SOUTHERN CALIFORNIA LABORERS'

WORKERS' COMPENSATION TRUST

ALTERNATIVE DISPUTE RESOLUTION SYSTEM

Shogren
Ombudsperson
Services

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WORKERS' COMPENSATION AGREEMENT

SECTION 1.0. This Agreement is entered into between the Associated General Contractors of California, Inc., the Building Industry Association of Southern California, Inc., the Southern California Contractors Association, Inc., the Engineering Contractors Association, Inc. ("Associations") and the Southern California District Council of Laborers of behalf of itself and its affiliated local unions ("Union"), pursuant to California Labor Code Section 3201.5. It is the intent of the parties to improve the delivery of benefits to injured workers entitled to Workers' Compensation benefits under the laws of the State of California and to reduce the waste and excessive cost which have historically been associated with those benefits. Nothing in this Agreement diminishes the entitlement of an employee covered by this Agreement to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, medical treatment and other benefits as required by California law fully paid for by the employer through the purchase of a policy of Workers' Compensation insurance from an insurer authorized to issue such a policy in the State of California.

SECTION 1.1. The Associations are a group of employers that:

(a) are private employers primarily engaged in construction, construction maintenance and related activities;

(b) are part of a Workers' Compensation safety group that is established pursuant to a joint labor management committee and which safety group complies with Sections 11656.6 and 11656.7 of the California Insurance Code to the extent required by California Labor Code Section 3201.5;

(c) project annual collective California Workers' Compensation premiums of Two Million Dollars or more on wages paid and to be paid to employees covered by this Agreement.

This Agreement shall be available only to those employers who are signatory to an appropriate Union collective bargaining agreement. If the employer is a member of an Association, it shall be bound to this Agreement upon written authorization to the appropriate Association. The Associations shall provide a list to the Union of those members who have authorized the Association to represent them under the terms of this Agreement. If the Employer is not a member of an Association, it shall be bound to this Agreement upon its written consent in a form acceptable to the Union.

Each individual employer shall have the right to select its own insurance broker or carrier for participation under this Agreement, or have the right to be self-insured.

SECTION 1.2. The Union:

(a) is the recognized or certified exclusive bargaining representative of the employees covered by this Agreement;

(b) participates in the joint labor management committee which has established the Workers' Compensation safety group which complies with Sections 11656.6 and 11656.7 of the California Insurance Code to the extent required by California Labor Code Section 3201.5.

SECTION 1.3. This Agreement shall apply only to employees whose employment is or was covered by an appropriate Union collective bargaining agreement and this Agreement and any successor Agreements and shall apply only to employees' claims for Workers' Compensation benefits payable by an employer bound to this Agreement and which claims are subject to the laws of the State of California. This Agreement shall not be applicable to the employees of any employer which discontinues participation in

the safety group described above and after the date of such discontinuance. An employer's discontinuance in the safety group program described above in no fashion relieves the employer of any and all liabilities to continue to provide benefits to injured workers in accord with the laws of the State of California. Only employers bound to this Agreement may participate in the safety group described above.

SECTION 1.4. Upon execution of this Agreement, the parties shall assure that a copy and appropriate information is transmitted to the Administrative Director of the Division of Workers' Compensation of the State of California in accord with California Labor Code Section 3201.5(f) and shall instruct each employer's insurer and any other responsible entity to supply information to the Division of Workers' Compensation in accord with California Labor Code Sections 3201.5(f) and 3201.5(g).

SECTION 2.0. The parties to this Agreement shall establish a preferred provider network of health care providers which includes hospitals, physicians, pharmacies, chiropractors, psychiatrists, therapists, laboratories and other health care providers. Subject to the exceptions set forth in Section 2.1

and/or as modified by mutual Agreement, the providers in this network shall be the exclusive source of all medical treatment required under California Labor Code Section 4600. Attached hereto and marked Attachment "A" is a listing of the current network providers. The parties hereby agree that on the first working day of each month, Attachment "A" shall be revised to incorporate additions and deletions to the network of exclusive providers. In no event shall the deletion of a provider disrupt the ongoing treatment of an employee receiving treatment from that provider at the time of deletion. Except as provided above, in terms of discontinued providers, and in Section 2.1, medical care procured from a provider not included in the network shall not be provided at the expense of the employer. Nothing in this Agreement shall be construed to create a right for an employee to receive care at employer expense which is not reasonably required to cure or relieve a work-related injury.

SECTION 2.1 The restrictions of Section 2.0 shall not apply in any of the following instances:

(a) in the event of the need for emergency medical treatment of a work-related injury, the injured employee may

receive that emergency treatment from any provider qualified to provide that emergency treatment;

(b) in the event an injured employee requires care required under California Labor Code Section 4600 which is not available from any provider within the network established under Section 2.0, the employee shall receive that required treatment from a provider qualified to provide that treatment;

(c) in the event an injured employee requires care required under California Labor Code Section 4600 and does not reside within 40 miles of any network provider of that care, the worker may elect to receive that required care from a provider qualified to provide that care which is located within a reasonable distance from the injured employee's residence;

(d) if an employee has notified his or her employer in writing prior to the date of a work-related injury that the employee has a personal physician and such physician is within the plan network, the employee shall have the right to be treated by that physician from the date of injury.

SECTION 2.2 The employer shall have the statutorily provided period of control over the election of providers contained within the network of providers established pursuant to

Section 2.0. The employer may exercise control over the selection of providers pursuant to Section 2.1(a), (b) and (c), as provided by statute.

SECTION 2.3. No provision of this Agreement shall be construed to relieve the employer from its responsibility under California Labor Code Section 4600 to provide care which is reasonably required to cure or relieve a work-related injury. Should the employee not exercise the employee's right to select a provider from the network established under Section 2.0, the Administrator shall promptly assign an appropriate provider from the network of providers established pursuant to Section 2.0. It is the employer's responsibility to arrange for the care set forth in Section 2.1(a), (b) and (c).

SECTION 2.4. In accord with the requirements of California Labor Code Section 4061.5, the treating physician primarily responsible for managing the care of the injured employee, or the physician designated by that treating physician, shall render opinions on all medical issues necessary to determine eligibility for compensation in accordance with the rules promulgated and to be promulgated by the Administrative

Director of the Division of Workers' Compensation of the State of California. In the event that there is more than one treating physician, a single report shall be prepared by the physician primarily responsible for managing the injured employee's care that incorporates the findings of the various treating physicians.

SECTION 2.5 In no event shall the Laborers' Health & Welfare Fund be liable for the cost of medical care required to be provided by the employer pursuant to California Labor Code Section 4600. The costs of such care required to be provided by the employer pursuant to California law shall be the liability of the insurer from whom the employer has purchased a policy of Workers' Compensation insurance. Nothing in this Agreement in any fashion limits the lien rights of the Laborers' Health & Welfare Fund, or any other lien holder, to recover amounts paid related to medical care or other benefits which is properly the liability of the employer's Workers' Compensation insurer. Nothing in this Agreement shall result in benefits that exceed those provided by law.

SECTION 3.0. The parties hereto acknowledge that the provisions of California law governing the adjudication of disputed Workers' Compensation claims have resulted in delay, increased expense and other inefficiencies which result in undue detriment to employees and employers. In recognition of the foregoing, the parties establish the exclusive alternative dispute resolution system set forth below.

The parties recognize that adequate funding is essential in assuring the success of the alternative dispute resolution process established under this Agreement. It is the intent of the parties that there shall be an Administrator appointed and that the Administrator shall employ an ombudsperson who shall serve in that capacity as a full-time employee of the Administrator. There is a need to pay the costs associated with the Administrator, ombudsperson and the alternative dispute resolution system.

In order to provide adequate funding for the alternative resolution dispute system established by this Agreement, the parties bound to this Agreement have established the Laborers' Workers' Compensation Trust Fund. The employers bound to this Agreement shall pay to the Laborers' Workers' Compensation Trust Fund an agreed upon user fee or a monthly

contribution based on all hours worked by or paid to employees covered by this Agreement; provided, however, that no contributions for hours worked or paid on any jobsite where the owner requires participation in an wrap up insurance policy that prohibits use of the alternative dispute resolution system provided for in this Agreement. Such user fee or monthly contributions shall be payable in accord with the provisions contained within the Trust Agreement establishing the Laborers' Workers' Compensation Trust Fund, and in an amount agreed upon by the parties to this Agreement.

The monthly contributions shall be effective beginning the month following execution of this Agreement and shall be held in an escrow or similar account until the alternative dispute procedure, including the provider networks and other procedures and panels described in this Agreement, are fully agreed upon and operational. In the event the alternative dispute procedure does not become operational within six months of the date of execution of this Agreement, the contributions, less any administrative cost, shall be returned to the employers making contributions upon written request by the employers. The parties to this Agreement shall also arrange for the payment of annual contributions by insurance companies and other interested parties.

The Laborers' Workers' Compensation Trust Fund shall advise the parties hereto quarterly of contributions received and expenditures made related to this alternative dispute resolution system. Should the Trust advise the parties hereto that the contributions are not sufficient to pay the costs of this alternative dispute resolution system, the parties agree to meet and negotiate solely for the purpose of negotiating a contribution which will be sufficient to pay the expense of the alternative dispute resolution system established by this Agreement. Should the parties be unable to negotiate a contribution which is sufficient to pay the expense of the alternative dispute resolution system established by this Agreement, the alternative dispute resolution system shall be suspended until such time as the parties are able to negotiate a sufficient contribution. During periods of any such suspension, employees covered by this Agreement shall utilize the dispute resolution system set forth in the California Labor Code and the Rules and Regulations related thereto.

The parties bound to this Agreement shall be bound by all of the terms and provisions of the Trust Agreement establishing the Laborers' Workers' Compensation Trust Fund. The Trustees of the Laborers' Workers' Compensation Trust Fund shall

oversee the administration of the provisions and procedures contained in this Agreement and may amend the Trust Agreement to carry out this responsibility; provided, however, the Trustees shall not make fundamental modifications to the provisions or procedures contained in this Agreement.

SECTION 3.1 The Trustees of the Laborers' Workers' Compensation Trust Fund shall appoint an Administrator. The Administrator shall employ, with the approval of the Trustees, at least one individual to serve as an ombudsperson. The ombudsperson shall, upon request of an employee, assist the employee in filing claims related to alleged work-related injuries subject to this Agreement. The ombudsperson shall receive complaints from employees who have filed claims for Workers' Compensation benefits subject to this Agreement and upon the request of the employee shall assist the employee in attempting to resolve those disputes with the Workers' Compensation insurer of an employer subject to this Agreement. If the employee and/or the ombudsperson cannot resolve the employee's claim within a reasonable time, and in no event more than 90 days from the date of filing, the Administrator shall

immediately notify the employee of his or her right to arbitration.

The ombudsperson is an employee at will of the Administrator and as such may be discharged/removed by the Administrator upon mutual agreement of the trustees. A vote of the trustees of the Laborers' Workers' Compensation Trust Fund shall serve to effect any personnel action deemed necessary.

SECTION 3.3 It is the parties' intent to retain the services of a professional arbitration service. Attached hereto and marked Attachment "B" is a list of arbiters selected jointly by the Union and employers. If a dispute related to a claim has not been resolved pursuant to Section 3.2, the worker or employer may request the Administrator of the Laborers' Workers' Compensation Trust Fund to appoint an arbiter from the list to arbitrate the dispute. Absent extraordinary circumstances, arbitration must be requested no later than 60 days after the employee and/or ombudsperson concludes attempts to resolve the dispute with the employer's insurer.

The administrator shall appoint an arbiter from the list within three (3) working days of receipt of a request. Arbiters shall be appointed on a rotating basis, however, no arbiter who is unable to arbitrate the dispute within 20 working

days of appointment shall be appointed to arbitrate that dispute absent a contrary stipulation between the employee and employer. Should the employee and employer so stipulate, the employee and employer may jointly request appointment of a specific arbiter from the panel or arbitrators.

Upon request by the employee, the ombudsperson shall assist the employee in the arbitration. An employee receiving assistance from an ombudsperson but who is not represented in the arbitration proceeding by an attorney, shall be considered by the arbiter to be an "unrepresented worker".

In conducting the arbitration, the arbiter shall apply the same presumptions of compensability, statutory construction and rules of admissibility of evidence that would be applied by a Workers' Compensation Referee conducting a proceeding under the California Labor Code. The arbiter shall have the same authority as a Workers' Compensation Referee over discovery, the production of documents, the issuance of subpoenas and other procedural matters related to the arbitration hearing.

All arbitration proceedings shall be electronically recorded. The original tape and record of the proceeding shall be retained by the administrator of the Laborers' Workers' Compensation Trust Fund. Copies of the recording and record

shall be supplied to the employee and employer upon request. A transcript of the proceeding shall be prepared upon the request of the arbiter, employee or employer.

If the employer contends that the employee's injury or illness is not covered by the workers' compensation laws or this Agreement, the Arbitrator shall bifurcate the arbitration, upon request of the employer or employee, to decide the issue of liability first, and only if the injury is covered shall the arbiter decide the remaining issues regarding compensation.

Within ten (10) working days following the conclusion of the arbitration, the arbiter shall issue his or her written findings of fact, decision, order and, if applicable, award. The Arbiter's decision shall include minutes of the arbitration; a summary of the oral testimony, if any; and the reasons for the decision. The arbiter is authorized to include in any award all relief available from a Workers' Compensation Referee including, but not limited to, enhancements to compensation due to any unreasonable delay in the payment of compensation by the insurer as provided for by law, and attorney's fees and costs. The arbiter is also authorized to assess the costs of the alternative dispute resolution process contained in this Agreement against the employer, including the arbiter's fees, pursuant to the

guidelines established by the parties to this Agreement. The arbiter 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 their right to appear and present argument and testimony in support of their lien claim.

Any findings of fact, award, order or decision of the arbiter shall have the same force and effect as findings of fact, an award, order or decision of a California Workers' Compensation Referee.

The decision of the arbiter shall be subject to review pursuant to California Labor Code Section 3201.5(a)(1) by the California Workers' Compensation Appeals Board in the same manner as provided for reconsideration of a final order, decision or award made and filed by a Workers' Compensation Referee and by the California Court of Appeal pursuant to the procedures set forth in California Labor Code Section 3201.5(a)(1).

SECTION 3.4 Nothing in this alternative dispute resolution process shall prevent an employee from retaining an attorney to represent the employee in any and all stages of the alternative dispute resolution process established by this

Agreement. Such retention of an attorney is the sole and absolute choice of the employee. In no event shall the Laborers' Workers' Compensation Trust Fund be liable for the expense of such representation. The terms and conditions of any Agreement between an employee and the employee's retained 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.

SECTION 4.0 The Union and employers have jointly approved the Qualified Medical Evaluators listed on Attachment "C" hereto. They shall serve as the exclusive source of comprehensive medical-legal evaluations, other than those received from treating physicians, to be obtained by employees covered by this Agreement and the insurers of employers who are parties to this Agreement as to claims for Workers' Compensation benefits which are subject to this Agreement. Any Qualified Medical Evaluator who does not continue to be a Qualified Medical Evaluator within the meaning of California Labor Code Section 139.2 shall be deleted from the pool of Qualified Medical Evaluators upon loss of status as a Qualified Medical Evaluator

under California Labor Code Section 139.2.

Notwithstanding any other provision of this Agreement, no physician who has been involved in the examination or treatment of the employee may act as a Qualified Medical Evaluator in the employee's case.

SECTION 4.1. All notices of denial of claims and all notices required under the California Labor Code which require advice of an employee's right to a comprehensive medical-legal evaluation shall include a list of the Qualified Medical Evaluator panel including the addresses and telephone numbers of panel members. The notice shall include a copy of Sections 4.0, 4.1, 4.2, 4.3, 4.4, 4.5 and 4.6 of this Article.

SECTION 4.2. If the employee is not represented by an attorney and is entitled to a comprehensive medical-legal evaluation under the standards of California Labor Code Sections 4060, 4061, or 4062 and all related sections of the California Labor Code, the employee, with the assistance of an ombudsperson, may obtain a comprehensive medical-legal evaluation from any one Qualified Medical Evaluator included in the panel. The Qualified Medical Evaluator selected by the employee shall consult with any

Qualified Medical Evaluator on the panel of Qualified Medical Evaluators if in his or her opinion such consultation is necessary for a complete comprehensive medical-legal evaluation, provided that the Qualified Medical Evaluator shall notify the Administrator in writing prior to such consultation.

In cases subject to California Labor Code Section 4060 involving unrepresented employees, the employer may also obtain a comprehensive medical-legal evaluation from any Qualified Medical Evaluator included in the panel. In such cases, the Qualified Medical Evaluator selected by the insurer shall consult with any Qualified Medical Evaluator on the panel of Qualified Medical Evaluators if in his or her opinion such consultation is necessary for a complete comprehensive medical-legal evaluation, provided that the Qualified Medical Evaluator shall notify the Administrator in writing prior to such consultation.

In cases subject to California Labor Code Section 4060 involving unrepresented employees, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluation obtained by the employee from a panel member, the comprehensive medical-legal evaluation obtained by the insurer from a panel member and the testimony of those panel

members shall be the only medical evidence admissible in a proceeding before the arbiter.

SECTION 4.3. If the employee is represented by an attorney and is entitled to a comprehensive medical-legal evaluation under the standards of California Labor Code Sections 4060, 4061 or 4062 and all related sections of the California Labor Code, neither the employee nor the insurer of the employer shall obtain any comprehensive medical-legal evaluation, other than that of a treating physician or physicians, prior to the expiration of a ten (10) working day period during which the employee and insurer shall attempt to agree upon a single Qualified Medical Evaluator from the panel of Qualified Medical Evaluators. If agreement on a Qualified Medical Evaluator is not reached within the ten (10) working day period, the employee and employer then may each select a Qualified Medical Evaluator from the panel of Qualified Medical Evaluators. The Agreed Medical Evaluator or Qualified Medical Evaluators selected shall prepare comprehensive medical-legal evaluations and shall consult with any Qualified Medical Evaluator on the panel of Qualified Medical Evaluators if in his or her opinion such consultation is necessary for a complete comprehensive medical-legal evaluation,

provided that the Agreed Medical Evaluator or Qualified Medical Evaluators notify the Administrator in writing prior to such consultation. In cases involving employees represented by attorneys, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluations obtained pursuant to the foregoing procedure and the testimony of those panel members or Agreed Medical Evaluator shall be the only medical evidence admissible in a proceeding before the arbiter.

SECTION 4.4. Qualified Medical Evaluators on the panel established by the parties to this Agreement shall prepare and complete examinations and comprehensive medical-legal evaluations within 30 days, provided, however, the Qualified Medical Evaluators may obtain an extension for good cause upon the approval of the Administrator. Each comprehensive medical-legal evaluation shall address all contested medical issues in dispute at the time the evaluation is prepared.

SECTION 4.5 An employee who obtains a qualified medical-legal evaluation while not represented by an attorney shall not be entitled to any additional comprehensive medical-legal evaluation merely due to the fact that the employee

subsequently retains an attorney.

SECTION 4.6. In accord with California Labor Code Section 4064, the employer, through its insurer, shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to this Agreement. The employer shall not be liable for the cost of any comprehensive medical-legal evaluation obtained by its employee other than those authorized pursuant to this Agreement. In no event shall the employer be liable for any comprehensive medical-legal evaluation performed by other than the treating physician or physicians, either in whole or in part, prior to the employee's filing of a claim form and prior to the time the claim is denied or becomes presumptively compensable under California Labor Code Section 5402. Nothing in this Agreement prevents the employer or employee from obtaining any additional comprehensive medical-legal evaluation or consultation at the employer's, insurer's or employee's own expense, but in no event shall such additional comprehensive medical-legal evaluations or consultations be admissible in a proceeding before the arbiter under this Agreement.

SECTION 5.0. The Union and Employer Associations have created a joint labor management safety committee consisting of an equal number of Employer and Union representatives. The committee has established the Workers' Compensation safety group referenced in this Agreement. The committee shall assure that the Workers' Compensation safety group complies with all provisions of California Insurance Code Sections 11656.6 and 11656.7 to the extent required by California Labor Code Section 3201.5. Any employer not signatory to this Agreement or its successors may not participate in the Workers' Compensation safety group established by the committee.

SECTION 6.0. Attached hereto and marked Attachment "D" is a list of exclusive qualified rehabilitation representatives and independent vocational evaluators approved by the Union and employers. Should an injured worker subject to this Article be determined to be a "qualified injured worker" within the meaning of California Labor Code Section 4635 and should the injured employee desire vocation rehabilitation benefits, the injured employee, with the assistance of the ombudsperson, shall select a panel member to provide vocational services and assistance in the creation of a vocational

rehabilitation plan. All disputed matters regarding vocational rehabilitation benefits shall be processed through the alternative dispute resolution process contained in this Agreement.

SECTION 7.0. The parties have developed a light-duty modified job and return-to-work program which is attached hereto as Attachment "E". The employer may implement or discontinue this program at the employer's sole discretion.

SECTION 8.0. Nothing in this Agreement replaces or supersedes any provision of the California Labor Code related to the apportionment of injuries, the availability of the Office of Benefit Determination in terms of permanent partial disability ratings, the commutation of benefits, or the compromise and release of claims. Since the release of future medical coverage may cause substantial hardship to employees and in recognition of that hardship, the employer or its insurer must provide the ombudsperson with notification of any proposal by an insurer to an employee subject to this Agreement which calls for the release of future medical coverage by the employee.

SECTION 9.0. This Agreement shall not apply to any injury occurring before its effective date. The effective date of this Agreement shall be established by mutual agreement of the parties.

SECTION 10.0. The provisions of this Agreement are severable. Any provision of this Agreement deemed invalid by an entity with authority under law to make that determination shall be deemed severed. Should any provision of this Agreement be deemed invalid, the parties agree to commence negotiations solely for the purpose of replacing that provision deemed invalid by an entity with authority under law to make that determination.

SECTION 11.0. Attached hereto as Attachment "F" is a listing of the individual employer members of each Association executing this Agreement. Each of those signing for each Association below expressly warrants that the signer is authorized to execute this Agreement on behalf of the Association listed over the signer's signature and warrants that the members of that Association listed on Attachment "F" are parties to, and bound by their terms and provisions set forth in this addendum. Any employer that joins a signatory Association subsequent to the

execution of this Agreement and any existing member of an Association not set forth on Attachment "F" hereto may become a party to the Agreement.

SECTION 12.0. This Agreement shall remain in full force and effect during the term of the current Master Labor Agreement between the Union and the Employer Associations, and during any extension, modification or renewal term thereof, and during any post-contract period in which employers bound to the Agreement are obligated to maintain the wages, hours and working conditions prescribed by the Master Labor Agreement, and for a period of one hundred eighty (180) days after the last of such periods. Individual employers may, at their option, terminate this Agreement during its term upon 60 days notice to the parties.

Executed this 31st day of December, 1994, at Los Angeles, California.

Associations:

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By Melbourne E. Joseph

BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC.

By _____

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By _____

SOUTHERN CALIFORNIA CONTRACTORS' ASSOCIATION, INC.

By _____

Union:

SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS

By _____