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: May 8th, 2012

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Resolution Approving Professional Services Agreement for Continued Financial Advisory Services from Estrada Hinojosa & Co.

RECOMMENDATION

It is recommended that the Village Council consider the adoption of the enclosed Resolution approving the Professional Services Agreement ("Agreement") with Estrada Hinojosa & Co. for specialized financial advisory services for a term expiring on June 1st, 2013, subject to further annual renewals if necessary, at the same annual retainer of $50,000. This retainer is the same amount as originally approved on June 14th, 2011.

BACKGROUND

Lourdes Abadin of Estrada Hinojosa & Co., continues to serve the Village in a variety of ongoing financial advisory services including financial planning, transactional services and any necessary services related to the potential authorization and issuance of indebtedness as required by the Village.

In carrying out the financial planning services, Ms. Abadin attends Village meetings where the matter of finance will be discussed, advises the Village of the current bond market and any relating changes in Federal & State regulations, works with Village staff to develop financial feasibility studies and alternative financing plans, surveys the Village's outstanding debt, and evaluates capital project budgeting and funding. When necessary, transaction related services include coordinating the sale of bond proceeds, making recommendations to the Village as to the advisability of obtaining credit ratings, municipal bond insurance, or other credit enhancement tools, assisting staff in tabulations and comparison of bids, coordinating preparation of documents and maintaining liaison between working group members.

The financial advisory services agreement augments our finance activities with specialized services that are customarily utilized by municipal governmental units.

RESOLUTION NO. 2012- _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING PROFESSIONAL SERVICES AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND ESTRADA HINOJOSA & COMPANY, INC., CONCERNING FINANCIAL ADVISORY SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council desires to continue to obtain the professional services of Estrada Hinojosa & Company, Inc. (the "Consultant") concerning the provision of specialized financial advisory services to the Village; and

WHEREAS, the Village Council finds that approval of the attached Professional Services Agreement between Consultant and the 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"), 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 and Village Attorney are hereby authorized to take any necessary action 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 May, 2012.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC

_____
VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

_____
Village Attorney

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VILLAGE OF KEY BISCAYNE
AGREEMENT
FOR
PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into as of the 1st day of June, 2012, by and between the VILLAGE OF KEY BISCAYNE (the "VILLAGE") and ESTRADA HINOJOSA & COMPANY, INC., a Texas corporation which is authorized to do business in Florida, (the "CONSULTANT").

RECITALS:

The VILLAGE wants to continue to engage the CONSULTANT to perform certain professional services for the VILLAGE, consisting of the services described herein and any necessary financial advisory services related to the potential authorization and issuance of indebtedness as required by the VILLAGE as specifically described below (the "Specified Services"). The CONSULTANT wants to continue to provide such Specified Services.

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

1. **SCOPE OF SERVICES**

A. The CONSULTANT agrees to provide the Specified Services upon written request from the Village Manager. CONSULTANT shall provide the Specified Services as an independent contractor for the VILLAGE.

B. The Specified Services to be provided by CONSULTANT shall include, but not be limited to each of the financial advisory tasks, including both planning and transactional services, as applicable, which are set forth in the Specified Services list, a copy of which is attached hereto and incorporated herein as Exhibit "A".

C. CONSULTANT shall regularly provide status reports to the VILLAGE, as requested by the Village Manager.

2. **FEES FOR SERVICES**

A. The CONSULTANT agrees to charge the VILLAGE for the performance of the Specified Services which are provided by CONSULTANT, in accordance with the fee schedule which is set forth in Exhibit "B", a copy of which is attached hereto and incorporated herein, plus reasonable and necessary costs as approved by the Village Manager.

B. The Fifty Thousand ($50,000.00) Dollars annual retainer, which is referenced in paragraph (B) of Exhibit "B", shall cover the fees applicable for the financial planning items described in 1-10 on Exhibit "A." The annual retainer shall be invoiced in equal monthly installments.

C. Except as otherwise provided in Exhibit "B" as to costs and fees for specific debt issuance transactions, any additional fees and costs shall be invoiced in the month following performance of service and expenditure of costs by

CONSULTANT, pursuant to advance written work authorizations from the Village Manager. The work authorizations shall describe the specific requested work tasks, the applicable fees and the estimated costs. Other than the services covered by the retainer, no work shall be undertaken by CONSULTANT unless authorized in writing by the Village Manager pursuant to a work authorization.

D. Invoices shall also reflect a record of time expended by CONSULTANT in providing the Specified Services, for VILLAGE's information and for those services which are provided at hourly billing rates.

3. **TERM**

The duration of the term of this Agreement shall commence on June 1, 2012 and shall terminate on June 1, 2013, unless further extended by the mutual written consent of the CONSULTANT and Village Manager or earlier terminated pursuant to Section 6. The Village Council shall be authorized to renew the Agreement on behalf of the VILLAGE for successive additional one year periods upon the same terms, subject to applicable Village budget appropriations.

4. **ASSIGNMENT**

This Agreement involves skilled professional services and shall not be assignable by the CONSULTANT.

5. **PROHIBITION AGAINST CONTINGENT FEES; OTHER MATTERS**

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.

6. **TERMINATION**

This Agreement may be terminated by the VILLAGE upon thirty (30) days written notice with or without cause and by the CONSULTANT upon thirty (30) days written notice with or without cause. If this Agreement is terminated, the CONSULTANT shall be paid in accordance with the provisions of Paragraph 2 above, for all acceptable work performed up to the date of termination.

7. **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.

8. **RECORDS**

All original reports, documents, analysis and materials (the "Materials") that result from the CONSULTANT providing Specified Services 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 Materials shall be delivered to the VILLAGE by the CONSULTANT.

9. **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 review and approval of such written consent by the Village Attorney as to form and legal sufficiency.

10. **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 and will timely file all required reports.

11. **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, except that neither the CONSULTANT nor persons employed or utilized by the CONSULTANT will be liable under this paragraph for liabilities, damages, losses, or costs resulting from negligent acts, errors, or omissions by the VILLAGE or any of Village's officers, agents, or employees during the performance of this Agreement.

12. **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:	John C. Gilbert Village Manager Village of Key Biscayne 88 West McIntyre Street Key Biscayne, FL 33149
With a copy to:	Stephen J. Helfman, Esq. and David M. Wolpin, Esq. Village Attorneys Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce De Leon Blvd., Suite 700 Coral Gables, Florida 33134
Consultant:	Estrada Hinojosa & Company, Inc. 2937 SW 27th Avenue, Suite 200B Miami, FL 33133 Attention: Lourdes Reyes Abadin Estrada Hinojosa & Company, Inc. 1717 Main Street, 47th Floor Dallas, TX 75201 Attention: Robert A. Estrada

13. **GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for litigation hereunder shall be in Miami-Dade County, Florida.

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:

ESTRADA HINOJOSA &
COMPANY, INC.

By:_____
Robert A. Estrada
Title: Chairman

Attest: _____
Corporate Secretary

VILLAGE:

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

By:_____
John C. Gilbert
Village Manager

Attest:_____
Village Clerk

Approved as to Form and Legal Sufficiency:

By:_____
Village Attorney

EXHIBIT "A"

SPECIFIED SERVICES TO BE PROVIDED BY CONSULTANT

A. Financial Planning.

1. Consultant will attend any and all meetings of governing body of the Village, its staff, representatives or committees as requested by the Village, at all times when Consultant may be of assistance or service and the subject of financing is to be discussed.

2. Consultant will advise the Village and its staff of changes, proposed or enacted, in Federal and State laws and regulations which would affect the municipal bond market.

3. Consultant will work with the Village, its staff and any consultants employed by the Village in developing financial feasibility studies and analyzing alternative financing plans.

4. Consultant will conduct a survey of the financial resources of the Village to determine the extent of its capacity to authorize, issue and service debt. This survey will include an analysis of existing debt structure as compared with the existing and projected sources of revenues which may be pledged to secure payment of debt service and, where appropriate, will include a study of the trend of the assessed valuation, taxing power and present and future taxing requirements of the Village. In the event revenues of existing or projected facilities operated by the Village are to be pledged to repayment of the Debt Instruments then under consideration, the survey will take into account any outstanding indebtedness payable from the revenues thereof, additional revenues, as projected by consulting engineers employed by the Village, resulting from improvements to be financed by the Debt Instruments under consideration. Consultant will also take into account future financing needs and operations as projected by the Village's staff and consulting engineers or other experts, if any, employed by the Village.

5. On the basis of the information developed by the survey described above, and other information and experience available to Consultant, Consultant will submit to the Village its recommendations on the Debt Instruments under consideration including such elements as the date of issue, interest payment dates, schedule of principal maturities, portions of prior payment, security provisions, and any other additional provisions designed to make the issue attractive to investors. All recommendations will be based upon its professional judgment with the goal of designing Debt Instruments which can be sold under terms most advantageous to the Village and at the lowest interest cost consistent with all other considerations.

6. Consultant will advise the Village of current bond market conditions, forthcoming bond issues and other general information and economic data which might normally be expected to influence interest rates or bidding conditions so that the date of sale of the Debt Instruments may be set at a time which, in Consultant's opinion, will be favorable.

7. Consultant understands the Village has retained, or will retain, firms of municipal bond attorneys (the "Bond Counsel") whose fees will be paid by the Village. In the event it is necessary to hold an election to authorize the Debt Instruments then under consideration, Consultant will

assist in coordinating the assembly and transmittal to Bond Counsel of such data as may be required for the preparation of necessary petitions, orders, resolutions, ordinances, notices, and certificates in connection with the election.

8. Consultant will recommend the method of sale of the Debt Instruments that, in its opinion, is in the best interest of the Village and will proceed, as directed by the Village, with one of the following methods:

a. **Competitive Sale**: Consultant will advise the Issuer regarding the sale of the Debt Instrument whereby we coordinate the submission of competitive bids from prospective buyers for the Debt Instruments in accordance with established procedures.

b. **Negotiated Sale**: Consultant will recommend one or more investment banking firms as managers of an underwriting syndicate for the purposes of negotiating the purchase of Debt Instruments and in no event will Consultant participate either directly or indirectly in the underwriting of the Debt Instruments. Consultant will collaborate with any senior managing underwriter selected and Counsel to the underwriters in the preparation of the Official Statement or Offering Memorandum. Consultant will cooperate with the underwriters in obtaining any Blue Sky Memorandum and Legal Investment Survey, preparing the Bond Purchase Contract, Underwriters' Agreement and any other related documents. The costs thereof, including the printing of the documents, will be paid by the underwriters.

9. Consultant will, after consulting the Village, arrange for such reports and opinions of recognized independent consultants Consultant deems necessary and required for the successful marketing of the Debt Instruments.

10. Subject to the approval of the Village, Consultant will organize and make arrangements for such information meetings as, in its judgment, may be necessary.

B. Transactions.

11. When appropriate, Consultant will advise financial publications of the forthcoming sale of the Debt Instruments and provide them with all pertinent information.

12. Consultant will coordinate the preparation of the Notice of Sale and Bidding Instructions, Official Statement, Official Bid Form and such other documents as may be required. Consultant will submit to the Village all such documents for examinations, approval and certification. After such examination, approval and certification, Consultant will provide the Village with a supply of all such documents sufficient to its needs and will distribute by mail sets of the same to prospective bidders and to banks, life, fire and casualty insurance companies, investment counselors and other prospective purchasers of the Debt Instruments. Consultant also provides sufficient copies of the Official Statement to the purchaser of the debt Instruments in accordance with the Notice of Sale and Bidding Instructions. The expenses associated with printing and distribution of these documents will be paid by the Village.

13. Consultant will make recommendations to the Village as to the advisability of obtaining a credit rating, or ratings, for the Debt Instruments as, in its opinion, is required for submission to the appropriate company, institution or institutions. In those cases where the advisability of personal presentation of information to the rating agency, or agencies, may be indicated, Consultant will arrange for such personal presentations. The expenses associated with the preparation of information and personal presentations will be paid by the Village.

14. Consultant will make recommendations to the Village as to the advisability of obtaining municipal bond insurance or other credit enhancement, or qualifications for same, for the Debt Instruments and, when directed by the Village, Consultant will coordinate the preparation of such information as, in its opinion, is required for submission to the appropriate company, institution or institutions. In those cases where the advisability of personal presentation of information to the appropriate company, institution or institutions may be indicated, Consultant will arrange for such personal presentations. The expenses associated with the preparation of information and personal presentations will be paid by the Village.

15. Consultant will assist the staff of the Village at any advertised sale of Debt Instruments in coordinating the receipt, tabulation and comparison of bids and Consultant will advise the Village as to the best bid. Consultant will provide the Village with its recommendations as to acceptance or rejection of such bid.

16. As soon as a bid for the Debt Instruments is accepted by the Village, Consultant will proceed to coordinate the efforts of all concerned to the end that the Debt Instruments may be delivered and paid for as expeditiously as possible. Consultant will assist the Village in the preparation or verification of final closing figures incident to the delivery of the Debt Instruments.

17. Consultant will maintain liaison with Bond Counsel in the preparation of all legal documents pertaining to the authorization, sale and issuance of the Debt Instruments. Bond Counsel will provide an unqualified legal opinion as to the legality of the issuance of the Debt Instruments at the time of delivery.

18. If requested, Consultant will counsel with the Village in the selection of a Paying Agent/Registrar for the Debt Instruments, and will assist in the preparation of agreements pertinent to these services and the fees incident thereto.

19. In the event formal verification by an independent auditor or any calculations incident to the Debt Instruments is required, Consultant will make arrangements for such services.

20. Consultant agrees to do, or cause to be done, all work pertaining to the Debt Instruments, obtaining approval, as may be required by law, registration, and delivery to the purchaser. The expenses associated with the printing of the debt instruments will be paid by the Village.

21. After the closing of the sale and delivery of the Debt Instruments, Consultant will deliver to the Village a schedule of annual debt service requirements on the Debt Instruments.

In coordination with Bond Counsel, Consultant will assure that the Paying Agent/Registrar has been provided with a copy of the authorizing ordinance, order or resolution.

22. As soon as a bid for the Debt Instruments is accepted by the Issuer, Consultant will proceed to coordinate the efforts of all concerned to the end that the Debt Instruments may be delivered and paid for as expeditiously as possible. Consultant will assist the Issuer in the preparation or verification of final closing figures incident to the delivery of the Debt Instruments.

23. Consultant will maintain liaison with Bond Counsel in the preparation of all legal documents pertaining to the authorization, sale and issuance of the Debt Instruments. Bond Counsel will provide an unqualified legal opinion as to the legality of the issuance of the Debt Instruments at the time of delivery.

24. If requested, Consultant will counsel with the Issuer in the selection of a Paying Agent/Registrar for the Debt Instruments, and will assist in the preparation of agreements pertinent to these services and the fees incident thereto.

25. In the event formal verification by an independent auditor or any calculations incident to the Debt Instruments is required, Consultant will make arrangements for such services.

26. Consultant agrees to do, or cause to be done, all work pertaining to the Debt Instruments, obtaining approval, as may be required by the Attorney General, registration by the Comptroller of Public Accounts and delivery to the purchaser. The expenses associated with the printing of the debt instruments will be paid by the Issuer.

C. <u>Additional Services.</u>

In addition to the services set out above, Consultant agrees to provide the following services when so requested:

27. Consultant will provide its advice as to the investment of certain funds of the Village. Consultant will, when so directed, purchase those investments authorized to be purchased and Consultant will charge a normal and customary commission for each such transaction.

28. Consultant will provide its advice and assistance with regard to exercising any call and/or refunding of any outstanding Debt Instruments.

29. Consultant will provide its advice and assistance in the development of, and financing for, any capital improvement programs of the Village.

30. Consultant will provide its advice and assistance in the development of the long-range financing plan of the Village.

31. Consultant will provide any other financial planning services as may be requested by the Village.

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EXHIBIT "B"

FEE SCHEDULE

A. **In General.** With the exception of retainer fees for the financial planning services, as described in Section A, paragraphs 1-10, inclusive, of Exhibit "A" and in Section B of this Exhibit, and the proposed hourly fees, as described in Section C of this Exhibit, the fees due Consultant for transaction related services in accordance with Section D below of this Exhibit and any related costs as may be mutually agreed upon for which Consultant is entitled to reimbursement, shall become due and payable concurrently with the delivery of the Debt Instruments to the purchaser.

B. **Retainer.** Consultant shall receive a total annual retainer fee of Fifty Thousand ($50,000) Dollars (payable in equal monthly installments of $4,166.66) plus reimbursement of reasonable out of pocket expenses, which are payable monthly. This fee covers all ongoing financial planning services described in items (1-10) of Exhibit "A" of the Agreement.

C. **Hourly Fees:**

Principal/Senior Bankers	$200 per hour
Associates	$175 per hour
Administrative	$ 65 per hour

The Hourly Fees would be in addition to the retainer described in Section B above and would be for special and specific projects authorized in advance by the Village. Further, for any investment banking services provided by Consultant, the fees to be charged shall be disclosed and agreed to up front.

D. **Transactions.** In consideration for the services rendered by Consultant to the Village, as related to transaction services (items 11-26 of Exhibit "A") (bond issues, etc.), it is understood and agreed that the fee payable to Consultant for each issue of Debt Instruments or other specified financing will be, as follows:

Base Fee.

(i) Any Issue - $5000 plus an agreed upon "per bond" fee amount based on the size of the transaction. Consultant's base fee and expenses related to bond issues or other sources of financing are contingent on the issuance of debt and payable solely from bond proceeds. Expenses are borne by the Consultant until a fee statement and expense reimbursement are submitted at the closing in accordance with the Agreement between the Village and Consultant.

(ii) It is understood and agreed that Consultant will charge, in addition to its Financial Advisory fee, a computer and/or structuring fee to be negotiated in advance on a case by case basis.

(iii) Consultant may serve as the Paying Agent and will bill the Village at Closing for each issue of Debt Instruments a Net Amount which will include a fee calculated on the above schedule as well as costs and expenses, where applicable, incurred on behalf of the Village, provided the Village has requested that Consultant serve as its Paying Agent in the payment of Bond Counsel fee, preparation, printing and distribution of the Notice of Sale, Official Statement, Uniform Bid Form or Offering Memorandum, independent consultants, computer fees, information meetings, if any, presentations to rating agencies, rating fees and travel expenses of Village representatives, if any, printing of the Debt Instruments, and all appropriate costs and expenses associated with closing and delivery of the Debt Instruments.

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