



ST. JOSEPH COUNTY

ESTABLISHED 1830

BOARD OF COMMISSIONERS



MEMBERS

CARL H. BAXMEYER
District 1

DEREK D. DIETER
District 2

DEBORAH A. FLEMING, D.M.D.
District 3

AGENDA

Tuesday, September 12th, 2023, 10:00 a.m. 4th FLOOR COUNCIL CHAMBERS

[Join Board of Commissioners Meeting](#)

Dial in: 1-312-626-6799 | Meeting ID: 992 8675 0389 | Passcode: 314981

PLEDGE OF ALLEGIANCE

A. FIRST ORDER OF BUSINESS: Opening and Reading of Bids/Letters of Interest on:

B. REPORTS AND REQUESTS FROM:

COMMISSIONERS:

- a) Accounts Payable Docket
- b) Approval of JWF Specialty Company Administrative Agreement

EMERGENCY MANAGEMENT AGENCY:

- a) Request to Advertise – Early outdoor Warning systems (EOWS) Improvements

C. OLD BUSINESS:

D. PUBLIC COMMENTS (Three Minute Limit)

The Title VI Coordinator has made available at this meeting/hearing a voluntary Public Involvement Survey to collect demographic data to monitor and demonstrate St. Joseph County's compliance with its non-discrimination obligations under Title VI and Federal Regulation 23CFR 200.9(b)(4), and more importantly, ensure that affected communities and interested persons are provided equal access to public involvement. Compliance is voluntary. However, in order to demonstrate compliance with the federal regulation, the information requested must be documented when provided. It will not be used for any other purpose, except to show that those who are affected or have an interest in proceedings, or the proposed project have been given an opportunity to provide input throughout the process.

JWF SPECIALTY COMPANY ADMINISTRATIVE SERVICES AGREEMENT

THIS ADMINISTRATIVE SERVICES AGREEMENT, made this 1st day of September 2023, is by and between St. Joseph County (“Employer”), and ONB Benefits Administration, LLC d/b/a J.W.F. Specialty Company, an Indiana limited liability company (the "Administrator"), each referred to herein individually as “Party” and collectively as the “Parties.”

BACKGROUND

Administrator is in the business of providing claims administration services to its clients, which include employers who are subject to workers’ compensation regulations in their respective states and may have related property and casualty coverages and exposures.

Employer desires to engage the services of Administrator and Administrator desires to provide such services to Employer in connection with Employer’s workers compensation and related property and casualty programs of insurance (each, a “Program”) as set forth in more detail below.

In consideration of the premises, the mutual covenants herein contained, and each and every act performed hereunder by either of the Parties, such Parties agree as follows:

AGREEMENT

Section 1. Appointment of the Administrator. Employer appoints and authorizes Administrator to provide the claims administration services described herein in connection with claims or losses under policies of insurance issued pursuant to the Program(s). Such authority will apply to those claims or losses reported during the Term (as defined in Section 2) and will be subject to oversight by Employer.

Section 2. Term of Agreement. The term of this Agreement shall commence on September 1, 2023 (the “Effective Date”), and shall terminate on September 1, 2026, unless earlier terminated by a Party in accordance with Section 11 of this Agreement (the “Term”).

Section 3. Duties of Administrator. Administrator shall perform the following claims administrative services with respect to the Program(s) (collectively, the “Services”):

- (a) receive notice of and create a file on each claim reported to Administrator, maintain each claim file for Employer, and assist Employer in its reporting obligations to the required Worker's Compensation State Board or similar regulatory reporting entities;
- (b) manage claims as required to determine their validity and compensability;
- (c) determine benefits due on compensable cases;
- (d) adjust, settle, or deny payment of benefits due in accordance with payment procedures from the Claims Fund Account established by Employer and as provided to and agreed upon by Administrator in advance;
- (e) prepare documentation and arrange for the defense of litigated cases in accordance with the instructions of Employer;
- (f) at the direction of Employer, represent Employer before the Worker's Compensation State Board or similar regulatory entities;
- (g) at the direction of Employer, represent the Employer at settlement conferences or claim review regarding pending claims as necessary;
- (h) coordinate the activities of legal counsel and take such other actions as approved by Employer in connection with the preparation of cases for hearings, appeals, and/or trials;

- (i) maintain and provide to Employer pertinent data on all claim payments made;
- (j) provide monthly loss reports to Employer and, following the Term, provide loss reports bi-annually until such time as all claims are closed and resolved;
- (k) assist Employer in making timely reports to Employer's excess workers' compensation carrier and to comply with other reporting provisions of the excess policy as communicated by Employer to Administrator;
- (l) advise Employer in writing of major developments, including surveillance, rehabilitation, investigation, reserve recommendations and settlement of claims in excess of agreed levels by the Parties as may be noted in Special Handling Instructions;
- (m) seek Employer approval of any proposed lump sum settlement in excess of established agreed levels;
- (n) with prior approval of Employer (which approval shall not be unreasonably withheld), contract in the name of Employer (and at Employer's expense) with consultants, attorneys and such other independent contractors as shall be reasonably required by Administrator in the performance of its duties herewith;
- (o) arrange and pay, from Employer funds, for audits of Employer records required by the terms hereof; and
- (p) establish and utilize an agreed upon cost containment strategy to reduce overall cost of medical spend.

Administrator shall perform its duties hereunder in accordance with all applicable laws, orders, regulations, decrees, or judgments of any governmental or judicial authority. With respect to any funds of Employer held by Administrator, Administrator will act within its fiduciary capacity as required by law and will not commingle any such funds with any other funds.

Section 4. Duties of Employer.

In addition to its other obligations hereunder, Employer agrees as follows:

- (a) to promptly provide all claims information to Administrator;
- (b) to fully cooperate with Administrator and its representatives in the investigation and defense of claims;
- (c) to provide witnesses as reasonably required to investigate and defend claims;
- (d) to render decisions concerning payment of claims, and on all matters relating thereto, on a timely basis;
- (e) to provide sufficient funds required for the payment of benefits, fees and expenses;
- (f) to file all statutorily reports required to be filed with the appropriate Worker's Compensation Board or similar regulatory entities;
- (g) to promptly deliver funds as are required to carry out this Agreement; and
- (h) to utilize and cooperate in connection with cost containment programs as agreed upon by the Parties.

Section 5. Administrator's Compensation.

As consideration for the provision of the Services, Employer agrees to pay Administrator as set forth in Addendum 1 (fees for service and schedules 1,2 3)

Section 6. Reports; Records.

(a) During the Term, Administrator shall furnish such written reports to Employer relating to the Services as may be reasonably required by Employer within thirty (30) days of the agreed upon reporting timeframe. All of Employer's claim files maintained by Administrator hereunder shall be available for inspection and copying during normal business hours by Employer at Employer's sole expense. Such claim files shall be the sole property of Employer and will be surrendered to Employer at termination of this Agreement upon demand, provided that Administrator may retain such copies as reasonably required to fulfill its contractual obligations to Employer or to comply with applicable law or regulation and/or bona fide document retention policies and procedures intended to comply therewith.

(b). Administrator shall promptly forward to Employer any civil lawsuit or any other inquiry, written complaint or request received from any regulatory agency, client, insured, claimant, broker, or other interested party relating to claim services under this Agreement. Employer will respond and Administrator will fully cooperate and assist the Employer in responding to these inquiries. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance

Section 7. Claims Fund Account. Employer shall be solely responsible for providing and maintaining sufficient funds in the Claims Fund Account required for the payment of benefits, fees, and expenses. Employer shall provide payment for claims on a weekly basis by transferring funds through an Automated Clearing House transfer to the Administrator's Claims Fund Account to pay the normal operating expenses of Employer, including, but not limited to the following:

- (a) costs of settling claims;
- (b) costs of investigation, adjustments, litigation and legal counsel;
- (c) costs of preparing reports required hereunder;
- (d) costs of witness and expert fees;
- (e) costs of medical and engineering appraisals;
- (f) costs of surveillance, photography, and other incidental and special costs incurred to evaluate, process and defend claims;
- (g) costs of financial advisors, consultants, actuaries, accountants, attorneys, and other advisors or subcontractors retained by the Administrator with the consent of Employer pursuant hereto; and
- (h) costs of taxes, license expenses and other fees incurred by or on behalf of Employer.

Administrator shall use the funds in the Claims Fund Account in strict accordance with this Agreement. Employer shall have the right to audit the Claims Fund Account, at its sole expense, at any time during the Term.

Employer understands and agrees that Administrator will not be responsible for payment on any claims or other amounts due hereunder if the Claims Fund Account is not sufficiently and timely funded by Employer to satisfy such obligation, and Administrator will not be held responsible for any penalties, fines, or other late penalties assessed by regulatory agencies, vendors, or other third parties resulting from or arising out of any failure or delinquency by Employer to deliver sufficient funds for deposit to the Claims Fund Account.

Section 8. Administrator Personnel. Administrator shall employ such competent, appropriately licensed, and skilled personnel as shall be necessary to carry out its duties under this Agreement at its sole cost and expense.

Section 9. Non-exclusivity. The services of Administrator to Employer are not exclusive and Employer agrees that Administrator shall be free to render services to others, and to engage in other activities, provided that the rendering of such other services and performance of such other activities shall not in any way interfere with, impair or adversely affect the Administrator's duties hereunder.

Section 10. Mandatory Medicare Reporting Purposes under Section 111. Employer may appoint Administrator as the agent with Medicare's Centers for Medicare & Medicaid Services ("CMS") reporting agency for MMSEA reporting. By statute, Medicare has imposed mandatory reporting requirements on Employer as further described below.

Under the Medicare, Medicaid & SCHIP Extension Act of 2007, Section 111 (MMSEA Section 111, 42 U.S.C. 1395y(b)(8)), worker's compensation payments to Medicare beneficiaries must be reported to Medicare. The same rules require reporting of group health benefits, as well as settlements of personal injury lawsuits. Under Section 111, a self-insured employer, or an employer with a large deductible who is responsible for paying the claim, is designated as the Responsible Reporting Entity ("RRE"). The RRE is required to identify Medicare beneficiaries and then, through a data exchange program with Medicare, report awards, settlements, and the employer's ongoing responsibility to provide medical care. The RRE may designate an agent to assist it in meeting

its legal responsibilities.

Medicare's rules state that the RRE remains legally responsible for proper reporting in every case, and the agent cannot assume this responsibility. *See*, Medicare Secondary Payor Reporting Requirements Users Guide, Version 2.0, July 31, 2009, Sections 7.1 and 7.2.

Administrator has developed a reporting module to intended to meet Employer's requirements for communicating the necessary information to CMS. Administrator will report such required information as is provided by Employer, assist Employer in obtaining the information necessary for proper reporting, and advise Employer when reports are submitted and of all responses received from CMS. However, Administrator cannot be legally responsible for these reports in light of Medicare's rules.

This information above pertaining to mandatory reporting requirements is offered solely for general information purposes, and is not intended to be, nor may any person receiving this information construe or rely on this material, as legal or other professional advice.

Section 11. Termination. This Agreement may be terminated at any time as follows:

- (a) either Party may terminate this Agreement for convenience by providing at least 180 days prior written notice to the other Party;
- (b) Administrator may terminate this Agreement upon any violation of Employer of Section 5 (i.e., failure to compensate Administrator) by providing at least 60 days prior written notice to Employer, provided that Employer does not cure the breach prior to the effective date of termination; or,
- (c) either Party may terminate this Agreement immediately if the other Party becomes insolvent, makes an assignment for the benefit of creditors, is declared a bankrupt, or its assets are administered in any type of creditors' proceeding.

Section 12. Indemnification; Limitations of Liability. Administrator agrees to indemnify, defend, and hold harmless the employees, officers, directors, or agents of Employer ("Employer Indemnitees") against any and all liabilities, costs, expenses (including reasonable attorneys' fees), or damages ("Losses") actually and necessarily incurred by or imposed on any of the Employer Indemnitees in connection with or resulting from any claim made or threatened against Employer Indemnitees as a result of or in connection with gross negligence or intentional misconduct of Administrator, except to the extent caused, compounded by, contributed to by Employer Indemnitees. Employer agrees to indemnify, defend and hold harmless Administrator against any and Losses actually and necessarily incurred by or imposed on any of employees, officers, directors, or agents of Administrator ("Administrator Indemnitees") in connection with or resulting from any claim made or threatened against Administrator Indemnitees as a result of or in connection with any gross negligence or intentional misconduct of Employer, except to the extent caused, compounded by, contributed to by Administrator Indemnitees.

Additionally, the Parties acknowledge and agree that (a) Employer retains ultimate settlement authority for all claims serviced pursuant to this Agreement and (b) Employer is solely responsible for providing and maintaining sufficient funds in the Claims Fund Account required for the payment of benefits, fees, and expenses. As such, Employer will defend, indemnify and holder harmless Administrator Indemnitees from any Losses arising out of any the foregoing.

UNDER NO CIRCUMSTANCES WILL ADMINISTRATOR, ITS EMPLOYEES, OFFICERS, DIRECTORS, OR AGENTS BE LIABLE TO EMPLOYER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS, OR LOST BUSINESS IRRESPECTIVE OF WHETHER SUCH DAMAGES WERE INCURRED BY EMPLOYER DUE TO A NEGLIGENT ACT OR OMISSION. FOR ALL CAUSES OF ACTION OR CLAIMS, EPIC, ITS EMPLOYEES, OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS' AGGREGATE LIABILITY FOR DAMAGES SHALL

NOT EXCEED THE EQUIVALENT OF ONE YEAR ANNUAL COMPENSATION RECEIVED BY ADMINISTRATOR PURSUANT TO THIS AGREEMENT.

Section 13. Notices. All notices required to be given under this Agreement shall be given by personal delivery or by certified mail or registered mail, return receipt requested, postage prepared, addressed as follows:

If to the Client:

Michael P. Misch
Anderson, Agostino & Keller, P.C.
131 South Taylor Street
South Bend, IN 46601

If to the Administrator:

Sandy Fralich
JWF Specialty Company
600 East 96th Street, Ste. 425
PO Box 40996
Indianapolis, IN 46240-0996

Notices shall be effective upon actual receipt if given by personal delivery or three days after mailing, if mailed.

Section 14. Counterparts; Entire Agreement. This Agreement may be executed in any number of counterparts and each shall be considered an original and together they shall constitute one agreement. This Agreement constitutes the entire Agreement among the Parties in respect to the transactions contemplated hereby and supersedes all prior agreements, arrangements and undertakings relating to the subject matter hereof. No covenant or condition not expressed in this Agreement shall affect or be effective to interpret, change or restrict the Agreement.

Section 15. Amendment; Waiver. This Agreement may be amended or modified only by a writing specifically amending the Agreement and signed by the Parties hereto. No waiver of any provisions of or default under this Agreement shall affect the rights of the Parties thereafter to enforce any other provision or to exercise any right or remedy in the event of any other default, whether or not similar. Any waiver of any term of this Agreement must be in writing. All consents and approvals required hereunder shall be in writing and signed by the consenting or approving party.

Section 16. Successors; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either of the Parties hereto without the prior consent of the other (consent not to be unreasonably withheld, conditioned, or delayed). Any delegation or subcontracting of the duties or responsibilities by Administrator to third persons or entities in accordance with the provisions of this Agreement shall not be deemed as an assignment.

Section 17. Governing Law. This Agreement shall be governed by, and shall be construed and regulated in accordance with, the laws of the State of Indiana.

Section 18. No Imputation of Partnership; Agency. Employer and Administrator are not partners or joint venturers and neither this Agreement nor any provision thereof shall be deemed to constitute a partnership or joint venture as between the Parties hereto or to constitute either party as the agent of the other for any purpose except as expressly provided for herein. Neither Party shall be or become responsible for any debts, obligations, or liabilities of the other. Any transaction unrelated to the contractual services set forth herein engaged in by either Party, unless expressly authorized by other Party, shall be solely the liability and responsibility of such Party, which shall not be authorized to bind the other Party with respect thereto. The employees of each Party hereto shall not be deemed employees or sub-agents of the other and each Party shall pay all compensation and provide any fringe benefits to its own employees.

Section 19. Severability. If any provision or part of this Agreement is found to be prohibited, unenforceable or

invalid under the laws of any jurisdiction, the provision or part thereof shall be ineffective to the extent of such prohibition, unenforceability or invalidity under the applicable law without affecting the enforceability or validity of such provision in any other jurisdiction, and without invalidating the remainder of such provision or other provisions of this Agreement.

Section 20. Headings. Headings are not part of this Agreement and shall not be used in the interpretation of this Agreement. They are provided for convenience only.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representatives.

ST. JOSEPH COUNTY, IN

By: _____

Its: _____

Date: _____

J.W.F. SPECIALTY COMPANY

DocuSigned by:
By: Sandy Pralich
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Its: President

Date: 6/22/2023

Addendum 1 Fees for Service:

(a) Employer shall pay Administrator an annual flat fee of \$90,500.00 (the “Claims Service Fee”) for Services provided the 1st year of the Term. Employer shall pay Administrator an annual flat fee of \$91,000.00 for Services provided the 2nd year of the Term. Employer shall pay Administrator an annual flat fee of \$91,000.00 for Services provided the 3rd year of the Term. The annual Claims Service Fee will be paid quarterly, and the 1st installment is due upon inception of the Agreement. Employer shall pay subsequent installments of the annual Claims Service Fee upon receipt. Thereafter, Employer shall pay the annual Claims Service Fee no later than thirty (30) days following each anniversary of the Effective Date. The Parties agree that Claims Service Fee is consideration for services provided by Administrator for the life of any claims reported during the Term, irrespective of termination of the Agreement.

Additional Miscellaneous Fees (schedule 2)

1. Subrogation/ Recovery: 25% of all recoveries
2. All MMSEA reporting: Included

Cost Containment / Managed Care Fees: (schedule 3)

- a. Bill Review: Fee Schedule/U&C: \$6.25 per bill
 - Pass Through Ancillary bills: \$6.25 per bill
 - PPO Networks: 25% of savings
 - Out of Network Negotiation: 25% of savings
 - Complex Bill Review: 25% of savings
 - Nurse Bill Review: 25% of savings
- b. 24/7 Triage: \$85 per call
- c. Telephonic Case Management: \$85 per hour
- d. Field Case Management: \$85 – \$98 per hour

- E. Anticipated schedule has identified to reflect general milestone dates; actual dates may vary based on the Award of Contract:

Anticipated Schedule	
	<i>Anticipated Completion Date</i>
BIDDING PHASE	
Commissioners Meeting Approve Release for Bid	September 12, 2023
1 st Advertisements	September 21, 2023
2 nd Advertisement	September 28, 2023
Pre-Bid Meeting	September 29, 2023
Bid Opening at Commissioners Meeting	October 10, 2023
Review and Recommendation for Award	October 16, 2023
Award of Contract	October 17, 2023
CONSTRUCTION ADMINISTRATION PHASE	
Execution of Agreement and Administrative items	October 24, 2023
Mobilization on Site	March 1, 2024
Substantial Completion (Pending availability of labor and material)	September 30, 2024
Project Closeout	October 31, 2024

- F. Refer to technical specifications for additional schedule provisions identified for specific product and installation.

1.3 EXISTING SYSTEM OPERATIONS

- A. The existing early outdoor warning system sirens shall remain operational for the duration of the project, except for the time that equipment is being replaced at each siren site.
- B. Work areas shall be properly phased to minimize downtime for each siren and to avoid multiple sirens being down at the same time.
- C. Equipment shall be moved by Contractor to accommodate work activities. Cost associated with moving equipment shall be included within the Project.

1.4 EXISTING DRAWINGS AVAILABILITY

- A. Existing drawings of the siren system are available upon request.

END OF SECTION 00 22 13

SECTION 00 21 13 - SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

1.1 LABOR REQUIREMENTS

- A. Contractors must certify that they are in compliance with the federal Fair Labor Standards Act (FLSA) and the **Indiana** Department of Labor Requirements.

1.2 CONSTRUCTION SCHEDULE

- A. An anticipated schedule is being provided to indicate parameters for construction activities and anticipated start dates, finish dates and construction duration for various construction activities.
 - 1. Contractor is responsible for developing a specific work and sequencing plan as required to complete the work and maintain the overall intent to minimize disruption to the existing operations.
- B. The actual construction schedule may not vary from what is indicated due to material and manpower availability. In no event shall the construction schedule be allowed to be used as a basis for additional compensation for actual construction activities earlier or later than indicated on the Construction Schedule.
- C. Scope of Work for the entire Project shall be deemed substantially complete to include the overall project as defined in project documents.
- D. A Project Certificate of Substantial Completion will be issued at the date all work is completed in its entirety.
 - 1. All warranties shall go into effect at the date of Substantial Completion for the project in its entirety.
 - 2. A Certificate of Substantial Completion for the selected portions of the project may be issued if deemed by the Architect/Engineer as appropriate. The issuance of the certificate does not impact the warranty for the project in its entirety.