

THIRD AMENDED AND RESTATED  
LABOR-MANAGEMENT WORKERS' COMPENSATION  
SUPPLEMENTAL DISPUTE RESOLUTION AGREEMENT  
BETWEEN THE CITY OF LONG BEACH AND  
THE LONG BEACH FIREFIGHTER'S ASSOCIATION

**30464**

THIS THIRD AMENDED AND RESTATED LABOR-MANAGEMENT WORKERS' COMPENSATION SUPPLEMENTAL DISPUTE RESOLUTION AGREEMENT ("Agreement") is entered into by and between the City of Long Beach ("City") and the Long Beach Firefighter's Association ("LBFFA"). This Agreement is created pursuant to California Labor Code Section 3201.7(a)(3)(c).

Nothing in this Agreement diminishes the entitlement of an employee to Workers Compensation benefits 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.

**RECITALS:**

- A. The City and LBFFA entered into a certain Labor-Management Workers' Compensation Supplemental Dispute Resolution Agreement on October 25, 2007, known as Agreement No. 30464;
- B. The parties amended and restated that certain Labor-Management Workers' Compensation Supplemental Dispute Resolution on September 29, 2009 and November 30, 2010.
- C. Since November 30, 2010, the California legislature reformed and amended certain Workers' Compensation laws. The parties now desire to amend and restate this Agreement to conform to current Workers' Compensation law, and clarify and limit the scope of the agreement.
- D. The parties hereby enter into this Third Amended and Restated Labor-Management Workers' Compensation Supplemental Dispute Resolution Agreement as follows:

## **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 Workers’ Compensation disputes;
- 2) To reduce the number and severity of disputes between the City and covered employees, when those disputes relate to workers’ compensation; and
- 3) 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 provide medical-legal evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7(c).

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

## **Article II. Term of Agreement**

This Agreement shall continue and remain in force from year to year unless terminated by either party. The parties may terminate this Agreement at any time. The terminating party shall 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 this 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, claimed by: 1) active employees; 2) active employees who file a claim and subsequently retire before the claim is resolved; 3) Retirees who file a presumptive claim. This agreement does not apply to retirees who have a future medical treatment dispute. Employees who are covered under this Agreement remain covered during the entire period of active employment.
- B. Injuries occurring and claims filed after termination of this Agreement are not covered by this Agreement.
- C. This Agreement applies only to injuries claimed on or after January 1, 2008.

### **Article IV. Medical Provider**

- A. This Agreement does not constitute a Medical Provider Network ("MPN"). However, all employees must utilize the City's current MPN for treatment purposes during the time the City maintains and utilizes the MPN. The MPN is governed by Labor Code section 4616 et seq. 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 issue covered by this agreement must be evaluated by an approved physician from the exclusive list of approved medical providers. Said physician will serve as an IME. Attached hereto as Exhibit A, is an exclusive list of approved medical providers that was agreed upon by the City and the LBFFA.
- C. An IME shall be used for disputed issues 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. The parties will use the originally chosen IME for all subsequent disputes under this Agreement. If said IME is no longer available, then the parties shall utilize the next specialist on the list pursuant to Article IV G 5 (below).

- D. This agreement applies to treatment disputes including Utilization Review denial for active employees. This agreement does not control medical disputes by non-active members or retirees with future medical disputes. This agreement will not control disputes regarding Utilization Review decisions for non-active members or retirees. Utilization review disputes for those future medical disputes by retirees and non-active members are subject to Independent Medical Review (IMR) as set forth in Labor Code section 4610.6.
- E. The IME process will be triggered 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 LBFFA. Objections from the employee or employee's legal representative will be sent to the employee's assigned claims examiner. Objections will be sent within thirty (30) days of receipt of a medical report. 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.
- F. The exclusive list of approved medical providers shall serve as the exclusive source of medical-legal evaluations. The exclusive list of approved medical providers shall include the specialties as agreed upon by the parties. Should a member require a specialist who is not on the panel, an IME may refer employee to an appropriate specialist or the parties may use either an Agreed Medical Examiner or a three-member panel to the extent necessary and practical in order to expedite resolution of disputed issue.
- G. 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 s/he breaches the terms and conditions of the contract with the City or by mutual agreement of the parties.

H. 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 unless there is a reasonable delay within the ten-day time frame. The notice of the appointment location, date and time will be sent to the employee and their legal representative.
- b. The employee shall be responsible for providing the Claims section with his/her work schedule prior to an appointment being made so that appointments can be made during an employee's nonworking hours.
- c. Compensation for medical appointments under this Agreement shall be consistent with the Labor Code.
- d. Mileage reimbursement to covered employees shall be in accordance with Labor Code Section 4600 (e)(2) unless transportation is provided by the City.
- e. For purposes of appointments, the Claims section will select the IMEs 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 Claims will resume using the first name on the list.
- f. 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.
- g. Both parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement. A notice of the results of the examination will be sent to the employee, to his legal representative, if there is one, and to the union representative.
- h. 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 will serve those records on the other party

immediately upon receipt. If one party objects to the provision of any nonmedical records to the Independent Medical Examiner, the party will object within ten (10) days of the service of the records. Objection to the provision of nonmedical records may result in the denial of the claim on the basis that the IME did not have a complete and accurate history. There can be no objection to the provision of medical records to the Independent Medical Examiner.

- i. The City will provide to the Independent Medical Examiner records prepared or maintained by the employee's treating physician(s) and medical and nonmedical records relevant to the determination of the medical issue. The City will serve a copy of the listing of all records provided on the employee or on his representative.
- j. 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 employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination.
- k. Ex-parte communication with the IME is prohibited. If a party communicates with the IME in violation of subdivision L., 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 provision G.5. If a new examination is required, the party making the communication prohibited by this section shall be liable for the cost of the initial medical evaluation.

#### **Article V. Discovery**

Employees covered by this Agreement will provide the Claims section 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. Employees will co-operate in providing a statement but this is not mandatory. Failure to comply may delay processing and/or denial of the claim. 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 at the rate of \$350/hr. There will be no attorney's fees for doctor's depositions.

**Article VI. General Provisions**

- A. This 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:

LBFFA: John A. Ferrone, Esq  
Adams, Ferrone & Ferrone

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.

LONG BEACH FIRE FIGHTER'S ASSOCIATION

5-24-2022, 2022 By  \_\_\_\_\_  
President, LBFFA

LBFFA  
Type or Print Name  
"LBFFA"

CITY OF LONG BEACH, a municipal corporation

June 6, 2022

By Linda F. Tatum  
City Manager

LINDA F. TATUM

Type or Print Name

"City"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

This Third Amended and Restated Labor-Management Workers' Compensation  
Supplemental Dispute Resolution Agreement is approved as to and from on

May 31, 2022.

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CHARLES PARKIN, City Attorney

Anne C. Lattime, Principal Deputy