



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

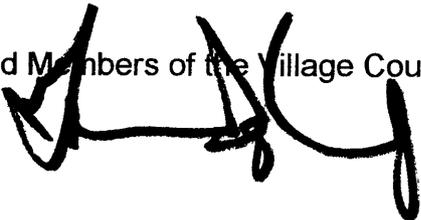
Village Council
Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

MEMORANDUM

Village Manager
Genaro "Chip" Iglesias

DT: June 13, 2008

TO: The Honorable Mayor and Members of the Village Council

FR: Genaro "Chip" Iglesias
Village Manager 

RE: FEMA Grant Management and Public Adjusting Advisory Service

RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution which authorizes the Village Manager to execute the attached Agreement for Professional Services with Adjusters International.

BACKGROUND

Adjusters International offers professional loss consulting services and will provide a coordinated claim management strategy regarding the Village's FEMA Public Assistance (PA) and insurance reimbursements.

Adjusters International will work with the Village to develop a FEMA grant management recovery strategy, formulate projects and develop FEMA project worksheets (PWs) that are fully coordinated with the insurance claims settlement process to maximize funding for the Village. The majority of Adjusters International fees regarding FEMA's PA program are reimbursable by FEMA. Adjuster International has MOU'S with many communities on Florida's west coast- including Lee County and Sanibel Island.

RESOLUTION NO. 2008-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING PROFESSIONAL SERVICES AGREEMENT BETWEEN THE VILLAGE AND ADJUSTERS INTERNATIONAL, CONCERNING FEMA GRANT MANAGEMENT AND PUBLIC ADJUSTING ADVISORY SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council desires to obtain the professional services of Adjusters International (the “Consultant”) concerning the provision of specialized FEMA grant management and public adjusting services; and

WHEREAS, upon the advice of the Village Attorney , the Village Council finds that the proposed services constitute professional services which are exempt from competitive bidding pursuant to Section 2-87(2) of the Village Code; and

WHEREAS, the Village Council finds that approval of the attached Professional Services Agreement between Consultant and Village is in the best interest of the Village.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Agreement Approved. That certain Village of Key Biscayne Agreement for Professional Services (the “Agreement”) between the Village and Consultant, in substantially the form attached hereto, is hereby approved, and the Village Manager and Village Clerk are authorized, in their respective capacities, to execute the Agreement on behalf of the Village, once approved by the Village Attorney as to form and legal sufficiency.

Section 3. Implementation. That the Village Manager is hereby authorized to take any action which is necessary to implement the Agreement and this Resolution.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this _____ day of _____, 2008.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

VILLAGE ATTORNEY

**VILLAGE OF KEY BISCAYNE
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this ___ day of June, 2008, by and between the VILLAGE OF KEY BISCAYNE (the "VILLAGE") and Adjusters International Inc. (the "CONSULTANT") a Delaware corporation which is authorized to do business in Florida.

RECITALS:

The VILLAGE wants to engage the CONSULTANT to perform for the VILLAGE certain professional FEMA grant management and disaster related public adjusting services (the "Specified Services"), which are within CONSULTANT'S expertise, as specifically described in the scope of work negotiated by the VILLAGE and CONSULTANT (the "Proposal") a copy of which Proposal is attached hereto and incorporated herein as Exhibit "A". The CONSULTANT agrees to provide such Specified Services as described in the Proposal on an "as needed" basis as required by the Village Manager.

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

1. **SCOPE OF SERVICES**

A. CONSULTANT agrees to perform the Specified Services upon written request from the Village Manager.

B. CONSULTANT shall expend all necessary efforts to competently and professionally complete all tasks in accordance with a final schedule to be approved by the Village Manager

C. CONSULTANT shall perform additional services beyond the Specified Services, but within its expertise, if requested by the Village Manager, at compensation which is first mutually agreed to in writing.

2. OBLIGATIONS OF THE CONSULTANT

A. Licenses. CONSULTANT agrees to obtain and maintain throughout the term of this Agreement any and all such licenses as are required to do business in the State of Florida, including, but not limited to, licenses required by the respective state boards and other governmental agencies responsible for the regulation and licensing of the services provided and performed by CONSULTANT.

B. Qualified Personnel The CONSULTANT agrees that, where the services to be provided and performed relate to a professional service, which under Florida Statutes, requires a license, certificate of authorization, or other form of legal entitlement to practice such services, CONSULTANT will employ or retain only qualified personnel to be in charge of all such services to be provided pursuant to this Agreement.

C. Standards of Professional Service. CONSULTANT agrees to provide all Specified Services provided for in this Agreement in accordance with generally accepted standards of professional practice and, in accordance with all laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies which may regulate or have jurisdiction over the Specified Services provided for in the Agreement.

D. Responsibility. The CONSULTANT agrees to accept sole responsibility for the professional quality, technical adequacy, and accuracy of all data, studies, reports, memorandum, and any and all other work product provided by CONSULTANT. CONSULTANT shall, without additional compensation, correct any errors, omissions, or other deficiencies as may be required by the VILLAGE. Neither the review, nor acceptance, nor approval of VILLAGE shall be considered a waiver of any of VILLAGE'S rights under this Agreement or any cause of action arising there under.

3. **FEES FOR SERVICES**

A. As full compensation for satisfactory performance of the Specified Services, the CONSULTANT agrees to charge and shall be paid by the VILLAGE in accordance with the hourly fee schedule or the percentage of recovery basis as to insurance claims, pursuant to the applicable fee basis which is attached in Exhibit "A" and incorporated herein. The total amount of compensation shall be determined by the scope and nature of the work requested by the Village Manager pursuant to written work authorization. Fees shall be paid in arrears each month, pursuant to monthly invoice, based upon the hourly fee schedule attached in Exhibit "A." or as otherwise provided in Exhibit "A" for recovery of insurance proceeds. Invoices shall be promptly processed for payment pursuant to the Florida Prompt Payment Act.

B. VILLAGE shall reimburse CONSULTANT for its direct and reasonable expenses for document production and reproduction, postage, long distance telephone charges, photographic services, authorized travel and other cost items which are first approved by the Village Manager.

4. **TERM**

A. The term of this Agreement shall be three (3) years, commencing upon the date of execution hereof. At any point during the term of this Agreement, the VILLAGE shall, at its sole discretion, engage CONSULTANT to complete certain Specified Services, the scope of which shall be determined by the Village Manager in accordance with Sec. 9-4 of the Village of Key Biscayne Code of Ordinances (which pertains to disaster and emergency situations) or in accordance with other authority of the Village Manager, as applicable .

B. Time and Schedule of Performance

a. Following the execution of this Agreement by both parties, if, at any point within the term of the Agreement the Village Manager shall activate the

provisions of this Agreement by authorizing CONSULTANT to perform Specified Services, VILLAGE and CONSULTANT shall agree, in writing, to a work schedule for which said Specified Services shall be completed.

- b. Should CONSULTANT be obstructed or delayed in the prosecution or completion of its obligations in accordance with the schedule to be agreed upon under the terms of this Agreement, as a result of causes beyond the control of CONSULTANT, and not due to their own fault or neglect, CONSULTANT shall notify the VILLAGE within five (5) calendar days of the commencing of such delay, stating the causes thereof and requesting an extension of the CONSULTANT'S time of performance. Upon receipt of the CONSULTANT'S request for an extension of time, the VILLAGE shall grant the extension if it determines the delay encountered by the CONSULTANT is due to unforeseen circumstances and not attributable to CONSULTANT'S fault or neglect.
- c. Should the CONSULTANT fail to commence, provide, perform and/or complete any of the Specified Services in accordance with the schedule of work to be established under this Agreement in a timely manner, the VILLAGE may consider such failure reasonable grounds for the termination of this Agreement. As an alternative, the VILLAGE at its option may, upon written notice to the CONSULTANT, withhold any and all payments due and owing to the CONSULTANT, not to exceed the amount of compensation for the work in dispute, until such time as CONSULTANT conforms with agreed upon schedule for the completion of Specified Services.

5. **RECORDS**

All details, guidelines, reports, work papers and other documents and plans that result from the CONSULTANT providing Specified Services or any additional services hereunder shall be the property of the VILLAGE. Upon termination of this Agreement or upon request of the VILLAGE during the term of this Agreement, any and all such documents shall be delivered to the VILLAGE by the CONSULTANT. All work products shall be provided to VILLAGE in paper and digital.

6. **INSURANCE**

A. The CONSULTANT shall at all times carry comprehensive general liability and contractual liability insurance, workers' compensation insurance (if applicable), and automotive liability insurance, with minimum policy limits for each coverage in the amount of at least Five Hundred Thousand (\$500,000.00) Dollars per occurrence, combined single limit, for property damage and bodily injury, including death, except that the dollar amount of workers compensation coverage, if applicable, shall be as provided by Chapter 440, Fla. Stat. The VILLAGE shall be named as an additional insured on all of the above insurance policies, to the extent permitted by law. Each insurance policy shall state that it is not subject to cancellation or reduction in coverage without written notice to the VILLAGE 30 days prior to the effective date of cancellation or reduction of coverage.

B. CONSULTANT shall indemnify and hold harmless the VILLAGE, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of the Agreement.

7. **ASSIGNMENT**

This Agreement shall not be assignable by the CONSULTANT. CONSULTANT is authorized to utilize its subconsultants, if any, as identified in the Proposal.

8. **PROHIBITION AGAINST CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

9. **TERMINATION**

This Agreement may be terminated by the VILLAGE upon thirty (30) days advance written notice with or without cause and by the CONSULTANT upon ninety (90) days advance written notice with or without cause.

A. In the event of termination of this Agreement at the convenience of the VILLAGE, the VILLAGE shall compensate CONSULTANT for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; (3) reasonable expenses incurred by the CONSULTANT in affecting the termination of services and work, and incurred by the submittal to the VILLAGE of any documents.

B. In the event that VILLAGE elects to terminate Agreement as a result of CONSULTANT default, as a result of a failure to complete all or part of the Specified Services outlined in this Agreement, the VILLAGE shall compensate CONSULTANT for all services satisfactorily performed prior to the effective date of the termination and reimbursable expenses

then due, less any costs or damages sustained by VILLAGE. CONSULTANT shall not be entitled to receive any compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expenses which may be associated with the services which have been terminated.

10. **NONEXCLUSIVE AGREEMENT**

The services to be provided by the CONSULTANT pursuant to this Agreement shall be nonexclusive and nothing herein shall preclude the VILLAGE from engaging other firms to perform the same or similar services for the benefit of the VILLAGE within the VILLAGE's sole and absolute discretion.

11. **ENTIRE AGREEMENT**

The parties hereby agree that this is the entire agreement between the parties. This Agreement cannot be amended or modified without the express written consent of the parties. The Village Manager shall act for VILLAGE hereunder, subject to budgetary limitations.

12. **WARRANTIES OF CONSULTANT**

The CONSULTANT hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services for VILLAGE as an independent contractor of the VILLAGE.

13. **NOTICES**

All notices and communications to the VILLAGE or CONSULTANT shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail or hand delivery. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

VILLAGE: Genaro "Chip" Iglesias
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Village Attorney
c/o Weiss Serota Helfman Pastoriza Cole & Boniske,
P.L.
2525 Ponce de Leon Boulevard
Suite 700
Miami, Florida 33134

CONSULTANT: John Marini
Vice President
Adjusters International
126 Business Park Drive
Utica NY 13502

14. **GOVERNING LAW; LITIGATION**

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any litigation hereunder shall be in Miami-Dade County, Florida. The parties voluntarily waive the right to any trial by jury in any litigation hereunder between the parties.

15. **MISCELLANEOUS**

A. CONSULTANT represents and warrants to the VILLAGE that CONSULTANT does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with CONSULTANT's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status, sexual preference or sexual orientation, or national origin. CONSULTANT further covenants that no otherwise qualified individual shall, solely by reason of his or her race, color, sex, religion, age, handicap, marital status, sexual preference or sexual orientation, or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

B. CONSULTANT is reminded and hereby recognizes that all work under this Agreement must comply with any applicable county, state and federal regulations. Any mandatory clauses which are required by such county, state or federal regulations shall be deemed to be incorporated herein immediately upon VILLAGE's written request.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

CONSULTANT:

ADJUSTERS INTERNATIONAL Inc,
126 Business Park Drive.
Utica NY 13502

VILLAGE:

VILLAGE OF KEY BISCAYNE
88 West McIntyre Street
Key Biscayne, FL 33149

By: _____

Name: _____

Title: _____

By: _____

Genaro "Chip" Iglesias
Village Manager

Attest: _____

Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney

Approved pursuant to Council Resolution No. _____

Attachment “A”

Approach and Scope of Work

FEMA Public Assistance Consulting Services

Upon its request, AI will provide The Village with services designed to help formulate project worksheets, maximize FEMA funding, expedite the process, and retain funds during project closeout and audit. The following bullets present the services that are available under this engagement.

Grant Management Tasks:

- Provide general grant management/project worksheet/grant advice
- Assist in the development of a disaster recovery team
- Assist in the development of a comprehensive response/recovery/mitigation strategy
- Provide advice to disaster recovery team as appropriate and participate in meetings
- Prepare draft correspondence to State and FEMA as necessary

Eligibility Tasks:

- Review eligibility issues, and work with The Village to develop justifications for project worksheet/grant presentation to FEMA and the State
- Assist The Village in developing approach to filing and tracking costs
- Review contracts and purchasing documentation
- Review documentation prepared by departments
- Assist in capturing and summarizing eligible costs for project worksheets/grants
- Assist The Village departments with compiling and summarizing Category A through G costs for presentation to FEMA and the State
- Assist The Village to prepare project worksheets for small, large, improved, and alternate projects based upon information provided by departments
- Attend meetings with The Village, State and FEMA to negotiate individual Project Worksheets, and to resolve related issues as needed
- Provide oversight to departments having difficulty with their project worksheets
- Assist in determining if any eligible damages have not been quantified and presented to FEMA and the State
- Work with The Village to resolve disputes that may arise
- Address issues related to inter-agency funding conflicts
- If The Village disagrees with FEMA determinations, assist to strategize and write appeals
- When The Village has completed all projects and drawn down reimbursement for all eligible costs, assist with finalizing preparations for State/FEMA final inspections and audits, and participate in exit conferences with State/FEMA

Engagement Management Tasks:

- Prepare program management plan
- Prepare weekly reports
- Attend status meetings

Staffing

An assigned project manager will serve as engagement leader and perform the tasks outlined above, taking direction from The Village's designee. Other AI consulting staff will provide support as required.

Planning, Response, and Training

AI will also offer the following services:

- On-site strategic and operational support for Emergency Management
- Comprehensive Emergency Management Planning & Assessment
- Hazard Mitigation and continuity of operation planning
- Strategic Deployment & Response Support
- National Incident Management System (NIMS) assessments, planning & training
- Incident Command & Control Training – ICS 100, 200, 300, 400, 401, 402
- Fire, EMS, Emergency Management & Private Sector Training & Education
- In-service hands-on, seminars, tabletop, full-scale exercises, training for management & staff
- Additional Response and Debris Monitoring services as requested and agreed to by both parties

Insurance Adjusting Services:

Property Damage:

Building

- Investigate and analyze all "on-site" property damage to the building
- In accordance with policy requirements, prepare details of the loss, using replacement costs and actual cash values where applicable
- Calculate appropriate depreciation where necessary
- Prepare all valuations necessitated by coinsurance provisions (if required)
- Prepare a concise, detailed, well-documented claim
- Recommend to management actions that will mitigate the loss

Contents & Stock

- Investigate and analyze all "on-site" property damage to the contents, including stock, supplies, furniture, fixtures, machinery, equipment, improvements and betterments, computer systems, etc.
- In accordance with policy requirements, prepare details of the loss, using replacement costs and actual cash values where applicable

- Calculate appropriate depreciation when necessary
- Prepare all valuations necessitated by coinsurance provisions (if required)
- Prepare a concise, detailed, well-documented claim

Time Element Coverage

Business Interruption (if applicable)

- Advise management on how to start collecting and developing information (e.g., track impact of loss through the general ledger accounts for extra costs, inefficiencies of operation and payroll for those not working)
- Determine the appropriate period of suspension, total or partial
- Determine sales projected or the sales value of production
- Determine cost of sales/production in compliance with insurance policy definitions
- Determine claim limitations (actual loss sustained)
- Determine and evaluate discontinued (saved) expenses
- Determine expediting expenses; expenses related to reducing the loss
- Instruct management on actions that will mitigate the loss
- Determine values for coinsurance compliance (if necessary)
- Prepare financial projections for the period of suspension and perhaps beyond
- Prepare for submission a business interruption valuation claim, supported by multiple schedules
- Provide total business interruption claim management to ensure consistency with the property portions of the claim

Extra Expense

- Analyze and advise management on extra expenses that are necessitated and recoverable under the insurance provisions
- Coordinate tracking of extra expense items to ensure collect ability
- Determine excess expenses over normal expenses
- Continue to track recoverable extra expenses during an extended period of indemnity, if available under the insurance program
- Integrate the extra expense claim with the property damage claim
- Present and support the claim

The Village Responsibilities

To assist AI in completing the various work tasks described, if activated, the Village may need to assemble and provide the following information and resources:

- A central contact person
- A Village organization chart, together with a list of names, roles, and phone numbers of personnel involved in FEMA grant management/insurance claim(s)
- Access to all relevant disaster-related files and insurance policies

- Access to knowledgeable individuals who can answer questions and assist in obtaining additional information, including engineering staff, finance staff, accounting staff, and grant management staff
- Available written explanations of how the Village calculates its fringe benefit and indirect cost rate
- Sample cost summaries
- Written grant management guidelines and other correspondence from the State or FEMA.
- A work area, such as a conference room, including access to phone, internet, and copier

The Village shall pay the Consultant according to the following Compensation and Schedule:

FEMA, Response and Recovery Consulting

AI proposes to perform all FEMA consulting, planning, response, and training engagements on a time-and-expense basis, which is invoiced monthly. AI’s compensation will be a function of the type of expertise provided to the Village based on the tasks requested by the Village and as generally outlined under this proposal.

The following table presents Adjusters International’s FEMA consultation fully burdened rates by position for representing the Village as an Applicant.

	Hourly Rate
Project Manager	\$290
Administrative	\$110
Consultant/Engineer/Environmental	\$220
Project Officer – PW writer	\$160
Trainer	\$175

Airfare is not included in the burdened rates and will be billed separately.

Professional fees and expenses will be invoiced on a monthly basis. Because of AI’s timekeeping system, some invoices may be for periods of less or more than thirty days.

As this is a time and expense engagement, The Village has the ability to decide which tasks AI will assist them with. Consequently, the overall cost of this engagement is at all times subject to the Village’s desired level and length of AI’s service.

AI will provide weekly progress reports to the Village as appropriate. These reports will serve as the support for bi-weekly progress invoicing.

Public Adjusting

AI proposes to provide public adjusting services on a contingency basis. The benefits to The

Village of using an incentive-based fee are (1) there are no out-of-pocket expenses, thereby increasing cash flow at a time when revenues are reduced, and (2) it allows our team to earn our fees based on our success.

Consultant's fee for service is 10 percent of the net recovery after deductible (or a negotiated stepped fee). Consultant will absorb all expenses related to the preparation and presentation of the claim. This does not include any legal fees, should they become necessary. Our fee is due when the insurance proceeds are received by The Village.