

**NA<sup>3</sup> ALTERNATIVE DISPUTE RESOLUTION  
PROGRAM FOR WORKERS COMPENSATION**



Administered by  
Workers' Comp Solutions, LLC

On behalf of

**AMERICAN BUILDING MAINTENANCE &  
SEIU-USWW**

©WCS 2011

## **Application for Approval of a Workers Compensation Carve-Out Program**

This application is submitted to the Administrative Director of the California Department of Industrial Relations pursuant to CA Code of Regulations 10202: Procedure for Recognizing Labor-Management Agreements Under Labor Code 3201.7. The parties identified herein intend to establish a collectively bargained workers compensation program pursuant to the California laws and regulations noted herein.

Per CCR 10202, the following items are enclosed.

### **Employer Required Information**

- A copy of the 3201.7 provision ("Agreement")
- The approximate number of employees covered under the Agreement
- Validation of current Collective Bargaining Agreement
- Employer contact information
- Valid and active license(s) of participating employer(s)
- Evidence of suitable annual workers compensation costs and/or premium
- Confirmation of Data Submission Requirements

### **Union Required Information**

- Most recent LM-2
- Statement of True Copy of LM-2
- Union contact information
- Evidence of bona fide labor organization

## **Employer Required Information**

- A copy of the 3201.7 provision (enclosed)
- Approximate # of employees covered under the Agreement (below)
- Validation of current Collective Bargaining Agreement (enclosed)
- Employer contact Information (below)
- Valid and active license of participating employers (enclosed)
- Evidence of suitable annual workers compensation costs (enclosed)
- Confirmation of data submission requirements (enclosed)

The enclosed workers' compensation carve-out program agreement has been collectively bargained by SEIU-USWW and American Building Maintenance (ABM).

This Agreement is intended to cover the approximately 100 SEIU-USWW members who are employed by ABM and provide janitorial services to the retail food industry in all southern California counties.

The employer contact for this carve-out program is:

James Beard  
Beard Affiliates  
5 Thomas Mellon Circle – Suite 111  
San Francisco, CA 94134  
(415) 468-9697

**Alternative Dispute Resolution (“ADR”) Agreement  
for Workers’ Compensation Claims**

Between

Service Employees International Union – United Service Workers West

and

American Building Maintenance

This ADR Agreement is made and entered into on the date of signature, by and between American Building Maintenance (hereinafter “the Employer” or “the Employer Association”) and Service Employees International Union – United Service Workers West (hereinafter “the Union”). The term “parties”, as used herein, shall refer to the Employer and the Union. This ADR Agreement shall apply only to the Employer and the Union who have signed a Labor Management ADR Agreement under California Labor Code Section 3201.7, negotiated separate and apart from any Collective Bargaining Agreement (hereinafter “CBA”) covering affected Employees. This ADR Agreement is the result of the “Program Administrator Agreement” previously signed by the signatories of this ADR Agreement and WCS on November 1, 2010.

## ARTICLE I

### PURPOSE

1.1 It is the intent of this ADR Agreement to provide Employees, who claim to have sustained occupational injuries or illnesses arising out of and occurring in the course of employment (hereinafter “injuries”) under the California Workers’ Compensation Law, California Labor Code Section 3600 et. seq. (hereinafter “the Law”), with improved access to high-quality medical care, to reduce the frequency and severity of disputes, and to provide an efficient and effective method of dealing with disputes that do arise resulting from such injuries by utilizing the provisions of SB 228, chapter 639 of the 2003 session of the State of California Legislature, Labor Code Section 3201.7. The program fulfilling the above purpose shall hereinafter be referred to as the “ADR Program.”

## ARTICLE II

### SCOPE OF ADR AGREEMENT

2.1 This ADR Agreement, which was negotiated by the Employer and the Union, shall apply only to the Employer who signs this ADR Agreement. The term “Employer” as used herein, shall refer to such firm.

2.2 This ADR Agreement shall apply only to injuries, as defined by the Law, sustained by Employees covered by the relevant Collective Bargaining

Agreement(s) during their employment by an Employer in California during the term of this ADR Agreement.

2.3 This ADR Agreement shall apply to all claims, causes of action and affirmative defenses, including Serious and Willful claims under Labor Code Sections 4551, et seq.

2.4 This ADR Agreement shall remain in effect until December 31, 2012 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 this ADR Agreement with a 90 day written notice. Any individual Employer wishing to withdraw from this ADR Agreement may do so upon notifying the Joint Labor Management Committee in writing 90 days prior to the termination date. Upon termination or withdrawal, any case involving an injury which occurred during the term of the ADR Agreement, or during the term this ADR Agreement was applicable to the withdrawing Employer, shall continue and be resolved subject to the terms of this ADR Agreement.

2.5 This ADR Agreement represents the complete understanding of the parties with respect to the subject matter dealt with herein.

2.6 Per the above referenced "Program Administrator Agreement," it is noted that the Joint-Labor Management Committee established herein will receive annually, or more frequently if requested and feasible, data which

shows the savings, if any, realized by participating Employers based on indications such as Workers Compensation insurance premium costs, or the total or average cost of Workers Compensation claims, during a defined annual period or other period of time.

2.7 In any instance of conflict, the provisions of the ADR Agreement shall take precedence over provisions of the Law, so far as permitted by the provisions of Labor Code 3201.7 of the State of California.

### ARTICLE III

#### ROLE OF JOINT LABOR-MANAGEMENT COMMITTEE

3.1 There shall be a Joint Labor-Management Committee and referred to in the alternative herein as the "JLM Committee". The JLM Committee shall have full authority to operate and manage this ADR Program, including the obligation to promulgate rules for its operation. The JLM Committee shall have an equal number of members representing the Employer and the Union. The terms of the appointees shall run concurrent with the term of this ADR Agreement. The JLM Committee will be chaired jointly by Employer and Union Co-Chairpersons.

3.2 Meetings will be held every three (3) months unless the parties mutually agree otherwise and/or when called by the Chairperson. The parties agree, wherever possible, they will notify each other of items to be

included on the agenda for the meeting no less than three (3) days prior to the scheduled meeting date.

3.3 The JLM Committee shall supervise all matters involving implementation and conformity with the provisions of this ADR Agreement and California Workers' Compensation Law and Labor Codes. The JLM Committee shall have full power and authority to develop and implement any procedures the JLM Committee deems necessary to carry out, or affect the purpose and scope of this ADR Agreement. In case of a deadlock, the matter in dispute shall be referred to the American Arbitration Association, (AAA), for expedited adjudication. The Arbitrator's decision shall be final and binding upon both parties hereto.

3.4 The JLM Committee is hereby instructed and authorized to select an ADR Program Administrator at such time as is possible and practical. The ADR Program Administrator shall have the authority to appoint an Ombudsperson who shall be paid by the Employer where self-insured and by the carrier where insured. The JLM Committee shall delegate, to the Ombudsperson the responsibility and authority deemed necessary by the JLM Committee.

## ARTICLE IV

### AUTHORIZED MEDICAL PROVIDERS

4.1 All medical and hospital services required by Employees, subject to this ADR Agreement, as the result of a compensable injury, shall be furnished by health care professionals and facilities selected by the Employee from a list of health care professionals and facilities authorized by the JLM Committee. This list, hereinafter referred to as "Exclusive Medical Providers List," shall constitute an exclusive list of all medical providers eligible to treat employees under the jurisdiction of this ADR Agreement. This list can be changed at anytime by the JLM Committee. Any health care professionals not listed on the approved list of authorized providers may be submitted to the JLM Committee for review and inclusion. All authorized providers shall be Board Certified in their respective specialties assuming such is available in the geographical area.

4.2 A nurse advocate shall be selected by agreement between the JLM Committee and the ADR Program Administrator. The nurse advocate shall be responsible for immediately contacting the injured employee upon notice of an industrial injury or illness claim and for coordinating the provision of the employee's medical treatment. This coordination shall include, but not be limited to, assistance in identifying the highest quality medical provider

available, facilitating and assuring adequate communication between the injured employee and his or her primary treating physician and any specialists required, and confirming the medical necessity and appropriateness of the treatment plan prescribed by the primary treating physician in consultation with the ombudsperson.

4.3 In case of emergency, when no authorized provider is available, the Employee may seek treatment from a health care professional or facility, not otherwise authorized by this ADR Agreement, to provide treatment during the emergency. Responsibility for treatment shall be transferred to an authorized provider as soon as possible consistent with sound medical practices.

4.4 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 will be made only with the recommendation of the nurse advocate.

4.5 The Employer shall not be responsible for the cost of medical services furnished by a health care professional, or facility not authorized pursuant to the ADR Agreement. Nothing in this Article shall be construed to create a right for an Employee to receive care at Employer expense that is not reasonably required to cure or relieve a work related injury.

4.6 The list of authorized providers shall include, but not be limited to, providers within the following specialties:

Audiology

Cardiology

Chiropractic

Dermatology

General Practice

Internal Medicine

Neurosurgery

Neurology

Occupational Medicine

Oncology

Ophthalmology

Orthopedics

Psychiatry

Pulmonary/Respiratory

Radiology

4.7 The parties to this ADR Agreement may include providers from additional specialties, or providers who are not specialists on the list of authorized providers furnishing treatment to an Employee. If the authorized

provider determines consultation or treatment is necessary from a specialty for which no authorized provider has been selected through this ADR Agreement, or in the event the distance makes it impractical for treatment from the authorized provider, the authorized provider and injured Employee shall mutually select the additional specialist, or the additional provider, who offers treatment at a distance that is as close as reasonably possible for the Employee.

4.8 Both the Employer and the Employee may request a second opinion from an authorized provider regarding diagnosis, treatment and evaluation of a related issue. Only one such second opinion shall be permitted by either party for any issue, unless the nurse advocate authorizes an additional opinion.

## ARTICLE V

### MEDICAL EVALUATORS

5.1 All eligible medical evaluators to be accessible to the parties in workers' compensation claims shall be selected and listed by the JLM Committee. This list, hereinafter referred to as the "Authorized Medical Evaluators List," shall list all of the physicians that may serve as medical evaluators. The list may be changed by the JLM Committee as necessary.

5.2 The parties to a workers' compensation claim may each select a medical evaluator from the Authorized Medical Evaluators List prepared by the JLM Committee, in each medical specialty relevant to the injury or illness in dispute. No more than one medical evaluator may be selected in each specialty, in each case, absent a showing of good cause to the contrary.

5.3 The parties may agree to an Agreed Medical Evaluator ("AME"), but only where the injured employee is represented by counsel.

## ARTICLE VI

### DISPUTE RESOLUTION

6.1 The parties hereto acknowledge the provisions of California law governing the adjudication of disputed Workers' Compensation claims have resulted in delay, increased expenses, and other inefficiencies which result in undue detriment to Employees and Employers. In recognition of the foregoing, the parties hereby establish the exclusive Alternative Dispute Resolution Program (hereinafter "Program") set forth below.

6.2 The Alternative Dispute Resolution Program will consist of three components:

Ombudsperson

Mediation

## Arbitration

6.3 This Program shall replace all of those dispute resolution processes, to the maximum extent permitted by law, including those authorized pursuant to California Labor Code Section 3201.7, except for disputes between a party to this ADR Agreement and a person or entity who is not subject to the provisions of this ADR Agreement by subscription or law, unless such third party or entity agrees in writing to submit to the jurisdiction of this Alternative Dispute Resolution Program.

Any claim subject to this ADR Agreement filed with the Workers' Compensation Appeals Board ("WCAB") for Resolution will immediately be removed and placed within the program established by this ADR Agreement. This is the sole means of dispute resolution and no dispute shall proceed to the California WCAB until it has completed the ombudsperson, mediation, and arbitration processes defined by this ADR Agreement. Except where provided otherwise in this ADR Agreement, the mediation and arbitration processes shall be conducted in accordance with the program's Rules for Alternative Dispute Resolution. The Rules of Practice and Procedure of the WCAB may supplement the program's rules where necessary. Any disputes over discovery shall be submitted to the dispute resolution process called for under this ADR Agreement and shall be

determined in accordance with the applicable discovery rules for proceedings before the WCAB.

6.4 The ombudsperson shall receive complaints from Employees who have filed claims for Workers' Compensation benefits, subject to this Article, and upon request of the Employee shall assist the Employee in attempting to resolve those disputes with the Employer subject to this Article. The ombudsperson shall, upon request of an Employee, assist the Employee in filing the request for mediation and arbitration related to alleged work-related injuries subject to this Article. The Employer may also file a request for mediation and arbitration and may seek the assistance of the ombudsperson, if necessary, for that purpose.

6.5 An Employee covered by this ADR Agreement who believes that he/she is not receiving compensation to which he/she is entitled, including medical and hospital services, shall notify the ombudsperson immediately. It is expected that the Employee will contact the ombudsperson immediately. If the issue cannot be resolved to the satisfaction of the Employee within thirty (30) days, the Employee shall apply for mediation on a form provided (Mediation Request Form). This thirty (30) day period may be extended upon a showing of good cause. The ombudsperson shall assist the Employee in filing the application for mediation. No issue will proceed to

mediation without first being presented to the ombudsperson. The response of the ombudsperson to the Employee shall be explained in terms which are readily understandable by the Employee, to the greatest extent possible. The ombudsperson shall maintain a log recording all ombudsperson activity including the date of each notification and the date of each response. The Employer shall also be allowed to file a written request with the ombudsperson to assist in resolving a dispute involving either or both of the parties hereto, provided the dispute is related to a claim of industrial injury covered by this ADR Agreement.

6.6 Any application for mediation shall be immediately assigned to a mediator, selected under this ADR Agreement. The mediator will contact the parties to the dispute and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.

6.7 The mediator, subject to this ADR Agreement, shall be from a list mutually agreed to by the parties to this ADR Agreement and who has experience and is knowledgeable in the Workers' Compensation Industry. As needed, this list may be modified by the JLM Committee.

6.8 Mediation shall be completed as expeditiously as possible. In no event shall an issue be permitted to proceed beyond the mediation unless and until the parties cooperate with the mediator and the mediation process.

6.9 Upon the request of any party or the mediator, the nurse advocate may be invited to attend the mediation.

6.10 Nothing in this ADR Agreement shall be interpreted so as to deny, to any Employee, the right to representation by counsel at all stages during the Alternative Dispute Resolution process.

6.11 Within thirty (30) days after completion of the mediation process, any party not satisfied with the outcome shall file with the ombudsperson a request in writing that the dispute be referred for arbitration on a form provided (Arbitration Request Form). This time period may be extended by the ombudsperson by a showing of good cause. Upon receipt of such a request, the ombudsperson shall immediately refer the dispute for arbitration as provided herein.

6.12 The arbitrator shall have experience in Workers' Compensation. The arbitrator shall be assigned by the ombudsperson, or its designee for such purpose, from the list of arbitrators agreed to by the JLM Committee (Arbitrators List). As needed, this list may be modified by the JLM Committee. In any case which has been regularly 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 WCAB, in the manner required by Labor Code Section 3201.7, and shall have the same force and effect as an award, order, or decision of a Workers' Compensation Judge.

6.13 Arbitration will be conducted pursuant to the program's Rules for Alternative Dispute Resolution, supplemented by the Workers' Compensation Appeals Board's Rules of Practice and Procedure. The arbitrator's decision shall be written in a form consistent with the WCAB practices.

6.14 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.

6.15 Applicant's attorneys shall be paid in accordance with WCAB practices.

6.16 The mediator, or arbitrator, may in his sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue, the cost of which is to be paid by the Employer.

6.17 The parties may submit a proposed settlement to the ombudsperson, at any time, for assignment to an arbitrator for expeditious issuance of award and/or order. Any such settlement shall be in the form of a Compromise and

Release Agreement or in the form of Stipulations with request for Award. The settlement shall be filed on a pre-printed form approved by the JLM Committee. The JLM Committee may create a separate list of arbitrators to handle settlements under separate contract(s) and change such list at their discretion.

6.18 It is agreed that the JLM Committee may assign the ombudsperson, mediator, and arbitrator to geographical areas in order to better serve injured workers.

6.19 Ombudsperson services may be provided by individuals, corporations, or other business entities formed for the purpose of providing such services. Ombudspersons shall have experience in the field of workers' compensation.

## ARTICLE VII

### MISCELLANEOUS ISSUES

7.1 All payments required to be made by the Employer pursuant to this ADR Agreement shall be in accordance with California law.

7.2 Upon termination of this ADR Agreement, the Union and the Employer shall take whatever steps necessary to insure all obligations under this ADR Agreement are fulfilled until all claims subject to this ADR Agreement are resolved.

7.3 In the event of legal action contesting the legality of this ADR Agreement, or any portion of it, the Employer shall pay the cost of defending the ADR Agreement and shall actively assist in such defense and shall solicit the participation and financial assistance of other interested parties in such defense.

7.4 If any provision of this ADR Agreement or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or applications of this ADR Agreement that can be given effect without the invalid provisions or application and to this end, the provisions of this ADR Agreement are declared to be severable.

7.5 The parties mutually represent and warrant they have complied with the requirements of Labor Code Section 3201.7. The parties specifically agree to hold harmless and indemnify each other against any and all claims, actions, or complaints arising from a failure to comply with any obligation under Labor Code Section 3201.7. The mutual duty to indemnify includes the obligation to make the other party whole for any loss or damage arising from a claim, action, or complaint and specifically includes the payment of attorney's fees and costs incurred in the defense of such claim, action, or complaint. Each party shall retain the right to conduct its own defense of any claim, action, or complaint arising under this provision and shall retain

the right to select counsel of its choosing for such defense. The right to indemnify, provided under this provision, shall extend to the right to recover attorney's fees and costs incurred to enforce the rights set forth herein.

IN WITNESS WHEREOF, this ADR Agreement has been executed by the parties herein as of the date and year first above written, in the City of San Francisco, County of San Francisco, State of California.

ACCEPTED BY THE UNION listed above:

\_\_\_\_\_  
Union Representative Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Union Representative Title

ACCEPTED BY THE EMPLOYER(S) listed above:

James Beard  
Employer Representative Signature

James O Beard  
Print Name

6-10-11  
Date

Representative  
Employer Representative Title

IN WITNESS WHEREOF, this ADR Agreement has been executed by the parties herein as of the date and year first above written, in the City of San Francisco, County of San Francisco, State of California.

ACCEPTED BY THE UNION listed above:

*Mark Sharwood*

Union Representative Signature

MARK SHARWOOD

Print Name

6/10/11

Date

BARGAINING DIRECTOR

Union Representative Title

ACCEPTED BY THE EMPLOYER(S) listed above:

\_\_\_\_\_  
Employer Representative Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer Representative Title