VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Franklin H. Caplan, *Mayor*
Michael W. Davey, *Vice Mayor*
Theodore J. Holloway
Michael E. Kelly
Mayra P. Lindsay
Ed London
James S. Taintor

Village Manager
John C. Gilbert

DATE: August 26, 2014

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Professional Lobbying Consulting Services Agreement-Gomez Barker and Associates, Inc.

RECOMMENDATION

It is recommended that the Village Council approve the Professional Lobbying Consulting Services Agreement between the Village and Gomez Barker and Associates, Inc., attached as Exhibit A.

BACKGROUND

As directed by the Village Council, the attached proposed Agreement retains the firm of Gomez Barker and Associates, Inc. to represent the Village of Key Biscayne and advance the Village's goals, objectives and interests before Miami-Dade County.

The cost of the services provided by the firm as described in Exhibit A-Section 1.1, will total $1,500 per month. For further details, see attached Exhibit A.

Reviewed by Ms. Lillian Arango from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

RESOLUTION NO. 2014- _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE PROFESSIONAL LOBBYING CONSULTING SERVICES AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND GOMEZ BARKER ASSOCIATES, INC.; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council desires to retain the firm of Gomez Barker Associates, a Florida corporation ("Gomez Barker") to represent the Village of Key Biscayne ("Village") and advance the Village's goals, objectives and interest before Miami-Dade County; and

WHEREAS, the Village Council finds that approval of the attached Agreement for lobbying services between Gomez Barker 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 the Professional Lobbying Consulting Services Agreement between the Village and Gomez Barker (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 is hereby authorized to take any necessary action to implement the purposes of this Resolution and the Agreement.

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

PASSED AND ADOPTED this _____ day of August, 2014.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

PROFESSIONAL LOBBYING CONSULTING SERVICES AGREEMENT BETWEEN VILLAGE OF KEY BISCAYNE AND GOMEZ BARKER ASSOCIATES, INC.

THIS PROFESSIONAL LOBBYING CONSULTING SERVICES AGREEMENT (the "Agreement") is made between the **VILLAGE OF KEY BISCAYNE,** a Florida municipal corporation (the "Village") and **GOMEZ BARKER ASSOCIATES, INC.**, a Florida corporation (the "Consultant").

WHEREAS, the Village Council for the Village wishes to engage the Consultant to monitor legislative action and activities at Miami-Dade County ("County"), and to represent the Village and advance the Village's goals, objectives and interests before administration, Board of County Commissioners and departments and agencies of Miami-Dade County; and

WHEREAS, the Consultant is ready, willing and able to provide the Village with Miami-Dade County government professional lobbying services in accordance with the terms provided herein; and

WHEREAS, the Consultant and the Village, through mutual negotiation, have agreed upon the Scope of Services and Fee for Professional Lobbying Services for the Village; and

WHEREAS, the Village desires to engage the Consultant to perform the Services specified below.

NOW, THEREFORE, in consideration of the aforementioned recitals, which are true and correct and incorporated into the body of this Agreement by reference, the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Consultant and the Village agree as follows.

1. **Scope of Services.**

   1.1 The Consultant agrees to monitor and report on County legislation, activities, policies and/or programs of interest to the Village, including those related to the Village and which may impact the Village (the "Services").

   1.2 The Consultant agrees to provide consulting and representative services for the Village on specific matters before administration, Board of County Commissioners and departments and agencies of the County, as specified herein, and as may be requested or directed and authorized by the Village Manager, from time to time. The Consultant shall duly register before each governmental entity before engaging in any lobbying activities. The Village shall complete any forms and all forms necessary to comply with the lobbyist registration requirements of the County.

1.3 The Services, specified in Sections 1.1 and 1.2 shall hereinafter be collectively referred to as the "Services". Specifically, the Services shall include, but not be limited to, the following:

1.3.1 Assist the Village in identifying, developing and securing funding for projects, including transportation, wastewater, water, capital improvements and infrastructure projects within the Village;

1.3.2 Represent the Village's interests before administration, Board of County Commissioners and departments and agencies of the County;

1.3.3 Report to the Village Manager and Village Council during budget sessions and other periods during which specific appropriations and/or policy legislation relevant to the Village is being considered and addressed by the Mayor, Board of County Commissioner and/or a department or agencies of the County;

1.3.4 Arrange, facilitate and host all necessary and appropriate meetings by Village officials with the Mayor, members of the administration, members of the Board of County Commissioners and/or management of Departments, of the County;

1.3.5 Attend staff meetings, workshops or Village Council meetings at the Village Manager's and/or Village Council's request; and

1.3.6 Provide ancillary services such as relaying news articles, legislative analyses and important governmental announcements relevant to the Village's goals, objective and interests.

2. **Term/Commencement Date.**

2.1 Unless otherwise terminated pursuant to Section 4, this Agreement shall be effective on the earlier of August ____, 2014 or upon execution by both parties and shall be renewed automatically for additional one (1) terms on the anniversary date of this Agreement unless terminated sooner by the Village Manager or his designee pursuant to Section 4 or notice is provided by the Village Manager or his designee of the Village's election not to renew this Agreement for an additional one (1) year term.

3. **Compensation and Payment.**

3.1 For all of the Services provided by the Consultant as described in Section 1, the Village shall pay the Consultant monthly compensation of ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS ($1,500.00) throughout the Term or Renewal Term.

3.2 Except for lobbyist registration fees, as may be assessed by each governmental entity, the Consultant shall not be entitled to recover and shall not be reimbursed for any other costs and/or fees incurred during, and/or associated with, the rendition of the Services, which have not been approved by the Village in advance. .

3.3 The Consultant shall send the Village a monthly invoice on the first of each month, and the Village shall render payment within thirty (30) days of receipt of the invoice.

3.4 Compensation to the Consultant shall payable in accordance with the Florida Prompt Payment Act.

4. **Termination.**

4.1 Notwithstanding the provisions of Section 2, either party may terminate this Agreement at any time upon thirty (30) days advance written notice to the other party.

4.2 In the event of such termination, the Village shall be obligated to the Consultant only for the pro-rated monthly compensation incurred prior to the termination date.

5. **Insurance.**

5.1 The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts as specified below naming the Village as an additional insured entity, underwritten by a firm 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. The insurance coverage shall include a minimum of the following.

5.1.1 Commercial General Liability. Commercial general liability insurance with limits of liability not less than One Million Dollars ($1,000,000.00).

5.1.2 Worker's Compensation and Employer's Liability Insurance. Workers' Compensation Insurance for statutory limits as required by applicable State and Federal laws.

5.1.3 Employer's Liability Insurance. Employer's Liability Insurance shall be provided at the statutory coverage amount with a minimum of One Hundred Thousand Dollars ($100,000.00) per accident. The Consultant shall agree to be responsible for the employment, conduct and control of its employees and for any

injury sustained by such employees in the course of their employment.

5.1.4 Business Automobile Liability Insurance. Business Automobile Liability Insurance with minimum limits of One Million Dollars ($1,000.000.00) per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. 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 Vehicles, Hired and Non-Owned Vehicles and Employers' non-Ownership.

5.2 Certificates of insurance shall be provided to the Village at the time of execution of this Agreement as well as certified copies, as 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 Village before any policy or coverage is cancelled or restricted.

6. **Nondiscrimination.**

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

7. **Attorneys Fees and Waiver of Jury Trial.**

7.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including, but not limited to, 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.

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

8. **Indemnification.**

8.1 The Consultant shall defend, indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, directly caused by the Consultant's negligent acts, errors, or omissions in the performance or non-performance of any provisions of this Agreement, including but not limited to, liabilities arising from contracts between the

Consultant and its employees, volunteers or agents.. The Consultant shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any claim or investigation and for any judgment or damages directly caused by the Consultant's negligent acts, errors, or omissions in the performance or non-performance of this Agreement.

8.2 The provisions of this Section shall survive termination of this Agreement.

9. **Notices/Authorized Representatives.**

9.1 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 private postal service or by registered or certified mail with postage prepaid return receipt requested, addressed to the parties (or their successors) at the following addresses.

For the Village:	John C. Gilbert, Village Manager Village of Key Biscayne 88 West McIntyre Street Key Biscayne, Florida 33149
With a copy to:	Stephen J. Helfman, Esq. Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Coral Gables, Florida 33134
For The Consultant:	Fausto B. Gomez Gomez Barker Associates, Inc. 2350 Coral Way, Suite 301 Miami, Florida 33145

10. **Governing Law**.

10.1 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 or, if in Federal Court, the Southern District of Florida.

11. **Entire Agreement/Modification/Amendment.**

11.1 This writing contains the entire Agreement of the parties and supercedes 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.

11.2 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 Agreement.

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

12.1 The Consultant shall comply with the applicable provisions of Florida' Public Records Law and Chapter 119, Florida Statutes.

12.2 The Village may cancel this Agreement for refusal by the Consultant to allow access by the Village Attorney or his designee to any records pertaining to Services performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

13. **Non-assignability and Non-Exclusivity**

13.1 This Agreement shall not be assignable by the Consultant. Although this Agreement is with the Consultant, the parties agree that the Village is relying upon the apparent qualifications and personal expertise of Fausto B. Gomez, whom is designated by the Consultant as the primary point of contact and principle performer of the Services under this Agreement. In the event that the aforementioned individual can no longer perform the Services under this Agreement, this Agreement shall automatically terminate. This Agreement shall not be subject to assignment by the Consultant without written permission of the Village Council.

13.2 The Consultant hereby acknowledges that this Agreement is non-exclusive as to the Services being provided and generally any lobbying the Village may have done on its behalf. The Village reserves the right to hire one or more additional individuals and/or firms to represent its interests and otherwise provide lobbying consulting services before the legislature and executive branch of the State of Florida and the government of Miami-Dade County. So as to maximize the benefit to the Village, the Village Manager and/or his designee shall coordinate representation efforts by multiple lobbying professionals.

14. **Severability.**

14.1 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 terms and provision of this

Agreement shall be valid and be enforceable to the fullest extent permitted by law.

15. **Independent Contractor.**

15.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the 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, enterprise or venture between the parties.

15.2 The Consultant shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Consultant.

16. **Conflict of Interest**.

16.1 The Consultant shall not be prohibited from representing or providing the like services to other persons and entities other than the Village, so long as the Consultant shall avoid any representation or relation which would create an adversarial position or conflict of interest, as first determined by the Village Attorney and Village Council.

16.2 The Consultant shall not take on any client or matter that would jeopardize the Consultant's ability to devote the time, resources, and efforts necessary to fulfill its obligations to the Village.

17. **Compliance with Laws.**

17.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Services.

18. **Waiver**

18.1 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.

19. **Survival of Provisions**

19.1 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.

20. **Prohibition Of Contingency Fees.**

20.1 The Consultant warrants that it has not employed or retained any company or person(s), 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.

21. **Counterparts**

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

IN WITNESS WHEREOF, the parties, by their respective authorized agents have executed this Agreement on the respective dates under each signature.

CONSULTANT:

GOMEZ BARKER ASSOCIATES, INC.,
a Florida corporation

By: _____
Name: Fausto B. Gomez
Title: President

Date Executed: _____

VILLAGE:

Attest:

VILLAGE OF KEY BISCAYNE, a Florida municipal corporation

_____
Interim Village Clerk

By:_____
Name: John C. Gilbert
Title: Village Manager

Date Executed: _____

Approved as to Form and Legal Sufficiency
for the Sole Use and Benefit of the
Village of Key Biscayne:

_____
Village Attorney