

TAB 2



City of Palmetto Agenda Item

Meeting Date

4/15/10

Presenter: Jeff Burton

Department: CRA

Title:

5th Street West Streetscape Pilot

Several site reviews of this street have revealed much needed repair and enhancement to the streets and associated sidewalks.

A proposal to design a pilot program for this street that could be used as a prototype for other streets within the CRA District that could easily be incorporated into a larger design project.

Budgeted Amount:	\$50,000.00	Budget Page No(s):	186	Available Amount:	\$29,375.00	Expenditure Amount:	\$10,000.00
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Additional Budgetary Information: Design for this item will be less than \$10,00.00.

Funding Source(s):	FY10	Sufficient Funds Available:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Budget Amendment Required:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Source:	
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City Attorney Reviewed:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Advisory Board Recommendation:	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> N/A	Consistent With:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	CRA Plan Florida Statute 163
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Potential Motion/ Direction Requested: Recommend approval of funding an amount less than \$10,000.00 for design of 5th Street West Landscape design as set forth in proposal by Ugarte & Associates. Funds to be taken from 1905508214 8th Avenue Beautification Project and authorization to enter into the agreement

Staff Contact: Jeff Burton CRA Interim Administrator 3-8-2010

Attachments: Ugarte & Associates Proposal



February 25, 2010

Jeff Burton
CRA
715 4th St. W.
Palmetto, FL 34221

RE: CRA 5th Street Improvements Architectural Services Proposal

Dear Jeff:

The following proposal is based our meetings of 2/5/10, 2/26/10 and a neighborhood community meeting at the Palmetto Art Center to discuss improvements to 5th Street.

Description of the Project: Street improvements to 5th Street from 8th Avenue and 10th Avenue. Improvements to include sidewalks, street, lighting, pedestrian access, parking and future development. It will be a master plan of potential improvements that can be an example of successful streetscaping and urban design.

Description of Professional Services to be provided by U&A: Architectural and planning consulting using existing aerial drawings provided by the City. Meeting with local Owners to develop a plan for various improvements. Create a document showing the proposed improvements. Include details for lighting, paving, parking, landscaping, drainage and future building "build-to" lines. Plan will adhere to the City's Downtown Development Guidelines. See attached Exhibit "C" for schedule of services.

Compensation: Time and materials at the hourly rates described in "Exhibit A". Terms are as described in Exhibit "B". Fees will not exceed \$10,000.

If the above terms are agreeable, please return a copy of this proposal signed for our records. We are looking forward to working with you on this project. Please contact me if you have any questions.

This proposal becomes null and void if not executed within thirty days.

Respectfully submitted,

Carlos (Charlie) D. Ugarte, AIA

Accepted by:

Signature/Date



Exhibit "A"

Fee Schedule 2010

Professional Services

Professional Architect	\$160.00 per hour
Project Manager	\$100.00 per hour
Designer	\$100.00 per hour
Senior Autocad Operator	\$75.00 per hour
Administrative Assistant	\$50.00 per hour
Expert Testimony (Trial/Mediation/Arbitration/ Deposition)	\$300.00 per hour
Consultants	Cost + coordination

Reimbursable Expenses:

Plotting	\$10.00/sheet (24 x 36)
Blue Prints	\$ 2.00/sheet (24 x 36)
Photocopies:	
8-1/2 x 11	\$0.05/sheet
8-1/2 x 14	\$0.10/sheet
11 x 17	\$0.15/sheet
Mileage (outside Manatee county)	\$0.55 per mile
Long Distance Call	cost
Travel Expenses (other than mileage)	cost
Courier Service	cost

UGARTE & ASSOCIATES, INC.

TERMS AND CONDITIONS

These Terms and Conditions are attached to, and made a part of, Proposals and Agreements for services by UGARTE & ASSOCIATES, INC. referred to herein as the "Design Professional."

1. Standard of Care and Allocation of Risk

The Design Professional's services under this Agreement will be consistent with the degree of care and skill exercised by reasonably prudent members of the Design Professional's profession who are acting in the community in which the services are provided under similar circumstances. If the Design Professional's services fall below this standard of care, then the Client shall provide notice of the same to the Design Professional and allow the Design Professional an opportunity to correct such services before the Design Professional shall be liable for any damages suffered or incurred by the Client as a result of such failure of the Design Professional to meet the aforesaid standard of care. The Design Professional and the Client recognize that this Project involves risk. While the Design Professional shall be liable for its negligent acts and errors, the Design Professional and the Client hereby agree as follows regarding the Design Professional's liability arising out of or relating to this Agreement and/or the Project to which it relates: (i) in relation to any negligent omissions by the Design Professional, the Design Professional's liability shall be limited to the cost, expenses or damages suffered or incurred by the Client as a result or consequence of any such negligent omissions, but in no event shall the Design Professional be liable for the cost of the labor, equipment, services or materials which the Design Professional negligently omitted which, if they had not been omitted, would have been included in the Project and paid for by the Client in any event; and (ii) in relation to both the provisions of "(i) just preceding this clause, and in relation to any and all other claims for losses, expenses, costs, liabilities and damages of any kind whatsoever for which the Design Professional may otherwise be liable, the Client agrees that the maximum amount for which the Design Professional may be responsible or liable is limited to the Design Professional's fees in relation to this Project.

2. Information from Client

The Client shall provide all information reasonably requested by the Design Professional including, but not necessarily limited to, supporting information, extraordinary project considerations, special services required, and all other information requested by the Design Professional in order for it to provide the services described in this Agreement. The Design Professional shall be entitled to rely upon such information, and shall have no liability as a result of any inaccuracy or incompleteness of any such information.

3. Billings and Payments

Fixed fees shall be billed monthly for that portion of the Design Professional's services rendered through the billing date, plus reimbursable expenses. Time/Material/Expenses ("T/M/E") fees shall be billed monthly based on the time, materials and expenses incurred during the billing period, plus reimbursable expenses. Additional Services provided shall be billed monthly. The continuous progress of the Design Professional's services requires prompt payment. Payment is due-upon receipt of the Design Professional's invoices. The Design Professional shall be entitled to recover interest at the rate of 18% per annum on invoices which are not paid within 30 days and, in addition, the Design Professional may, after seven days' notice to the Client, suspend or terminate (in the Design Professional's sole discretion) its services under this Agreement until all outstanding amounts (for both services and reimbursable expenses) have been paid in full, including applicable interest. The foregoing provisions of this Agreement to the contrary notwithstanding, in the event that any of the Design Professional's statements are not paid within 60 days from the receipt thereof by the Client, and even if the Design Professional has not given a seven-day notice to the Client regarding the same, the Design Professional may suspend further services under this Agreement until any and all such outstanding statements have been paid in full, including applicable interest. Any prepayment made at or about the execution of the Agreement shall be credited to the Client's account at the time of final payment.

4. Adjustment of Hourly Rates and Renegotiation of Fees

Hourly rates and all rates in the Design Professional's current Schedule of Fees are subject to periodic review and adjustment. Moreover, the Design Professional reserves the right to renegotiate fixed fees to reflect changes in price indices and pay scales applicable to the period when services are rendered. The Design Professional and the Client agree to exercise good faith in any such renegotiation.

5. Permit and Application Fees

The Client shall pay all project-related fees, including, but not limited to, any and all legal and administrative fees incident to plan review, permitting, etc. and the Design Professional shall have no liability therefore whatsoever.

6. Budgetary Limitations

The Client shall advise the Design Professional in writing either before execution, or within 15 days of execution, of this Agreement, of any budgetary limitations for the overall project cost or construction cost. The Design Professional will endeavor to work within those limitations. However, the Design Professional does not guarantee that any opinions it may render regarding the probable cost of construction or of any aspect of the project will not differ materially from quoted fees, submitted bids, negotiated prices or actual costs ultimately incurred. If Client wishes greater assurance as to probable construction costs, or if formal estimates are otherwise desired, the Client must employ the services of an independent cost estimator.

7. Excluded Services

The Design Professional will provide only those services described in the Scope of Services that is a part of this Agreement. The Design Professional shall have no responsibility or liability whatsoever for any services beyond those specifically described in the Scope of Services, and any and all other services are specifically excluded.

8. Construction Phase

During any site visits or when the Design Professional otherwise observes the contractor(s)' work in progress, the Design Professional shall not supervise, direct or have control over the contractor(s)' work, nor shall the Design Professional have any authority over, or responsibility for, the means, methods, techniques, sequences or procedures of construction selected by the contractor(s), or for any safety precautions or programs incident to the work of the contractor(s), or for any failure of the contractor(s) in furnishing or performing (their) work. The Design Professional neither guarantees the performance of any construction contracts by contractor(s), nor assumes responsibility or liability for the contractor(s)' failure to furnish or perform (their) work in accordance with the applicable contract documents.

9. Delays

The Design Professional shall take reasonable steps to perform its services in a timely fashion, but the Client recognizes and agrees that factors both within and outside the Design Professional's control may delay the Design Professional's services, as well as the work performance, permitting, license issuance and overall construction of the Project. While the Design Professional shall take such steps as it reasonably can to meet the Client's reasonable scheduling demands, under no circumstances shall the Design Professional be responsible for any damages for delay, whether the same are caused in whole or in part by any circumstances within the Design Professional's control.

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10. Legal Interpretations Not Provided

The services and work proposed to be performed pursuant to this Agreement are based upon the services of an Architect and do not and will not under any circumstances constitute the rendering of legal advice, legal opinions or legal services. Any interpretation of laws, rules, regulations or ordinances are based solely upon the professional opinions of the Design Professional as a design professional. The Client understands that the same are not intended as legal opinions, and the Client shall in any and all such instances secure adequate legal counsel as may be needed for the Client's needs related to the Project.

11. Ownership of Instruments of Services

All reports, plans, specifications, field data, notes and other documents, including electronic media, prepared by the Design Professional as instruments of service, shall remain the property of the Design Professional.

12. Termination for Cause

This agreement may be terminated by the Client upon 30 days' written notice in the event of a material breach hereof by the Design Professional, provided that the Design Professional does not cure such material breach within the 30-day period after it receives written notice of the same (describing the alleged breach in detail) or, in relation to matters which cannot be cured within such 30 days, unless the Design Professional has failed to initiate reasonable steps to cure such breach. In the event of a cure or the undertaking of reasonable steps to cure by the Design Professional within such 30-day period, the Client shall have no right to terminate for cause. This Agreement may be terminated by the Design Professional in the event that any of its' statements have not been paid within seven days of the date when such payment was due, provided that the Client shall have the right to cure such default by making payment (including applicable interest) within seven days of its' receipt of a written notice from the Design Professional describing the default in payment.

13. Termination for Convenience

This Agreement may be terminated for convenience by the Client upon 30 days' advance written notice to the Design Professional. In such event, the Design Professional shall be entitled to be compensated for all services performed, and to be reimbursed for all reimbursable expenses incurred, through the effective date of termination; provided, however, that the Design Professional shall also be entitled to a termination expense equal to 10% of the total amount of fees to which the Design Professional is entitled through the effective date of termination. The Design Professional shall also have the right to terminate this Agreement for convenience upon 30 days' written notice to the Client, in which event the Design Professional shall be entitled to be compensated for all services rendered, and to be reimbursed for all reimbursable expenses reasonably incurred, through the effective date of termination. In the event of such a termination for convenience by either the Client or the Design Professional, all such amounts shall be paid to the Design Professional no later than 15 days following the effective date of such a termination for convenience. In either event, the amounts set forth herein shall be the sole amounts the Design Professional is entitled to receive and, in the event of a termination for convenience, neither party shall have any liability to the other for breach of contract as a result of such a termination for convenience.

14. Hazardous Materials

Services related to asbestos, PCB, mold, mildew, and any and all other hazardous or toxic materials are expressly excluded from this Agreement. The Client agrees that the Client shall provide a site that complies with all applicable laws and regulations, and the Client shall defend, indemnify and hold harmless the Design Professional, and its officers, directors, employees, agents, servants and representatives, from any and all claims of any nature whatsoever, including, but not limited to, reasonable attorneys' fees, which arise out of or relate to the presence of any asbestos, PCB, mold, mildew, or other hazardous or toxic materials on the Project site. In the event any asbestos, PCB, mold, mildew, or other

hazardous or toxic materials are found to be present on the Project site, the Design Professional may, at its option and without any liability for any direct, incidental or consequential damages, suspend services until the Client (acting through appropriate specialist consultants) abates or removes any and all such asbestos, PCB, mold, mildew, hazardous or toxic materials from the Project site.

15. Waiver of Consequential Damages

Any other provisions of this Agreement to the contrary notwithstanding, and to the fullest extent permitted by law, except as expressly set forth in clause "(i)" of the Standard of Care and Allocation of Risk section set forth above, neither the Client nor the Design Professional, or any of their respective officers, directors, partners, employees, contractors, subcontractors, consultants or subconsultants, shall be liable to the other, or shall make any claim, for any incidental, indirect, resulting or consequential damages arising out of or connected in any way to this Project or to this Agreement. This mutual waiver of incidental, indirect, resulting and consequential damages shall include, but not necessarily be limited to, any and all claims for loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other form of incidental, indirect, resulting or consequential damages that either party may have incurred, regardless of whether or not any such party's cause of action is based upon contract, tort, statute or otherwise. Both the Client and the Design Professional shall require similar waivers of incidental, indirect, resulting and consequential damages protecting all the entities and persons named herein in all contracts and subcontracts with others involved in this Project; provided, however, that the failure to require such waivers shall not in any way negate the full extent of the waiver expressed in this paragraph as between the Client and the Design Professional.

16. Indemnification

The Client and the Design Professional shall indemnify one another for their respective acts and omissions, as well as for the acts and omissions of any officers, directors, partners, employees, contractors, subcontractors, consultants or subconsultants working by, through or under either of them (whether in contract with them directly or indirectly), from any claims, losses, costs, expenses (including, but not limited to, reasonable attorneys' fees) or other liabilities (including, but not limited to, administrative fines or penalties), which arise out of or result from any negligent or intentional act or omission of either of them (or of anyone for whom either of them may be responsible or liable), provided that the party seeking such indemnification shall not have been actively at fault in relation to the claim which has been so asserted against them.

17. Mediation, Venue and Attorneys' Fees

Prior to the filing of any litigation by the Client or the Design Professional against the other (and, except as described below, as a precondition to any such filing), the Client and the Design Professional shall engage in pre-suit mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to court ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request the Circuit Court in Manatee County, Florida (or the Mediation Coordinator, if any, for the Courts of Manatee County, Florida to appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not peremptorily. While the request for and the conducting of such a mediation shall be a precondition to the filing of a civil action, in the event that either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then a suit may be filed before mediation is conducted, provided that mediation is requested before, or simultaneously with, the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the Complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall therefore grant the defendant an appropriate extension of time to respond to the Complaint so as to permit the mediation to be conducted before the defendant must so respond.

The Client and the Design Professional agree that any litigation between

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them arising out of, resulting from or relating to this Agreement or the Project shall be venued, and shall only be venued (i.e., exclusively), in a state court of competent jurisdiction in Manatee County, Florida.

In the event of any litigation between the Client and the Design Professional arising out of, resulting from or relating to this Agreement or the Project, the prevailing party shall be entitled to recover the prevailing party's reasonable attorneys' fees and court costs, at the trial and at all appellate levels.

18. Severability

In the event that any provision of this Agreement is found to be invalid or unenforceable for any reason (whether on its face or as applied), the same shall be deemed excised and such excision shall have no effect upon the remaining provisions hereof. It is the intent of the parties that this agreement be enforced to the fullest extent permitted by law.

19. Entire Understanding and Lack of Waiver

This Proposal/Agreement represents the entire understanding between the Client and the Design Professional in respect to this Project, and may only be modified in writing. The failure of either party to require strict performance by the other shall not constitute a waiver of any of such party's rights pursuant to this Agreement, or to thereafter require strict performance by such other party.

20. Project "Hold"

In the event the project is placed on a "hold" status during the design or construction phase for a period exceeding 30 days, the design professional shall be entitled to an additional fee of 10% of the total professional fee for the project or a minimum fee of \$500.00, whichever is less to restart the project.

21. Assignment

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

22. Confidentiality

The Consultant agrees to keep confidential and not to disclose to any person or entity, other than the Consultant's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by the Consultant or furnished to the Consultant and marked CONFIDENTIAL by the Owner. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the Consultant to defend itself from any legal action or claim.

23. Limitation of Liability

Owner/client and design professional are aware of the risks, rewards and benefits of the project and the design professional's total fee for services. The risks have been allocated such that the owner/client agrees that, to the fullest extent permitted by the law, design professional's total liability to owner/client for any and all injuries, claims, losses, expenses, damages or claims expenses arising out of this agreement from any cause or causes shall not exceed the total amount of or fees. Such causes include but are not limited to design professional's negligence, errors, omissions, strict liability, breach of contract and breach of warranty.

EXHIBIT "C"

SCHEDULE OF SERVICES

Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a additional services.

SCHEDULE OF SERVICES CHECKLIST

SERVICES	PROVIDED /NOT PROVIDED
1. SCHEMATIC DESIGN INCLUDING SITE AERIAL AND SECTIONS	P
2. COORDINATE WITH OWNERS, CRA AND PUBLIC WORKS	P
3. DESIGN DEVELOPMENT	P
4. SELECTIVE DEMOLITION PLANS	P
5. PROGRAMMING	P
6. INVESTIGATE FEASIBILITY OF REMOVING OVERHEAD POWER LINES	P
7. INVESTIGATE FEASIBILITY OF ALTERNATE STORMWATER TREATMENT	P
8. LANDSCAPE DESIGN - SCHEMATIC	P
9. PRELIMINARY COST ESTIMATING	P
10. INVESTIGATE "GREEN" LIGHTING FIXTURES FOR POTENTIAL CITY STANDARD	P
11. CONSTRUCTION MANAGEMENT	NP
12. LAND SURVEY SERVICES	NP
13. ENVIRONMENTAL STUDIES AND REPORTS	NP
14. GEOTECHNICAL SERVICES	NP
15. CONSTRUCTION DOCUMENTS	NP
16. CIVIL DESIGN INCLUDING OFF-STREET PARKING PLAN	NP
17. ON-SITE PROJECT REPRESENTATION	NP
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Items noted above as "not provided" can be provided as additional services upon the client's written request.