

**CITY OF CORONA
PROFESSIONAL SERVICES AGREEMENT
WITH EXCEL MANAGED CARE & DISABILITY SERVICES, INC.
(WC PROGRAM - MCP SERVICES - UR\FCM\RTW)**

1. PARTIES AND DATE.

This Agreement is made and entered into this 4th day of April, 2018 ("Effective Date") by and between the City of Corona, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 ("City") and Excel Managed Care & Disability Services, Inc., a California Corporation with its principal place of business at 3840 Watt Avenue, Building C, Suite 200, Sacramento, CA 95821 ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Medical Case Management, Utilization Review and Return to Work services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the City of Corona's Self-Insured Workers' Compensation Program project ("Project") as set forth in this Agreement.

2.3 Corona Utility Authority.

Consultant understands that the City has entered into a Water Enterprise Management Agreement and a Wastewater Enterprise Management Agreement, both dated as of February 6, 2002, with the Corona Utility Authority ("CUA") for the maintenance, management and operation of those utility systems (collectively, the "CUA Management Agreements"). To the extent that this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, City enters into this Agreement on behalf of the CUA and subject to the terms of the applicable CUA Management Agreement(s).

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional utilization review, case management, return to work and related consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from July 1, 2018 to June 30, 2020 ("Initial Term"), unless earlier terminated as provided herein. Consultant shall complete the Services within the Initial Term of this Agreement, and shall meet any other established schedules and deadlines. The City has the right to extend the Initial Term of this Agreement, in its sole discretion and under the same terms and conditions, for four (4) additional one (1) year periods (each a "Renewal Term"). The terms "Initial Term" and "Renewal Term" may sometimes be generally and collectively referred to as "Term" in this Agreement.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the Term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services within the Term of this Agreement, in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference, and in accordance with any other completion schedule or milestones which may be separately agreed upon in writing by the Parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All Services performed by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: Steve Smetana.

3.2.5 City's Representative. The City hereby designates City Attorney/Legal & Risk Management Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Steve Smetana, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant agrees that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the Term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and

expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work or Services knowing them to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the Term of the Agreement. Consultant shall avoid any violation of any such law during the Term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.9 or any of its sub-sections.

3.2.9.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work or Services relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.9.1.

3.2.9.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.9.1 or 3.2.9.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.9.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.9.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.5 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.9.6 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Promptly following the Effective Date of this Agreement, but in no event before Consultant commences any Services under this Agreement, Consultant shall provide evidence satisfactory to the City that it has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury, advertising injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain or be endorsed (amended) to include the following provisions:

(A) General Liability. The general liability policy shall state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection therewith (the endorsement form shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 37 and one of the following: CG 20 10, CG 20 26, CG 20 33 or CG 20 38); and (2) the insurance coverage shall be primary insurance coverage as respects the City, its directors, officials, officers, employees, agents, and volunteers (the endorsement form shall be at least as broad as ISO CG 20 01 04 13). Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Waiver of Subrogation – Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work or Services performed by the Consultant.

(C) All Coverages. If Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City is entitled to the broader coverage and/or higher limits maintained by Consultant. Thus, any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

3.2.10.5 Other Provisions; Endorsements Preferred. Consultant shall endeavor to provide endorsements regarding the following provisions, but nonetheless understands, acknowledges and agrees that the following provisions shall apply and that failure to comply shall be considered to be a breach of this Agreement by Consultant:

(A) Waiver of Subrogation – All Other Policies. Consultant hereby waives all rights of subrogation any insurer of Consultant's may acquire against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of any insurance policy which arise from work or Services performed by the Consultant. Consultant understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

(B) Notice. Consultant shall either: (1) require its insurer to provide thirty (30) days prior written notice to the City before coverage is suspended, voided, or canceled; or (2) notify City in writing that such notice is not available and forward any notice of such actions to the City within two (2) business days from date of receipt by Consultant. Consultant understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

3.2.10.6 Claims Made Policies. The following provisions shall apply to all policies that provide coverage on a claims-made basis: (A) the retroactive date must be shown and must be before the date on which any Services under this Agreement commence; (B) the insurance must be maintained and evidence of insurance must be provided for at least five (5)

years after completion of the Project; and (C) if coverage is canceled or not renewed and is not replaced with another claims-made policy with a retroactive date prior to the date on which any Services under this Agreement commence, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Project.

3.2.10.7 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigation, claims administration and defense expenses within the deductible or self-insured retention. The deductible or self-insured retention may be satisfied by either the named insured or the City.

3.2.10.8 Acceptability of Insurers. Unless under the circumstances a different rating is otherwise acceptable to the City in its sole and absolute discretion, insurance is to be placed with insurers which are satisfactory to the City and which meet either of the following criteria : (1) an insurer with a current A.M. Best's rating no less than A:-VII and licensed as an admitted insurance carrier in California; or (2) an insurer with a current A.M. Best's rating no less than A:-X and authorized to issue the required policies in California.

3.2.10.9 Verification of Coverage. Consultant shall furnish City with original certificates of insurance, as well as amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All documents must be received and approved by the City before any Services commence; provided, however, that failure to obtain the required documents prior to the commencement of Services shall not waive Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.10 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.10.11 Sub-Consultants. All sub-consultants shall comply with each and every insurance provision of this Section 3.2.10. Consultant shall therefore not allow any sub-consultant to commence work on any subcontract to perform any part of the Services until it has provided evidence satisfactory to the City that the sub-consultant has secured all insurance required under this Agreement.

3.2.10.12 Special Risk or Circumstances. The City reserves the right, in its sole and absolute discretion, to modify the requirements of this Section 3.2.10, including limits, based on any of the following: (A) the nature of the risk of the Services; (B) the prior experience of the insured; (C) the rating or other quality or characteristic of the insurer; (D) any special or unique coverage issues; and (E) any other special or unique circumstances.

3.2.11 Safety. Consultant shall execute and maintain its work and Services so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and

regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Services and the conditions under which the Services are to be performed.

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.2.13 HIPAA. Consultant shall execute the City's HIPAA Business Associate Agreement, a current copy of which is attached hereto at Exhibit "D" and incorporated herein by reference, wherein Consultant agrees to carry out its obligations to City in accordance with the following: (A) the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"); (B) regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HIPAA Regulations"); (C) the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"); and (D) other applicable laws.

3.3 Fees and Payments.

3.3.1 Rates & Total Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation, including authorized reimbursements, shall not exceed One Hundred Thirty Thousand Dollars (\$130,000) per fiscal year (July through June) ("Total Compensation"), without written approval of City's City Attorney/Legal and Risk Management Director. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the Term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement.

Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, as well as any authorized reimbursable expenses, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically, electronically or otherwise recorded or stored, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of five (5) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. In addition, before destroying the Documents & Data following this retention period, Consultant

shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.5.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.6 General Provisions.

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Consultant:

Excel Managed Care & Disability Services, Inc.
3840 Watt Avenue, Building C, Suite 200
Sacramento, CA 95821
Attn. Steve Smetana

City:

City of Corona
400 South Vicentia Avenue
Corona, CA 92882
Attn: Dean Derleth
City Attorney/Legal & Risk Management Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to any alleged willful misconduct or negligent acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all settlement amounts, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code Sections 900 et

seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.6.1 Subconsultants; Assignment or Transfer. Consultant shall not subcontract any portion of the Services required under this Agreement, except as expressly authorized herein, without the prior written approval of the City. Subcontracts, if any, shall include a provision making them subject to all provisions of this Agreement. Consultant shall also not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to subcontract or take any other action not authorized herein shall be null and void, and any subconsultants, assignees, hypothecates or transferees shall acquire no right or interest by reason of such action.

3.6.6.2 Corona Utility Authority. To the extent that this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, Consultant has no right to terminate this Agreement, either with or without cause, based upon the existence or non-existence of either or both of the CUA Management Agreements. Therefore, if an applicable CUA Management Agreement expires or terminates for any reason, Consultant shall remain fully obligated to perform under this Agreement with the CUA or another third party contracted by the CUA for the maintenance, management and operation of the applicable utility system.

3.6.7 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.10 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.6.6, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.12 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the Term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.13 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.14 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.6.15 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.17 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

[SIGNATURES ON NEXT 2 PAGES]

CITY'S SIGNATURE PAGE FOR
CITY OF CORONA
PROFESSIONAL SERVICES AGREEMENT
WITH EXCEL MANAGED CARE & DISABILITY SERVICES, INC.
(WC PROGRAM - MCP SERVICES - UR\FCM\RTW)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

CITY OF CORONA

By:

Karen Spiegel
Mayor

Attest:

Patty Rodriguez
Interim City Clerk

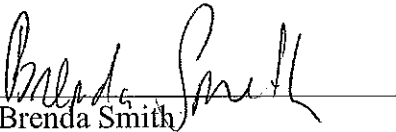
Approved as to Form:

Dean Derleth
City Attorney/
Legal & Risk Management Director

CONSULTANT'S SIGNATURE PAGE FOR
CITY OF CORONA
PROFESSIONAL SERVICES AGREEMENT
WITH EXCEL MANAGED CARE & DISABILITY SERVICES, INC.
(WC PROGRAM - MCP SERVICES - UR\FCM\RTW)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

EXCEL MANAGED CARE & DISABILITY SERVICES, INC.
a California Corporation

By: 
Brenda Smith
President/CEO

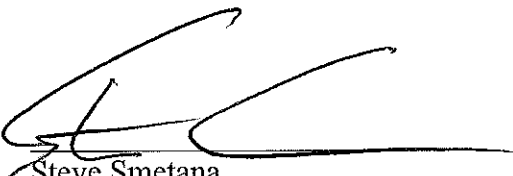
By: 
Steve Smetana
Vice President/CFO

EXHIBIT "A"

SCOPE OF SERVICES

GENERAL INFORMATION

This Agreement is for the administration of the utilization review, case management, return to work and related services within the Managed Care Program ("MCP") component of the City's self-insured workers' compensation program. The Services are to be performed in consultation and cooperation with the City's Workers' Compensation Third Party Administrator ("TPA"), as well as other MCP service consultants. The MCP services may include, but are not limited to, bill review, utilization review, clinical consultation, case management (telephonic and field), pharmacy benefits management, return to work and disability management services and special investigations and fraud services ("MCP Services"). The City may assign one or more MCP Services to an individual consultant, but also may unbundle all MCP Services and assign each to a different consultant.

Consultant's Services shall include handling of all existing claims (open and closed) and all newly filed claims for the Term, capitalizing on best practices models the industry has developed. Consultant shall provide creative and effective services that are streamlined and user-friendly, will leverage technology and will have a strong customer service focus, solid reporting capabilities, competitive rates and fees, and an ability to comply with the City's performance standards.

A. MCP SERVICES

The Scope of Services for Consultant shall also include all of the following:

1. General Requirements

- *Communication:* Consultant shall respond to phone calls, emails and other written correspondence from staff or employees within one (1) business day. Consultant shall respond to all critical issues on the same day.
- *Regulatory Updates:* Consultant shall provide the City with information regarding changes and proposed changes in statutes and regulations affecting its MCP services.
- *Employee Training:* Consultant shall provide orientation and training to City personnel involved in the administration of its MCP services. Personnel shall be made available to the City on an "as needed" basis to provide City-wide supervisory and employee training at designated City locations on topics of interest affecting its MCP services.
- *Forms:* Consultant shall provide at its expense all forms, posters and pamphlets required by applicable laws, rules or regulations affecting its MCP

services. Consultant shall also develop, for review and approval by the City, any materials which Consultant and City mutually agree will provide needed or helpful information and guidance to City employees regarding its MCP services.

- *Penalties:* Consultant shall provide its services in a timely manner and in compliance with statutory requirements. To the extent provided for in Section 3.6.2 (Indemnification) of the Agreement, all fines, citations, penalties or other assessments assessed because of a failure to comply with statutory laws and/or administrative regulations shall be the sole responsibility of the Consultant. Consultant will reimburse the City within 30 days for any fines, citations, penalties or other assessments assessed against the City, unless the City agrees that non-compliance was not the responsibility of the Consultant. Consultant shall provide a detailed monthly listing of all assessed fines, citations, penalties or other assessments, identifying the responsible party. Consultant's responsibility for fines, citations, penalties and other assessments shall survive the expiration or early termination of the Agreement.
- *Transition Plan; File Storage:* Consultant shall be responsible for the cost and execution of the conversion and/or establishment of file transfers, including documents and images, from the previous TPA and shall assume responsibility for the storage of physical files at a site other than City property. City retains the right to test any data transfer capabilities.
- *Affiliation Disclosure:* Consultant shall disclose any financial relationships, arrangements, or inducements with vendors that will work with Consultant on City claims. In addition, Consultant shall disclose all subsidiaries financially linked to your organization. Such disclosures shall be made prior to approval of the Agreement, and shall be continuously maintained and updated throughout the term of the Agreement.

2. Utilization Review

- Consultant shall have a comprehensive plan for the provision of utilization review services for all occupational disabilities in compliance with State Labor Code, State Division of Workers' Compensation and all other applicable state and federal laws, rules and regulations.
- Consultant shall provide utilization review services for all consults, diagnostics, physical therapy, pharmaceuticals and other medical services.
- If City elects to use a utilization review consultant that is different than the TPA, consultant shall interface with the TPA in a professional and efficient manner.

3. Case Management (Telephonic and Field)

- Consultant shall provide medical managed care services for referred occupational disabilities.
- City shall make the final decision regarding the assignment of a case manager to an injured employee. If Consultant believes a case manager should be assigned for a particular employee, Consultant shall coordinate with the City to understand and agree upon the purpose and strategy behind the assignment. Consultant shall obtain City's concurrence and authorization before an assignment is made.

• 4. Return to Work and Disability Management

- When requested by City, Consultant shall provide essential job function analysis and ergonomic evaluations. Consultant shall work as a team with the City in order to comply with laws preventing disability discrimination, including Government Code Section 12926.1 which requires an interactive process with the injured worker when addressing a return to work situation, particularly with permanent work restrictions. Consultant shall cooperate with the City to the fullest extent in providing medical and other information the City deems necessary for the City to meet its obligations under applicable Federal and State laws, rules and regulations. This includes prompt notification of all work restrictions imposed by medical providers.

EXHIBIT "B"
SCHEDULE OF SERVICES

Prior to July 1, 2018:

- Consultant shall meet with the City and its TPA to create a timeline of necessary conversion steps to accomplish the transition to the City's new TPA and MCP Service providers prior to July 1, 2018.

After July 1, 2018

- Consultant shall provide all Services in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant shall also meet any other schedules or deadlines reasonably established by the City.

EXHIBIT "C"

COMPENSATION

INITIAL TERM - FEES

For the Initial Term, Consultant shall be paid according to the following fee schedule:

- **Utilization Review Fee:** RN Review = \$79 per review
 Physician Review = \$215 per review
 Physician Review (Specialist, if needed) = \$215 per review

 Flat fee services (each review includes up to 3 medical requests).
- **Case Management Fee:** Telephonic = \$90 per hour
 Field Rate = \$95 per hour
- **Return to Work Fee:** \$105 per hour

Travel Time: While travel time is billable when charging the Case Management and Return to Work fees, Consultant shall make reasonable efforts to minimize travel time. If travel commences from the residence of the service provider, travel time shall be charged from either Consultant's office or the residence of the service provider, whichever is shorter. In no event shall Consultant bill for automobile travel time in excess of 1 hour in each direction without the prior written permission of the City.

Although Services must commence prior to July 2018, Consultant shall not be entitled to compensation for any Services unless they are provided in or after July 2018 and they fall within the fee schedule provided herein. Invoicing shall not commence until August 2018.

RENEWAL TERMS – ROUTINE BILL FEE & LIEN DEFENSE FEE COST OF LIVING INCREASES

If the City elects to implement any of the four (4) optional Renewal Terms provided for in Section 3.1.2 of this Agreement, the Utilization Review Fee, Case Management Fee and Return to Work Fees (flat fees and hourly rates) shall be subject to adjustment at the beginning of each such implemented Renewal Term. The adjustment shall be equal to the lesser of: (1) two percent (2%); or (2) the change in the Consumer Price Index (all urban consumers; Riverside-Los Angeles) for the most recent March to March period. Each adjustment to the Annual Flat Fee shall be documented pursuant to a duly authorized written amendment to this Agreement.

REIMBURSABLE EXPENSES

When charging the Case Management and Return to Work fees, Consultant shall be entitled to mileage reimbursement at the then current Internal Revenue Service (IRS) rate. If travel commences from the residence of the service provider, mileage shall be charged from either the Consultant's office or the residence of the service provider, whichever is shorter. Consultant shall not be entitled to the payment of any other reimbursable expenses, including, but not limited to, toll fees or other transportation related charges. The above mileage reimbursement and fee schedule shall be Consultant's sole compensation or consideration of any kind under this Agreement.

EXHIBIT "D"
HIPAA BUSINESS ASSOCIATE AGREEMENT

[SEE ATTACHED FIFTEEN (15) PAGES]

**CITY OF CORONA
HIPAA BUSINESS ASSOCIATE AGREEMENT
(EXCEL MANAGED CARE & DISABILITY SERVICES INC.)**

1. PARTIES AND DATE.

This Agreement is made and entered into this 4th day of April, 2018 by and between the CITY OF CORONA, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 ("Covered Entity") and Excel Managed Care & Disability Services Inc., a California Corporation with its principal place of business at 3840 Watt Avenue, Building C, Suite 200, Sacramento, CA 92581 ("Business Associate"). Covered Entity and Business Associate are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Purposes of Agreement.

This Agreement is executed for the purpose of ensuring that Business Associate carries out its obligations to Covered Entity in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"); regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HIPAA Regulations"); the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"); and other applicable laws.

This Agreement encompasses Business Associate's assurance to protect the confidentiality, integrity and security of any personally identifiable Protected Health Information ("PHI") that is collected, processed or learned as a result of the services provided to Covered Entity by Business Associate, including any such information stored and transmitted electronically (referred to as electronic Protected Health Information ("e-PHI") herein).

This Agreement is also executed for purposes of complying with the HITECH Act, which requires Covered Entity to enter into a contract prior to the disclosure of PHI and ePHI, as set forth in, but not limited to, the Privacy Rule and Security Rule set forth in Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR").

3. TERMS.

3.1 Definitions.

3.1.1 Partial List; Regulatory Default. For purposes of this Agreement, the following definitions shall apply:

"Agreement" shall mean this Business Associate Agreement.

"Breach" shall have the meaning given to such a term under the HITECH Act [42 U.S.C. Section 17921].

“Business Associate” refers to the entity contracting with Covered Entity and described in Section 1 (Parties and Date) of this Agreement, and shall have the meaning given to such term under the Privacy Rule and HITECH Act, including, but not limited to, 45 CFR §160.103 and 42 U.S.C. §17938.

“Covered Entity” refers to the City of Corona, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 CFR §160.103.

“Data Aggregation” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 CFR §164.501.

“Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

“Electronic PHI” or **“ePHI”** shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR §160.103.

“Limited Data Set” shall have the meaning given to such term under 45 CFR §164.514(e)(2).

“Privacy Rule” shall mean the HIPAA Regulations relating to the privacy of PHI that is codified at 45 CFR Parts 160 and 164.

“Protected Health Information or PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §164.501. Protected Health Information includes ePHI.

“Protected Information” shall mean PHI provided by Covered Entity to Business Associate in connection with Business Associate’s performance of services under the Agreement or any PHI created or received by Business Associate on Covered Entity’s behalf in connection with Business Associate’s performance of services under the Agreement.

“Security Incident” shall mean a Breach, breach of physical or electronic security where PHI is stored, or any other unauthorized use or disclosure of PHI, both secured and unsecured as defined by the HITECH Act and any guidance issued to such Act, including, but not limited to, 42 U.S.C. §17932(h).

“Security Rule” shall mean HIPAA Regulations relating to the security of PHI that is codified at 45 CFR Parts 160 and 164.

“Unsecured PHI” shall have the meaning given to such a term under the HITECH Act and any guidance issued to such Act, including, but not limited to, 42 U.S.C. §17932(h).

Any additional terms not defined herein shall have the meanings set forth in 45 CFR §160.103 and §160.501.

3.2 Obligations of Business Associate.

3.2.1 Permitted Uses and Disclosures. Business Associate shall not use or disclose Protected Information except for the purpose of performing Business Associate's obligations to Covered Entity and as permitted under this Agreement. Further, Business Associate shall not use or disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if disclosed by Covered Entity, except that Business Associate may use Protected Information in the following ways:

A. Underlying Agreement. To provide those services described in that City of Corona Professional Services Agreement (WC Program – MCP Services – UR\FCM\RTW) entered into by and between Covered Entity and Business Associate on or about April 4, 2018, which agreement and any properly executed amendments thereto are incorporated herein by reference ("Underlying Agreement");

B. Management and Administration. For the proper management and administration of Business Associate;

C. Legal Responsibilities. To carry out the legal responsibilities of Business Associate (including without limitations, as required for Business Associate to comply with applicable professional standards and obligations);

D. Data Aggregation. For Data Aggregation purposes; or

E. Required by Law. If required by law.

3.2.2 Assurances and Agreements Prior to Disclosure. To the extent that Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, the following:

A. Assurances. Reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and

B. Agreement. An agreement from such third party to immediately notify Business Associate of any incident involving the security or confidentiality of Protected Information, to the extent it has obtained knowledge of such an incident.

3.2.3 Prohibited Uses and Disclosures. Business Associate will neither use nor disclose Covered Entity's Protected Information, except as permitted or required by this Agreement, by Covered Entity in writing, or as required by law. This Agreement does not authorize Business Associate to use or disclose Covered Entity's Protected Information in a manner that would violate the Privacy Rule or the HITECH Act if done by Covered Entity.

3.2.4 Restriction Agreements and Confidential Communications. Business Associate will comply with any agreement that Covered Entity makes that either:

A. Restrictive Use or Disclosure. Restricts use or disclosure of Covered Entity's Protected Information pursuant to 45 CFR §164.522(a); or

B. Required Confidential Communication. Requires confidential communication about Covered Entity's Protected Information pursuant to 45 CFR §164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow.

Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement.

3.2.5 Appropriate Safeguards. Business Associate shall implement and use the following types of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including ePHI, that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity as required by the HITECH Act:

A. Administrative. Administrative safeguards as required by 45 CFR Section §164.308;

B. Physical. Physical safeguards as required by 45 CFR §164.310;
and

C. Technical. Technical safeguards as required by 45 CFR Section §164.312

The purpose of such safeguards is to prevent the use or disclosure of PHI in violation of this Agreement. Such safeguards shall conform with, but are not limited to, the standards and implementation specifications required by the HIPAA Security Standards for the protection of ePHI. Business Associate shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 CFR §164.316.

3.2.6 Reporting of Improper Use, Disclosure or Security Incident. Business Associate shall report to Covered Entity in writing any Security Incident involving, or use or disclosure of, Protected Information, including ePHI, other than those permitted for by this Agreement, within five (5) business days of the date on which any owner, partner, director, official, officer, employee, volunteer, agent or subcontractor of Business Associate becomes aware of such Security Incident, use or disclosure.

3.2.7 Business Associate's Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI, as well implement the safeguards required by Section 3.2.5 above with respect to ePHI. Business Associate shall implement and maintain sanctions against any agents that violate such restrictions and conditions, and shall mitigate the effects of any such violation.

3.2.8 Access to Protected Information. For any reason, including enabling Covered Entity to fulfill its obligations under the Privacy Rule, Business Associate shall make Protected Information maintained by Business Associate or its agents, including subcontractors, in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) business days of a request by Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. §17935(e).

3.2.9 Amendment of PHI. For any reason, including enabling Covered Entity to fulfill its obligations under the Privacy Rule, within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents, including subcontractors, shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment. If any individual requests an amendment of Protected Information directly from Business Associate or its agents, including subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents, including subcontractors, shall be the responsibility of Covered Entity.

3.2.10 Accounting Rights. Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents, including subcontractors, shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and the HITECH Act, including, but not limited to, 42 U.S.C. §17935(c) as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents, including subcontractors, for at least six (6) years prior to the request, but not before the effective date of the Agreement. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If the request for an accounting is delivered directly to Business Associate or its agents, including subcontractors, Business Associate shall within ten (10) business days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Section 3.2.1 of this Agreement. The provisions of this paragraph shall survive the expiration or termination of this Agreement and the Underlying Agreement.

3.2.11 Governmental Access to Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule. Business Associate shall provide to Covered Entity a copy of any Protected

Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

3.2.12 Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.

3.2.13 Minimum Necessary. Business Associate, and its agents, including subcontractors, shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Business Associate shall limit, to the extent practicable, the use, disclosure, or request of PHI to the Limited Data Set. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and government guidance on the definition.

3.2.14 Breach Pattern or Practice. Pursuant to 42 U.S.C. §17934(b), if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, or of the Privacy and Security Rules or HITECH Act, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate this Agreement and related contracts (including the Underlying Agreement), if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity under this paragraph within five (5) days of discovery, and shall meet with Covered Entity, upon its written request, to discuss or attempt to resolve the problems as one of the reasonable steps to cure the breach or end the violation.

3.2.15 Retention of Protected Information. Notwithstanding Section 3.3.3 of this Agreement, Business Associate and its agents, including subcontractors, shall retain all Protected Information throughout the term of this Agreement and the Underlying Agreement. Upon termination of this Agreement or the Underlying Agreement, Business Associate shall follow the procedures set forth in Section 3.4.5 of this Agreement with respect to the handling of Protected Information.

3.2.16 Audits, Inspection, and Enforcement. For the purpose of determining whether Business Associate has complied with this Agreement, within ten (10) days of a written request by Covered Entity, Business Associate and its agents, including subcontractors, shall allow Covered Entity or its agents to conduct a reasonable inspection of any facilities, systems, books, records, agreements, policies, and procedures relating to the use or disclosure of Protected Information under this Agreement. Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; provided, however, that each Party's agreement shall not be unreasonably withheld. Covered Entity and its agents shall take all reasonable steps to protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity and its agents have access during the course of inspection. If requested by Business Associate, Covered Entity and its agents shall execute a nondisclosure agreement, upon terms mutually

agreed upon by the Parties; provided, however, that each Party's agreement shall not be unreasonably withheld.

None of the following shall constitute, or be used to imply, Covered Entity's acceptance of a violation of this Agreement, a waiver of Covered Entity's enforcement rights under this Agreement, or a waiver of Business Associate's responsibility to comply with this Agreement and applicable law: (i) the fact that Covered Entity and its agents have the right to inspect Business Associate's facilities, systems, books, records, agreements, policies and procedures; (ii) the fact that Covered Entity, or its agents, actually inspect Business Associate's facilities, systems, books, records, agreements, policies and procedures; (iii) the fact that Covered Entity, or its agents, fail to inspect Business Associate's facilities, systems, books, records, agreements, policies and procedures; (iv) failure by Covered Entity or its agents to detect a violation of this Agreement or a practice that is otherwise unsatisfactory; (v) failure by Covered Entity or its agents to notify Business Associate of a detected violation of this Agreement or a practice that is otherwise unsatisfactory; and (vi) failure by Covered Entity or its agents to require Business Associate to address a detected violation of this Agreement or a practice that is otherwise unsatisfactory.

Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review or compliant investigation by the Office for Civil Rights or other government agency.

3.2.17 Notification of Breach. During the term of this Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual Security Incident of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies, and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. The notice required by this paragraph shall contain at least the following information:

A. Nature of Incident. The nature of the Security Incident, including a brief description of the incident, whether in Business Associate's opinion the incident involved Unsecured PHI and why, the date it occurred, and the date it was discovered;

B. Protected Information. The Protected Information subject to the Security Incident and identity of each individual whose information may have been accessed, acquired, or disclosed during the incident;

C. Involved Persons/Entities. Who made the non-permitted use or disclosure and who received the Protected Information;

D. Corrective Action. Corrective action taken by Business Associate to prevent further unauthorized use or access and to mitigate loss;

E. Protective Steps. Identify steps that individuals whose information was accessed should take to protect themselves; and

F. Other Information. Any other information, including a written report, that Covered Entity may reasonably request.

3.2.18 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself, and any employees or agents, including subcontractors, assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officials, officers, employees or agents based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy of health information, except where Business Associate, or its employee or agent, including a subcontractor, is named as an adverse party.

3.2.19 Compliance with Standard Transactions. If Business Associate conducts Standard Transactions (as defined in 45 CFR Parts 160 and 162 or other applicable laws or regulations, as may be amended from time to time) with or on behalf of Covered Entity, Business Associate will require any agent, including subcontractor, involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 CFR Part 162 or other applicable laws or regulations, as may be amended from time to time. Business Associate agrees to demonstrate compliance with the Standard Transactions by allowing Covered Entity to test the Standard Transactions and content requirements upon a mutually agreeable date. Business Associate will not enter into, or permit its agents, including subcontractors, to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or (iv) changes the meaning or intent of the Standard Transaction's implementation specification.

3.3 Obligations of Covered Entity.

3.3.1 Applicable Law. Covered Entity shall comply with HIPAA and the HITECH Act, along with any applicable state law in disclosing Protected Information to Business Associate.

3.3.2 Notice of Privacy Practices. Covered Entity shall provide Business Associate with a copy of its Notice of Privacy Practices ("Notice") currently in use, upon Business Associate's request. If requested and if such Notice is modified in the future, Covered Entity shall provide Business Associate with such modified Notice promptly following adoption.

3.3.3 Change in Consent or Authorization. Covered Entity shall notify Business Associate of any change in, or the withdrawal of, the consent or authorization of an individual regarding the use or disclosure of Protected Information to the extent that such change or withdrawal may affect Business Associate's use or disclosure of PHI.

3.3.4 Appropriate Requests. Covered Entity shall not request Business Associate to use or disclose Protected Information in any manner that would not be permissible under HIPAA or the HITECH Act if done by Covered Entity.

3.3.5 Breach Pattern or Practice If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, or of the Privacy and Security Rules or HITECH Act, Covered Entity must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Covered Entity must terminate this Agreement and related contracts (including the Underlying Agreement), if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.

3.4 Term and Termination.

3.4.1 Term. This Agreement shall remain in full force and effect until expressly terminated as provided for herein.

3.4.2 Material Breach. A breach by Business Associate of any material provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination for cause by Covered Entity of the Agreement, and any underlying contract necessitating this Agreement (including the Underlying Agreement), if Business Associate has failed to cure such breach within thirty (30) days of written notice by Covered Entity.

3.4.3 Judicial or Administrative Proceedings. Covered Entity may terminate for cause this Agreement and related contracts (including the Underlying Agreement), effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, HITECH Act, or other security or privacy laws; or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations, HITECH Act, or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined.

3.4.4 Termination by Business Associate. Business Associate shall have no right to terminate this Agreement so long as the Underlying Agreement is in effect. Following expiration or termination of the Underlying Agreement, Business Associate shall continue to fully comply with the terms of this Agreement, including, but not limited to, Section 3.4.5, until the purposes of this Agreement have been fully accomplished. Thereafter, and with the prior written consent of Covered Entity, Business Associate may terminate this Agreement.

3.4.5 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents, including subcontractors, still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 3.2 of this Agreement to such information and limit further

use of such PHI to those purposes that make the return or destruction of such PHI infeasible. If Covered Entity elects destruction of the PHI, Business Associate shall confirm in writing to Covered Entity that such PHI has been destroyed.

3.5 Indemnification.

3.5.1 Obligation. To the fullest extent permitted by law, Business Associate shall defend, indemnify and hold Covered Entity, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, lawsuits, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Business Associate, its officials, officers, employees, consultants or agents, including subcontractors, in connection with the performance this Agreement, any alleged breach of any provision of this Agreement, or any alleged violation of HIPAA, the HIPAA Regulations, HITECH Act, or other security or privacy laws, including, without limitation, the payment of all expert witness fees and attorney's fees and other related costs and expenses.

3.5.2 Additional Indemnity Obligations. Business Associate shall defend, with Counsel of Covered Entity's choosing and at Business Associate's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.1 that may be brought or instituted against Covered Entity or its directors, officials, officers, employees, volunteers and agents. Business Associate shall pay and satisfy any judgment, award or decree that may be rendered against Covered Entity or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Business Associate shall also reimburse Covered Entity for the cost of any settlement paid by Covered Entity or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Covered Entity's attorney's fees and costs, including expert witness fees. Business Associate shall reimburse Covered Entity and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Business Associate's obligation to indemnify shall survive termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Covered Entity, its directors, officials officers, employees, agents, or volunteers.

3.5.3 Right to Control Resolution. Covered Entity shall have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of action, liabilities, or damages against it, notwithstanding that Covered Entity may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Covered Entity and its directors, officials, officers, employees, volunteers and agents under this Agreement.

3.6 General Provisions.

3.6.1 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA Regulations, or HITECH Act will be adequate or satisfactory for Business Associate's own purposes. Business

Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

3.6.2 Changes in Applicable Law; Amendments. The Parties understand, acknowledge and agree that this Agreement incorporates by reference all applicable provisions of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI, as they currently exist or as they may be amended from time to time. To this end, therefore, the Parties specifically understand, acknowledge and agree to take such actions as are necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI, as they currently exist or as they may be amended from time to time, regardless of whether a written amendment to this Agreement is approved and executed by the Parties. The Parties understand, acknowledge and agree that state and federal laws relating to data security and privacy are rapidly evolving, and that amendments to this Agreement may be required by Covered Entity, in its sole but reasonable discretion, to best document procedures to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI. Business Associate understands, acknowledges and agrees that by entering into this Agreement it is providing written assurance to Covered Entity that Business Associate will adequately safeguard all Protected Information by negotiating and executing such amendments in good faith. Upon the request of Covered Entity, Business Associate agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other applicable laws. Covered Entity may terminate this Agreement, pursuant to the provisions of Section 3.4, in the event Business Associate does not promptly enter into negotiations to amend this Agreement when required by Covered Entity or if Business Associate does not approve and execute a reasonable amendment to this Agreement as provided for herein.

3.6.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

3.6.4 Interpretation; Construction; References; Captions. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule, and the Security Rule. In addition, since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Business Associate include all personnel, employees and agents, including subcontractors, of Business Associate, except as otherwise specified in this Agreement. All references to Covered Entity include its elected officials, officers, employees, agents and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for

convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.5 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.7 Assignment or Transfer. Business Associate shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Covered Entity. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.11 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.12 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.13 Authority to Enter Agreement. Business Associate represents that it has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.15 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements

3.6.16 Corona Utility Authority. Business Associate understands that Covered Entity has entered into a Water Enterprise Management Agreement and a Wastewater Enterprise Management Agreement, both dated as of February 6, 2002, with the Corona Utility Authority ("CUA") for the maintenance, management and operation of those utility systems (collectively, the "CUA Management Agreements"). To the extent that this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, Covered Entity enters into this Agreement on behalf of the CUA and subject to the terms of the applicable CUA Management Agreement(s), and Business Associate has no right to terminate this Agreement, either with or without cause, based upon the existence or non-existence of either or both of the CUA Management Agreements. Therefore, if an applicable CUA Management Agreement expires or terminates for any reason, Business Associate shall remain fully obligated to perform under this Agreement on behalf of the CUA or another third party contracted by the CUA for the maintenance, management and operation of the applicable utility system.

[SIGNATURES ON NEXT 2 PAGES]

CITY'S SIGNATURE PAGE FOR
CITY OF CORONA
HIPAA BUSINESS ASSOCIATE AGREEMENT
(EXCEL MANAGED CARE & DISABILITY SERVICES INC.)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

CITY OF CORONA

By:

Karen Spiegel
Mayor

Attest:

Patty Rodriguez
Interim City Clerk

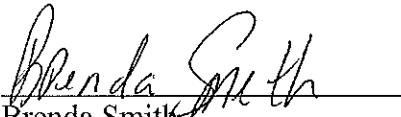
Approved as to Form:

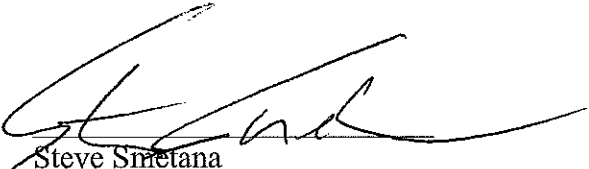
Dean Derleth
City Attorney/
Legal & Risk Management Director

CONSULTANT'S SIGNATURE PAGE FOR
CITY OF CORONA
HIPAA BUSINESS ASSOCIATE AGREEMENT
(EXCEL MANAGED CARE & DISABILITY SERVICES INC.)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

EXCEL MANAGED CARE & DISABILITY SERVICES, INC.
a California Corporation

By: 
Brenda Smith
President/CEO

By: 
Steve Smetana
Vice President/CFO