VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Franklin H. Caplan, *Mayor*
Michael E. Kelly, *Vice Mayor*
Michael W. Davey
Enrique Garcia
Robert Gusman
Mayra P. Lindsay
James S. Taintor

Village Manager
John C. Gilbert

DATE: March 13th, 2012

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Request for Qualifications Health Insurance Broker Record of Services Selection

RECOMMENDATION

It is requested that the Village Council approve this Resolution selecting National Marketing Group Services, Inc. ("National Marketing") to serve as the Village's Health Insurance Broker of Record Services. The Resolution would authorize the Village Manager to fully execute an agreement (attached hereto as Exhibit "A") with National Marketing for a term expiring on March 13th, 2013 and providing the Manager with the ability to renew annually.

BACKGROUND

On January 10th, 2012, the Village Council approved a Resolution to publish a Request for Qualifications (RFQ) for a Health Insurance Broker of Record Services. The Village formally issued the RFQ on January 13th, 2012 with the submittals due and opened on February 3rd, 2012 at 10:00 AM. The RFQ was placed on the Village's website on January 13th, 2012 and advertised in the Daily Business Review and The Islander News on January 19th, 2012.

The Village received nine (9) RFQ responses by February 3rd, 2012. Four (4) companies were interviewed individually by a Selection Committee. Their representatives were asked to present an in-depth explanation of the benefits that their respective company could offer the Village if selected as the agent of record for the Village of Key Biscayne. Each member of the Selection Committee was asked to rate each of the companies based on their interpretation of the quality of each company's presentation.

After careful review and deliberation, the Committee selected National Marketing Group Services, Inc., to serve as the Health Insurance Broker for the Village of Key Biscayne.

RESOLUTION NO. 2012 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING NATIONAL MARKETING GROUP SERVICES, INC. FOR THE VILLAGE'S HEALTH INSURANCE BROKER OF RECORD; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT RELATED TO THE SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Manager, in accordance with Section 2-82 of the Village Code of Ordinances, recently sought qualifications for a Health Insurance Broker Record of Services (the "Services"); and

WHEREAS, after careful review and consideration of the responses submitted, the Village Manager recommends National Marketing Group Services, Inc. ("National Marketing") for the Services; and

WHEREAS, the Village Council selects National Marketing for the Services, and authorizes the Village Manager to execute an agreement with National Marketing in substantially the form attached hereto as Exhibit "A;" and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

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

Section 1. **Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. **National Marketing Selected.** The Village Council hereby selects National Marketing for the Services.

Section 3. **Village Manager Authorized.** The Village Manager is hereby authorized to execute an agreement with National Marketing for the Services, in substantially the form attached hereto as Exhibit "A," subject to the approval of the Village Attorney as to legal form and sufficiency.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of March, 2012.

_____
FRANK CAPLAN, MAYOR

ATTEST:

_____
CONCHITA H. ALVAREZ, CMC
VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

_____
Village Attorney

Exhibit “A”

AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND NATIONAL MARKETING GROUP SERVICES, INC. FOR HEALTH INSURANCE BROKER OF RECORD SERVICES

THIS IS AN AGREEMENT dated the _____ day of _____, 2012, between VILLAGE OF KEY BISCAYNE, a Florida municipal corporation, hereinafter "VILLAGE," and NATIONAL MARKETING GROUP SERVICES, INC. a Florida Corporation, hereinafter "CONTRACTOR."

WITNESSETH:

In consideration of the mutual terms and conditions and promises and covenants, the receipt and sufficiency of which is hereby acknowledged, VILLAGE and CONTRACTOR (also known as "the parties") hereby agree as follows:

SECTION 1 PREAMBLE

The Village issued a Request For Qualifications for a health insurance broker of record on January 13, 2012 (the "RFQ") seeking a contractor to provide health insurance brokerage services for the VILLAGE, as more particularly described in the RFQ and in Section 2 below. The Village received nine (9) proposals in response to the RFQ, which is incorporated herein and made a part of for all purposes. On March 13, 2012, the Village Council selected the CONTRACTOR as the broker of record for health insurance and enters into this Agreement with the VILLAGE for that purpose.

SECTION 2 SCOPE OF WORK

2.1 The CONTRACTOR shall furnish all of the materials, software programs, supplies, and labor necessary to perform the work described in the RFQ.

2.2 CONTRACTOR hereby represents to VILLAGE, with full knowledge that VILLAGE is relying upon these representations when entering into this AGREEMENT with CONTRACTOR, that CONTRACTOR has the professional expertise, experience, manpower, and professional licenses to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.3 CONTRACTOR assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good consulting and management practices.

2.4 The RFQ is included in its entirety as part of this Agreement. The contract documents consist of: this Agreement, the RFQ, and the CONTRACTOR'S response to the RFQ. The contract documents govern in the order stated above in the event of any conflict.

2.5 CONTRACTOR agrees to present health insurance options annually to the Village no later than June 15 each year during the term of this Agreement.

CONTRACTOR acknowledges Section 112.08, F.S., which requires a competitive solicitation for municipal health insurance selection. Accordingly, CONTRACTOR'S services shall include assisting the VILLAGE with regard to compliance with this requirement. CONTRACTOR shall ensure compliance will all applicable laws, including without limitation, the requirements of Section 112.08, F.S.

SECTION 3 COMPENSATION

The insurance carrier shall pay the CONTRACTOR on a commission basis or other pre-determined basis, based on separate arrangements made between the insurance carrier and the CONTRACTOR. The VILLAGE shall have no liability for compensation to CONTRACTOR hereunder.

SECTION 4 CONTRACTOR'S INDEMNIFICATION

The CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the VILLAGE, its officers, employees, and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind in connection with or arising directly out of the work agreed to be performed herein, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, its employees, servants, agents, and subcontractors. Without limiting the foregoing in any way, any and all such lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind, relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.

SECTION 5 INSURANCE

CONTRACTOR shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below, satisfactory to Village, naming the VILLAGE as an Additional Insured, underwritten by a firm rated as A-X or better by Best Rating and qualified to do business in the State of Florida. Certificates of Insurance shall be provided to the Village, reflecting the VILLAGE as an Additional Insured no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by VILLAGE and prior to commencing any work hereunder. Each certificate shall include no less than (30) thirty-day advance written notice to VILLAGE prior to cancellation, termination, or material alteration of said policies or insurance.

(a) Commercial General Liability coverage with limits of liability of not less than $1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under

the care, custody and control of CONTRACTOR. The General Aggregate Liability Limit (except for Products/Completed Operations) shall be in the amount of $2,000,000.

(b) Professional liability Errors and Omissions insurance coverage in an amount not less than $1,000,000.

(c) Workers Compensation and Employer's Liability insurance, as required by law.

(d) Business Automobile Liability with minimum limits of $1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.

(e) If CONTRACTOR permits any required coverage to lapse, VILLAGE may, but is not required to, immediately terminate this Agreement. VILLAGE is entitled to approve all deductibles and CONTRACTOR shall decrease all or any deductibles in accord with VILLAGE'S request to do so. CONTRACTOR shall require all of its' subcontractors to provide the aforementioned coverage. Any deficiency in any required coverage or policy limits by CONTRACTOR or a subcontractor shall be a breach of this Agreement and default by CONTRACTOR.

SECTION 6 WARRANTIES AND ATTORNEYS FEES

CONTRACTOR warrants that its services are to be performed using due diligence and best practices within the insurance industry and with the thoroughness and competence expected of the highest quality professionalism in the insurance profession. In the event it becomes necessary for either party herein to seek legal means to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable and actual attorney fees and court costs at both the trial and appellate levels, to the extent permitted by law.

SECTION 7 MISCELLANEOUS

7.1 The indemnity and other duties, obligations, warranties and guarantees of CONTRACTOR imposed by this Agreement shall survive termination or completion of the Agreement. Warranties and representations made by CONTRACTOR in providing a response to the RFQ are expressly reaffirmed by CONTRACTOR'S execution of this Agreement.

7.2 CONTRACTOR shall not assign or transfer the Agreement or its rights, title or interests therein without VILLAGE'S prior written approval as evidenced by a letter signed by the Village Manager, which may be withheld for any or no reason. The obligations undertaken by CONTRACTOR pursuant to the Agreement shall not be delegated or

assigned to any other person or firm unless VILLAGE shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of the Agreement by CONTRACTOR and the VILLAGE may, at its discretion, cancel the Agreement and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

7.3 CONTRACTOR and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of VILLAGE with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

7.4 The remedies expressly provided in this Agreement to VILLAGE shall not be deemed to be exclusive but shall be cumulative and shall be available in addition to all other remedies in favor of VILLAGE now or hereafter existing at law or in equity.

7.5 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Subject to provisions hereof relating to arbitration, any claim, objection or dispute arising out of this Agreement shall be litigated in a competent court of jurisdiction in Miami-Dade County.

7.6 Should any part, term or provision of this Agreement be judicially determined to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

7.7 CONTRACTOR shall permit VILLAGE to examine all records, books, documents and papers generated by CONTRACTOR during the course of administration of this Agreement and relating to this Agreement. CONTRACTOR shall maintain the records, books, documents and papers associated with this Agreement for a period of three years after completion or termination of the Agreement, or such longer period as may be required by applicable law. Upon VILLAGE'S request, CONTRACTOR shall provide VILLAGE with copies of all public records related to this Agreement at no cost to VILLAGE.

7.8 CONTRACTOR shall not have nor hold any employment or contractual relationship that is substantially antagonistic or incompatible with the VILLAGE. Doing so shall be a breach of this Agreement giving rise to the VILLAGE'S right to terminate this Agreement.

8.0 NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

8.1 During the performance of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color or national origin.

8.2 CONTRACTOR shall comply with all applicable local, state and federal and laws and regulations at all times during the performance of this Agreement.

SECTION 9 TERM AND TERMINATION

9.1 This AGREEMENT shall have an Initial term of one (1) year, commencing on the date of full execution by the parties. This Agreement may be renewed annually on the same terms and conditions with the mutual consent of the Village Manager and CONTRACTOR.

9.2 It is expressly understood and agreed that the Village Manager or the CONTRACTOR may terminate this Agreement at any time, without cause or penalty on thirty (30) days written notice, to the other party; provided, however, if the CONTRACTOR terminates the Agreement between the months of June and September, the CONTRACTOR shall provide the VILLAGE with ninety (90) days prior written notice. Upon such termination, the VILLAGE may, without penalty or other obligation to the CONTRACTOR, elect to employ other persons to perform the same or similar services. In the event of termination by either party, the CONTRACTOR shall provide for a smooth transition to another CONTRACTOR, including with regard to any outstanding claims issues.

SECTION 10 NOTICES

Whenever the VILLAGE desires to give notice unto the CONTRACTOR, it must be given by written notice, sent by certified mail, addressed to the party for whom it is intended at the place last specified or by facsimile transfer with confirmation thereof. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective place for giving of notice, to-wit:

For VILLAGE:	Village of Key Biscayne Village Manager Village of Key Biscayne, 88 W. McIntyre Street Key Biscayne, FL 33149 Telephone: 305-365-5514 Facsimile: 305-365-8914
Copy to:	Stephen Helfman, Village Attorney Weiss Serota Helfman Pastoriza Cole & Boniske, P.L 2525 Ponce de Leon Blvd. Coral Gables, FL 33134 Telephone: 305-854-0800 Facsimile: 305-854-2323
For CONTRACTOR:	Roger Gonzalez

National Marketing Group Services, Inc.
7705 N.W. 48 Street
Suite 100
Doral, FL 33166
Telephone: 305-592-9926

Notice by facsimile shall not be deemed received until the party receiving notice receives a copy of such notice through certified mail, return receipt requested.

When any period of time is referred to in the Agreement by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty four (24) hours measured from midnight to the next midnight shall constitute a day.

SECTION 11 DEFAULT

In the event the CONTRACTOR fails to comply with the provisions of this Agreement, the VILLAGE may declare the CONTRACTOR in default by written notification, providing a reasonable time to cure the default, but in no event shall this time period exceed thirty (30) calendar days, unless otherwise agreed to by the parties. In the event such default is not cured with such period, VILLAGE may immediately terminate this Agreement, in addition to any other remedies available at law or equity.

SECTION 12 ACCEPTANCE OF AGREEMENT

Execution of this Agreement by both parties signifies acceptance of the Agreement with all the terms and conditions and serves as a notice to proceed to CONTRACTOR, subject to receipt of the insurance documents as required herein.

IN WITNESS WHEREOF, VILLAGE and CONTRACTOR have signed this Agreement, in duplicate.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seal the day and year first written above.

VILLAGE OF KEY BISCAYNE

_____
John C. Gilbert, Village Manager

ATTEST

_____
Conchita H. Alvarez, CMC
Village Clerk

APPROVED AS TO FORM:

_____
Village Attorney

CONTRACTOR

_____
Roger Gonzalez
Title_____

WITNESSES

_____
Signature
Print name_____

_____
Signature
Print name_____

ATTEST

(Corporate Seal)

_____
Secretary

STATE OF FLORIDA)
) SS:
COUNTY OF _____)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ and _____ as

_____ and _____, respectively, of _____, a Florida corporation, and acknowledged they executed the foregoing AGREEMENT as the proper officials of _____, for the use and purposes mentioned in the AGREEMENT and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this ____ day of _____, 2012.

_____
Signature of Notary Public
My Commission Expires:

_____
Printed Name of Notary Public

Notary Seal