upon final agreement of the terms and conditions of this Agreement.

The Committee shall oversee the initial and ongoing implementation of the ADR Program including agreeing upon the ombudspersons, mediators, arbitrators, permanent disability raters, language interpreters, medical providers, and ADR Program Manager. The City shall retain all contracting and appointing authority for these contracted services.

A top priority of the Committee is to establish short-, medium- and long-term goals and metrics to achieve the objectives of this ADR Program as set forth herein.

Any party to this Agreement can bring forward to the Committee either concerns about, or opportunities to enable or improve, the successful implementation of this ADR Program. Such matters shall be forwarded to the ADR Program Manager who will make recommendations to the Committee for improvements that will address and resolve any impediments to a successful implementation of this ADR Program.

The Committee shall develop policies, procedures, and reporting requirements to monitor the effectiveness of the ADR Program. All reports required to be submitted by the ADR Program Manager shall be provided to the Committee upon request, including but not limited to utilization review.

The Committee shall be comprised of ten (10) designated representatives, five (5) representatives of the City and five (5) representatives of the Coalition of City Unions. The City and the Coalition of City Unions shall each select five (5) members to be appointed to the Committee. The Union Party to this Agreement agrees to abide by the selection of members made by the Coalition of City Unions.

Six (6) attendees, three (3) from the City and three (3) from the Coalition, shall constitute a quorum. At least three (3) affirmative votes from the City designated representatives and three (3) affirmative votes from the Coalition of City Unions designated representatives are required to approve any issue before the Committee.
The Committee shall prepare rules and procedures required to implement and maintain the duties and responsibilities of the Committee. Said rules and procedures shall be approved by a majority vote of the Committee as defined herein.

The Committee shall create a subcommittee on Return to Work/Stay at Work issues.

There will be no tiebreaking procedures. In the event that a majority of the members as defined above do not vote in support of the proposal, the matter shall not be considered adopted or approved by the parties to this Agreement.

The City will provide administrative support and resources for the Committee.

XI. MEDICAL TREATMENT

At the present time, the City does not have a Medical Provider Network (MPN). If the City decides to utilize an MPN, the medical providers in the network shall be used for all claims in this ADR Program provided that the City complies with the Labor Code, Rules of Practice and Procedure, and case law interpreting treatment under the MPN. However, if an employee has predesignated a physician in accordance with Labor Code Section 4600, said employee can treat outside the MPN.

The medical providers in the network shall provide treatment using evidence-based guidelines: Medical Treatment Utilization Schedule (MTUS), American College of Occupational and Environmental Medicine (ACOEM), Official Disability Guidelines (ODG), or other evidence-based guidelines adopted by the Administrative Director of the WCAB pursuant to Labor Code Section 5307.27. The medical providers will follow all medical treatment guidelines for MPNs established by the Division of Workers' Compensation (DWC) and made available to those utilizing this ADR Program. The Committee reserves the right to add health care providers or remove health care providers that fail to treat based on approved guidelines.

The Committee will consider and develop evaluation criteria for inclusion or removal of MPN medical providers, review the inclusion or removal of individual medical providers, and make recommendations to the Personnel Department General Manager. The recommendations from the Committee shall be reasonably considered by the General Manager for approval. If the General Manager rejects the recommendations of the Committee, the General Manager shall notify the Committee promptly with the reasons therefor. The Committee shall be notified prior to the addition or removal of any medical providers from the network with the reasons therefor.
In an emergency, an injured employee covered by this Agreement may seek treatment from a health care provider or facility not authorized by this Agreement for the purpose of obtaining emergency treatment only. Treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.

XII. MEDICAL PROVIDER NETWORK (MPN)

It is the intention of the parties to this Agreement to engage in a collaborative effort to implement the MPN consistent with Labor Code Section 3201.7a3(B) and the goals of this ADR Program.

XIII. UTILIZATION REVIEW (UR)

The City shall retain the right and the authority to use the UR process currently in place. UR disputes shall be resolved by an Agreed Medical Examiner (AME). The City, however, may selectively suspend the use of the UR process for specific medical services or procedures where system experience demonstrates that it is appropriate to do so. The City shall provide reports on UR in accordance with the request of the Committee.

XIV. INDEPENDENT MEDICAL REVIEW (IMR)

The parties to the claim agree not to utilize the IMR provisions of Labor Code Section 4616.4 for claims submitted under the ADR Program.

XV. AGREED MEDICAL EXAMINER (AME)

Any medical issues under claims covered by this Agreement dependent upon a medical/legal opinion for resolution shall be resolved by an AME. The Committee may select designated representatives to review and recommend to the Committee the names of the proposed AMEs for approval by the City. These AMEs shall include all specialties relevant to the injuries and/or illnesses sustained by the employees covered by this ADR Program. Such AME or AMEs, provided more than one medical specialty is required, once selected, shall be the only AME or AMEs to resolve all issues within his or her medical specialty for the duration of the claims and as set forth in Section XVII. Medical Disputes, below.
XVI. PROCEDURE FOR SELECTING AN AME(s)

If the injured employee is represented by an attorney, the parties to the claim shall agree to the AME and in the event no agreement can be reached, the AME(s) shall be selected by the ombudsperson. If the injured employee is not represented by an attorney, the ombudsperson may assist the employee in the selection of an AME(s).

XVII. MEDICAL DISPUTES

All medical disputes concerning treatment, temporary disability, permanent disability, and/or return to work issues under claims covered by this Agreement shall be referred to an AME and resolved by the same AME or AMEs, if more than one medical specialty is involved. Such AME, once selected, shall be the only AME to resolve all issues within his or her medical specialty for the duration of the claims. In the event of the total unavailability of the selected AME, a new AME shall be agreed to by the parties to the claim. In the event there is a dispute as to the total unavailability of the selected AME, the matter shall be resolved through telephonic mediation.

In the event either party to the claim disagrees with the decision of the AME(s), each party retains the right to cross-examine the AME by interrogatory and/or deposition.

XVIII. ALL WORKERS' COMPENSATION DISPUTE RESOLUTION PROCEDURES

All unresolved workers' compensation related disputes shall be submitted to mediation, in accordance with Section XXI. Mediation, below.

Each party to the claim shall be entitled to representation by legal counsel.

In the event either party to the claim disagrees with the results of the mediation the parties retain the right to arbitration in accordance with Section XXII. Arbitration, below.

The parties to the claim shall retain all Labor Code procedural and legal rights relative to the arbitration.

Each arbitration shall be recorded by a certified court reporter.
XIX. CLAIMS NOT COVERED BY THIS ADR PROGRAM

Labor Code Section 132a, Serious and Willful Misconduct, death claims, Americans with Disabilities Act of 1990, and the California Fair Employment and Housing Act are excluded from this ADR Program.

XX. DENIED CLAIMS

Once a claim has been denied by the City, the ombudsperson shall work with the parties to the claim to have discovery completed expeditiously. If there are discovery disputes that cannot be resolved by the ombudsperson, the claim shall be set for telephonic mediation at which time the mediator will establish a discovery schedule and have the discretion to continue the matter to further telephonic mediations until discovery has been completed. Once discovery has been completed, if any unresolved disputes remain, a face-to-face mediation shall occur. If the disputed issues cannot be settled at mediation, the claim shall be set for arbitration.

XXI. MEDIATION

Either party to the claim shall file an application to mediate with the ombudsperson and the other party. The requesting party shall set forth in writing the efforts to resolve the dispute with the assistance of the ombudsperson and the issues that remain unresolved and in dispute. The written application must include a detailed explanation of all issues in dispute.

Either party can object to an application for mediation within seven (7) calendar days of receipt of the request for mediation. If an objection is received within seven (7) calendar days, the matter shall be set for telephonic mediation within seven (7) calendar days. At the completion of the telephonic mediation, the mediator shall either continue the case to a face-to-face mediation or take the matter off calendar.

If no objection is received within seven (7) calendar days, the ombudsperson shall set the matter for mediation.

If the dispute is to be set for mediation, unless there is a telephonic mediation, it shall be set within thirty (30) calendar days of the application or mutually agreed upon extension. Mediations will be held at 700 E. Temple Street, Los Angeles, CA 90012, or at a site mutually agreed upon by both parties to the claim. Any changes to applications for mediation as outlined above will be submitted to the Committee for approval.
If the issue or issues in dispute are not resolved at the mediation, discovery shall close on the date of the mediation at the discretion of the mediator. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

If the dispute is not resolved through a face-to-face mediation, the matter may be continued to arbitration.

The City shall provide reports documenting mediation activities in accordance with the request of the Committee.

XXII. ARBITRATION

When either party to the claim requests arbitration, it shall be set within forty-five (45) calendar days of mediation completion or mutually agreed upon extension. All arbitrations will be held at 700 E. Temple Street, Los Angeles, CA 90012, or at a site mutually agreed upon by both parties to the claim. Any changes to arbitration requests as outlined above will be submitted to the Committee for approval.

The City shall provide reports documenting arbitration activities in accordance with the request of the Committee.

XXIII. BENEFITS

All benefits available to the injured employee under State of California Workers’ Compensation Law shall remain in place. The parties to the Agreement agree that nothing in the ADR Program shall increase or decrease said benefits.

XXIV. RETURN TO WORK

All medical disputes regarding an injured employee’s ability to return to work shall be submitted to an AME for resolution. Pending resolution, the findings, opinions, and recommendations of the employee’s primary treating physician shall be followed.

When the injured employee has been released to return to work with temporary work restrictions and is recovering from his or her injury, the Personnel Department shall assist and facilitate the injured employee’s return to work, consistent with medical evidence and the City’s current Return to Work Program or the Return to Work Program as amended hereafter.
When the injured employee has reached Maximum Medical Improvement and has been released to return to work with work restrictions, the Personnel Department shall notify the employing department of the injured employee's status, work restrictions, and the City's current Reasonable Accommodation Process or the Reasonable Accommodation Process as amended hereafter. The City shall engage the injured employee in a timely, good faith, interactive process and explore reasonable accommodation options to overcome the job-related limitations.

The City agrees to keep the Committee current with all revisions and up-to-date on current policies and procedures.

XXV. RIGHT TO AN ATTORNEY

Under the ADR Program, the injured employee shall retain the right to legal counsel of his or her choosing. Nothing in this Agreement shall impair the right to legal representation.

XXVI. NOTICE OF CLAIMS

It is agreed that the City will provide the ombudsperson and ADR Program Manager access to documents filed with the ADR Program through the City's Workers' Compensation system (IVOS). A monthly summary report of new claims will be provided to the Committee, to include agreed upon data elements as requested by the Committee but will not include individually identifiable confidential medical information.

XXVII. OMBUDSPERSON

The role of the ombudsperson in a claim where the employee is not represented by an attorney is to be the injured employee's advocate and interface with the claims examiner, medical provider(s), and other individuals related to the dispute to facilitate resolution of any disputes arising out of the work injury. In a claim where the employee is represented by an attorney, the ombudsperson is a neutral facilitator for the interest of the injured employee and the City.

The ombudsperson shall not be considered an employee of the City but will be compensated as an independent contractor. Any communication between the ombudsperson and the injured employee shall be confidential. The ombudsperson shall be available to attend mediations and arbitrations. Since the ombudsperson is essential to the success of the ADR Program, he/she must be knowledgeable in workers'
compensation law and the rights and responsibilities of the employee and employer. He/she must successfully complete the State of California Self-Insurance Administrator’s exam within six (6) months of being hired by the Plan Administrator and have a minimum of five (5) years of experience as a senior workers’ compensation analyst, or equivalent experience.

XXVIII. MEDIATORS

The mediators shall have extensive background and experience with workers’ compensation claims and related matters. The mediators shall not be employees of the City but rather retained on an as-needed basis in the capacity of independent contractors. The mediators shall meet minimum requirements as established by Labor Code Section 5270.5.

XXIX. ARBITRATORS

The arbitrators shall have extensive background and experience with workers’ compensation claims and related matters. The arbitrators shall not be employees of the City but rather retained on an as-needed basis in the capacity of independent contractors. The arbitrators shall meet minimum requirements as established by Labor Code Section 5270.5.

XXX. ADR PROGRAM SUPPORT

The City shall provide resources to support the ADR Program.

XXXI. RESOLUTION OF CLAIMS

All settlements must be approved by a mediator and/or arbitrator.

XXXII. PRE-EXISTING CLAIMS NOT COVERED BY THIS AGREEMENT

Any active/retired employee may opt into the ADR Program unresolved or unsettled WCAB claims where the nature of claims to be transferred into the ADR Program involve the same or similar body part and the medical specialties necessary to resolve any medical disputes are the same for both the ADR and non-ADR claim(s). The employee, claims adjuster, or ombudsperson with the employee’s written consent may initiate the opt-in request.

As a condition of the active/retired employee participating in the ADR Program, the Committee shall establish conditions and requirements for participation, including
but not limited to dismissing any and all pending applications with the WCAB that are to be opted in (or that have been approved to be opted in), and executing written acknowledgements of the terms of this Agreement. The ADR Program Manager shall make recommendations to the Committee as to whether a previously filed claim shall be accepted into the ADR Program with the reasons relied upon as the basis for the recommendation.

The parties to this Agreement agree that where system experience indicates that other types of non-ADR claims can be accommodated by the ADR Program the criteria for admission may be modified and expanded by the Committee.

The ADR Program Manager shall take all necessary and appropriate steps to evaluate the feasibility of transitioning previously filed claim(s) and proceedings to the ADR Program. The Committee shall be kept informed of the actions of the ADR Program Manager in regards to the steps in this process.

If a case is being resolved under this ADR Program by Compromise and Release and there are non-ADR claims and the parties to the claim want to resolve all claims in the Compromise and Release, the non-ADR claims can be opted in to this ADR Program so they can be included in the Compromise and Release.

Non-ADR claims that have been settled and the adjudication is final will not be permitted to opt in after five (5) years from the date of injury.

XXXIII. REQUESTS FOR PROPOSALS (RFPs) AND CONTRACTS

The Committee will be provided an opportunity to review and make recommendations on all RFPs and proposed contractors under the jurisdiction of this ADR Program prior to formal action by the City. The Committee’s involvement may include reviewing the final draft of City RFPs, interviewing top-ranked RFP respondents, and reviewing the evaluation of RFP respondents.

The General Manager of the Personnel Department maintains all contracting authority.
THE CITY OF LOS ANGELES, a Municipal Corporation

Executed at Los Angeles, California.

Dated: 5/9/18

By: Wendy Macy
General Manager, Personnel Department

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

Dated: 6/8/18

By: Office of the City Attorney

UNION:

Dated: 5/11/2018

By: SEIU, Local 721