

ATTACHMENT 4

WORKERS' COMPENSATION COVERAGE AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Section 1. Intent and Purpose

(a)(1) The Contractor, the Building and Trades Council of Los Angeles – Orange County (Council), the signatory craft unions (Unions) and the District (collectively, the “Parties”) working on the Los Angeles Community College District Propositions A&AA Facilities Project Labor Agreement (the Agreement”) jointly recognize the importance of an effective and efficient program to provide a workers’ compensation delivery system for the-benefit of the employees covered by this Agreement. The Parties will therefore work together, under the provisions of Section 3201.5 of the California Labor Code (the “Code”), to implement a dispute resolution procedure which will reduce disputes arising out of the workers’ compensation delivery system established for this Project, and which will provide fair and expeditious methods for resolving such disputes. Additionally, the Parties will work together to broaden and improve the workers’ compensation process to include optimum access to delivery of medical care and disability benefits for covered employees affected by occupational injury or disease and covered under this Agreement. The Parties further, through the Joint Labor-Management Workers’ Compensation Committee hereinafter established, will endeavor to develop an effective quality control and improvement program for the medical coverage provided to the employees covered by this Agreement. Finally, the Parties agree that abuses of the system will not be tolerated and will cooperate in any investigation of a claim of abuse.

(a)(2) To accomplish the goals of(a)(1) above, the Parties have agreed:

(i) That all employees working under this Agreement shall be covered to the fullest extent required by the workers’ compensation provisions of the Code, and that nothing in this Agreement diminishes the entitlement of an employee covered by this Agreement to compensation benefits for disability or medical treatment and other benefits as required by California law, fully paid for by the District through the purchase of a policy of workers’ compensation insurance from an insurer authorized to issue such a policy in the State of California; and

(ii) To implement a medical and benefits delivery system complemented by an alternative dispute resolution process, hereby established, in cooperation with a Joint Labor Management Workers’ Compensation Committee, created under this Agreement.

(b) This Agreement shall apply only to injuries as defined by the Law sustained by employees covered by this project labor agreement during their employment by an employer located in California and only when that employee is engaged in employment activities related to work on District bond construction projects and covered

by the OCIP.

(c) This Agreement shall remain in effect for a period of five years from the date of its execution by the parties. It shall continue in effect from year to year thereafter unless terminated by either party to the Agreement in the manner provided herein.

(d) This Agreement represents the complete understanding of the parties with respect to the subject matter dealt with herein.

(e) In any instance of conflict, the provisions of this Agreement shall take precedence over provisions of the Law, as far as permitted by the provisions of Labor Code Section 3201.5 of the State of California.

Section 2. Joint Labor-Management Workers' Compensation Committee

(a) There is hereby established a Joint Labor-Management Workers' Compensation Committee to review, oversee, consult and advise all parties involved with the development, implementation and provision of benefits and procedures for workers' compensation covered under the Code and this Attachment, with particular reference to the workers' compensation provisions of this Attachment. Such Committee shall participate in the selection of the providers and other personnel as set forth in Section 3. below. The power of the Committee may only be exercised through the majority agreement of the Parties, with each such party having such representative vote(s) as agreed.

(b) The District shall designate no more than two (2) Contractor representatives, which may rotate annually to assure broad representation by as many contractors as possible, and two (2) District representatives. The Council and the signatory craft unions shall appoint four (4) representatives to represent the unions. The Committee shall be chaired by a representative appointed by the District (or designee).

(c) The Committee shall meet at least once each calendar quarter, or more often as necessary on the call of the chair. A quorum shall be five or more members provided that notice of meeting is provided at least one week in advance. The ombudsperson and representatives of the District, OCIP insurer and/or providers of medical care shall be available to attend the Committee meetings and furnish such information as is requested by the Committee. The Committee may recommend to the Program Manager, District and/or OCIP Insurer, as appropriate, changes in the procedural and substantive delivery of medical care and services and ADR processing as it believes appropriate to fulfill the parties' goal to make effective use of the revisions to Labor Code Section 3201.5. Any dispute between the union and contractor parties with regard to the power of the Committee shall be referred to the Arbitrator designated under Section 7(c), below.

(d) Each member of the Committee and/or the member's sending

organization shall be responsible for any defense or indemnification of the respective member in the event of legal action arising out of the activities or decisions of that member while serving on the Committee. The District shall have no responsibility for decisions or actions of the Committee. The Committee shall have no separate legal standing.

Section 3. Service Providers

(a) Unless otherwise specifically stated, reference to a "medical provider" may be either to an individual providing treatment or to a group practice or clinic providing treatment to employees covered by this Attachment.

(b) The Parties will jointly designate, under the auspices of the Joint Workers' Compensation Committee herein established:

- (1) A preferred provider network of health care providers;
- (2) Organizations providing prescription medicine, which may be affiliated with (1), above;
- (3) Vocational rehabilitation evaluator/service organizations if required by law or regulation;
- (4) Mediators (who shall be familiar with and experienced in the California State Workers' Compensation System and related medical issues); and
- (5) Arbitrators (who to the extent available shall possess experience as referees and/or judges under the State Workers' Compensation System and, at a minimum, qualified as arbitrators under the Code).

(b) If the Parties are unable to agree on the organizations in (1) - (3) above or the individuals to serve in the positions listed in (4) - (5) above, in the numbers deemed necessary by the OCIP insurer for the efficient operation of the Workers' Compensation Delivery System (including ADR), or in the numbers otherwise established in this Agreement, appointments shall be made by the neutral arbitrator established under Section 7(c), below, after he/she has heard recommendations and arguments in favor of their respective positions from the Parties to the Agreement.

Section 4. Medical Care and Treatment for Occupational Injury and Disease.

(a) Authorized Medical Providers. The providers designated under this Agreement shall be the exclusive source of all medical treatment required under Code

Section 4600. In addition to the preferred medical provider list promulgated by the Insurer, authorized medical providers shall include preferred provider networks of health care providers contained within any preferred provider panels currently established by any Union (or subsequently established panels approved for inclusion by the parties to this Project Labor Agreement), who qualify and who agree to participate under the terms of this Attachment.

(1) All medical and hospital services, except for first aid and other emergency type services only, required by employees subject to this Agreement as the result of a compensable injury or disease, shall be furnished by health care professionals and facilities selected by the employee from a list of health care professionals and facilities agreed to by the Parties to this Agreement and available to each employee upon his initial employment at the site. 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 the decision. However, once the specific course of treatment is completed, the employee must use an authorized provider for any additional treatment. The authorized provider organizations shall have on their rosters individual Board Certified providers in their respective specialties available for selection by employees for treatment, or for referral from other individual providers, or to act as evaluators. This designation of providers pursuant to Section 3201.5 of the Labor code replaces all other provisions regarding the selection of medical providers located elsewhere in the Code.

(2) In case of an emergency requiring treatment covered by this Attachment when no authorized provider is available, the employee may seek treatment from a health care professional or facility not otherwise authorized by this Attachment, to provide treatment during the emergency and such treatment shall be compensated for in reasonable amounts by the OCIP Insurer as if provided by providers authorized under this Agreement. Responsibility for treatment shall be transferred to an authorized provider as soon as possible, consistent with sound medical practices.

(3) After selecting an authorized provider to furnish treatment for a particular injury, an employee may change once to another authorized provider. When referred by the authorized provider to another provider in a particular specialty, the employee may also change once to another authorized provider in such specialty. Additional changes may be made only with the approval of the Insurer. Neither the employer nor its OCIP Insurer shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this Agreement (except as provided in (2) above). Nothing in this Article shall be construed to create a right for an employee to receive care at employer obligation or expense that is not reasonably required to cure or relieve a work related injury.

(4) Neither the Insurer nor the District shall be responsible for the cost of medical services furnished by a health care professional or a facility not authorized pursuant to this Agreement (except for emergencies as noted in (2) above), nor for care not required by the Code.

(5) The list of authorized providers administered by the authorized provider organization shall contain sufficient providers for each of the specialties which the parties to this Agreement believe are required to respond to the needs of employees subject to this Agreement, at least some of whom, in each specialty, shall be Board Certified. This shall include, but shall not be limited to providers within the following specialties:

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|---------------------------|---------------------------|---------------------|-----------------|
| •1 Orthopedics | •2 Radiology | •3 Neurology | •4 Neurosurgery |
| •5 Ophthalmology | •6 Cardiology | •7 General Practice | •8 Chiropractic |
| •9 Psychiatry | •10 Internal Medicine | •11 Dermatology | •12 Oncology |
| •13 Pulmonary/Respiratory | •14 Occupational Medicine | | |

In the event that an authorized provider furnishing treatment to an employee determines that treatment or consultation is necessary from a specialty for which no authorized provider has been selected through this Agreement, or in the event the distance makes it impractical for treatment from an authorized provider, the authorized provider shall select the additional specialist or additional provider who offers treatment at a practical distance for the employee.

(6) All prescription medicines furnished as the result of injuries subject to this Agreement shall be furnished by the OCIP Insurer through a jointly agreed upon medical prescription provider organization or organizations, except in those instances in which an authorized medical provider determines that due to time constraints or other valid medical reasons, use of another prescription source is required.

(7) Evaluations shall be secured in a manner consistent with, and utilized for the purposes described in, Division 4, Part 1, Chapter 7, Article 2 of the Code. It is not the intent of the parties to the Agreement in this section or in any other portion of this Attachment to add to or diminish the rights of the respective parties to a workers' compensation dispute to introduce evidence or be prohibited from introducing evidence in an arbitration proceeding in any different manner than they would otherwise be allowed to do in a proceeding before an Administrative Law Judge of the WCAB.

(8) The OCIP Insurer and the employee shall each be bound by the opinions and recommendations of the authorized provider selected in accordance with this Agreement. In the event of disagreement with the authorized provider's findings or opinions, the sole recourse shall be to obtain a second opinion from another authorized provider to the extent permitted by Division 4, Part 1, Chapter 7, Article 2 of the Code, and to present the second opinion through the Alternative Dispute Resolution Program established in this Agreement.

Section 5. Authorized Vocational Rehabilitation Service Providers.

All vocational rehabilitation evaluator services to which an employee may be entitled under the Labor Code and within the jurisdiction of this Agreement as the result of an occupationally incurred compensable injury, including occupational disease,

OCIP Insurer. The Ombudsperson shall be compensated by the District at reasonable and customary rates for this service. The Ombudsperson will be familiar with workers' compensation procedures and practices. He/she shall be available at reasonable times, upon reasonable notice, at the Project site for the convenience of the employees. The Ombudsperson shall report regularly to the committee, shall submit an annual report and shall be subject to annual review.

The Mediator(s) and the Arbitrator(s) will be selected in chronological rotation from a permanent panel not to exceed three of each to be established by agreement of a majority of the members of the Joint Committee. Each shall be knowledgeable and experienced regarding medical and legal aspects of workers' compensation procedures in California. The compensation of the Mediators and Arbitrators shall be provided by the OCIP Insurer. Pending such agreement under Section 3, should there be a need for a Mediator and/or Arbitrator to undertake proceedings required by these provisions, such shall be requested from and appointed pursuant to the rules of the Division of Industrial Relations with regard to the appointment of Arbitrators under the Code for workers' compensation matters, but may not be an attorney engaged in private practice on behalf of either applicants or insurers.

(2) When an employee's workers' compensation benefits are denied, reduced or terminated, or otherwise affected, the employee shall be provided with a written Notice ("Notice") of such action, in a procedural and substantive format similar to those prescribed in Section 4061 of the Code, by the OCIP Insurer, by first class mail. The Notice shall include a summary of the reasons for the action, in terms reasonably calculated to be understandable by the employee.

Within thirty (30) days of the employee's receipt of such Notice, or whenever an employee believes that he/she is not receiving the benefits to which he/she is entitled, including medical and hospital services, the employee shall notify the Ombudsperson. The Ombudsperson shall explain to the employee the response to any employee question or complaint in terms that are understandable by the employee. The Ombudsperson shall maintain a record of all activity affecting any individual employee with whom he/she is involved by reason of these provisions or where he/she becomes aware or reasonably should become aware that such employee should be involved in these procedures, including the date of each notification and request for intervention of the Ombudsperson, the date of each response, the receipt of a form requesting mediation, and the date of reference of that form to the Mediator. All records kept by the Ombudsperson shall be a form consistent with record keeping requirements under the Act, if any.

(3) If the issue cannot be resolved to the satisfaction of the employee and the OCIP insurer within the fifteen (15) business days after the date of notification to the Ombudsperson, the aggrieved party may apply for mediation on the form available from the Ombudsperson. Such form shall be filed with the Ombudsperson, who shall promptly notify the appropriate Mediator and furnish the Mediator with a copy of the Notice. The parties to the dispute may extend the fifteen (15) business day period

by mutual agreement, and no issue shall proceed to mediation without first being presented to the Ombudspersons.

(c) Mediation. Application for mediation shall be made not more than twenty-five (25) business days after the Ombudsperson has responded to the employee's request for assistance. Failure to timely request mediation will bar any further right to adjudicate the issue. The parties intend that such mediation will be a meaningful informal, non-adversarial effort to resolve all legitimate claims fairly without resort to adversary proceedings or unnecessary procedures. The Mediator will contact the parties to the dispute (the employee and the OCIP Insurer) and take whatever steps he/she deems necessary to bring the dispute to an agreed conclusion. At any mediation, the OCIP Insurer and the employee (and an adviser to the employee) may be present. The mediation must be attended by persons with authority to resolve the dispute.

Mediation shall be completed not more than fifteen (15) business days from the date of referral, unless otherwise agreed by the parties to the dispute, including the Mediator, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the Mediator and the mediation process. The Parties to the dispute may agree in writing to extend such time for a period certain. Neither party will be permitted to be represented by legal counsel at mediation. All communication between the Mediator and the parties shall be directly with the parties to the dispute, unless disability or linguistics dictate the need for a surrogate. In no case may the surrogate act in the capacity of attorney of record.

If, after the completion of the mediation process, the parties to the dispute are unable to reach agreement, either the employee or the OCIP Insurer may file with the Ombudsperson, within thirty (30) business days of the completion of the process, a request that the matter be referred to Arbitration. Immediately upon receipt of the request, the Ombudsperson shall notify the appropriate Arbitrator from the Panel designated by the parties to this Agreement, as well as all parties to the dispute, that a request for Arbitration has been received and the Arbitrator shall set a date for a hearing, to be commenced no later than forty-five (45) calendar days after the Arbitrator has received Notice of the Request for Arbitration.

(d) Arbitration. The Arbitration proceeding will be conducted pursuant to the rules and regulations applied by workers' compensation judges under the Code (including rules of evidence and burden of proof), and the Arbitrator shall have the same powers and authority as such judges (and, as appropriate, referees), except as such rules, regulations or powers are specifically modified or supplemented by this Agreement or otherwise in writing by the parties to this Agreement. The arbitration proceeding shall be completed within ten (10) business days of its commencement unless otherwise ordered by the Arbitrator, in his/her sole discretion, to further the interest of fairness to all parties to the dispute and/or completeness of the record. Except in extraordinary circumstances, such extension shall not exceed forty-five (45) days. The Arbitrator shall render a decision within ten (10) business days of the completion of the proceedings. The Arbitrator's decision shall be written in a form consistent with WCAB practices and

his/her findings of fact, award, order, or decision shall have the same force and effect as that of a workers' compensation judge and be subject to enforcement proceedings and/or review as provided in Section 3201.5(a) (1) of the Code. No written or oral offer or recommendation made during the mediation process by any party or the Mediator shall be admissible in the Arbitration proceedings.

(1) The hearing shall be held in a location convenient to the parties to the dispute as determined in the sole discretion of the Arbitrator, but unless otherwise agreed by the parties to the dispute, no further than fifty. (50) miles from the employee's residence at the time-he/she was/is working under this Agreement. The proceeding shall be electronically recorded.

(2) In any case that has been assigned to an arbitrator for hearing hereunder, the arbitrator shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case. The decision of the arbitrator is subject to review by the Workers' Compensation Appeals Board (WCAB) in the manner required by Labor Code Section 3201.5, and shall have the same force and effect as an award, order, or decision of a Workers' Compensation Administrative Law Judge.

(3) Arbitration will be conducted pursuant to the rules of the American Arbitration Association, or such other rules agreed to by the Committee, using the arbitrator assigned by the Committee. Unless the parties to the matter otherwise mutually agree, arbitration proceeding shall be completed in not more than 30 calendar days after referral, and an arbitration decision rendered within 10 working days of the completion of the proceedings. The arbitrator's decision shall be in written form consistent with the WCAB practices.

(4) No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.

(5) The arbitrator may in his/her sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue, the cost to be paid by the OCIP Insurer. The Arbitrator may appoint a trustee or guardian ad litem to appear for and represent any minor or incompetent upon the terms and conditions which he or she deems proper. The Arbitrator may provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, service provider or otherwise.

(6) Either side may request the appearance of the treating physician and question him or her at arbitration. If the Arbitrator requests the appearance of a treating physician, or otherwise appoints an authorized health care professional to assist in the resolution of any medical issue, the expense will be borne by the OCIP Insurer.

(7) The decision of the Arbitrator, including his/her findings of facts award, or order, shall have the same force and effect as an award, order or decision of a workers compensation Judge, and shall be subject to review by the Workers' Compensation' Appeals Board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by such judge pursuant to the procedures set forth in Article I (commencing with Section 5900) of Chapter 7 of Part IV of Division 4, in the Court of Appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part IV of Division 4.

(8) Any and all settlements and/or compromises between an employee and an insurer involving a workers compensation claim arising on this Project and under this Agreement shall be subject to the same appeals and review by the Arbitrator as if he were sitting as a referee under the Code, and appealed to the WCAB to the extent permitted by the Code.

(9) The Arbitrator shall issue an order terminating temporary disability benefits in the event an injured worker is found to be temporarily partially disabled and offered a modified duty return to work program consistent with the restrictions provided by the treating physician. Upon return to modified duty, the injured employee shall be paid his regular wage and benefit package pursuant to the collective bargaining agreement.

(10) The Arbitrator shall not have the authority to resolve petitions filed pursuant to Labor Code section 132a and shall not have the authority to resolve issues involving Serious and Willful Misconduct petitions filed pursuant to Labor Code Section 4551 et seq. The Arbitrator shall retain authority over the underlying claim.

(e) Notwithstanding any provision of this Attachment to the contrary, an employee who has received benefits under this Attachment, and who is subsequently injured while in the employ of an employer not covered at this time by this Attachment, shall have full access to the workers' Compensation Appeals Board Procedures in effect at the time on any matter involving apportionment due to the subsequent injuries or subsequent exacerbation of the preexisting condition, and the provisions of this Attachment shall not, in such cases, be applied or asserted to diminish any rights such an employee might otherwise have had, had it not been for the existence of this Workers' Compensation Attachment.

Section 7. General Provisions.

(a) Except for payments resulting from awards for violation of Labor Code 132a and serious and willful misconduct claims (which are the responsibility of the employer), all payments required to be made by Contractors pursuant to this Attachment, shall, in accordance with California law, be made by the OCIP Workers Compensation insurer. Similarly, all actions required by law to be undertaken by the insurer rather than the contractor shall be performed by the OCIP Workers' Compensation Insurer. The OCIP Insurer and/or the Ombudsperson will provide all notices to the employees and/or

applicants, and in such form, as are required to be issued or otherwise referenced in the workers' compensation provisions of the Code.

(b) If any provisions of Sections 1 through 6 of this Attachment or their application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or application of such Section or of the remainder of this Agreement that can be given effect without the invalid provision or application. To implement this provision it is understood that the provisions of this Attachment are declared to be severable. Further, in the event of legal action contesting the legality of Sections 1 through 6 of this Attachment, or any portion of them, the parties agree to jointly defend such provision and such Sections and shall actively assist each other in such defense.

(c) It is the intent of the parties to meet the spirit and letter of the requirements of Section 3201.5 of the Labor Code. To the extent that the Department of Industrial Relations, Division of Workers' Compensation, succeeds in enjoining or otherwise preventing the application of part or all of the Program and provisions above, by an order of the final court of competent jurisdiction, the parties shall meet expeditiously to adjust this Attachment to meet the requirements of the Code, and failing to reach agreement within thirty (30) days after notification of such failure to comply by the Division, the matter shall be referred to [Impartial Arbitrator] for development of an appropriate provision or provisions consistent with the spirit of this Attachment.

(d) No employee shall be denied the right to consult and/or be advised by legal counsel of his/her choice, if desired, at any time during the processes established herein. However, it is recognized that the ADR Program here established is intended to be non-adversarial, and until an appeal beyond mediation, no attorney shall participate in the system as counsel of record for either the employee or the OCIP Insurer. Counsel fees shall be the sole responsibility of the person consulting with an attorney.

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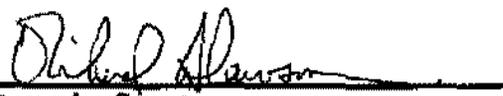
For the Los Angeles Community College
District:


LACCD Representative

Executive Director
Title

2/9/05

For the Unions:


Executive Secretary
Los Angeles – Orange County Building
and Construction Trades Council