

City of Fresno and Fresno Police Officers Association

Workers' Compensation Alternative Dispute Prevention and Resolution Program Agreement

This Workers' Compensation Alternative Dispute Prevention and Resolution Agreement ("Agreement") is entered into by and between the City of Fresno ("City") and the Fresno Police Officers Association ("FPOA") on behalf of its represented members, pursuant to the authority granted to the parties in California Labor Code section 3201.7.

RECITALS

Whereas, the parties are desirous of entering into an agreement whereby represented employee members of FPOA will receive benefits and resolve all disputes for claims arising under Division 4 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 intend that this Agreement not diminish certain statutorily guaranteed rights of employees or the City; erode or impair the rights of individual employees to compensation payments for total or partial disability, supplemental job displacement benefits, medical treatment and any other benefits as may be required by California law; and

Whereas, the parties intend that the implementation of an alternative dispute resolution program ("ADR program") will generate savings to the City, and as the agreement of the FPOA is required to implement this ADR program, it is agreed that the FPOA will receive an agreed upon portion of the net savings to the extent allowed by law. It is agreed that the factors to be considered, and the manner by which the savings shall be calculated, and the manner in which the

parties will share, will be contained in a separate agreement approved by the FPOA and the City.

Wherefore, the parties hereto agree as follows:

PURPOSE AND INTENT

The parties to this Agreement recognize that delay in case resolution resulting from the technical and complex nature of the statutory dispute resolution process inhibits the ability of the City to provide service to the public and injured members covered by this Agreement to promptly and efficiently access all Workers' Compensation benefits, including quality medical treatment and timely return to work in order to resolve their Workers' Compensation claims in an efficient manner. The parties to this Agreement also recognize that a program that accelerates the delivery of quality medical treatment, return to work and overall claim resolution, also reduces loss development that in some cases grows at a protracted rate over time.

The parties also seek to eliminate and reduce the waste, excessive costs and delays in delivering medical care historically associated with the delivery of Workers' Compensation benefits to injured employees. Such waste, excessive costs and delays are direct symptoms of the current statutory system established by the California Legislature. The parties acknowledge that the City and its third party administrator have been attempting to achieve program efficiencies but are constrained by the current California law and procedures administering Workers' Compensation benefits. Further, the parties seek to improve labor-management relations between the City and the FPOA through the cooperation necessary to construct and oversee this program.

It is the intent of the parties to this Agreement to construct an alternative dispute resolution program ("ADR program") authorized by California law which will provide that those injured FPOA active (in-service including DROP) and retired members,

covered by this Agreement, who claim to have sustained injuries or illnesses compensable pursuant to the Workers' Compensation laws of the State of California with:

- a) timely and efficient determination of claims status;
- b) timely and efficient access to high quality medical care;
- c) the best opportunity reasonably possible to return to work in a timely fashion;
- d) an alternative dispute resolution program that provides the best opportunity reasonably possible to:
 1. promote the efficient, timely and fair resolution of all disputes that do arise in the processing of claims, including, but not limited to the compensability of claims within the jurisdiction of this program; and
 2. prevent disputes, and reduce the frequency and severity of those disputes that do arise, that otherwise delay treatment, a timely return to work and the ultimate resolution of the claim.
- e) provide the foregoing on a stable and long-term basis.

The parties intend that this Agreement will not:

- a) diminish, erode or impair the substantive rights of the City or of individual retirees or active (in-service including DROP) employees to compensation payments for total or partial disability, supplemental job displacement benefits, medical treatment, and any other benefits as required by California law to be fully paid for by the City; or
- b) impair, restrict or condition the rights of the City or of a retired or active (in-service including DROP) employee member to be represented by legal counsel of their choosing throughout the entire alternative dispute resolution program; or
- c) impair, restrict or condition the rights of the City or of a retired or active (in-service including DROP) employee to pursue legal remedies and

appeals after exhausting the alternative dispute resolution program procedures as allowed under the Labor Code.

The parties further intend that this Agreement create and accommodate an enhanced method to provide Workers' Compensation benefits in a way that improves labor management relationships, efficiencies of benefit to all parties and organizational effectiveness. The parties also recognize that there will be certain Departmental and City efficiencies associated with the implementation of this Agreement. Such efficiencies shall be recognized by the parties through ongoing communication, participation and assessment of the effectiveness of the alternative dispute resolution program.

It is agreed that the parties will make every good faith effort to apply the terms of this Agreement consistent with the intent of the parties as expressed above.

1. General Provisions

1.1 This Agreement shall become effective on the issuance of a recognition letter by the Administrative Director of the Division of Workers' Compensation of the Department of Industrial Relations and is subject to approval of the Fresno City Council, Fresno POA and California Department of Industrial Relations. The Agreement shall remain in effect for at least one year from the date of execution, continuing year to year thereafter, unless terminated by one of the parties by giving sixty (60) days written notice to the other party. Unless otherwise specifically noted in this Agreement, any reference to "days" shall mean calendar days not working days. Should this program be terminated it is the intent of the parties that those claims (including cumulative injuries that allegedly began before the Agreement but the claim was not filed until after the Agreement was in effect) with dates of injury or illness occurring during the period of the program, or those claims which have been submitted pursuant to the "opt in" provision of Section 1.3(b) shall continue to be covered by the terms of this Agreement. Regardless of the effective

date of this Agreement, the formal jurisdiction of this program shall commence on a date agreed upon by the Joint Committee ("JC") and reduced to writing in a memorandum issued by the JC to the City and the FPOA.

1.2 This Agreement shall constitute the complete understanding of the parties with regard to the issues addressed herein. Nothing in this Agreement shall be considered or construed as a modification of the substantive provisions of California Workers' Compensation Law except as specifically set forth herein in accordance with Labor Code section 3201.7 or any rules adopted pursuant to this Agreement.

1.3 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 the FPOA, 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 program shall be used in place of the filing of an application with the WCAB for any injuries or claims that would otherwise be subject to the initial jurisdiction of the WCAB. This program is the sole means of dispute resolution and no dispute shall proceed to the California Workers' Compensation Appeals Board until it has completed the processes defined and established by this Agreement.

- a) Any Application filed with the WCAB with an alleged date of injury occurring on or after the effective date of this ADR program shall be dismissed and removed to the jurisdiction of this ADR program unless this program is terminated in accordance with the terms of the Agreement.
- b) Any retired or active (in-service including DROP) employee with an active or pending claim filed with the WCAB before the effective date

of this ADR program may be permitted to “opt in” to the ADR program. Upon written request by the retired or active (in-service including DROP) employee to the City and the ADR Director of the intent to participate in the ADR program, the ADR Director shall take all necessary and appropriate steps to evaluate the feasibility of transitioning the previously filed claim(s) and proceedings to the ADR program. As a condition of the retired or current employee participating in the ADR program, the Joint Committee shall establish conditions and requirements for participation, including but not limited to dismissing any and all pending applications with the WCAB (Section 2.8), executing written acknowledgements of the terms of this ADR Agreement and waivers of certain procedural Workers’ Compensation rights. The ADR Director shall make recommendations to the Joint Committee as to whether a previously filed claim shall be accepted into the ADR program.

This Agreement is not intended to diminish any right to compensation that injured employees or the City as the employer are entitled to under the Workers’ Compensation laws of the State of California. The parties acknowledge that no retired or active (in-service including DROP) employee covered by this Agreement or the program established herein will lose or compromise any rights to Labor Code section 4850 pay, any presumptions allowed by California Law, or any other substantive right allowed by law.

1.4 The terms of this Agreement shall apply only to City of Fresno employees/retirees who are, or upon retirement were, members of Fresno City bargaining units 4 and 9, represented by the FPOA.

1.5 This Agreement shall apply only to injuries or illnesses compensable or alleged to be compensable under the Workers’ Compensation laws of the State of California, including all claims, defenses, lien claims and Serious and Willful

Misconduct claims (section 4551, et seq.). Further, this Agreement applies to injuries, as defined by Workers' Compensation Law, claimed by 1) active (in-service including DROP) employees; 2) retirees who, while active (in-service including DROP) employees, made a claim alleging injury or illness; 3) retirees who, while active (in-service including DROP) employees, made a report, consistent with Department policy, of an industrial incident that may lead to injury or illness; 4) retirees, who were active (in-service including DROP) employees on or after the effective date of this Agreement, and claim a new presumptive injury as defined by Labor Code section 3212, et seq.; and 5) any retiree or active (in-service including DROP) employee who "opts in" to the ADR program pursuant to Section 1.3(b) above. Subject to the "opt in" provisions of Section 1.3(b), this Agreement does not cover post-retirement amendments to claims filed prior to the term of the Agreement. This Agreement does not apply to any other retired employees. Since section 132a of the Labor Code is not contained within Division 4 of the Labor Code, and since section 3201.7 applies only to Division 4 of the Labor Code, discrimination claims filed under section 132a may be litigated only within the program by the written agreement of the injured member/employee and the City of Fresno.

1.6 The City may delegate to its third party administrator ("TPA") the performance of its obligations under this Agreement, but it may not relieve itself of the legal responsibility for those obligations.

1.7 Joint Committee

This Agreement establishes a Joint Committee ("JC") which holds the exclusive authority to administer the ADR program; including but not limited to the authority to enforce the terms of the Agreement, establish policies, manage the implementation of the ADR program, promulgate and modify any rules of the program. The JC shall be made up of three (3) members selected by the FPOA and three (3) members selected by the City. The City Manager, or his/her designee shall select two (2) members and the Chief of Police shall select one member. The

Chief's selection shall be a full-time employee member of the Police Department, but is not required to be a sworn member. The JC shall meet as they deem necessary, but no less than once each month for the first six (6) months from the date of this Agreement, and quarterly thereafter. The JC will establish rules and procedures to guide the internal governance of the JC. The meetings shall be held alternatively, at the City offices and the FPOA office unless otherwise agreed by the parties. An agenda of each meeting shall be provided to all members of the JC at least one (1) week prior to the meeting date. Any disputes that arise between the members of the JC where action must be taken to administer the Program and cannot be resolved, shall be submitted to a three member "Dispute Resolution Committee" comprised of the ADR Director, and one JC member each from the FPOA and City. Any two members shall be authorized to seek resolution of a dispute by the Dispute Resolution Committee upon impasse. The Dispute Resolution Committee is to be guided by the terms of this Agreement and authorized to interpret this Agreement but not create additional terms. Unless agreed by the parties, any meetings of the Dispute Resolution Committee shall be scheduled within sixty (60) days and an award issued thirty (30) days after submission.

1.8 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.

1.9 From time to time, this Agreement may be modified by the mutual written agreement of the City and FPOA or unanimous written consent of the JC.

2. Workers' Compensation Claim Dispute Prevention and Resolution

2.1 All disputes involving Workers' Compensation claims within the jurisdiction of this ADR program, including medical disputes, shall be subject to this dispute prevention and resolution process.

2.2 The component steps of this dispute prevention and resolution process are:

- a. The Ombudsperson
- b. The ADR Director/Mediator
- c. Arbitration
- d. Appeal by Petition for Reconsideration to the Workers' Compensation Appeals Board

2.3 The Joint Committee shall select an ADR Director/Mediator, Ombudsperson, and the arbitrators. The Joint Committee also has the authority to adopt rules of practice and procedure for the ADR Director/Mediator, Ombudsperson, and the arbitrators as they deem necessary to execute the letter and spirit of this Agreement. The JC may establish other positions which are necessary to effectively accomplish the goals and purposes of this Agreement.

2.4 The ADR Director/Mediator shall oversee the work of the Ombudsperson and other ADR professionals on an ongoing basis, train the other ADR professionals in conjunction with training the claims staff assigned to this program, attend all JC meetings and assist in the gathering and submission of data required to be provided to the Division of Workers' Compensation annually or as required by law. The ADR Director/Mediator shall also conduct all mediations and shall provide a written report outlining the issues in dispute and the disposition of the mediation session. The JC may establish other duties and assignments consistent with the position of ADR Director/Mediator.

2.5 The Ombudsperson shall consider the interests of the City and the injured FPOA members in performing his/her duties. In that regard, he/she should provide aid, counsel and advocacy for an individual injured FPOA member in an effort to establish common interests with the City so that disputes can be prevented or efficiently resolved within the Program. The Ombudsperson shall be proactive and seek to identify disputes before they occur where possible and attempt to assure that all injured FPOA members are receiving the

compensation to which they are entitled. The City shall compensate the Ombudsperson and his/her services are free of cost to the injured FPOA member. The Ombudsperson is not responsible for timely completing or filing ADR forms or other documents for the employee, as this is the employee's responsibility. However, the Ombudsperson may assist in the completion of forms if requested.

The Ombudsperson will also receive all documents filed with the ADR program and will assign case numbers to each claim filed and will keep an electronic claims file containing all documents related to the claim. To the extent possible, claim numbers shall be consistent with claim numbers customarily established by the third party administrator, the WCAB or the City. The JC may establish other duties and assignments consistent with the position of the Ombudsperson.

2.6 Three (3) arbitrators shall be selected and assigned to the Arbitrators Panel by the JC. The arbitrators shall be attorneys or retired Workers' Compensation Judges knowledgeable in the field of California Workers' Compensation. The arbitrators shall be responsible for adjudicating all disputes between the injured employee and the City arising out of the submission and processing of Workers' Compensation claims covered by this Agreement. The arbitrator is authorized to include in any award all relief available from a Workers' Compensation Judge including but not limited to enhancements to compensation due to any unreasonable delay in the payment of compensation by the City as provided for by law, and/or Labor Code section 4553 and/or attorneys fees and costs. The arbitrator is authorized to resolve all liens not settled by the parties, provided that written notice of the time and place of the arbitration is given to the lienholders advising them of the right to appear and present argument and testimony in support of their lien claim.

2.7 In the event of the reporting of an injury or illness regarding an employee covered by this Agreement, the City, or its third party administrator,

shall notify the Ombudsperson within one (1) working day of receipt by the third party administrator of the first notice of injury/illness, and provide the name, address and telephone number of the injured employee. Thereafter, copies of the initial claim form, all medical treatment reports, all medical-legal reports, all notices to the injured employee denying, reducing, terminating or renewing compensation, all pleadings and any other documents of significance, other than documents that constitute attorney work product or other privileged documents, shall be served on the Ombudsperson electronically as soon as possible, but no later than five (5) days of receipt.

The Ombudsperson shall contact each injured member within the jurisdiction of the program as soon as possible, but no later than five (5) days of receipt of notice of the injury. Conversations between the Ombudsperson and the injured member, or the Ombudsperson and the City, or its third party administrator, are confidential (Evidence Code section 1115, et seq.). Injured members may contact the Ombudsperson with any questions, to seek clarification or when they believe they are not receiving compensation to which they are entitled or have any other concern or dispute arising out of the processing of any claim.

2.8 Applications filed with the WCAB with an alleged date(s) of injury occurring on or after the effective date of this ADR program, and those applications that were filed prior to the effective date and have been accepted by the JC, shall be immediately dismissed and removed to the jurisdiction of this ADR program which is the sole means of dispute resolution for claims within the jurisdiction of this program. Every issue regarding the transfer of a claim from the WCAB to this program shall first be submitted to the Ombudsperson who shall seek a voluntary resolution of the issue, prior to filing any petitions, motions, declarations of readiness to proceed or any other documents or actions with the WCAB.

2.9 Where there is an acceptance, delay or denial of a claim, or there is a change of position by the claims examiner, the Ombudsperson shall be advised

forthwith by the claims department and shall then advise each injured member no later than five (5) working days of the position of the claims administrator. The 5-day period may be extended by agreement, or on a showing of good cause.

2.10 No dispute may proceed to mediation until the Ombudsperson has been advised of all the issue(s) in dispute and has had an opportunity to resolve the dispute. Where the Ombudsperson is unable to resolve a dispute, any party, including the Ombudsperson, may request mediation of the dispute. The Ombudsperson shall, in his/her discretion, schedule a mediation where it is necessary to move a case toward resolution or is in the best interest of the program. Except where good cause exists, or unless the parties agree otherwise, the mediation process will be concluded within thirty (30) calendar days of the request for mediation.

2.11 With the approval of the ADR Director, the Ombudsperson may in his/her discretion attend any mediation if necessary to move the claim toward resolution or if necessary to further the interests of the program.

2.12 In the event that any dispute is not resolved in mediation, the matter may be set for arbitration at the request of either party. The Ombudsperson shall, as soon as practical, appoint an arbitrator from the list of those arbitrators chosen by the JC.

2.13 The Ombudsperson may in his/her discretion attend any arbitration if necessary to move the claim toward resolution or if necessary to further the interests of the program. The Ombudsperson shall secure the approval of the ADR Director when attending an arbitration. The Ombudsperson may provide general assistance to the injured member, if unrepresented, but may not act as the injured member's attorney.

2.14 The arbitrator shall apply the same presumptions of compensability, statutory construction and rules of admissibility of evidence as would a

Workers' Compensation Administrative Law Judge, and shall have the same authority as a Workers' Compensation Administrative Law Judge over discovery, the production of documents, the issuance of subpoenas and other procedural matters related to the hearing

2.15 The JC shall promulgate specific rules for the location of the hearings, but unless good cause exists, all arbitration hearings must be venued in the greater Fresno area.

2.16 All arbitration hearings shall be recorded by a certified court reporter and such record, including documentary evidence, shall be retained by the arbitrator unless the parties agree to other methods of creating a record.

2.17 The arbitrator shall file with the Ombudsperson and serve on the parties and counsel his or her findings of fact, conclusions of law, orders and opinion within thirty (30) days of the submission of the matter for decision which shall be final and binding except for any appeal to the WCAB Appellate Panel. Any such appeal to the California Workers' Compensation Appeals Board shall be in the same manner as provided for reconsideration of a final order, decision or award made and filed by a Workers' Compensation Judge and by the California Court of Appeal. Any finding of fact, award, order or decision of the arbitrator shall be in the same form and have the same force and effect as findings of fact, and award, order or decision of a California Workers' Compensation Judge.

2.18 Nothing in this Agreement shall be interpreted as restricting in any way the City's or an injured member's right to retain legal counsel, per Labor Code section 3201.7. The FPOA, the City of Fresno and the JC shall not be responsible or liable for any attorneys fees associated with representation of any member. Attorney's fees shall be established consistent with California Workers' Compensation Law. The terms and conditions of any agreement between an employee and the employee's retained legal counsel are not subject to this Agreement nor does this Agreement in any fashion alter or replace any or all

California law applicable to an agreement between an attorney and a worker pursuing Workers' Compensation benefits.

2.19 All parties shall have the right to discovery as per the California Labor Code and California Code of Regulations.

2.20 In the event of a lien dispute, any lien claimant allowed to file a lien claim in the statutory system shall be allowed to file a lien claim in this alternative dispute resolution program where the alleged right to file stems from activity in a claim within the jurisdiction of this Program. The Ombudsperson, at the request of the City or a lien claimant may bypass the mediation step, in the dispute resolution process and set the lien dispute immediately for arbitration, if the Ombudsperson is unable to resolve the dispute.

2.21 The scheduling and cost of interpreters will be handled pursuant to Workers' Compensation Law. The ADR Director and/or Ombudsperson shall have the authority to select an appropriate interpreter if one is required.

2.22 The ADR Director and/or Ombudsperson shall have the authority to appoint assigned permanent disability raters as necessary.

2.23 The ADR Director or an assigned arbitrator must approve all settlements by determining their adequacy based upon the evidentiary record and standards consistent with the Workers' Compensation Laws.

2.24 All documents filed by any party with the ADR program regarding claims within the ADR program shall be filed with the Ombudsperson or any other place or designee as determined by the JC.

2.25 The City shall pay all costs incurred in retaining the ADR professionals necessary to carry out the responsibilities set forth in this Agreement.

2.26 The Ombudsperson, and all other ADR professionals retained to provide professional ADR services within the jurisdiction of this ADR program,

shall exercise independent discretion in fulfilling the responsibilities required under this ADR Agreement on a case-by-case basis. While the JC holds the responsibility for supervising these ADR professionals to assure quality performance in fulfilling their obligations under this ADR Agreement, it is also understood by the parties to this ADR Agreement that in order for these ADR professionals to maximize their effectiveness, their independence and credibility with all parties involved in claims within the jurisdiction of this ADR program must be protected.

3. Medical Treatment

3.1 The JC shall establish a network of health care providers authorized to provide treatment to those injured within the jurisdiction of the alternative dispute resolution program. This network shall be identified in writing and made available to those utilizing this program.

3.2 The JC shall select a nurse advocate who shall be accessible to those City employees and representatives whom are responsible for processing, facilitating or evaluating injured workers' claims, any injured employee within the jurisdiction of this ADR program, the Ombudsperson and claims examiner for the purpose of answering medical questions and interacting with medical providers as medically appropriate for the purpose of facilitating the provision of the best possible medical care as efficiently as possible. The nurse advocate shall both promptly respond to any contact by an injured employee within the jurisdiction of the program and contact injured employees when instructed to do so by the Ombudsperson or the ADR Director. The dissemination of information from any communications between the nurse advocate and the City representative is subject to the privacy rights of the injured worker. This Agreement is not meant in any way to abrogate, impair or curtail the privacy rights of an injured worker.

3.3 An injured employee shall have the right to choose any of the authorized medical providers that offer treatment consistent with the nature of

the injuries.

3.4 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.

3.5 In the event that there is no authorized provider within the appropriate medical specialty to provide the treatment required, the authorized primary treating physician shall recommend a provider or providers that he/she believes is best qualified to provide the treatment required.

3.6 Where compensability is in dispute and the City is denying responsibility for the payment of medical treatment, the injured employee is not required to obtain treatment by an authorized provider, pending the resolution of the issue of compensability.

3.7 It is the intent of the parties and a primary goal of the ADR program, and therefore a directive to the JC, that to the greatest extent reasonably possible injured employees shall be returned to work as soon as practical. Such early return to work shall occur only where the light or modified work offered is consistent with any restrictions imposed by the injured employee's treating physician.

4. Medical Evaluation

4.1 The JC shall establish a network of medical-legal examiners to serve as the exclusive source of comprehensive medical-legal evaluations within the jurisdiction of this program. Any issue of the appropriateness of medical treatment shall be resolved in this program and shall be submitted to the appointed medical-legal examiner. It is the party's intention to not utilize the independent medical review provisions of Labor Code section 4616.4 and the regulations thereunder.

4.2 The injured employee and the City of Fresno may each schedule an appointment with a medical-legal examiner in any medical specialty relevant to the case in dispute. Absent good cause to the contrary, the injured employee shall be entitled to one examination with a medical-legal examiner in each relevant specialty. Any dispute regarding whether a report in any particular medical specialty is relevant shall be submitted to mediation and, if necessary, arbitration. The Ombudsperson shall also have the authority to schedule a medical-legal exam if necessary to move the case toward resolution or it is found to be in the best interests of the program. The selected medical-legal examiner in each case has the authority to resolve any question that requires independent medical- legal review.

Executed at Fresno, California.

CITY OF FRESNO:

FRESNO POLICE OFFICERS
ASSOCIATION:

Dated: _____

Dated: _____

By: _____

By: _____

APPROVED AS TO FORM AND CONTENT:

APPROVED AS TO FORM AND CONTENT:

Dated: _____

Dated: _____

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