

TWO PARTY CLAIM SERVICE AGREEMENT

THIS AGREEMENT (the "Agreement") is entered this 1st day of January 2019, by and between City of Council Bluffs, (hereinafter the "Client") an Iowa municipality with its primary place of business at Council Bluffs, Iowa and EMC Risk Services, LLC, an Iowa limited liability company with its principal offices in Des Moines, Iowa (hereinafter "ERS") (together the "Parties").

WHEREAS, Client is a qualified self-insurer of certain risks and desires that ERS furnish certain claim services to the Client with respect to their self-insured exposures and ERS is willing to provide such services; and

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

1. Definitions.

(a) "Claim" shall be any request or demand for consideration of payment of a loss or investigation of a loss with respect to the risks enumerated on the Schedule of Risks and Retention, attached hereto as Exhibit A and made hereof, which is reported to ERS and which is within Client's self-insured retention as stated on Exhibit A.

(b) "Excess Claim" shall be any request or demand for consideration of payment of a loss or investigation of a loss with respect to the risks enumerated on Exhibit A which is reported to ERS and which exceeds Client's self-insured retention as stated on Exhibit A.

2. Effective Date and Term. This Agreement shall commence on January 1, 2019 ("Effective Date") and shall remain in effect for a period of three (3) years, unless terminated earlier pursuant to Section 15. The term of this Agreement shall automatically renew for additional successive terms of one (1) year (each a "Renewal Term"), unless terminated pursuant to Section 15. Exhibit C may be modified without revision of the entire Agreement by written agreement by both parties if claims activity changes or volume is other than originally contemplated.

3. Notification. Client shall submit Claims to ERS as soon as reasonably practical upon Client's receiving notice of the Claim; provided however, that First Reports of Injury under the workers' compensation risks will be submitted by Client, either by facsimile or on-line, to ERS within two (2) business days after notice of any such Claim received by Client. ERS will review and immediately process each Claim reported to ERS.

4. Claim Services. Subject to all the terms and conditions of this Agreement, ERS shall provide and shall have the authority and responsibility to provide the following claims adjusting and administration services ("Claim Service(s)") for Client about Claims occurring on and after the Effective Date and ending when the Claims are closed, unless this Agreement is sooner terminated:

(a) Perform the necessary investigation and documentation, including but not limited

to Medical Summaries, File Reviews, and adjuster notes, upon which to base a decision regarding liability and damages exposure, secure information required for the adjustment of each Claim, including a Medical Authorization, and provide investigation in the preparation of the defense for Claims which are subject to litigation;

(b) Maintain a list of outside physicians and other specialists for use as necessary in the independent examination and evaluation of all Claims;

(c) Evaluate each Claim with respect to the probable ultimate cost of the Claim, the need for medical management or rehabilitation services for Workers' Compensation Claims, and such other matters as are routinely evaluated in the industry; provided, that ERS, as it determines necessary in the scope of each Claim, may engage such medical case managers, vocational counselors, independent medical examiners and specialists, to provide opinions with respect to compensability and debatable denials;

(d) Make specific recommendations as to the disposition of the Claim;

(e) Make recommendations, in contested workers' compensation Claims subject to Iowa law, as to settlement with an Iowa Code §85.35 contested case settlement requiring approval by the Iowa Industrial Commission, or similar procedures as permitted in other applicable jurisdictions

(f) Analyze each Claim to determine Client's rights against third parties, and, when appropriate, supervise subrogation of Claims on behalf of Client.

(g) Negotiate and settle Claims where appropriate within ERS' judgment and consistent with Section 7 below.

(h) Compute the amount of any loss payments on the Claim, if any payment is warranted, issue such payment and maintain a record of all payments in each Claim file, based upon factual investigation and evaluation of Client's liability;

(i) With respect to litigated Claims:

(1) Maintain a list of recommended attorneys; provided however, that (i) Client may request the selection of legal counsel other than an ERS recommended attorney; (ii) ERS in no way guarantees or warrants the performance or capabilities of the attorneys on the list and shall not be liable in any way for any acts or omissions of such attorneys.

(2) Review attorney activity and assist with discovery and pre-trial preparation, including continued negotiation and settlement efforts where warranted;

(3) Analyze attorney billings for consistency with fee arrangement and necessity for expenses or time incurred; and

(4) Coordinate and expedite, where necessary, communication between Client and attorney as needed; and

(j) With respect to Medicare Secondary Payer Reporting Requirements:

(1) Client has an obligation to perform Mandatory Insurer Reporting ("MIR") as set forth in Section 111 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Extension Act of 2007 (all of which together shall be referred to herein as "MMSEA") (P.L. 110-173). MMSEA adds new mandatory reporting requirements for liability insurance (including self-insurance), no-fault insurance and workers' compensation (see 42 U.S.C. § 1395y(b)(7), -(8)). Client agrees to properly register (or, as applicable, to use commercially reasonable efforts to cause its insurer to properly register) with the Centers for Medicare and Medicaid Services ("CMS") as the Responsible Reporting Entity ("RRE") and to provide to ERS all relevant information, including the RRE Identification Number(s) assigned. ERS shall assist Client with the MIR, and shall be the reporting agent for Client with respect to the MIR. Client consents to the disclosure of any required information to ERS for processing Client's MIR.

(2) Client agrees that, for each Claim reported to ERS for which Client possesses the information, it shall provide to ERS, as soon as required to comply with applicable law and to avoid fines and penalties, and ERS agrees that, for each Claim reported to ERS, it shall use commercially reasonable efforts to obtain from claimants, to the extent permitted by any applicable law, the following information:

(i) Claimant's first and last name;

(ii) Claimant's date of birth;

(iii) Claimant's gender; and

(iv) Claimant's Health Insurance Claim Number ("HICN"), social security number ("SSN") or, in the alternative, a form in substantial compliance with CMS model language containing either claimant's HICN, SSN or a written explanation as to why claimant's HICN and/or SSN is not provided by claimant.

(3) Client shall be responsible and shall, upon receipt of an invoice from ERS, pay ERS all taxes, duties and assessments, including, but not limited to, sales, ad valorem and excise taxes, duties and assessments, which are assessed, levied or imposed by any governmental entity or tax authority in connections with any service provided pursuant to this Section 4(j). This obligation shall survive the termination of the Agreement.

(4) In addition to Client's indemnification obligations set out in the Agreement, and in no way limited by those obligations, in consideration of ERS's provision of

MIR reporting services, and for other good and valuable consideration, Client agrees to defend, indemnify, and hold ERS harmless from any failure by Client to properly comply with MIR obligations or otherwise comply with the rules and regulations set forth by, or in connection with, CMS, including, but not limited to, the requirements of 42 U.S.C. § 1395y(b)(8) that results in any loss, cost, damage or expense, including, but not limited to fines, claims, attorney's fees or other loss, including litigation or administrative proceedings, to the extent arising from or related to the failure of Client to timely or accurately remit to ERS any information in Client's possession required by MIR, including, but not limited to, relevant information, such as the RRE Identification Number(s) assigned by CMS or the information set out in Section 4(j)(2) above. The provisions of this Section 4(j) shall survive the expiration or termination of the Agreement.

(5) Client shall not indemnify ERS, nor be responsible, for any losses, damages or fines incurred by ERS because of errors, omissions, inaction, or incorrect information obtained by ERS from sources other than Client or any errors on the part of CMS or other government agency.

(k) In the course of providing Claim Services, in the event of any disagreement between ERS and Client as to directions provided to ERS by Client with respect to the investigation and/or adjustment of any Claim that ERS, in good faith, believes would violate any applicable law or subject any party hereto to liability under the applicable bad faith law of any applicable jurisdiction, ERS may investigate and/or adjust such Claim as it, in good faith, believes is appropriate and any dispute as to the investigation and/or adjustment of such claim shall be resolved in good faith.

5. Allocated Loss Adjustment Expense. In the course of providing Claim Services, ERS may incur expenses on behalf of Client ("Allocated Loss Adjustment Expense(s)"), including, but not limited to, the following items or services:

(a) Fees of attorneys or other authorized representatives, where permitted, for legal services, whether by outside or staff hearing representatives.

(b) Court costs, alternate dispute resolution costs, and other specific items of expense, including but not limited to:

(1) Medical examinations of a claimant to determine the extent of liability, degree of permanency, or length of disability;

(2) Expert medical or other testimony;

(3) Autopsy;

(4) Witnesses and summons;

(5) Copies of documents, such as birth and death certificates, medical treatment records;

- (6) Impartial examinations ordered by applicable workers' compensation boards;
- (7) Arbitration fees;
- (8) Surveillance; and
- (9) Appeal bond costs and appeal filing fees;
- (10) ISO Claim Search Fees
- (11) Call Center Expense

(c) Extraordinary medical costs containment and other expenses, whether performed by an outside vendor or an ERS employee, incurred for the purpose of controlling losses and to ensure that only the reasonable and necessary costs of services are paid; and said expenses may include, but are not limited to:

- (1) Bill auditing expenses for any medical or vocational services rendered, including hospital bills (inpatient or outpatient), nursing home bills, physician bills, chiropractic bills, medical equipment charges, pharmacy charges, physical therapy bills, medical or vocational rehabilitation vendor bills;
- (2) Hospital utilization reviews, including pre-certification/pre-admission, where applicable, and concurrent or retrospective reviews;
- (3) Preferred provider network/organization expenses;
- (4) Medical fee review panel expenses;
- (5) Case management services expenses, including medical summaries;
- (6) Rehabilitation services expenses; and
- (7) Pharmacy management services expense;

(d) Expense(s) not defined as losses which are directly related to and directly allocated to the adjustment of a Claim and/or which are required to be performed by any applicable statute or regulation; and

(e) Salaries, overhead and traveling expenses of ERS employees, except for employees while doing activities previously listed as Allocated Loss Adjustment Expenses, shall not be included as Allocated Loss Adjustment Expenses.

6. Excess Claims. ERS shall have no responsibility with respect to Excess Claims; provided,

however, that ERS shall notify Client of its receipt of an Excess Claim. Only if and to the extent requested in writing by Client, ERS shall cooperate with the Client's Excess Claim insurance carrier by providing such Excess Claim insurance carrier with access to ERS' claim files, if any, on such Excess Claim.

7. Claim Settlement Authority. ERS shall have authority to settle all Claims under this Agreement without the prior approval of Client, except those which involve or are expected to involve total expenditures of loss and Allocated Loss Adjustment Expenses more than amounts set forth in the Settlement Authority Schedule, attached hereto as Exhibit B and made a part hereof, in which case ERS shall not settle the Claim without first obtaining the approval of Client.

8. ERS Reports. ERS shall provide the following reports, monthly, which shall be due within twenty (20) days after the end of each applicable month:

(a) A Claim loss run detailing, by report period, year to date and inception to date figures and the following information by accident date: policy number (if more than one); claim number; state; location number; total incurred loss expense, broken down by medical expense, indemnity expense and Allocated Loss Adjustment Expense; outstanding and suggested reserves (loss and loss adjustment); Loss Payment Account (as hereinafter defined) activity; and such other information reasonably requested by Client;

(b) Upon request, copies of all Claim loss payment and Allocated Loss Adjustment Expense checks;

(c) A report of any Claim reserve in the amount of \$5,000 or greater, and any change in a Claim reserve of \$10,000 or greater; and

(d) A Narrative Serious Loss Report and a copy of the claim file for any Claim involving death or other catastrophic loss and an Additional Narrative Serious Loss Reports whenever there is a change in the reserve on such Claims.

9. Draft Authority and Funding Arrangements.

(a) ERS will make Claim and Allocated Loss Adjustment Expense payments only from funds provided by Client as described herein (the "Funding Arrangement"). In the event that Client fails to fulfill its obligations under the Funding Arrangement, ERS may immediately suspend all payments of Claims and Allocated Loss Adjustment Expenses.

(b) Pursuant to a separate agreement between a bank designated by ERS ("Processing Bank") and ERS, ERS will maintain a loss payment account with the Processing Bank ("Loss Payment Account" or "Loss Fund") consisting only of Client's money. All Claim and Allocated Loss Adjustment Expense payments will be paid from this Loss Fund.

(c) The Loss Payment Account shall be funded by Client as follows:

(1) Client shall pay to ERS a deposit of fund of \$18,000 ("Funding Deposit").

This deposit will be held by ERS in its general accounts. Payments of Claims and Allocated Loss Adjustment Expenses paid on behalf of Client shall be charged against the Funding Deposit. In addition, ERS loss systems will generate (as applicable) charges for Claim Payments and Allocated Loss Adjustment Expenses which will be payable through the Loss Payment Account.

(2) Each week, ERS will invoice and sweep Client's bank account for amounts paid from or charges assessed against the Funding Deposit during the previous week. Payment shall be received via ACH within two (2) business days of invoice.

(3) ERS reserves the right to require Client to pay to ERS additional amounts in the Loss Fund to cover Special Requests for claim payments over \$10,000 which could deplete the level of the Funding Deposit to less than twenty (20%) of the Funding Deposit. In the event an adjustment in the Funding Deposit is required, ERS will provide Client with documentation of the analysis and notification of the amount of increase in the Funding Deposit. With mutual agreement, the Client may adjust the fund based on claims payment experience. The increase to the Funding Deposit must be received by ERS within five (5) business days after Client is notified of the need for an increase. Prior to any Renewal Term, or in the event of this Agreement is not renewed or is terminated for any reason, ERS may request an adjustment to the Funding Deposit.

(4) All Claim and Allocated Loss Adjustment Expense payments shall be made by ERS on behalf of Client on a continuous basis by means of checks drawn on the Loss Payment Account or Loss Fund.

10. Ownership of Files.

The parties agree that at all times prior to and after the termination of this Agreement all Claim files, including all related electronic data, are owned by Client, and Client shall have the right to copy any and all Claim files, or any documents related to any Claim. ERS shall retain and store closed Claim files for such period as is required by ERS's record retention policies, or such other time as Client and ERS may mutually agree. Until such time as ERS's obligation to retain and store Claim files ends, ERS shall either return and/or destroy closed Claim files as directed by Client.

11. Duties of Client.

(a) Client shall cooperate with ERS in the investigation of any Claim and promptly provide any information ERS reasonably requests for the purpose of investigating a Claim;

(b) Client shall report all Claims to ERS; and

(c) Client shall indemnify, defend, and hold harmless ERS, and its officers, agents, employees, and those of its parent, subsidiaries, and affiliates providing Claim Services hereunder, from and against any and all claims, lawsuits, causes of action, proceedings,

penalties, fines, losses, damages, costs, expenses, and all other liabilities of any kind, including, without limitation, extra-contractual and punitive damages, settlement costs, judgments, and attorney's fees based upon, arising out of, or in connection with, any actual or alleged act or omission, tortious or otherwise, of Client, its officers, agents, employees, independent contractors, or any other third party engaged by Client. This clause shall survive the termination of this Agreement. Such indemnification shall include, but not be limited to, penalties, fines or other loss, cost or expense arising out of one of the following areas:

- (1) Any loss, claims, lawsuits, fines, penalties, assessments, or interest imposed on or alleged against ERS regarding actions taken pursuant to the specific direction of Client;
- (2) Client's failure to provide, or provide in a timely fashion, a properly completed copy of the employer's First Report of Injury;
- (3) ERS's inability to process and/or pay the initial or subsequent disability payment, vocational rehabilitation maintenance payment and any automatic indemnity benefit penalty within the prescribed deadlines, as a result of the late reporting, or any other action or inaction, by Client to ERS, of the accident, incident, disability or facts necessary to enable ERS to make proper determination of benefit entitlements; such notice shall be deemed late if all necessary and complete documentation is not received in ERS's designated claim servicing facility at least five (5) business days prior to the payment deadline;
- (4) ERS's inability to maintain complete Claim information as a result of Client's failure to provide, or failure to provide in a timely fashion, information as required, including, but not limited to, the date of employer's first knowledge of injury and advice of involved subsidiary operations; and
- (5) ERS's inability to maintain properly documented Claim files in all areas as required by the applicable workers' compensation act, regulation, edict or guideline, if the information is unavailable as a result of Client's failure to provide, or failure to provide in a timely fashion, the necessary documentation or information as required.
- (6) Any other failure by ERS to comply with the applicable workers' compensation act or other administrative guidelines as a result of Client's failure to provide, or failure to provide in a timely fashion, any necessary documentation or information as prescribed by law, or as a result of Client's action or inaction which prohibits ERS from properly complying with the appropriate law, regulation or guideline.

12. Fees. Client agrees to pay ERS the fees for the Claim Services provided herein and such other services as Client may request, including, but not limited to loss control services, as set

forth in the Service Fee Schedule, which is attached hereto as Exhibit C and made a part hereof. Fees will be computed upon either per Claim or per claimant basis, as specified in Exhibit C. Invoices shall be due within thirty (30) days after billing. The charges for Claim Services are exclusive of the charges for loss or Allocated Loss Adjustment Expenses payments. Payment of fees shall be subject to the following:

- (a) Client agrees to further reimburse ERS for the amount of any such taxes, assessments or escheat obligations, any interest expense assessed against or incurred by ERS before or after payment of such amounts, and any other charges, penalties or fines in connection therewith, including reasonable attorneys' fees, that ERS may sustain in connection with such amounts, or for which ERS is imposed with the duty to act as agent for collection; unless such amounts, charges, penalties or fines, including attorneys' fees, were caused by the negligence or willful misconduct of ERS and any such amount shall be due and payable upon written notification by ERS to Client;
- (b) Client shall have sole discretion in determining whether any claim or assessment for taxes, assessments or escheat obligations shall be paid, compromised, litigated or appealed and as to all matters of procedure, compromise, defense or appeal or any other aspects of any claim or assessments concerning its liability;
- (c) In the event any amounts due under this Agreement are not paid on or before the due date, ERS reserves the right to charge interest at the monthly rate of one and one-half percent (1.5%), from the date of ERS's demand for payment until the date of payment.
- (d) The fees for each Claim shall cover Claim Services for the term of the Agreement, and any renewal term thereof, and shall be non-refundable.

13. Limitation of Liability.

- (a) ERS makes no representation that Client is authorized to insure or to self-insure the risks set forth on Exhibit A. It is the responsibility of Client to obtain all necessary authorizations from any applicable insurer or governmental authorities. Client acknowledges and agrees that ERS is not an insurance carrier and that this Agreement is not a policy of insurance. As such, ERS will act on behalf of Client to investigate, settle and supervise Claims only as expressly stated in this Agreement and such actions by ERS will have no effect upon any of Client's insurance, even if provided by ERS's parent or any of its parent's affiliates or subsidiaries. ERS reserves the right to not provide Claim Service in any state or other political jurisdiction if, such services are prohibited by the laws or regulations thereof.
- (b) In the event ERS breaches this Agreement, ERS shall have thirty (30) days after it receives notice of the breach from Client to cure such breach. If the breach is not cured within thirty (30) days, then this Agreement shall terminate immediately upon receipt by the non-breaching party of written notice termination. The foregoing is in lieu of all other warranties, expressed or implied (including warranties of merchantability and fitness of a particular purpose) and all liability for special, indirect or consequential damages,

including lost profits, even if ERS has been advised of the possibility of such damages.

(c) ERS shall have no liability where:

- (1) ERS makes a recommendation to Client that Client declines to follow and, instead, ERS follows an alternative course of action at the direction of Company;
- (2) ERS follows a course of action directed by Client without a recommendation from ERS;
- (3) Client has delegated its decision-making responsibilities to a third party and ERS makes a recommendation to the third party that the third-party declines to follow and, instead, ERS follows an alternative course of action at the direction of the third party; or
- (4) Any person not a party to this Agreement attempts to enforce this Agreement against ERS.

(d) ERS agrees to indemnify, defend, and hold harmless Client, and its directors, officers, agents, and employees, against all claims, lawsuits, penalties, administrative proceedings, judgements, costs or expenses, including but not limited to reasonable attorney's fees, resulting from, or arising out of or in connection with the negligence or willful misconduct on the part of ERS or its employees. ERS shall have no duty to indemnify and hold harmless Client or its directors, officers, agents and employees from claims arising out of (i) actions of ERS or its employees taken at the specific direction of Client, its employees, agents or delegated third parties, or (ii) the negligence or fault of Client or its employees and agents.

14. Events of Default. The following are events of default under this Agreement:

- (a) Client shall fail to make any payment of charges or fees on or before the due date;
- (b) Client shall fail to fulfill any of its obligations under Section 9;
- (c) Either party becomes insolvent or is unable to pay its debts as they become due or is declared bankrupt or insolvent, or if a debtor relief proceeding has been brought by or against it.
- (d.) ERS fails to fulfil its obligations under the terms of this Agreement and the attached documents incorporated herein.

15. Termination.

- (a) This Agreement may be terminated by either Party upon one hundred twenty (120) days prior written notice, by Client under Section 13(b), or immediately upon the occurrence of any event of default, as defined in Section 14 upon written notice to the

breaching party. In addition, this Agreement will automatically terminate when both parties agree that all the obligations of each party hereunder have been fully performed.

(b) Notwithstanding the termination or expiration of this Agreement, Client shall remain fully liable to ERS for all fees for Claim Services, payments for losses (paid and incurred) and Allocated Loss Adjustment Expenses for Claims and all other sums due pursuant to this Agreement with respect to losses, fees, and Allocated Loss Adjustment Expenses incurred and Claims reported before such termination, and all such obligations of Client shall survive termination of this Agreement.

(c) In the event of termination of this Agreement, ERS will continue to provide Claim Services for Claims reported prior to such termination until conclusion, unless otherwise notified by Client. However, if, after termination of this Agreement, Client fails to fulfill its obligations Sections 9, 11 or 12, ERS may immediately discontinue all Claim Services.

(d) After termination of this Agreement, if requested by Client, ERS may provide Claim Services to Client for Claims reported, or which occurred, after termination, subject to the parties reaching agreement as to the type of Claim Services, the price thereof and the method by which ERS will be reimbursed by Client for performance of those Claim Services.

(e) Notwithstanding anything to the contrary contained herein, ERS shall not be obligated to provide any Claim Services for any Claim after two (2) years after the date of the later of (1) the last Claim is closed; or (2) the Loss Payment Account is closed, unless specifically requested in writing by Client, Client deposits sufficient funds in the Loss Payment Account as ERS deems reasonably necessary, and ERS and Client agree as to method and price by which ERS will be reimbursed fees by Client.

16. Examination of Records. Client shall have the right to examine any Claim file or time sheets relating to the specific Claim maintained by ERS pursuant to this Agreement; provided, however, that any examination of individual Claim files shall be carried out in a manner designed to protect the confidentiality of the individual's medical and professional information and that any examination shall be conducted during the normal business hours of ERS and pursuant to reasonable restrictions imposed by ERS, including Section 19 below.

17. Assignment and Subcontracting. No assignment by any party to this Agreement shall be valid without the written consent of the other parties. ERS shall not subcontract for any of the activities to be performed by ERS without approval of Client; provided, however, that any such assignment or subcontracting shall not relieve ERS of its obligation to Client under this Agreement. Notwithstanding the foregoing, ERS may at any time assign its rights and delegate its duties hereunder to Employers Mutual Casualty Client or its affiliates or subsidiaries. In addition, Client acknowledges and agrees that all or some of the Claim Services provided hereunder may be provided by Employers Mutual Casualty or its affiliates or subsidiaries.

18. Disputes. If an irreconcilable difference of opinion or claim should arise between Client and ERS both parties agree to try to resolve any dispute arising under this Agreement by good faith negotiations. The parties waive any and all right to a jury trial for any claims arising out of or in any way related to this agreement.

19. Confidentiality.

(a) For the purpose of this Agreement, the following information shall be treated as "Confidential Information": (1) all information or data disclosed, provided, or to which access is granted, by one party to the other party pursuant to or as a result of receiving or performing services or obligations under this Agreement; (2) all information contained in the Claims files maintained by ERS pursuant to this Agreement and any related statistical information; (3) all information subject to privacy statutes and regulations, including but not limited to personally identifiable or health-related information disclosed by any person in furtherance of or pursuant to this Agreement; (4) the terms of this Agreement; and (5) trade secrets as defined in Iowa Code Chapter 550 or an equivalent applicable state or federal statute or common law.

(b) Confidential Information includes, but is not limited to information that is in written, graphic, tangible, oral, electronic, or magnetic form, and regardless of whether designated or labeled as "confidential".

(c) Both Parties acknowledge and warrant that it will maintain all Confidential Information in compliance with any and all applicable state and federal laws relating to privacy, including those that pertain to the maintenance, disclosure, and use of personal information.

(d) Each party hereto shall use Confidential Information only in furtherance and support of, and to fulfill its obligations under this Agreement, and each shall hold the other parties' Confidential Information in trust and confidence using the same level of care it uses to protect its own Confidential Information from disclosure, and in any event no less than commercially reasonable care, and will not disclose, make available, or grant access to the Confidential Information to any other party, person, or entity, except in any of the following instances: (1) its employees, officers, and contractors who (i) need to know the Confidential Information in order for the party to fulfill its obligations under this Agreement, (ii) are informed of the confidential nature of the Confidential Information, and (iii) are required to protect the Confidential Information with at least the same level of confidentiality as provided herein; (2) as may be authorized in writing by the party that disclosed the Confidential Information; (3) as maybe required or allowed by law or legislative, administrative, or judicial order, provided the receiving party uses diligent efforts to limit disclosure and obtain confidential protection, and consults with the disclosing party to allow the disclosing party to participate in the proceeding; and (4) ERS may disclose Confidential Information as allowed under its privacy policies.

(e) Each party shall maintain all applicable and appropriate attorney-client and other legal privileges.

(f) In the event either ERS or Client learns of or has reason to believe that any Confidential Information has been disclosed to or accessed by any unauthorized party ("Security Event"), that party shall within ten (10) business days give notice of such Security Event to the other party and cooperate in any ensuing investigation.

20. General Provisions.

(a) The subject headings of the Articles of this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

(b) This Agreement and its Exhibits, attached hereto and incorporated herein by reference, set forth the entire understanding of the parties and supersedes any prior agreement or understanding relating to the subject matter hereof. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties.

(c) No waiver of any of the provisions of this Agreement, including any event of default, shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(d) This Agreement is for the sole benefit of the parties hereto and in no event shall this Agreement be construed to be for the benefit of any third party.

(e) Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa, without regard to conflicts of law's provisions. Should all or any part of any provision contained in this Agreement be rendered or declared invalid by reason of any existing or subsequently enacted legislation, or by any decree of a court of competent jurisdiction, the remaining provisions shall remain in full force and effect to the maximum extent permitted by law.

(g) Each notice or other instrument referred to in this Agreement shall be in writing and shall be deemed given to a party when delivered by hand or by nationally recognized overnight courier, or three (3) days after a writing is deposited in the mail, postage prepaid and registered, addressed to each party at the address set forth below or at such other address as such party, by notice to each of the other parties, may designate from time to time.

If to ERS:

EMC Risk Services, LLC
717 Mulberry Street
Des Moines, Iowa 50309
ATTN: Barbara A. Sullivan
(515) 345-2669

If to Client:

City of Council Bluffs
209 Pearl Street
Council Bluffs, Iowa 51503
ATTN: _____

21. Request for proposal and ERS response

By this reference Client's RFP and the ERS response attached as exhibit's D and E hereto, are hereby made a part of this of this agreement. All the requirements set out therein and the commitments pledged therein shall be considered terms of this agreement and enforceable in the same fashion as all other terms of this agreement. In the event that there is a conflict between the language of this Agreement and the Client's RFP and ERS Response thereto, the conflict will be resolved to the interpretation most beneficial to the Client's position.

*Exception: Section 15 extends the time allowed for a Termination notice to 120 days

IN WITNESS WHEREOF, Client and ERS have caused this Agreement to be executed in duplicate by their respective officers duly authorized to do so this 1st day of September 2018.

EMC RISK SERVICES, LLC

Date: _____

By:

Barbara A. Sullivan, CPCU, AIC
Title: President and Chief Operating Officer

Client

Date: _____

By: _____

Title: _____

EXHIBIT A

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(Self-Insured Policy information to be documented here)

EXHIBIT B

ERS SETTLEMENT AUTHORITY SCHEDULE

Workers' Compensation Claims:

ERS will have authority to settle workers' compensation Claims without the prior approval of Client up to \$10,000; provided, however, that:

1. ERS is authorized to pay all authorized and covered medical bills;
2. ERS is authorized to initiate permanent partial disability payments up to the rating as determined by the authorized treating physician and all state specific applicable interest; and

Prior to offering or accepting any settlement in excess of \$10,000, ERS will submit a formal written report to Client asking for authority. Once authority is granted, ERS will contact the claimant and/or the claimant's attorney and make an offer to resolve the Claim. Before any settlement above this amount is issued, ERS may make a special request for funding of the settlement amount as such settlements

EXHIBIT C

SERVICE FEE SCHEDULE

Claim Fees shall be effective as of the Effective Date, or upon the agreed established date.

Client agrees to pay ERS the following fees for handling of Workers Compensation Claims:

| | |
|--|---|
| Medical Only and 411 Management | \$ 211.00 |
| Indemnity/Full Investigation | \$ 1125.00 |
| Incidents Only | \$ 35.00 |
| Assume Existing Chapter 85 claims | \$ 725.00 |
| Reload Fee: | \$ 275.00 |
| Medical Bill Review and Pharmacy Benefit Program: | |
| | 28% of Savings and \$9.00 per bill |
| On-Line Automation/Administration user) | \$ 500.00 per user (no fee for first user) |
| Annual Administration: | \$ 5400.00 |

This includes quarterly file reviews and loss or trending reporting as requested, access to the online claims system with ability to file claims online. Reports available include a variety of loss and safety reports that are provided upon a schedule or per request, as well as reports that can be tailored to the specific business needs of the City of Council Bluffs.

As Requested:

| | |
|-------------------------------|--|
| Nurse Case Management | \$ 110.00/hour (plus reasonable expenses) |
| Medical/Legal Review | \$ 110.00/hour |
| Loss Control Services: | \$ 125.00/hour (plus reasonable expenses) |
| Safety Data Dashboard: | \$ 400.00/report |

**Subrogation/Recovery Fee:
of recovery**

As requested and authorized: **18% of the amount**

In consideration of such compensation, ERS will adjust Claims for a two (2) year period; after which, if the Claim remains open after two (2) years, then a reload service fee as set out above will be invoiced. The claim fees will include all Medicare and State EDI filings as required.

Workers' Compensation (Chapter 85) Medical Only Claim Definition:

- Involves not disputed issues that would require in-depth investigation or recorded statements
- Time loss does not exceed the statutory waiting period
- No need for medical case management or vocational rehab
- No attorney
- No issue of medical causal relationship or compensability
- No subrogation issues exist
- No Permanent Partial Disability issues exist
- Medical Treatment does not exceed \$2200
- The claim can reasonably be closed within 120 days.

EXHIBIT D

City of Council RFP

See attachment

EXHIBIT E

EMC Response to RFP

See attached