

## **IRONWORKERS WORKERS' COMPENSATION ADDENDUM**

This addendum to the Master Collective Bargaining Agreement is entered into between the Associations comprising the California Ironworkers Employers Council, Inc. ("Association"), Individual Contractors (Contractors who qualify individually under the State of California requirements for a "Carve Out" program) as listed in Attachment "A", and the District Council of Iron Workers of the State of California and Vicinity ("Union"), pursuant to California Labor Code Section 3201.5. It is the intent of the parties to improve the delivery of benefits and resolution of disputes for workers who claim Workers' Compensation benefits under the laws of the State of California and to reduce the waste and excessive costs that have historically been associated with the delivery of those benefits. Nothing in this Addendum diminishes the entitlement of an employee covered by this Addendum to compensation payments for total or partial disability, vocational rehabilitation, medical treatment and other benefits as required by California law fully paid for by the employer.

### **SECTION 1**

#### **GENERAL PROVISIONS**

1.1. This Addendum shall become effective January 1, 2003, and shall remain in effect for at least one year from the date of its execution. Thereafter, it shall continue and remain in force from year to year, unless terminated by one of the bargaining parties. The Association, Individual Contractor, or the Union may withdraw from this Addendum on its anniversary date by giving written notice not less than sixty (60) nor more than one-hundred twenty (120) days prior to the anniversary date of the Addendum. An insured employer may withdraw from this Addendum by giving written notice to the Trust Fund and Program Representative not less than thirty (30) nor more than one-hundred twenty

(120) days prior to the end of the policy period. A self-insured employer may withdraw from this Addendum by giving written notice to the Trust Fund and Program Representative not less than sixty (60) nor more than one-hundred twenty (120) days prior to the anniversary date of the employer's written acceptance of this Agreement. Upon termination of this Addendum in its entirety or with regard to a specific employer, the affected Employer and its employees shall become fully subject to the provisions of the California law to the same extent as they were prior to the implementation of this Addendum. Any claim arising from an accident or illness sustained before the termination of this Addendum shall continue to be covered by the terms of this Addendum, except that a claim remaining open more than three years after the complete termination of this Addendum shall revert to the standard statutory program. If any issue involved in a claim has been arbitrated under this Addendum, the employer and the employee shall not be permitted to raise identical issues under the statutory system.

- 1.2. Each individual employer member or the Association shall have the right to determine whether it will participate in this Addendum, and may select its own insurance agent or broker for participation under this Addendum, or have the right to be self-insured. An insurance carrier that wishes to insure an employer who is signatory or wishes to become signatory to this Addendum or a self-insured employer that wishes to become signatory to this Addendum must agree to abide by all terms and conditions of this Addendum, including the use of the dispute resolution process and personnel selected by the Trustees, and the medical network and related medical case management personnel also established under this Addendum. Any such insurance carrier or self insured employer must also establish to the satisfaction of the Trustees that it has the ability to provide benefits in a

timely fashion, without unnecessary delay or litigation, and that it can comply with the spirit and intent of this Addendum and the program established under it. The Trustees can revoke an insurance carrier or self-insurer's privilege to participate in this Addendum at any time for failure to comply with this Addendum.

- 1.3. This Addendum shall apply only to employees whose employment is or was covered by an appropriate Union collective bargaining agreement and this Addendum and any successor Addendum and shall apply only to employees' claims for Workers' Compensation benefits payable by an employer bound to this Addendum and which claims are subject to the laws of the State of California, and which are sustained during their employment by the employer on or after the effective date of this Addendum, irrespective of the date of claim.
- 1.4. All payments required to be made by an insured Employer pursuant to this Agreement shall, in accordance with the law, be made by its workers' compensation insurance carrier, hereinafter the "Insurance Carrier". Similarly, all actions required by the law to be undertaken by the Insurance Carrier rather than the Employer shall be performed by the employer's insurance carrier.
- 1.5. The parties agree that injured employees whose claims are covered by this Addendum and who are receiving weekly temporary total disability benefits for such claims shall receive weekly temporary total disability benefits that are subject to a maximum weekly benefit that is one hundred ten percent (110%) of the maximum weekly benefit that is otherwise applicable under state law.
- 1.6. The California Ironworkers Workers' Compensation Trust shall administer the Program established under this Addendum. The Trust shall have, in addition to rights granted similar Trusts, the authority to set policies and make rules for the administration of the

program established under this Addendum, including the expansion of the number of Trustees.

- 1.7. This Agreement represents the complete understanding of the parties with regard to the subject matter dealt with herein, and shall not be construed to modify the provisions of the California Workers' Compensation Law except as specifically set forth in this document or in the rules adopted by the Trust. In any instance of conflict with the California Workers' Compensation Law, the provisions of this Agreement shall take precedence over provisions of the Law, but only so far as permitted by the provisions of California Labor Code Section 3201.5.

## **SECTION 2**

### **MEDICAL BENEFITS**

- 2.1. The Trustees of the Field Ironworkers Health & Welfare Trust Fund have established a network of health care providers, to be known as "Authorized Providers". Subject to the exceptions set forth in this Addendum and/or as modified by mutual agreement, the Authorized Providers shall be the exclusive source of all medical treatment required under California Labor Code Section 4600, including medical case management and/or patient advocacy services. All Authorized Providers must be board certified in their respective specialties, where applicable. Attached hereto and marked Attachment "B" is a listing of the current network providers. The parties hereby agree that from time to time the list may be revised by the Trustees of the Ironworkers Workers' Compensation Trust ("Trustees") to incorporate additions and deletions to the network. 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. A physician that an employee has designated in writing as

his or her personal physician as defined in California Labor Code Section 4600 shall also be considered an Authorized Provider, if the employee has notified the employer in writing prior to the date of the industrial injury of the name, address and telephone number of such designated physician.

- 2.2. In the event of a lost time injury the employer or insurance company must notify the Program Representative within 24 hours of the first report of injury and provide the name, address and telephone number of the injured employee.
- 2.3. The Trustees have approved the Qualified Medical Evaluators listed on Attachment "C" hereto. The Trustees may modify the list from time to time. They shall serve as the exclusive source of comprehensive medial-legal evaluations, other than those received from treating physicians, to be obtained by the employees covered by this Addendum and the insurers of employers who are parties to this Addendum as to claims for Workers' Compensation benefits that are subject to this Addendum.
- 2.4. The selection of an Authorized Provider from the network of providers is in the sole control of the injured employee. After selecting an Authorized Provider to furnish treatment, 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. Thereafter, additional changes will be made only with the agreement of the Employer.
- 2.5. In an emergency the employee may seek treatment from a health care provider or facility not otherwise authorized by this Addendum in order to obtain treatment during the emergency. Responsibility for treatment shall be transferred to an Authorized Provider as soon as possible, consistent with sound medical practices.

- 2.6. In the event that an Authorized Provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no Authorized Provider has been selected through this Addendum, or in the event that distance makes it impractical for continuing treatment from an Authorized Provider, the Authorized Provider shall, in consultation with the employee, the Employer, and the case nurse, select the additional specialist or the additional provider who offers treatment at a distance not greater than 40 miles one way for the employee.
- 2.7. Medical care obtained from a provider not authorized by this Addendum shall not be provided at the expense of the Employer. Nothing in this Addendum 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.
- 2.8. No provision of this Addendum shall be construed to relieve the employer from its responsibility under the California Labor Code Section 4600 to provide care that is reasonably required to cure or relieve a work-related injury. In no event shall the Field Ironworkers 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.
- 2.9. Both the Employer and the employee may request a second opinion from an Authorized Provider and/or Qualified Medical Examiner regarding diagnosis, treatment, evaluation or related issues. Only one such second opinion shall be permitted by each party for any issue. It is recognized that resolution of questions concerning an employee's medical condition may involve multiple issues and the need for second opinions from more than one specialty. A request for examination by a physician in a specialty that has not been prescribed by the treating physician shall be considered a request for a second opinion.

- 2.10. Both the Employer and the employee shall be bound by the opinions and recommendations of the Authorized Providers selected in accordance with this Addendum. In the event of disagreement with an Authorized Providers findings or opinions, the sole recourse shall be to obtain a second opinion from another Authorized Provider and/or a Qualified Medical Examiner and to present the opinions through the dispute prevention and resolution procedure established in this Addendum. A mediator or arbitrator may in his or her sole discretion appoint an authorized health care provider and/or Qualified Medical Examiner to assist in the resolution of any medical issue, the cost to be paid by the employer.
- 2.11. The parties to this Addendum agree that it is in their mutual best interests to establish a schedule of fees that an Authorized Provider may charge for providing documents and narrative reports. The parties will in consultation with Authorized Providers work to establish such a schedule.
- 2.12. Attached hereto and marked Attachment "D" is a panel of exclusive qualified rehabilitation representatives and independent vocational evaluators approved by the Trustees. The Trustees may subsequently select additional representatives and evaluators. Should an injured worker subject to this Addendum be determined to be a "qualified injured worker" within the meaning of California Labor Code Section 4635 and should the injured employee desire vocational rehabilitation benefits, the injured employee 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 dispute prevention and resolution process contained in this Addendum.

- 2.13. For Iron Workers permanently injured and who cannot return to iron work the Trustees will work towards establishing a Vocational Rehabilitation Program that can train Iron Workers in occupations that are in related fields whenever possible. These occupations may include but are not limited to, estimators, inspectors, OSHA inspectors and such other occupations in the construction industry.
- 2.14. If the Employer is controverting the underlying compensability of a claim, the employee is not bound by this Article, other than the use of the list of Qualified Medical Examiners established under this Addendum, pending the resolution of the controversy. Any issue of compensability shall be resolved under Section 3 of this Addendum. If the claim is found to be compensable, the Employer will be responsible for payment for the health care rendered to the employee as required by the law.
- 2.15. The injured employee not determined to be a “qualified injured worker” as defined in paragraph 2.12 may return to modified or light duty work provided the treating physician has reviewed the description of the modified duties and determined the performance of those skills will not further injure the employee. The injured worker returning to modified work will be paid at the rate specified in the Collective Bargaining Agreement.

### **SECTION 3**

#### **DISPUTE PREVENTION AND RESOLUTION**

- 3.1. The dispute prevention and resolution program shall consist of three components:

Program Representative (Ombudsman)

Mediation

Arbitration.

This program shall be used in place of the filing of an application with the WCAB. Any claim subject to this Addendum filed with the WCAB for resolution will immediately be removed and placed within the program established by this Addendum. This program is the sole means of dispute resolution and no dispute shall proceed to the California Workers' Compensation Appeals Board until it has completed the processes defined and established by this Addendum.

3.2. The ADR process may be utilized for cases involving cumulative trauma provided that at least one of the employers is a participant in this agreement. The insurance carriers of previous employers may elect to participate in the ADR process provided they agree to be bound by the decision reached through the Mediation/Arbitration portion of this Agreement. When the ADR process is not utilized the cumulative trauma case will be handled through the current statutory process.

3.3. The Trustees shall provide for the preparation of explanatory material, which will be distributed to all current and newly hired employees employed by an employer subject to this Addendum, either before or after injury, or both. The material shall contain an explanation of the program and the rights and responsibilities of the respective parties and of the program representative, mediator and arbitrator. The material shall also contain an explanation of the employee's rights to pre-designate his or her physician along with a pre-printed form to pre-designate a physician should the employee desire to do so.

3.4. The Trustees shall select at least one individual to serve as program representative, at least one individual to serve as mediator and at least one person to serve as arbitrator. Each individual shall be selected from a list of at least 5 candidates submitted by the Union, and may be discharged/removed at will by vote of the Trustees.

- 3.5. Program representatives, mediators and arbitrators shall be paid by the Trust Fund. The Trustees shall by rule establish a schedule for assessing participating insurance carriers and self-insurers the costs of operating the dispute prevention and dispute resolution program and other administrative costs of the program.
- 3.6. Subject to rules adopted by the Trustees, the program representative shall as soon as is practicable contact by telephone each employee who has sustained compensable lost time injury, to advise the employee of the existence of the program and its operation. Employees subject to this Addendum who believe they are not receiving workers' compensation benefits to which they are entitled, including medical and hospital services, may notify the Program Representative by telephone. An employer may also request assistance from the Program Representative. The Program Representative shall attempt to resolve the issue(s) to the satisfaction of the employee. Within five (5) working days the Program Representative shall advise the employee of the position of the insurer or self-insured employer in terms which are readily understandable by the employee, and shall advise the employee of further steps the employee may need to take in order to reach a fair resolution including mediation and arbitration. The 5-day period may be extended by agreement between the employee and the Program Representative. Upon request, the Program Representative shall assist the employee in filing requests for mediation and arbitration related to alleged work related injuries and diseases subject to this Addendum.
- 3.7. The Program Representative shall maintain a log recording all activity including, but not limited to, dates and summaries of communications with employees, employers, and insurers, as well as any agreements to extend the time frames provided for in this Addendum. All written and oral communications involving the Program Representative

shall be considered confidential pursuant to the California Constitution Article 1 Section 1 and pursuant to Evidence Code Sections 1115 et. seq..

- 3.8. If a dispute related to a claim governed by this Addendum is not resolved pursuant to Section 3.1 within five working days from the employee's contacting the Program Representative, the employee may request mediation services. The employer may also request mediation services related to any claim for benefits subject to this Addendum. No matter may proceed to mediation until completion of the five-day period and any agreed extension thereto. In no event may a matter proceed to mediation without first being presented to the Program Representative.
- 3.9. A request for mediation may be made no later than sixty days subsequent to the expiration of the five-day period and any agreed extension thereto. The insurer and employee may extend this sixty-day period by mutual agreement.
- 3.10. The Ironworkers Workers' Compensation Trust Fund shall appoint a mediator within three (3) working days of receipt of a request for mediation. Upon request by the employee, the Program Representative shall assist the employee in any mediation proceedings. The mediation process shall be subject to rules adopted by the Trustees.
- 3.11. The mediator shall contact the employee and a representative of the employer's insurer. Both the employee and employer's insurer shall supply the mediator with requested information. The mediator may meet separately with the employee and the representative of the insurer, and/or may schedule a mediation session to be attended by both the employee and the representative of the insurer. If the dispute is not resolved within fifteen (15) working days of the appointment of the mediator, the mediation process shall be deemed exhausted unless the employee and the representative of the insurer agree otherwise.

- 3.12. If a dispute related to a claim has not been resolved at mediation, the employee or representative of the insurer may request the Ironworkers Workers' Compensation Trust Fund to appoint an arbiter to arbitrate the dispute. Absent extraordinary circumstances, arbitration must be requested no later than sixty (60) days after the mediation process involving the same dispute has been exhausted or the date the parties have mutually objected to mediation.
- 3.13. The Ironworkers Workers' Compensation Trust Fund shall appoint an arbiter within three (3) working days of receipt of a request. Upon request by the employee who is not represented by an attorney, the Program Representative shall assist the employee with procedural matters related to the arbitration, but shall not be permitted to act in the capacity of an attorney. An employee receiving assistance from a Program Representative but who is not represented in the arbitration proceeding by an attorney shall be considered by the arbiter to be an "unrepresented worker".
- 3.14. 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 Judge over discovery, the production of documents, the issuance of subpoenas and other procedural matters related to the arbitration hearing.
- 3.15. Absent a contrary stipulation between the employee and the representative of the insurer, an arbitration proceeding shall be conducted at a location designated by the Ironworkers Workers' Compensation Trust Fund and no more than forty (40) miles from the residence of the employee if within California and otherwise at the offices of the Ironworkers Workers'

Compensation Trust Fund or within forty (40) miles of the Ironworkers Workers' Compensation Trust Fund's offices.

- 3.16. All arbitration proceedings shall be electronically recorded. The original tape and record of the proceeding shall be retained by the Ironworkers Workers' Compensation Trust Fund. Copies of the recording and record shall be supplied to the employee and representative of the insurer upon request. A transcript of the proceeding shall be prepared upon the request of the arbiter, employee or representative of the insurer.
- 3.17. 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 is authorized to include in any award all relief available from a Workers' Compensation Judge including but not limited to enhancements to compensation due to any unreasonable delay in the payment of compensation by the insurer as provided for by law, and/or relief under Labor Code Sections 132a and/or 4553 and/or attorneys' fees and costs. 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 lien holders advising them of their right to appear and present argument and testimony in support of their lien claim.
- 3.18. Any findings of fact, award, order or decision of the arbiter shall be in the same form and have the same force and effect as findings of fact, an award, order or decision of a California Workers' Compensation Referee.
- 3.19. 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 Judge and by the California Court of Appeal pursuant to the procedures set forth in California Labor Code Section 3201.5(a)(1).

3.20. 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 Addendum. Such retention of an attorney is the sole and absolute choice of the employee. The retention of an attorney shall not diminish the ability of the Program Representative, Mediator, Arbitrator or case nurse to speak directly with the employee in the attorney's physical or telephonic presence. In no event shall the Ironworkers 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 Addendum nor does this Addendum 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.

3.21. The California Ironworkers Workers' Compensation Trust is to be created by an Agreement and Declaration of Trust effective as of January 1, 2003.

Effective March 1, 2003 a contribution of one and one-half cents (\$0.015) per hour for each hour paid for and/or worked will be made to the California Ironworkers Workers' Compensation Trust by all signatory employers whether or not they participate in the program established by this Addendum. These contributions will be subject to all the provisions of the Agreement and Declaration of Trust dated as of January 1, 2003 establishing that program and the provisions of the California Ironworkers Workers' Compensation Plan adopted by the Board of Trustees. It is understood said Worker' Compensation Plan shall be administered pursuant to the Trust Agreement.

All rules of the Master Agreement relating to collection of delinquent contributions, and enforcement of the contribution obligation shall apply to the contributions provided for herein.

**SIGNATURE PAGE**

APPROVED BY THE UNION

APPROVED BY THE EMPLOYERS

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

District Council of Iron Workers of  
The State of California & Vicinity

Iron Workers Employers

\_\_\_\_\_  
Richard Zampa, Chairman  
Iron Workers Negotiating Committee

\_\_\_\_\_  
Dave McEuen, Chairman  
Employers Negotiating Committee

The undersigned insurance companies hereby agree to the terms of the program set forth herein:

\_\_\_\_\_  
Name of Insurance Company

By: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Insurance Company

By: \_\_\_\_\_

Dated: \_\_\_\_\_