

# 31243

## AGREEMENT PURSUANT TO WORKERS' COMPENSATION

### ALTERNATIVE DISPUTE RESOLUTION PROGRAM FOR CITY OF LONG BEACH

THIS AGREEMENT is made and entered, in duplicate, as of January 1, 2008 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 9, 2007, by and between Dr. Robert McDaniel, whose address is 17291 Irvine Boulevard, Suite 104, Tustin, California 92780, ("Physician"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires independent and experienced physicians to provide Independent Medical Evaluations with respect to workers' compensation claims filed by Long Beach Police Officers and Firefighters injured while in the employment of the City of Long Beach; and

WHEREAS, the City of Long Beach wishes to reduce the delays inherent in the workers' compensation system which lead to increased costs and the unacceptable treatment of injured workers; and

WHEREAS, the above mentioned Physician is willing and able to expeditiously provide said Independent Medical Evaluation required by the City at the rates indicated in Exhibit "A";

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

#### 1. SCOPE OF WORK OR SERVICES

A. The Physician shall provide the following medical services to the City at the rates shown on Exhibit "A" attached hereto and incorporated herein by this reference:

- (a.) AOE - COE EXAMS, (exams for the determination of industrial causation).
- (b.) Evaluation for necessity of appropriate medical treatment.
- (c.) Assessment of employee's present ability to return to work, whether full duty or modified.

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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- (d.) Advise on condition of maximum medical improvement status.
- (e.) Determine nature and extent of permanent disability, including factors of apportionment and need for future medical care.
- (f.) Resolve utilization review disputes.
- (g.) Determine the need for spinal surgery pursuant to Labor Code section 4062(b).

B. Physician shall perform the evaluation in full accordance with the standards defined by the Division of Worker's Compensation of the State of California and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. This requires a report of the injury, prior status, clinical chronology, current status, and past medical history. The physical examination will document all pertinent positive, negative, and non-physiological findings. For extremity injuries, measurements must be documented bilaterally. Additionally, Physician agrees to: (I) provide that medical exams will be set within thirty (30) days of the date of appointment request, and (II) prepare a written report of medical findings within thirty (30) days of the date of exam or evaluation and provide a copy to the parties within said time frame. If testing is required to complete the report, the testing shall be completed within 14 days of the date of the exam and the report shall issue within 30 days of the completion of testing.

C. The parties agree that the City is not obligated to pay compensation to the Physician except for agreed upon medical services and care. Failure of Physician to provide a written medical report within 30 days of the date of the exam or the completion of testing, if required, subjects Physician to non-payment for services rendered.

D. Physician billing shall conform to the requirements listed in section 9795 of Title 8 of the California Code of Regulations. Charges for services rendered will be reviewed in accordance with section 9795 to determine appropriate level of service.

1                   E.     City shall pay Physician pursuant to Exhibit A within forty-five  
2 (45) days following receipt from Physician of invoices for services rendered and for  
3 which payment has not previously been made, provided that: Physician shall  
4 submit all invoices within ninety (90) days after the date of service.

5                   2.     TERM

6                   A.     The term of this Agreement shall be for the duration of the  
7 Labor-Management Workers' Compensation Supplemental Dispute Resolution  
8 Agreement ("Dispute Resolution Agreement").

9                   B.     Either party hereto may terminate this Agreement at any time  
10 by giving to the other party written notice thereof at least thirty (30) days prior to  
11 the effective date of such termination. Physician agrees that withdrawal from this  
12 agreement is conditioned upon completion of all work in progress.

13                  C.     Any notices required or desired to be given hereunder shall be  
14 in writing and personally served or deposited in the U.S. Postal Service, first class,  
15 postage prepaid to: Robert Johnson, Claims Manager, 333 West Ocean  
16 Boulevard, 8th Floor, Long Beach, California 90802. Notice shall be deemed  
17 given on the date deposited in the mail or on the date personal delivery is made,  
18 whichever occurs first.

19                  3.     INSURANCE

20                  As a condition precedent to the effectiveness of this Agreement, Physician  
21 shall procure and maintain at Physician's expense for the duration of this Agreement from  
22 insurance companies that are admitted to write insurance in California or from authorized  
23 non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M.  
24 Best Company:

25                         (a) Commercial general liability insurance equivalent in scope to ISO  
26 form CG 00 01 11 85 or CG 00 01 1093 in an amount not less than One  
27 Million Dollars (\$1,000,000) per occurrence and Two Million Dollars  
28 (\$2,000,000) general aggregate. Such coverage shall include but not be

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limited to broad form contractual liability, cross liability independent contractors liability, and products and completed operations liability. The City, its officials, employees and agents shall be named as additional insured by endorsement on the City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85, and this insurance shall contain no special limitations on the scope of protection given to the City, its officials, employees and agents.

(b) Workers' Compensation insurance as required by the Labor Code of the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence.

(c) Professional (Medical Malpractice) or errors and omissions liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled in coverage except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City, its officials, employees and agents. Physician shall notify the City in writing within five (5) days after any insurance required herein has been voided by the insurer or cancelled by the insured.

Physician shall require that all contractors and subcontractors which Physician uses in the performance of services hereunder maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

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1 Prior to the start of performance hereunder, Physician shall deliver to City  
2 certificates of insurance and required endorsements, including any insurance required of  
3 Physician's contractors and subcontractors, for approval as to sufficiency and form. The  
4 certificates and endorsements for each insurance policy shall contain the original  
5 signature of a person authorized by that insurer to bind coverage on its behalf. In  
6 addition, Physician shall, within thirty (30) days prior to expiration of the insurance  
7 required hereunder, furnish to City certificates of insurance and endorsements evidencing  
8 renewal of such insurance. City reserves the right to require complete certified copies of  
9 all said policies of Physician and Physician's contractor and subcontractors at any time.  
10 Physician shall make available to City all records and other information relating to the  
11 insurance coverage required herein during normal business hours.

12 Any modification or waiver of the insurance requirements herein shall only  
13 be made at the request of the City department administering this Agreement and with the  
14 written approval of the City's Risk Manager or designee. Not more frequently than once  
15 a year, the City's Risk Manager or designee may require that Physician, Physician's  
16 contractors and subcontractors change the amount, scope or types of coverages required  
17 herein if, in his or her sole opinion, the amount, scope, or types of coverages are not  
18 adequate.

19 The procuring or existence of insurance shall not be construed or deemed  
20 as a limitation on liability relating to Physician's performance of services or as full  
21 performance of or compliance with the indemnification provisions of this Agreement.

22 4. INDEPENDENT CONTRACTOR

23 In performing services hereunder, Physician is an independent contractor  
24 and not an employee, agent, or representative of the City. Physician acknowledges and  
25 agrees that the City will not secure workers' compensation or pay unemployment  
26 insurance to, for on Physician's behalf nor provide any of the usual rights, benefits or  
27 privileges of City employees.

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5. INDEMNITY

Physician shall defend, protect, indemnify and hold the City, its officials, employees, and agents harmless from and against any and all claims, suits, causes of action, losses, damages, demands, liabilities, costs and expenses including reasonable attorney's fees, whether or not reduced to judgment or paid through settlement, which may be asserted against City, its officials, employees and agents attributable to or caused directly or indirectly by Physician, its employees or agents in the performance of this Agreement, or caused by any alleged negligent or intentional act, omission or misrepresentation by Physician, its employees or agents, which act, omission or misrepresentation is connected in any way with performance of this Agreement.

6. AMENDMENT

This Agreement, including all exhibits, shall not be amended nor any provision or breach thereof waived except in writing signed by the parties.

7. LAW

This Agreement shall be governed by and construed according to the laws of the State of California. Physician shall comply with all laws, ordinances, rules and regulations of and obtain such permits, licenses, and certificates required by all federal, state, and local governmental authorities.

8. CONFLICT OF INTEREST

Physicians who act as an employee's independent medical examiner ("IME") under this agreement shall not act as the same employee's treating physician for the injury in dispute, unless otherwise mutually agreed by the City and the employee.

9. ENTIRE AGREEMENT

This Agreement including all exhibits constitutes the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

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10. COSTS

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.

11. WAIVER

The acceptance of any services or the payment of any money by the City shall not operate as a waiver of any provision hereof, or of any rights or remedies hereunder. The waiver of any breach of any provision of this Agreement shall not constitute a waiver of any other or subsequent breach.

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law on the date first stated above.

12/10, 2007 By Robert N. McSherry  
Physician

July 27, 2007/9 By [Signature]  
City Manager  
CITY OF LONG BEACH, a municipal corporation  
**EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.**  
Assistant City Manager

"City"  
This Agreement is approved as to form on June 30<sup>th</sup>, 2007.  
ROBERT E. SHANNON, City Attorney  
By Barbara deJung  
Deputy

GJA:lkM 11/20/07- 07-00998

## Exhibit A Fee Schedule

### AOE-COE Exam

In the case of a simple AOE-COE examination for the determination of Industrial causation, reimbursement will be at the basic rate with a modifier of 1.35. This would equal \$675.00. Conditions anticipated in this category would be Hearing loss, skin cancer, hernia, conjunctivitis, eye strain and dermatitis. This may not include all types in this category.

A more complex exam that involves review of records, tests and expert opinion will be reimbursed at the ML 103 with the 1.35 modifier. This would be at \$1012.50.00. It is anticipated this would include new vs old injuries, internal exams, orthopedic exam with prior injuries or non-industrial conditions, cardiovascular cases, respiratory conditions, pneumonia, bronchitis, blood born pathogens, overuse syndromes and any CT type claim.

### Treatment and Temporary Disability Issues

When there is an issue on treatment or the employee's ability to perform some modified duty and an exam is not necessary the reimbursement would be at the ML 102 with the 1.35 modifier. This would be \$675.00. If an exam is needed to resolve the issue the payment would be \$1012.50. This would include issues regarding spinal surgery.

### Permanent and Stationary (MMI)

All Permanent and Stationary exams will be at the \$1012.50 level. If the parties agree the exam will reach a ML 104 the reimbursement will be at rate of \$350.00 per hour. The factors needed to support the ML 104 are outlined in Cal. Code of Regulations 9795.

### Deposition Fee

The hourly rate for depositions will be \$350.00, payable in quarter hours.

### Review of Records

The hourly rate for review of records will be \$350.00, payable in quarter hours.