

RESOLUTION NO. 15-184

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING EXTENDING THE AGREEMENT FOR ADMINISTRATIVE SERVICES WITH EMPLOYERS MUTUAL (EMI)/ASCENSION, AS THE CITY'S INSURANCE PROGRAM THIRD PARTY CLAIMS ADMINISTRATOR FOR THE POLICY PERIOD OF 10/1/15- 9/30/16 WITH AN OPTION TO RENEW FOR THREE (3) ADDITIONAL ONE (1) YEAR PERIODS AT THE SOLE DISCRETION OF THE CITY, PURSUANT TO SECTION 2-797(4)(b), BEST INTERESTS OF THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS WITH THE CONSENT AND ADVICE OF CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West, approved Resolution 09-246, approving the proposal of Employer Mutual, Inc. for the City's property and casualty insurance program third party claim administrator (TPA); and

WHEREAS, in Resolution No. 10-113, the City Commission ratified an "Agreement for Administrative Services" for policy year 2009/2010 with EMI, including an option for up to four (4) annual renewals; and

**WHEREAS,** in Resolution No. 13-232, the City Commission approved the last of the four one-year renewals contemplated in the original agreement; and

**WHEREAS,** in Resolution No. 14-085, the City Commission authorized a one-year extension of the "Agreement for Administrative Services" with EMI for policy year 2014/2015.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "Agreement for Administrative Services" between the City and EMI/Ascension is hereby authorized for policy year of 10/1/2015 - 9/30/2016, including an option to renew for up to three (3) additional one (1) year periods at the sole discretion of the City, pursuant to Section 2-797(4)(b), best interests of the City.

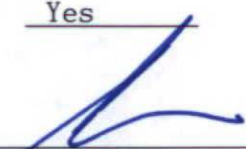
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 19th day of May, 2015.


Authenticated by the presiding officer and Clerk of the Commission on May 20, 2015.

Filed with the Clerk May 20, 2015.

Mayor Craig Cates	<u>Absent</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Absent</u>
Commissioner Jimmy Weekley	<u>Absent</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
\_\_\_\_\_  
MARK ROSSI, VICE MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

# Executive Summary



**To:** The City Commission for the City of Key West

**From:** Lisa Takach Borzy, Risk Manager

**Date:** 4/30/2015

**RE:** Third Party Administrator Services

A handwritten signature in blue ink, appearing to be "LB", is located to the right of the "From:" field.

---

## Action:

Pursuant to City of Key West Code of Ordinances 2-797 Exemptions, (4) (b), Best Interests of the City, respectfully request the City Commission to approve and extend Third Party Administrator (TPA) Services for the Administration of the City's property, casualty and workers' compensation claims program with Employers Mutual, Inc. (EMI)/Ascension for the policy period of 10/1/2015 – 10/1/2016 with the option, at the sole discretion of the City, to renew the agreement on an annual basis for up to three (3) additional policy years. Additionally authorizing the City Manager or designee to execute all necessary documents with the advice and consent of City Attorney.

## Background:

On September 15, 2009 the City Commission adopted Resolution No. 09-246 authorizing the acceptance of Employers Mutual, Inc. (EMI, now Ascensions) proposal to serve as the City's insurance (property casualty and workers' compensation) program Third Party Administrator (TPA) for policy year 2009/2010 with four (4) additional years. The intent of the RFP was to provide the City the opportunity to annually re-evaluate the services provided by EMI/Ascension and to exercise its option for renewal in subsequent policy periods based on performance. Policy year 2013/2014 represented the final one (1) year period that could be exercised by the City pursuant to Resolution 09-246 and RFP 09-011. Subsequently, the City Commission adopted Resolution No. 14-085 approving an additional one (1) year extension for policy year 2014/2015. The intent was to then consider whether the City would rebid the TPA Services for policy year 2015/2016 and beyond.

As concerns the services EMI/Ascension has provided to the City thus far, following are highlighted statistics since the inception of the relationship back in September, 2009.

- The average workers' compensation claim cost per year from 2005-2008 was \$1.63M and the average workers' compensation claim cost from 2009-2013 was \$670K. The average workers' compensation claim costs per year has decreased by \$960K per year or 59%.

- The average number of workers' compensation claims for the same periods above are: 2005-2008 = 113 and 2009-2013 = 75, a 33% reduction in WC claims volume.
- Total claims (all lines) cost for years 2005-2008 are \$10.242M and years 2009-2013 are \$6.43M. This is a \$3.81M reduction with an additional year in the latter time frame.
- The City's workers' compensation modification rate has decreased from a 2.13 in 2010 to a 1.3 in 2014. This represents significant savings to the City in premiums, assessments and loss funds.

Qualitative measures that have impacted the program include:

- The depth of questioning in determining compensability.
- Detailed investigations of pre-existing conditions.
- Aggressively handling presumption claims; taking a hard defense and investigation on all presumption claims, most new presumption claims have been successfully denied. When the statute is deciphered appropriately these are avoidable high dollar claims.
- Researching and selecting the best sources to save money on medical costs.
- Consistent employee contact; establishing a relationship with the employee allows for a more productive patient and desirable result in treatment.
- Reclassifying lost time and medical only claims to their statutory definition, not that of the former TPA.
- Consistent contact with Risk Management, and excellent communication.

#### **Financial Impact:**

The most significant savings to the City by continuing its relationship with EMI/Ascension has been realized in the result of excellent claims management over the past 5 years. Flat rate fees comprise roughly 10% of overall claims costs. Effective claims management is the key to significant cost savings as opposed to simply comparing administrative fees on paper. However, EMI/Ascension has excelled in both areas as it has provided the City with both savings in claims management efforts as detailed above, as well as savings in administrative fees as discussed below.

EMI/Ascension's fee schedule is very simple in that it charges the City based on a flat rate fee per claim. There are no "hidden" fees or additional charges for standard services for which other TPAs charge, such as an annual administrative fee, data conversion, or producing reports. Furthermore, EMI charges flat rate fees for workers' compensation claims based on the statutory definition of Medical Only rather than a non-statutory definition. The cost difference between Medical Only and Lost Time is approximately \$850.00 per claim.

EMI/Ascension has also proven itself to be a valuable source of savings simply by way of its philosophy in claims management. EMI/Ascension strives to close workers' compensation claims quickly and efficiently after providing injured workers with excellent medical services. The result of this practice has reduced the City's claim volumes significantly. Further, EMI/Ascension does not elongate the life of claims without good reason. Depending on the fee structure, extending the life of claims can unnecessarily cost the City additional claim expenses in the way of administrative fees. Average workers' compensation administrative costs with the City's prior TPA from 2005 through 2010 policy years ranged from \$54,536 to as high as \$96,500. Administrative costs for workers' compensation claims expended by the City to EMI/Ascension from policy years 2010 to 2014 ranged from \$12,606 to \$28,943. General liability claim administrative fees paid to the prior TPA for the same periods ranged from \$27,100 to \$96,500, whereas EMI/Ascension administrative fee costs for its respective policy years ranged from \$15,759 to \$29,571.00

By extending the City's current relationship with EMI/Ascension, the City will see savings in other operating costs as well. The City will forego the insurance consultant expense to assist in the RFP process for a new TPA proposal, an estimated \$4,000. Moreover, the City will avoid costs associated with contracting with a new TPA, which include claim assumption costs/roll over fees, data conversion fees, and set up fees. In the 2009 transfer from Gallagher to EMI, the claim assumption costs alone for EMI to take over claims originally opened by Gallagher, for which Gallagher had already received a flat rate fee, totaled \$46,600.

EMI/Ascension has offered to extend the current Agreement with no changes in services, and further, Ascension will defer the 3% annual escalation clause on the current flat rate fee schedule for up to four (4) years. The current flat rate fees paid by the City to EMI/Ascension for claims administration remain fair and reasonable, and consistent with the nature of services provided to the City.

The fiscal year proposed insurance budget, when approved, will contain amounts sufficient to cover the number of claims projected to be administered in the fiscal year 2015/2016 operating period in account numbers 502-1952-519-3100 and 502-1953-519-3100.

**Recommendation:**

Request the City Commission to authorize extending the agreement with EMI/Ascension for third party administrator services for the policy period of 10/1/2015 – 10/1/2016 with the option, at the sole discretion of the City, to renew the agreement on an annual basis for up to three (3) additional one (1) year periods.

**FIRST AMENDMENT TO  
AGREEMENT FOR ADMINISTRATIVE SERVICES**

**THIS FIRST AMENDMENT TO AGREEMENT FOR ADMINISTRATIVE SERVICES** is entered into this 16 day of JUNE, 2015, by and between **THE CITY OF KEY WEST**, a municipal corporation (hereinafter referred to as "Client"), whose address for purposes of notice is P.O. Box 1409, Key West, FL 33041, and **EMPLOYERS MUTUAL, INC.**, a Florida corporation, (hereinafter referred to as "Administrator"), whose address for purposes of notice is 700 Central Parkway, Stuart, FL 34994.

**WITNESSETH:**

**WHEREAS**, Client and Administrator entered into that certain Agreement for Administrative Services (hereinafter referred to as the "Agreement") on the 26<sup>th</sup> day of March, 2010; and

**WHEREAS**, the initial term of the Agreement expired on the 30<sup>th</sup> day of September, 2010; and

**WHEREAS**, the Agreement provides for four renewal periods of one year each, subject to certain conditions; and

**WHEREAS**, Client exercised its option to renew the Agreement for each of the four renewal periods; and

**WHEREAS**, at the conclusion of the fourth said renewal period, Client and Administrator agreed to extend the Agreement for an additional one-year period pursuant to Resolution No. 14-085, adopted by the City Commission of the City on Key West on March 18, 2014; and

**WHEREAS**, the one-year extension approved pursuant to Resolution No. 14-085 expires on September 30, 2015 and

**WHEREAS**, the parties desire to extend the term of the Agreement subject to conditions.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. The foregoing recitations of fact are true and correct and incorporated herein by this reference.

2. Paragraph V of the Agreement, styled "Administrator Fees and Agreement Period", is deleted in its entirety and replaced with the following:

"Agreement Period – The duration of this Agreement shall be one (1) year commencing on October 1, 2009, with an option, at the sole discretion of the Client, to renew the Agreement on an annual basis for up to ten (10) years.

Client shall pay Administrator a fee as outlined in Exhibit C. The amount will be paid in monthly installment payments due at the beginning of each month. In the event Client exercises its option to renew as outlined herein, there shall be no increase in the said fees.

If the Client, for any reason whatsoever, fails to make a required fee payment or necessary contribution for claim payment as requested by Administrator on a timely basis, Administrator may suspend the performance of its services to the Client until such time as the Client makes the proper remittance.

3. The document identified as Exhibit "C" in Paragraph V of the Agreement, consisting of the fees to be paid by Client to Administrator, is deleted in its entirety and replaced with Exhibit "C1", which is attached hereto and incorporated by reference.

4. This First Amendment may be executed in counterparts. Except as expressly modified by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect, and binding upon the parties in accordance with its terms. In the event of any conflict between the terms of the Agreement and the terms of this First Amendment, the terms of this First Amendment shall control. Client further represents and warrants it is not in default of any of the conditions or covenants of the Agreement.

<sup>th</sup>  
18 IN WITNESS WHEREOF, the parties have caused this Amendment to be executed this  
day of JUNE, 2015.

[SIGNATURE PAGES FOLLOW]





*Cheryl Smith*  
Cheryl Smith, City Clerk

THE CITY OF KEY WEST, a Municipal Corporation

By: *JS Scholl*  
Jim Scholl, City Manager

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 18 day of JUNE, 2015, by Jim Scholl, as City Manager of The City of Key West, a municipal corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

(Notary Seal)

*Portia Y. Navarro*  
Notary Public, State of Florida

Print Name: PORTIA Y. NAVARRO

My Commission Expires: 5/13/2018



**EMPLOYERS MUTUAL, INC.**

By: Joseph L. Tatum, Jr.  
Joseph L. Tatum, Jr., President

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2015, by Joseph L. Tatum, Jr., as President of Employers Mutual, Inc., a Florida corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

(Notary Seal)

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Contra Costa

On June 11, 2015 before me, Eva English  
(insert name and title of the officer)

personally appeared Joseph Lamar Tatum  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Eva English (Seal)



## EXHIBIT C1

### **Property and Casualty**

#### **General Liability**

Bodily injury	742.63
Property damage	742.63

#### **Automobile Liability**

Bodily injury	689.59
Property damage	689.59

<b>Public Officials Liability</b>	742.63
-----------------------------------	--------

<b>Police Professional Liability</b>	742.63
--------------------------------------	--------

### **Workers' Compensation**

Medical	159.14
---------	--------

Indemnity	1,007.86
-----------	----------

Transition (med. to indemnity)	848.72
--------------------------------	--------



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

---

March 26, 2010

Employers Mutual, Inc.  
700 Central Parkway  
Stuart, FL 34994

Dear Sir/Madame:

Enclosed is (1) one original copy of the agreement between the City of Key West and Employers Mutual Inc. for your records and files.

Any questions please give me a call at 305-809-3883.

Thank you.

A handwritten signature in cursive script that reads "Portia Navarro".

Portia Navarro  
Executive Assistant  
City Managers Office

/encl: (1)

RECEIVED  
MAR 31 2010  
Stuart, FL

## AGREEMENT FOR ADMINISTRATIVE SERVICES

**THIS AGREEMENT**, made and entered into by and between the City of Key West hereinafter referred to as the Client, and Employers Mutual Inc. (EMI), 700 Central Parkway, Stuart, FL 34994, a Florida Corporation, hereinafter referred to as Administrator.

### WITNESSETH

**WHEREAS**, the Client desires to engage the services of Administrator to provide claim adjusting services for workers compensation and liability claims as described herein on behalf of the Client;

**WHEREAS**, Administrator is qualified and desires to provide the aforementioned services on behalf of the Client in accordance with this Agreement; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the parties hereto do mutually agree as follows:

The above recitals are incorporated herein as if set forth here below.

### I. SERVICES

#### A. CLAIMS ADMINISTRATION SERVICES

Client engages Administrator to provide the following and such other services as may be considered necessary and which are mutually acceptable to both parties:

- (i) Supervise and administer the open claims in compliance with applicable laws, rules and regulations governing the administration of self-insurance programs and imposed by the State of Florida. Claims will be timely adjusted and Administrator will be responsible for penalties if the penalty arises from the neglect of the Administrator.
- (ii) Provide qualified and experienced personnel capable of servicing the open claims of the Client. Administrator will maintain an office with toll-free telephone services and experienced employees.
- (iii) Complete processing of loss adjustments, investigations and settlements falling within the self-insured retention level. Submissions of all investigation reports, legal actions, court orders, or awards shall be provided to the Client together with recommendations to be taken in the event claims exceed the limits of authority of Administrator. Administrator must obtain prior approval from the Client, for all settlements.
- (iv) Coordinate investigations of and manage litigated claims with defense attorneys.

- (v) Develop subrogation possibilities and assist in the collection of same. Submit claims to reinsurance/excess carriers and assist in the recovery of such benefits (if any) on behalf of Client.
- (vi) In the event of termination of the contract, Administrator shall not have any responsibility or obligation to handle any claims beyond sixty (90) days after the termination date.
- (vii) Administrator shall comply with all notification and reporting requirements of the Client's excess insurers and shall pursue all Excess Recoveries in a timely fashion.
- (viii) Administrator shall pursue all available Second Disability Trust Fund recoveries from the State of Florida.
- (ix) Administrator shall complete and file on behalf of the Client, all State mandated reports.
- (x) Those Services described in the Client's Request for Proposal # 09-011 (Exhibit "A") and the ADMINISTRATOR Proposal (Exhibit B), dated August 24, 2009.

## II. RESPONSIBILITIES OF THE CLIENT

The Client shall have and perform the following duties, obligations, and responsibilities to Administrator.

- (i) **Obligation & Responsibility for Payment.** The Client has the sole obligation and responsibility for funding the payment of claims made against the Client. Administrator assumes no duty to fund any such claims at any time and shall have no obligation to advance funds for such payment.
- (ii) **Deposit Account.** Prior to the commencement of the Agreement, the Client shall establish a bank account at a bank of the Client's choosing and this account will be used to process claim checks. The Client will be responsible for the proper funding of this account as well as all banking fees, bank interfaces and the bank reconciliations. Administrator shall use the funds deposited by the Client into the account to pay claim settlements within the discretionary settlement authority limit or as otherwise authorized by the Client, and to pay interim claim payments, indemnity payments, medical expenses and allocated expenses.
- (iii) **Management of Account.** It is the Client's responsibility to establish and replenish the bank account with funds sufficient to cover all claim payments. The Client may, at its discretion, increase or decrease the minimum funding levels based on actual claim activity. The bank account shall remain in effect until all claims activity ceases under this Agreement.

- (iv) **Allocated Loss Adjustment Expense.** Coverage costs shall include but not be limited to: cost of medical and/or indemnity payments, outside investigation of claims, surveillance, vocational rehabilitation, on-site case management, legal fees, court or hearing costs, depositions, documents and exhibits, witness fees, photography and other incidental and special costs, as approved by Client. Coverage costs shall be borne by the Client as normal claims related expenditures and shall be charged against the Deposit Account.
- (v) **Instructions from Client.** Administrator shall duly consider all written notices and recommendations made by Client relative to the administration of claims, including medical and litigation services with the understanding that the final authority rests with the Client. Administrator shall not be responsible or liable for any action or inaction of the Client, which is contrary to a lawful written recommendation or instruction by Administrator, applicable by law, and/or workers compensation law that causes any claim to not be properly adjusted, administered, and/or processed. Administrator will handle claims in accordance with the written handling procedures as produced by the Client.
- (vi) **Audits.** Client has the right to independently or via outside auditors review the Administrator's performance to insure compliance with the contract requirements and to insure the financial integrity of the program.

### III. ADMINISTRATOR'S RESPONSIBILITY

Administrator shall have no responsibility, risk, liability or obligation for the funding of claims, losses, or liabilities. The responsibility and obligation for funding the program exposures shall be solely and totally the responsibility of the Client.

Administrator shall be liable for the recovery of claim processing errors arising from Administrator's performance pursuant to the terms of this Agreement. Administrator shall use diligent efforts toward the recovery of any loss therefrom. Administrator's liability, if any, shall be limited to the amount in excess of the claim amount(s) payable under the terms of the Agreement.

It is understood and agreed that Administrator is and shall remain an independent ADMINISTRATOR with respect to the services being performed by the Administrator pursuant to this Agreement and shall not for any purpose be deemed an employee of the Client, nor shall the relationship of the parties be deemed that of partners or joint ventures. Administrator does not assume any responsibility, risk, liability, or obligation for the general policy direction of the program, the adequacy of the funding thereof, or any act or omission or breach of duty by parties other than Administrator. Administrator shall not be deemed an insurer, underwriter or guarantor with respect to any expenses payable under the program. Administrator agrees to maintain the insurance requirements as set forth in the Client's RFP throughout the entirety of the life of this contract, including naming the Client as an additional insured in their general liability contract.



**Insurance.** ADMINISTRATOR shall maintain on file with the Client a certificate of the insurance of the carriers showing that the following insurance coverage's are in effect. The following coverage's shall be provided:

Worker's Compensation – statutory – in compliance with the compensation law of the State of Florida.

Commercial General Liability Insurance with minimum limits of \$1 million per occurrence for bodily injury, personal injury and property damage.

Comprehensive Auto Liability Insurance with minimum limits of \$1 million combined single limit per occurrence.

Employer's Liability - \$500,000

Professional Liability / Errors & Omissions insurance with a minimum limit of one million (\$1,000,000) dollars. Must be specific for claims adjusting services.

The Client shall be named as additional insured, except for workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

**Licensing** - ADMINISTRATOR warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses whether federal, state, County or City.

#### IV. DEFAULT AND TERMINATION

- (i) **Default.** The failure of either party to comply with any provision of this Agreement will place that party in default. Prior to terminating the Agreement, the non-defaulting party will notify the defaulting party in writing. This notification will make specific reference to the provision(s) the defaulting party failed to comply with, the exact nature of the default, and the action that needs to occur to correct the default. The non-defaulting party will give the defaulting party a minimum of ten (10) business days to correct the default. If the default is not corrected within the allotted time, the non-defaulting party shall be permitted to terminate this Agreement, effective upon the receipt by the defaulting party of a written termination notice.
- (ii) **Bankruptcy.** If either party files a petition for bankruptcy or a petition or answer seeking reorganization, becomes or is insolvent or bankrupt, has a receiver appointed for its benefit, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, the other party may immediately terminate this Agreement.
- (iii) **Termination.** It is understood and agreed that either party shall have the right to terminate this Agreement on any date by:

- (a) the Client giving Administrator not less than thirty (90) days advance written notice of termination.
- (b) Administrator giving the Client not less than thirty (90) days advance written notice of termination.

Administrator may, at its sole discretion, terminate this Agreement in the event that Client fails to properly fund the program within fifteen (15) days of receiving a written request to do so from Administrator.

Upon termination by either party, Administrator shall, upon the request and at the expense of the Client, provide computer runs detailing various aspects of the Client's program.

It is understood that at termination of the Agreement, Administrator shall not have any responsibility or obligation to handle any incurred claims beyond the termination date except as set forth in paragraph I. A. (vi), above.

#### **V. ADMINISTRATOR FEES AND AGREEMENT PERIOD**

Agreement Period - The duration of the agreement shall be one (1) year commencing from October 1, 2009, with an option, at the sole discretion of the Client, to renew the agreement on an annual basis for up to four (4) years

Client shall pay Administrator a fee as outlined in Exhibit "C". The amount will be paid in monthly installment payments due at the beginning of each month. Fees as outlined in Exhibit "C" will be increased by three (3) percent at the commencement of years two, three, four and five should the City exercise its right to extend the Agreement pursuant to the terms stated in this section.

If the Client, for any reason whatsoever, fails to make a required fee payment or necessary contribution for claim payment as requested by Administrator on a timely basis, Administrator may suspend the performance of its services to the Client until such time as the Client makes the proper remittance.

#### **VI. OWNERSHIP AND RETENTION OF CLAIM FILES**

Administrator will retain all claim files during the time the Agreement is in effect. Subject to the foregoing, Administrator will make available to the Client for copying, at Client's expense, or inspection any records relating to any claim files serviced pursuant to this Agreement upon written request of the Client. Administrator will also make claim files available to any other third party as required by and in accordance with applicable law. All claim files created pursuant to this Agreement are the sole property of Client.

Upon termination of the Agreement, Administrator will be responsible for the retention and storage of all claim files. Client is also responsible for all shipping costs, if any, associated with transporting of claim files.

#### **VII. NOTICE**

Whenever written notice is required under the terms of this Agreement, it shall be delivered either in person or by registered mail to the appropriate party. Notice by registered mail shall be addressed as follows:

##### **ADMINISTRATOR**

Employers Mutual, Inc.  
700 Central Parkway  
Stuart, FL 34994  
ATTN: President

##### **CLIENT**

City of Key West  
525 Angela Street  
Key West, FL 33040  
Attn: City Manager

#### **VIII. NON-ASSIGNMENT**

The provisions of this Agreement supersede any prior Agreements or understandings to the contrary. No party hereto shall have the right to assign this agreement without the written consent of the other party, which will not be unreasonably withheld.

#### **IX. NON TRANSFER OF POWERS**

Nothing contained in this Agreement shall be construed to constitute a Transfer of Powers in any way whatsoever. This Agreement is solely an Agreement for provision of services.

#### **X. ENFORCEMENT**

In the event that it becomes necessary for either party to employ counsel to collect his obligation or to enforce this Agreement, whether or not suit be brought, the prevailing party shall recover a reasonable attorney's fee, including fees on appeal. For all enforcement actions, jurisdiction will be in Monroe County, Florida.

#### **XI. SEVERABILITY**

Should any provision of this Agreement be declared invalid by a Court of competent jurisdiction, same shall be deemed stricken herefrom and all other terms and conditions of this Agreement shall continue in full force and effect as if the invalid provision had never been made a part hereof.

#### **XII. NON-WAIVER**

No delay by either party in enforcing any covenant or right hereunder shall be deemed a waiver of such covenant or right, and no waiver of any particular provision hereof shall be deemed as

waiver of any other provision or a continuing waiver of such particular provision, and except as so expressly waived, all provisions hereof shall continue in full force and effect.

### **XIII. ENTIRE AGREEMENT**

Client's Request for Proposal # 09-011 (Exhibit "A") and the ADMINISTRATOR Proposal (Exhibit B), dated August 24, 2009 and amendments (if any) are hereby incorporated into this agreement. This Agreement constitutes the entire understanding of the parties with respect to provision of services. It may not be modified nor any of its provisions waived unless such modifications and/or waiver is in writing and is agreed to and signed by both parties.

### **XIV. THIRD PARTY BENEFICIARIES**

There are no third party beneficiaries of this Agreement, either intended or implied.

### **XV. INDEMNIFICATION**

- A. The ADMINISTRATOR shall indemnify and hold harmless the CLIENT, its officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of ADMINISTRATOR, its employees or agents, in the performance of this Agreement.
- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CLIENT by reason of such claim or demand, ADMINISTRATOR shall, upon written notice from the CLIENT, resist and defend such action or proceeding by counsel satisfactory to the CLIENT. The ADMINISTRATOR shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CLIENT's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CLIENT whether performed by ADMINISTRATOR, or by persons employed or used by ADMINISTRATOR.
- C. Without waiving the provisions of Florida Statute section 768.28, CLIENT agrees to indemnify and hold the ADMINISTRATOR harmless from any claims resulting in litigation against the ADMINISTRATOR based upon the sole negligence or willful misconduct of the CLIENT. In no event shall any amount payable hereunder exceed the statutory limit of \$100,000.00 irrespective of the applicability section 768.28.

IN WITNESSES WHEREOF, the parties hereunto set their hands and seals this 26th day of March, 20 10.

CLIENT

J. K. Scholl  
Authorized Signature

J. K. SCHOLL  
Typed or Printed Name

CITY MANAGER  
Title

26 MAR 2010  
Date

[Signature]  
Witness Signature

EMPLOYERS MUTUAL, INC.

[Signature]  
Authorized Signature

Kevin Cothran  
Typed or Printed Name

COO / Executive Vice President  
Title

3-24-10  
Date

[Signature]  
Witness Signature

Key West

Please explain required banking arrangements

See Attached following proposal forms.

\_\_\_\_\_  
\_\_\_\_\_

Does the proposer have an approved safety program filed with the State of Florida?

Yes  No

Quoted Price:

	Cost Per Claim	Cost Per Run-Off Claim
<b>General Liability</b>		
Bodily Injury	\$700	\$400
Property Damage	\$700	\$400
<b>Automobile Liability</b>		
Bodily Injury	\$650	\$350
Property Damage	\$650	\$350
<b>Public Officials Liability</b>	\$700	\$400
<b>Police Professional Liability</b>	\$700	\$400
<b>Workers Compensation</b>		
Medical Only	\$150	\$100
Indemnity Claims	\$950	\$475

Is an alternative pricing structure proposed?

Yes No

If so, please specify

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Will a minimum fee apply to the contract

Yes No

If so, please specify

\_\_\_\_\_  
\_\_\_\_\_

Are there any exceptions to the specifications?

Yes No

If so, please specify

\_\_\_\_\_

RESOLUTION NO. 14-085

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING A ONE-YEAR EXTENSION OF THE "AGREEMENT FOR ADMINISTRATIVE SERVICES" WITH EMPLOYERS MUTUAL, INC. (EMI), AS THE CITY'S INSURANCE PROGRAM THIRD PARTY CLAIMS ADMINISTRATOR FOR THE POLICY PERIOD OF 10/01/2014 - 9/30/2015, PURSUANT TO SECTION 2-797(4)(b), BEST INTERESTS OF THE CITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 10-113, the City Commission ratified an "Agreement for Administrative Services" for policy period 2009/2010 with EMI, Inc., including an option for up to four annual renewals; and

WHEREAS, in Resolution No. 13-232, the City Commission approved the last of four one-year renewals contemplated in the original Agreement; and

WHEREAS, the City Commission finds that pursuant to section 2-797(4)(b) of the Code of Ordinances, it is in the best interests of the City to approve an additional one-year extension for policy year 10/01-2014 = 9/30/2015.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the "Agreement for Administrative Services" between the City and EMI, is hereby extended for the policy

period of 10/1/2014 - 9/30/2015, pursuant to section 2-797(4)(b), best interests of the City.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18th day of March, 2014.

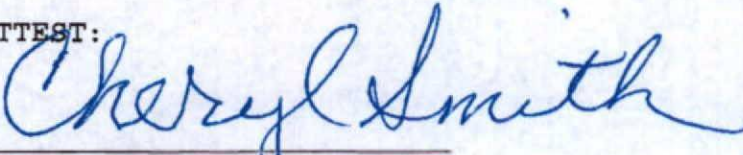
Authenticated by the presiding officer and Clerk of the Commission on March 20, 2014.

Filed with the Clerk March 20, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
CRAIG CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK





## CITY MANAGER'S OFFICE MEMORANDUM

**To:** Mayor and City Commission  
**From:** Bob Vitas, City Manager  
**Date:** February 24, 2014  
**Subject:** Extension of Third Party Administrator (TPA) Services (Property, Casualty and Workers Compensation Program) for Policy Period FY 2014-15 with Employers Mutual, Inc. (EMI)

---

### **ACTION STATEMENT:**

Pursuant to City of Key West Code of Ordinances 2-797 Exemptions, (4)(b), Best Interests of the City, request the City Commission approve and extend Third Party Administrator (TPA) services for the administration of the City's property, casualty and workers compensation claims program with Employers Mutual, Inc. (EMI) for the policy period of 10/01/2014 – 10/01/2015.

### **BACKGROUND:**

On September 15, 2009 the City Commission adopted Resolution No. 09-246 authorizing the acceptance of Employers Mutual, Inc. (EMI's) proposal to serve as the City's insurance (property, casualty and workers compensation) program Third Party Administrator for policy year 2009/2010 with four (4) additional years. The intent of the RFP was to provide the City the opportunity to annually re-evaluate the services provided by EMI and to exercise its option for renewal in subsequent policy periods based on their performance. Policy Year 2013-14 represented the final one year period that could be exercised by the City pursuant to Resolution No. 09-246 and RFP 09-011. With the recent resignation/retirement of the two primary City administrators who provided oversight for such services and the challenge their departure would create with respect to the construction a solicitation, releasing the solicitation and making an award for similar third party services, it is my strong recommendation the City retain for one additional policy period the services of EMI.

#### **2009- Current Services Provided by EMI**

Throughout their tenure with the City EMI has proved to be a responsive and readily available service partner in providing the City with its expertise in claim's management, timely and active interaction with claimants and working closely with both the Legal and Risk Management staff. Employers Mutual, Inc. (EMI) has assisted Risk Management in implementing a more aggressive litigation defense program on all claims which include those claims made under the Heart and Lung Act. Adjusters work hand in hand with City Attorneys to pursue claims closure as quickly as possible.

**FINANCIAL IMPACT:**

Employers Mutual, Inc. (EMI) charges a flat fee for each claim administered, dependent on the type of claim. Such fees were established during the Request for Proposal process and were one of the factors considered in the award determination. The fee charged for the administration of each claim is still considered fair and reasonable and consistent with fees proposed under the RFP and additionally consistent with those fees charged by Employers Mutual, Inc. (EMI) of Florida's contemporaries. The FY 2014-15 proposed insurance budget, when approved, will contain amounts sufficient to cover the number of claims projected to be administered in the FY 2015 operating period.

**RECOMMENDATION:**

Request the City Commission extend the City's agreement with Employers Mutual, Inc. (EMI) for the renewal period of 2014-2015 as allowed for in the RFP No. 09-011.

RESOLUTION NO. 13-232

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, RENEWING THE "AGREEMENT FOR ADMINISTRATIVE SERVICES" WITH EMPLOYERS MUTUAL, INC. (EMI), AS THE CITY'S INSURANCE PROGRAM THIRD PARTY CLAIMS ADMINISTRATOR FOR THE POLICY PERIOD OF 10/01/2013 - 10/01/2014; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 09-246, the City approved the proposal of EMI, Inc. in response to #09-011 requesting proposals for "third party claim administration"; and

WHEREAS, in Resolution No. 10-113, the City Commission ratified an "Agreement for Administrative Services" with EMI, Inc., including an option for up to four annual renewals; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

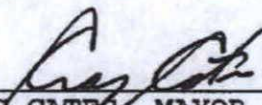
Section 1: That the "Agreement for Administrative Services" between the City and Employers Mutual Inc. (IMA), is hereby renewed for the policy period of 10/01/2013 - 10/01-2014.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

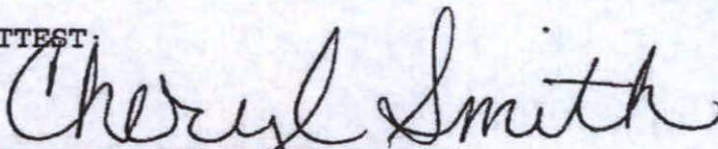
Passed and adopted by the City Commission at a meeting held this 17 day of September, 2013.

Authenticated by the presiding officer and Clerk of the Commission on September 18, 2013.

Filed with the Clerk September 18, 2013.

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

RESOLUTION NO. 10-113

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, RATIFYING THE ATTACHED AGREEMENT FOR ADMINISTRATIVE SERVICES BETWEEN THE CITY OF KEY WEST AND EMPLOYERS MUTUAL, INC. (EMI) FOR SERVICES AS THE CITY'S INSURANCE PROGRAM THIRD PARTY ADMINISTRATOR (TPA); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in Resolution No. 09-246, the City Commission authorized the City Manager to negotiate an agreement with EMI for services as a third party administrator;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

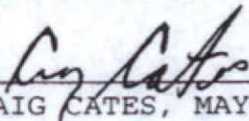
Section 1: That the attached Agreement for Administrative Services is hereby ratified.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

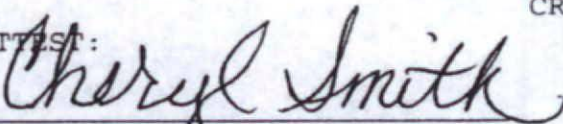
Passed and adopted by the City Commission at a meeting held this 6th day of April, 2010.

Authenticated by the Presiding Officer and Clerk of the Commission on 7th day of April, 2010.

Filed with the Clerk on April 7, 2010

  
CRAIG CATES, MAYOR


ATTEST:

  
CHERYL SMITH, CITY CLERK



## CITY MANAGER'S OFFICE MEMORANDUM

**TO:** Jim Scholl, City Manager

**FROM:** Mark Z. Finigan, Assistant City Manager 

**DATE:** March 7, 2010

**SUBJECT:** Ratification of Agreement with Employer Mutual, Inc.

---

### **ACTION STATEMENT:**

This purpose of this resolution is to request ratification by the City Commission of the attached fully executed Agreement between the City of Key West and Employer Mutual, Inc. (EMI), for services rendered as the City's Insurance Program Third Party Claims Administrator (TPA).

### **BACKGROUND:**

City Commission approved via Resolution 09-246 the recommended ranking of the Evaluation Committee for the engagement of Employer Mutual, Inc. (EMI). Pursuant to said resolution the City Manager was authorized to enter into negotiations with Employer Mutual, Inc. (EMI) and if successful in negotiating an agreement, execute said agreement and bring back before the City Commission for ratification. The resulting agreement is attached and presented to the City Commission for ratification. The agreement was reviewed and approved by the City's Legal Department before execution by the City Manager.

Employer Mutual, Inc. (EMI) has been providing services since October 1, 2009 as the third party administrator for all City insurance claims. To date, their service has been excellent. The delay in executing an agreement acceptable to both parties was centered on a protracted discussion/negotiation of certain terms and conditions which did not impact performance. Employer Mutual, Inc. (EMI) services from October 1, 2009 have been pursuant to the City's Request for Proposal and the proposal submitted by Employer Mutual, Inc. (EMI).

### **RECOMMENDATION:**

Ratify the attached fully executed Agreement For Services between the City of Key West and Employer Mutual, Inc. (EMI), for services rendered as the City's Insurance Program Third Party Administrator (TPA).