

**City of Richmond and Richmond Professional Firefighter's Association, IAFF Local 188**

**WORKERS' COMPENSATION AMENDED AND RESTATED ALTERNATIVE  
DISPUTE PREVENTION AND RESOLUTION PROGRAM AGREEMENT**

THIS AMENDED AND RESTATED WORKERS' COMPENSATION ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION AGREEMENT ("Agreement") is entered into by and between the City of Richmond ("City") and the Richmond Professional Firefighter's Association, IAFF Local 188 ("IAFF Local 188") on behalf of its represented members, pursuant to the authority granted to the Parties by California Labor Code Section 3201.7. The City and IAFF Local 188 are collectively referred to as the "Parties".

**A. RECITALS**

WHEREAS, the Parties are desirous of entering into an agreement whereby represented employee members of IAFF Local 188 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 which will be mutually beneficial to the Parties, and recent compensation increases have been granted by the City Council on the expectation that implementation of the ADR Program described herein will result in such savings; and

WHEREAS, the Parties previously carried out an ADR Program approved in 2016 which had beneficial aspects, but the Amended ADR Program is revised as provided herein to improve operations and make it more cost effective as further described below.

**B. 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. Further, the Parties seek to improve labor-management relations between the City and the IAFF Local 188 through the cooperation necessary to construct and oversee this Program.

### **C. ADR PROGRAM GOALS**

It is the intent of the Parties to this Agreement to construct an alternative dispute resolution program (“ADR Program”) authorized by California law that will provide injured IAFF Local 188 active 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 the following:

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

### **D. ADR PROGRAM RESTRICTIONS**

The Parties intend that this Agreement will not:

1. diminish, erode, or impair the substantive rights of the City in any manner including to legal representation or to pursue legal remedies and appeals; or
2. diminish, erode, or impair the substantive rights of members 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
3. impair, restrict, or condition the rights of members to be represented by legal counsel of their choice throughout the entire alternative dispute resolution program; or

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<sup>1</sup> Members means members of IAFF Local 188 and includes both active and retired members unless the context suggests it is limited to active members only, as it does here.

4. impair, restrict, or condition the rights of members to pursue legal remedies and appeals after exhausting the alternative dispute resolution program procedures as permitted under the Labor Code.

## **E. GOOD FAITH AND ADJUSTMENT**

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, creates efficiencies benefitting all Parties, and promotes organizational effectiveness. The Parties also recognize that it is intended there will be certain Fire Departmental ("Department") 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.

**WHEREFORE, the Parties hereto agree 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. It is further agreed that this Agreement and the ADR Program is subject to amendment as specified herein if necessary, to further accomplish Program intent.**

## **1. GENERAL PROVISIONS**

- 1.1 Application. This Agreement shall become effective only when approved and executed by both Parties and as stated below. Both Parties understand notification of an amended program must be given to the Administrative Director of the Division of Workers' Compensation of the Department of Industrial Relations and is subject to approval of the 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 for which the claim was not filed until after this Agreement took effect) with dates of injury or illness occurring during the period of the program, 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 and reduced to writing in a memorandum issued by the JC to the City and the IAFF Local 188.
- 1.2 Not Modify State Law. 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 Alternative Program as Permitted. 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 IAFF Local 188 via this Agreement, 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.
- 1.4 Substantive Rights Protected. 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 Law of the State of California. The Parties acknowledge that no member covered by this Agreement and the ADR Program established herein will lose or compromise any rights to Labor Code Section 4850 pay, any presumptions permitted by California Law, or any other substantive right permitted by applicable law.
- 1.5 Binding on Members of Local 188. The terms of this Agreement shall apply only to the City of Richmond employees/retirees who are, or upon retirement were, members of the IAFF Local 188.
- 1.6 Covered Claims. This Agreement shall apply only to injuries or illnesses compensable or alleged to be compensable under the Workers' Compensation Law of the State of California, including all claims, defenses, lien claims and Serious and Willful Misconduct claims (see Labor Code, Section 4551, *et seq.*). Further, this Agreement shall apply to injuries, as defined by Workers' Compensation Law, claimed by (i) active City employees; (ii) retirees who, while active City employees, made a claim alleging injury or illness; (iii) retirees who, while active City employees, made a report, consistent with Fire Department policy, of an industrial incident that may lead to injury or illness; (iv) retirees, who were active 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.* 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 because Section 3201.7 applies only to Division 4 of the Labor Code, discrimination claims filed under Section 132a may be litigated only within the ADR Program upon written agreement between the injured member and the City.
- 1.7 Third Party Administrator. 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. The TPA shall be selected, retained, and replaced by City in accordance with City ordinances and policies. The TPA shall perform its functions in accordance with the requirements

of this Agreement, the Labor Code, and Regulations pursuant thereto, including Labor Code 4062.3(b) and CCR 35(c), and evaluate all information submitted.

- 1.8 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, and promulgate and modify any rules of the Program. The JC shall be made up of six (6) persons, three (3) being members of IAFF Local 188 and selected by the IAFF Local 188 and three (3) persons selected by the City. The City Manager, or his/her designee shall select two (2) persons and the Fire Chief shall select one. The Chief's selection shall be a full-time employee member of the Fire Department, either sworn or unsworn. The persons selected shall serve at the pleasure of the appointing authority. The JC shall meet as they deem necessary, but no less than quarterly. 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 IAFF Local 188 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 which cannot be resolved, shall be submitted to a three member "Dispute Resolution Committee" comprised of the ADR Director selected in accordance with Section 2.4, and one JC member each from the IAFF Local 188 and City. Any two members of the JC 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 within thirty (30) days after submission.
- 1.9 Amendment. From time to time, this Agreement may be modified by the mutual written agreement of the City and IAFF Local 188 or by the unanimous written consent of the JC.
- 1.10 Commencement of Coverage. Any claim without an IME will have the IME selected pursuant to the terms the new ADR program.

## **2. WORKERS' COMPENSATION CLAIM DISPUTE PREVENTION AND RESOLUTION**

- 2.1 General. All disputes involving Workers' Compensation claims within the jurisdiction of this ADR Program, including medical disputes, shall be subject to the prevention and resolution process provided in this Agreement.
- 2.2 Component Steps. The component steps of the ADR Program, to the extent

necessary, are:

- (a) Submission of claim;
- (b) TPA determines if it is a Covered Claim;
- (c) Review by Claims Examiner;
- (d) Mediation by ADR Director;
- (e) Arbitration; and
- (f) Appeals to WCAB.

- 2.3 Joint Committee Authority. The JC has the authority to adopt rules of practice and procedure including for the ADR Director under supervision of the JC. The JC may establish other positions which are necessary to effectively accomplish the goals and purposes of this Agreement and the ADR Program.
- 2.4 ADR Director Authority. The City's Director of Human Resources shall select an ADR director ("ADR Director") for the ADR Program through a competitive process. The ADR Director shall assist with training the claims staff assigned to this program and 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 shall act as mediator to resolve all claims consistent with the policies of the ADR Program and the policies and rules established by the JC. The JC may establish other duties and assignments consistent with the position of ADR Director.
- 2.5 Submission of Claims. Any member who believes they have a Covered Claim under Section 1.6 shall submit the claim through the Department to the TPA who shall exercise reasonable judgment to determine if it is covered, and if covered, shall promptly submit it to the Claims Examiner, at the same time giving notice to the Nurse Case Manager. If TPA deems the claim not covered, it shall give written notice of such determination to the claimant and City.
- 2.6 Claims Examiner. The claims examiner ("Claims Examiner") shall consider the interests of the City and the injured IAFF Local 188 members in performing his/her duties. The Claims Examiner will contact the injured worker within 24 hours of receiving the claim. Claims Examiner performs a critical role in fulfilling the purpose of this Agreement in assuming that claims will be expeditiously and correctly administered. To this end, the Claims Examiner (i) shall be the main contact for the injured worker, (ii) will follow the fast track Authorization Criteria attached as Exhibit A, and (iii) and will provide an explanation to all documents sent and promptly respond, if questions arise. Injured members may contact the Claims Examiner 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. Where there is an acceptance, delay or denial of a claim, or there is a change of position by the Claims Examiner, each injured member and the ADR Director shall be advised no later than five (5)

working days of the position of the Claims Examiner. The 5-day period may be extended by agreement, or on a showing of good cause.

- 2.7 Medical Treatment. The nurse case manager (“Nurse Case Manager”) shall contact each injured member within the jurisdiction of the ADR Program as soon as possible, but no later than three (3) days of receipt of notice of the injury. Injured members may contact the Nurse Case Manager with any questions regarding medical treatment.
- 2.8 Mediation. The ADR Director shall conduct all mediations to resolve claims. Where it is necessary to move a case to resolution or in the best interest of the Program, the ADR Director shall schedule a mediation. Except where good cause exists or unless the Parties agree otherwise, the mediation process will be concluded within thirty (30) days of the request for mediation. The Director shall provide a written report outlining the issues in dispute and the disposition of the mediation sessions. In the event that any dispute is not resolved in mediation, the matter may be set for arbitration at the request of either Party.
- 2.9 Arbitrators. 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 member 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 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 so the lienholders advising them of the right to appear and present argument and testimony in support of their lien claim.
- 2.10 Arbitration. In arbitration, both Parties will adhere to the guidelines given by the WCAB, California Code of Regulations, § 10910, and the Arbitrator Code of Ethics in Labor Code § 123.6(a). 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. 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.
- 2.11 Arbitrator Decision; WCAB Appeals. The arbitrator shall file 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.

- 2.12 Legal Counsel. 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. All Parties shall have the right to discovery as per the California Labor Code and California Code of Regulations. The IAFF Local 188, the City 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 a member and their 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.
- 2.13 Liens. 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 ADR Program where the alleged right to file stems from activity in a claim within the jurisdiction of this Program.
- 2.14 Costs Paid by City.
- (a) The City shall pay all costs incurred in retaining the ADR Professionals necessary to carry out the responsibilities set forth in this Agreement.
  - (b) The scheduling and cost of interpreters shall be handled pursuant to Workers' Compensation Law. The ADR Director shall have the authority to select an appropriate interpreter if one is required
  - (c) The ADR Director and/or Joint Committee shall have an agreed list of permanent disability raters as necessary.
- 2.15 ADR Professionals. The ADR Professionals, which shall include the ADR Director, the Claims Examiner, the Nurse Case Manager, the Medical-Legal Examiner, and such other necessary personnel (all the "ADR Professionals"), are retained to provide professional ADR services within the jurisdiction of this ADR Program. They shall exercise independent discretion in fulfilling the responsibilities required under this Agreement on a case-by-case basis. The JC has responsibility for reviewing the ADR Professionals' work to assure quality performance in fulfilling their obligations under this Agreement. It is also understood by the Parties 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.



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

### **3. MEDICAL TREATMENT**

- 3.1 Medical Provider Network. The JC shall use a Medical Provider Network ("MPN") which will include an extensive list of providers in all specialties, throughout California.
- 3.2 Nurse Case Manager. The JC shall maintain a panel of Nurse Case Managers ("NCM") who are responsible for (i) processing, facilitating or evaluating injured members' claims, (ii) answering medical questions and interacting with medical providers as medically appropriate, and (iii) facilitating the provision of the best possible medical care as efficiently as possible. The NCM shall contact the injured member within 24 hours of receiving a claim and will both promptly respond to any contact by an injured member and shall remain accessible to injured members throughout the process of their open claim. The dissemination of information from any communications between the NCM 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 member.
- 3.3 Choice of Medical Providers. An injured member shall have the right to choose any of the authorized medical providers within the MPN that offer treatment consistent with the nature of the injuries.
- 3.4 Emergencies. In an emergency, an injured member covered by this Agreement may seek treatment from a health care provider or facility not with the MPN for the purpose of obtaining emergency treatment only. Treatment shall be transferred to a medical provider within the MPN, as soon as possible, consistent with sound medical practices.
- 3.5 Lack of Authorized Providers. In the event there is no authorized provider within the appropriate medical specialty to provide the necessary treatment, the authorized primary treating physician within the MPN shall recommend a provider or providers that they believe is best qualified to provide the necessary treatment.
- 3.6 Compensability. Where compensability is disputed and the City is denying responsibility for the payment of medical treatment, the injured member is not required to obtain treatment by an authorized provider, pending the resolution of compensability.
- 3.7 Early Return to Work. 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 members 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 member's treating physician.

#### **4. MEDICAL EVALUATION**

- 4.1 Network of Medical-Legal Examiners. The JC shall establish a network of independent medical-legal examiners who should have certificates of competency 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 independent 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 Examination; Specialties. The injured member or the City may request an appointment with an independent medical-legal examiner in any medical specialty relevant to the case in dispute. Absent good cause to the contrary, the injured member shall be entitled to one examination with a medical-legal examiner in each relevant specialty. If the City is requesting an independent medical evaluation, the TPA will notify the injured worker and/or the representing attorney. For purposes of appointments, the City's TPA shall 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 City's TPA will resume using the first name on the list. The medical-legal examiner in each case has the authority to resolve any question that requires independent medical-legal review.

This Amended and Restated Alternative Dispute Resolution Program Agreement is agreed to by the Parties this \_\_\_\_\_ day of October 2022 (Effective Date).

*[Signatures on Following Page]*

City of Richmond

IAFF Local 188

\_\_\_\_\_  
Shasa Curl, City Manager

\_\_\_\_\_  
*Aut W. President*  
President

Approved as to Form and Content:

Approved as to Form and Content:

\_\_\_\_\_  
*David J. Aleshire*  
David J. Aleshire, City Attorney

\_\_\_\_\_  
Legal

Attest:

\_\_\_\_\_  
Pamela Christian, City Clerk

Fire Chief

\_\_\_\_\_  
Angel Montoya