

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF DORAL  
AND  
NATIONAL MARKETING GROUP SERVICES, INC.  
FOR  
BENEFIT CONSULTING SERVICES**

**THIS AGREEMENT** is made between **NATIONAL MARKETING GROUP SERVICES, INC.**, an active, for-profit Florida Corporation, validly engaging business in the state of Florida (hereinafter the “Provider”), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

**RECITALS**

**WHEREAS**, the administration of the City desires to enhance and improve the City's executive and voluntary benefit offerings with competitive benefits and premiums that represent benefits that are considered best in market; and

**WHEREAS**, Provider has particular expertise in the subject matter and is ready and able to offer the professional services in the manner desired by the City; and

**WHEREAS**, the City desires to engage the Provider to perform the services specified below; and

**WHEREAS**, the City and Provider, through mutual negotiation, have agreed on the terms and conditions in this Agreement for the provision of services.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the aforementioned recitals, which are incorporated herein and made a part hereof by this reference, the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, Provider and the City agree as follows.

**1. Scope of Services/Deliverables.**

- 1.1 Provider shall review voluntary benefit product offerings, conduct market research to determine best in market offerings, provide updates on new products, and make recommendations for potential product changes or modifications.
- 1.2 Evaluate voluntary benefit product offerings that as may be required or considered by the City, establish possible vendors and making a recommendation on vendor by analyzing vendors on:
  - the viability of their products; and

- vendor credentials to ensure: (a) financial stability and soundness of product providers; (b) that the provider has a consistent record of good service; (c) reasonableness of premium rates; and (d) compliance with Section 125 requirements, where applicable.

1.3 Maintain an active and ongoing relationship with selected service providers/insurance carriers to ensure smooth operation and delivery of benefits as well as facilitating prompt review and resolution of plan and claims administration issues.

1.4 Provider shall conduct market research pertaining to executive level benefits provided by public sector employers in relevant markets and provide recommendations on product offerings or plan modifications for executive level benefits (city sponsored or voluntary) in order to ensure that the City maintains competitive executive benefits.

2. **Term/Commencement Date.**

2.1 The effective date of this Agreement shall be February 1, 2018. The Agreement shall remain in effect for twelve (12) months, through January 31, 2019, unless earlier terminated in accordance with Paragraph 8 herein. The City Manager may extend the term of this Agreement by written notice to the Provider.

3. **Compensation and Payment.**

3.1 In exchange for the performance of the Services, the City agrees to pay Provider, and Provider is entitled to receive, compensation in the amount \$416.67 per month, which amount shall include all labor, materials, transportation, and time associated with performance of the Services, regardless of the amount of time necessary to perform. Provider shall not be entitled to any additional payment for any expenses incurred in completion of the Services.

3.2 Provider shall issue an invoice to the City once a month for \$416.67. The City shall pay Provider in accordance with the Florida Prompt Payment Act.

4. **Sub-Providers.**

4.1 The Provider shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.

4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager or his designee.

5. **City's Responsibilities.**

- 5.1 Furnish to Provider, at the Provider's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Provider, in possession of the City.
- 5.2 Arrange for access to and make all provisions for Provider to enter upon real property as required for Provider to perform services as may be requested in writing by the Provider (if applicable).

6. **Provider's Responsibilities.**

- 6.1 The Provider shall exercise the same degree of care, skill and diligence in the performance of the services as is ordinarily provided by a professional provider under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Provider's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Provider shall at Providers sole expense, immediately correct the work. The City in no way assumes or shares any responsibility or liability of the Provider or Sub Provider under this agreement.

7. **Conflict of Interest.**

- 7.1 To avoid any conflict of interest or any appearance thereof, Provider shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any City related matter.

8. **Termination.**

- 8.1 This Agreement may be terminated by the City upon material breach of this Agreement by Provider that remains uncured for fifteen (15) days after receiving written notice of such breach by the City.
- 8.2 Upon receipt of the City's written notice of termination, Provider shall stop work on the Project.
- 8.3 In the event of termination by the City, the Provider shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Provider has first complied with the provisions of Paragraph 7.4.

8.4 The Provider shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format specified by the City within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8.5 If the Provider wishes to terminate this Agreement prior to the end of the initial term or during the option years, Provider must provide the City with one-hundred and twenty (120) days written notice. Failure to provide the City with one-hundred and twenty (120) days written notice may result in the Provider being unable to do business with the City in the future.

9. **Insurance.**

9.1 The Provider shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by Exhibit "A". The insurance carrier shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida.

9.2 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted, or in accordance to policy provisions. The City further reserves the right to solicit additional coverage, or require higher limits of liability as needed, and depending on the nature of scope, or level of exposure.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Provider shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys' Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Provider shall indemnify and hold harmless the City, its officers and employees, from and against any and all demands, claims, losses, suits, liabilities, judgment or damages, arising out of, related to, or any way connected with Provider's negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the Provider and third parties made pursuant to this Agreement, as determined by judgment and/or good faith settlement. Provider shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Provider's negligent performance or non-performance of this Agreement. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable.

12.2 The provisions of this section shall survive termination of this Agreement.

12.3 Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the Provider.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Edward Rojas  
City Manager  
City of Doral, Florida  
8401 NW 53rd Terrace  
Doral, Florida 33166

With a Copy to: Daniel A Espino, Esq.  
Weiss Serota Helfman Cole & Bierman, P.L.  
City Attorney  
2525 Ponce De Leon Boulevard, 7<sup>th</sup> Floor  
Coral Gables, FL 33134

For The Provider: Roger Gonzalez, Sr.  
President  
National Marketing Group Services, Inc.  
7705 NW 48 Street, Suite 100  
Doral, FL 33166

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida, or the Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 Upon full payment of all monies owed to the Provider, all records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Provider providing services to the City under this Agreement shall be the property of the City. The City agrees, to the fullest extent permitted by law, to indemnify and hold Provider harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any reuse or modification of the Records by the City or any person or entity that obtains the Records from or through the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Provider involving transactions related to this Agreement.

16.3 Provider shall comply with public records laws, specifically, without limitation, to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

16.4 The City may cancel this Agreement if Provider refuses or fails to comply with this section, to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes, and/or to comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Provider unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Provider, and such firm's familiarity with the City's area, circumstances and desires.

18. **Severability.**

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

19.1 The Provider and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City 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, enterprise or venture between the parties.

20. **Representations and Warranties of Provider.**

20.1 Avolve hereby warrants and represents, at all times during the Term of this Agreement, inclusive of any renewals thereof, that:

20.1.1 Provider, and its employees and/or subcontractors, shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the Services hereunder;

20.1.2 Provider is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey and duly registered, validly doing business and in good standing under the laws of the State of Florida;

20.1.3 The execution, delivery and performance of this Agreement by Provider has been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this Agreement a valid and binding instrument enforceable against Avolve in accordance with its terms; and

20.1.4 Provider has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

21. **Compliance with Laws.**

21.1 The Provider shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the services.

22. **Non-collusion.**

22.1 Provider certifies that it has not divulged, discussed or compared his/her/its quote with other individuals and/or entities that provided quotes to the City for the Services and has not colluded with any other individual or entity whatsoever.



23. **Truth in Negotiating Certificate.**

23.1 Provider hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for the Services that may be offered pursuant to this Agreement are accurate, complete, and current. Provider further agrees that the Fee provided shall be adjusted to exclude any significant sums by which the City determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the Term or any Extension term.

24. **Waiver**

24.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

25. **Survival of Provisions**

25.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

26. **Prohibition of Contingency Fees.**

26.1 The Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Provider, 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 Provider, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

27. **Force Majeure.**

27.1 It is understood that performance of any act by the City or Provider hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the City shall have the right to provide substitute service from third parties or City forces as may be necessary to meet City needs, and, in such event, the City shall withhold payment due Contractor for such period of time, if any. If the condition of

force majeure exceeds a period of fourteen (14) days, the City may, at its option and discretion, cancel or renegotiate the Agreement.

28. **Counterparts**

28.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.


**[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]**

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature:


Attest:

  
\_\_\_\_\_  
Connie Diaz, City Clerk


CITY OF DORAL

By:  (Edward)  
\_\_\_\_\_  
Edward Rojas, City Manager  
Date: 2.22.18

Approved As To Form and Legal Sufficiency for the Use  
And Reliance of the City of Doral Only:

  
\_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, PL  
City Attorney

National Marketing Group Services, Inc.

By:   
Its: PRESIDENT  
Date: 2-12-18

**Exhibit "A"**  
**Insurance Requirements**

**I. Commercial General Liability**

**A. Limits of Liability**

<b>Bodily Injury &amp; Property Damage Liability</b>	
Each Occurrence	\$1,000,000
Policy Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Products/Completed Operations	\$1,000,000

**B. Endorsements Required**

City of Doral listed as an additional insured  
Primary Insurance Clause Endorsement  
Contingent and Contractual Liability  
Premises and Operations Liability

- II. Automobile Liability (If Applicable)                      \$1,000,000**  
Owned or Scheduled Autos, including Hired and Non Owned Autos  
City of Doral listed as an additional insured

**III. Workers Compensation**

Statutory Limits- State of Florida

**Employer's Liability**

**A. Limits of Liability**

\$500,000 for bodily injury caused by an accident, each accident  
\$500,000 for bodily injury caused by disease, each employee  
\$500,000 for bodily injury caused by disease, policy limit

**IV. Professional Liability/Error's & Omissions**

**A. Limits of Liability**

Each Claim	\$5,000,000
Policy Aggregate	\$5,000,000
Retro Date Included	

**V. Umbrella Liability (Excess Follow Form)**

Each Occurrence	\$1,000,000
Policy Aggregate	\$1,000,000

City of Doral listed as an additional insured  
Excess Form over all applicable liability policies

**The above policies shall provide the City of Doral with written notice of cancellation or material change from the insurer in accordance to policy provisions.**

**Companies authorized to do business in the State of Florida with the following qualifications shall issue all insurance policies required above:**

**The Company must be rated no less than "A-" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best Insurance Guide published by A.M. best Company, or its equivalent. All policies or certificates of insurance are subject to review and verification by Risk Management**

Consultant shall indemnify, defend and hold harmless the City, its elected officials, employees, agents and volunteers (collectively referred as "Indemnitees") against all loss, costs, penalties, fines, damages, claims, expenses, including attorney's fees, or liabilities ("collectively referred to as "liabilities") by reason of any injury to, or death of any person, or damage to, or destruction, or loss of any property arising out of, resulting from, or in connection with the performance, or non-performance of the services contemplated by this agreement which is, or is alleged to be directly, or indirectly caused, in whole, or in part by any act of omission, default, or negligence of the Consultant, its employees, agents, or sub-contractors.

Consultant expressly agrees to indemnify and hold harmless the indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Consultant to the extent same it's covered by payments under workers' compensation or similar laws. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, without limitation, 725.06 & 725.08, F.S., if applicable. Severability shall apply to each sentence of this section. This indemnification shall survive the cancellation or expiration of the agreement.

Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntarily and knowingly acknowledged by Consultant.