

RESOLUTION NO. 22-110

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING UNDER THE GENERAL ARCHITECTURAL SERVICES CONTRACT WITH BENDER & ASSOCIATES ARCHITECTS, P.A., A TASK ORDER FOR PROFESSIONAL DESIGN SERVICES FOR BAYVIEW PARK IN AN AMOUNT NOT TO EXCEED \$121,238.00; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 17-190, the City Commission approved a contract for General Architectural Services with Bender & Associates Architects, P.A., and in Resolution 20-141 the contract was extended for two years; and

WHEREAS, public use of Bayview Park, a historic landmark located at the entrance to Old Town Key West, has changed significantly in recent years, and the City Commission finds that development of a master plan for the park, including schematic design of landscape, buildings and structures, minor development plan application and cost estimates to better serve current and future needs would benefit the citizens and visitors of Key West; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached task order between the City and Bender & Associates Architects, P.A., for Professional Design Services for Bayview Park, is hereby approved in an amount not to exceed \$121,238.00.

Section 2: That FY 2022 funds are allocated for this project in account 101-1702-572-6300/Project Number IS172012001-Bayview Park. Any necessary budget transfers or adjustments are hereby authorized.

Section 3: That the City Manager is authorized to execute any necessary documents, upon consent of the City Attorney.

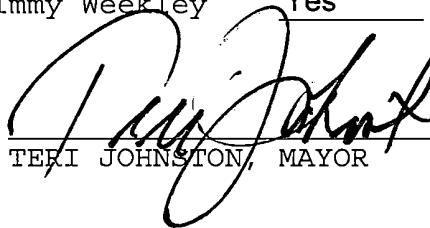
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held  
this 3rd day of May, 2022.

Authenticated by the Presiding Officer and Clerk of the  
Commission on 4th day of May, 2022.

Filed with the Clerk on May 4, 2022.

Mayor Teri Johnston	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
\_\_\_\_\_  
TERI JOHNSTON, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST  
1300 White Street, Key West, FL 33040 (305) 809-3792

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## EXECUTIVE SUMMARY

**DATE:** April 19<sup>th</sup>, 2022

**TO:** Patty McLaughlin, City Manager

**FROM:** Albiona Balliu, Sr. Project Manager

**CC:** Todd Stoughton, Assistant City Manager  
Steve McAlearney, Director of Engineering

**SUBJECT:** Bayview Park Masterplan Design

### ACTION STATEMENT:

Authorize a Task Order to Bender & Associates Architects, PA (Bender) for professional design services for historic Bayview Park in the amount of \$121,238.00. Authorize City Manager to approve Task Order and any necessary budget transfers/amendments.

### BACKGROUND

The City desires a redesign of Bayview Park, a historic landmark located in the entrance of the oldtown neighborhood. Park use has changed with the use of the new Truman Waterfront for larger scale scheduled events. The initial redesign phase requires a cohesive masterplan for the entirety of the park. Staff requested a Task Order proposal from Bender under their General Architectural Services agreement with the City (Resolution 17-190; extended via Resolution 20-141). Bender subsequently provided a proposal of \$121,238.00 as presented in the attachment dated March 9<sup>th</sup>, 2022. Bender will provide the following subtasks:

- Site / Code investigation
- Attendance at Public meetings
- Masterplan /Schematic Design
  - Schematic landscape design, with narrative
  - Schematic Design of all buildings and structures
- Minor Development Plan Application including City Commission approval.
- Cost Estimates for the proposed design

**PURPOSE & JUSTIFICATION**

Updating Bayview Park addresses the City's strategic plan, *Key West Forward*, Part II - Major Projects, Priority 4: Bayview Park.

**FINANCIAL IMPACT:**

The cost to complete the Task Order will not exceed \$121,238.00 and is funded in budget account 101-7201-572-6300 (Project Number IS172012001 – Bayview Park).

Staff has reviewed the proposed fee and found the labor hours reasonable for the required work and hourly rates consistent with Bender Architects' General Architectural Services fee schedule. The building component of the fee aligns with the State of Florida Fee Guide Calculator for Architectural and Engineering Services.

**RECOMMENDATION:**

Staff recommends authorizing a Task Order to Bender & Associates Architects, PA, for professional design services for historic Bayview Park in the amount of \$121,238.00. Authorize City Manager to approve Task Order and any necessary budget transfers/amendments.

March 30, 2022

Albiona Balliu  
Senior Project Manager  
Engineering Department  
City of Key West  
Key West City Hall  
1300 White Street  
Key West, Florida 33040



**RE: Bayview Park Renovations  
Updated Proposal March 9, 2022**

Dear Albi,

Thank you for asking us to work with you on renovations to Bayview Park in Key West. Located on Truman Avenue at the entrance to Old Town, Bayview Park is an important historic landmark for Key West and the City would like to see the park brought back to life for visitors and our residents.

As we understand the project, the City of Key West would like to redesign Bayview Park. At this time, the City would like a Masterplan / Schematic Design for the Park, as well as Planning Approval for the project. We will provide the following:

Attendance at Public meetings to inform the Schematic design  
Schematic Landscape Design, with a narrative.  
Schematic Design of all buildings and structures  
Cost Estimates for the proposed design  
Planning Approval for the design.

The Planning Director will determine the permitting path based on the design that the City selects. The project will likely require Minor Development approval, and quite possibly additional Variances. For the purposes of this proposal, we are assuming that Minor Development Approval will be required.

The Planning Approval path is as follows:

1. DRC Meeting / Approval
2. Tree Commission - preliminary approval
3. Planning Approval
4. HARC Approval
5. Tree Commission - Final Approval
6. City Commission Approval.

This proposal does not include Construction Documents. Once the design is approved and planning permission is obtained for the project, we will give you a separate proposal for construction documents and construction administration for the approved project. If funding is not immediately available for the entire project, we can phase the project to meet your budget over time.

410 Angela Street  
Key West, Florida 33040  
Telephone (305) 296-1347  
Facsimile (305) 296-2727  
Florida License AAC002022  
[www.BenderArchitects.com](http://www.BenderArchitects.com)

The spaces requiring redesign are as follows:

- Baseball field to remain (should not need to be redesigned)
- Boys and Girls Club was recently renovated and will remain, but will need stormwater water retention areas.
- The existing Tennis courts and basketball court shall be repaved and possibly relocated. Perhaps change to just one basketball court in the new design.
- Tennis Pro building is extremely deteriorated and will need to be demolished and a new building will be constructed. The building could possibly be relocated.
- HARC and the City have plenty of historic photos and information on the park for background research.
- Meetings with public will be needed for the renovation and presentations to different city boards will be required.
- The public feedback from the survey shows that they do not feel safe with the current restrooms. New restrooms will be constructed, possibly in a different location.
- The children's playground area shall be moved and redesigned, perhaps in front of Boys and Girls Club. The playground will be designed specifically for Key West and will not consist of 'off-the-shelf' playground features.
- Feedback from previous surveys state that the public would like to see more green open space.
- The public has also asked for a dog area in the park.
- The City of Key West will provide an existing tree inventory list.

With a history back to the 1920s, Bayview Park is considered a significant historic resource in Key West and Monroe County, and as such, all exterior work is required to be in compliance with the City of Key West HARC Board, Secretary of Interior's Standards for Rehabilitation, and any other requirements of the State Division of Historical Resources. All permitting will be through the City of Key West.

The park is located in a Flood Zone AE-6 and Zone X. These flood zones are likely to change when FEMA releases new flood maps, slated for 2023. The proposed new Restroom and Pro shop buildings will likely be elevated above grade.

You have provided a PDF survey of the property, completed by Avirom Associates, dated 10/30/19. We will require an autoCAD copy of this survey. Surveyors often charge for AutoCAD copies of surveys. The City will provide an AutoCAD copy of the survey.

Landscape design will be the most important part of this project. The property will require significantly more landscape, and a new landscape design. To accomplish this, we have retained our Landscape Architects Community Solutions Group, Inc. for landscape design work on the park. We have included the cost of this work in our fee proposal.

Based on the City of Key West planning requirements, the property will require alterations for parking, and a redesign of the existing impervious surfaces and drainage, as well as new taps for City water and electric service. To accomplish this, we have retained our Civil Engineers Perez Engineering, Inc. for Civil design work for the park. We have included the cost of the schematic Civil Design in our fee proposal.

It should be noted that if the new park design exceeds 2 acres of impervious surface area, the project will be required to be permitted through the South Florida Water Management District. Permitting

through SFWMD make the stormwater management system much larger, more complex, and more expensive. The permitting process will also likely take at least 90 days. Permitting through SFWMD is not included in this proposal. If required, permitting through SFWMD will be an additional service of \$7,480.

The Planning Approval process will require the services of a professional Planner. To accomplish this, we have retained Planner Don Craig of The Spottswood Companies, Inc. to guide us through the process. We have included the cost of Planning Services in our fee proposal.

As discussed, the City of Key West will provide the design team with an existing tree survey of the park. A new tree survey is not included in this proposal. If a new tree survey is required, the cost will be additional services.

To summarize, we will utilize the following consultants to provide full architectural services for the schematic design and planning approval process. We have obtained cost proposals from each of these firms for design services:

Landscape Design:	Community Solutions Group, Inc.
Civil Engineering:	Perez Engineering & Development, Inc.
Planning Services:	The Spottswood Companies, Inc.

We have added 10% to the cost of our consultant's fees for coordination.

The following is a breakdown of required tasks and our estimate of hours based on my understanding of the project scope as of this date.

**TASK 1: SCHEMATIC DESIGN AND PLANNING APPROVALS**

Task Description	Principal Architect	Architect	Admin. Assistant
Site visit & kick off meeting with City personnel	4	4	
Measure and draw existing conditions for Design and Demolition Plans	24	40	
Schematic design & code analysis report	-	40	1
City Meetings / Workshops with public to establish program		20	
Schematic design Documents and Applications for HARC, DRC, Tree Commission, and Planning Approval Meetings. Attend Meetings.		80	
<b>Total Hours</b>	<b>28</b>	<b>184</b>	<b>1</b>
\$/hour	\$240	\$180	\$90
Labor cost	\$6,720	\$33,120	\$90
<b>Total B&amp;A Labor Cost</b>	<b>\$39,930</b>		



Landscape Site Analysis, Landscape Schematic Design, Tree Commission Presentation, Development Approval	\$46,000 + 10% = \$50,600
Civil Engineering Preliminary Design, Development Approval Drawings	\$15,280 + 10% = \$16,808
Planning Services to facilitate Development Approval process	\$9,000 + 10% = \$9,900
<b>TOTAL SCHEMATIC DESIGN AND PLANNING APPROVAL COST:</b>	<b>\$117,238</b>

**All Professional Services Total: \$117,238**  
**Reimbursable expenses: \$4,000**

We propose to organize the deliverables to the City as follows:

Completion of Schematic Design Documents (60%)      \$70,342 + \$2,000 reimbursables = \$72,342  
Completion of Planning Approval process (40%)      \$46,896 + \$2,000 reimbursables = \$48,896

**We propose to provide all the required services for a fee of \$121,238.**

If permitting through SFWMD is required, there will be the following fee:

Permitting through SFWMD (Additional Service)      \$7,480 (If impervious surface exceeds 2 acres)

Please call if you have any questions.

Sincerely,



David J Salay, Architect  
Bender & Associates Architects

Attachments: Civil Engineering Proposal – Perez Engineering, Inc.  
Landscape Design Proposal – Community Solutions Group  
Planning Services Proposal – The Spottswood Companies, Inc.



Planning | Urban Design  
Landscape Architecture  
Economics | Real Estate

March 11, 2022

GAI Project R220044.00

Mr. David Salay  
Bender & Associates Architects  
410 Angela Street  
Key West, Florida 33040

**Proposal**  
**Bayview Park**  
**Key West, Florida**

Dear Mr. Salay:

Based on our meeting with Ms. Albi Balliu, GAI's Community Solutions Group (CSG) is pleased to offer Bender & Associates (CLIENT) the following scope and fee proposal. The scope of service outline below is for an overall master plan and conceptual opinion of probable cost for Bayview Park. Currently the City has an estimated budget is 2.5 million in construction cost lined up for this fiscal year. The city will use this master plan to prioritize improvements to the park that work within its capital improvement budget in a phased effort. Based on the master plan, it is the City's intention to identify those projects that fit within the budget and request from the consultants' additional services to develop construction documents for these programs.

**Scope of Services**

Based on our understanding of the project requirements/criteria provided to date by the City of Key West, GAI's Community Solutions Group will perform the following described Scope of Services:

**Task 1: The Foundation: Project Initiation & Opportunities and Constraints Analysis**

Project initiation

- After notice to proceed, CSG will meet with the City staff and perform a site visit to discuss the shared project management approach for the project, focusing on key personnel, schedules, data gathering, regular coordination meetings and other logistics, and to discuss key planning objectives. We will also look at issues and factors requiring special consideration, including overview summaries from the various City Departments relevant to this project.

Site/Code Investigation

- CSG will obtain pertinent site information from the City staff, including files in GIS, availability of utilities, on-site and off-site drainage constraints, soils information, existing features, existing vegetation and

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other environmental features, adjacent land uses and adjacent roadway constraints and opportunities for walk connectivity.

- CSG will provide a graphic representation of the site issues and opportunities on an aerial exhibit, taking into consideration the items listed above.
- CSG will meet with the City staff to review the site issues and opportunities and prepare for Task 2.

#### Task 1 Deliverables

- Site issues and opportunities exhibit.
- All deliverables electronic unless otherwise stated.

### **Task 2: Exploring: Conceptual Master Plans**

- Based on the public input, program statement and the issues and opportunities, CSG will prepare three (3) preliminary concept plans for the park and will meet with the City staff for review prior to the public meeting and walking audit.
- Public Meeting and Walking Audit: CSG will plan, conduct, and provide staffing for a two-hour, on-site, walking audit with community participants (either in the early evening or on a Saturday morning) to walk and observe the park. The walking audit will include a short neighborhood open-house style meeting on site to review programmatic opportunities and the conceptual master plans. The City and CSG will jointly determine the locations for this workshop.
- CSG will meet with the City staff to review the outcomes of the public meeting and walking audit, in preparation for the final master plan.
- CSG will meet jointly with the City Commission (CC) and the Parks and Recreation Advisory Board (PRAB) to review and receive input on the three conceptual plans and the feedback from the public meetings.

#### Task 2 Deliverables:

- Three preliminary concept plans.
- All deliverables electronic unless otherwise stated.

### **Task 3: Public Meeting Updates**

#### Public Input

- CSG will assist with a public forum event at a location to be arranged by the City. The purpose of the event is to provide an overview of the preferred master plan direction prepared in Task 2. CSG will assist in presenting and fielding comments and questions from the public.
- CSG will prepare a summary report of the public meeting for City staff.
- CSG will meet with the City to review the input received during the public meeting and finalize the program verification and update the conceptual plan.

- CSG will assist the City with a second public meeting to present the final concept plan and receive any final comments.

#### Task 2 Deliverables

- Conceptual Master Plan alternative
- Revised Conceptual Master Plan

All deliverables electronic unless otherwise stated.

#### **Task 4: The Vision: Final Master Plan**

- Based on direction after the public meetings and staff direction, CSG will produce a consolidated Master Plan detailing the layout of the park. The plan will address issues and opportunities, public input, programmatic and design recommendations, access and connectivity including pedestrian connections to/from the park, stormwater management /stormwater retrofits as well as standards for recommended amenities and landscape design. An opinion of probable cost that includes design, permitting, construction, and construction engineering and inspections (CEI) will be developed for the park, and included in this submittal.
- CSG will meet with and review these items with the City staff prior to presenting to the City Commission.
- Final Draft Master Plan: CSG will present the final draft of Bayview Park Master Plan, including an opinion of probable cost at the City Commission meeting so they can provide final comments, ask questions and seek clarification of the recommendations.
- Based on final Commission input, CSG will prepare the final Bayview Park Master Plan for approval by the City Commission

#### Task 4 Deliverables:

- Overall Master Plan
- Conceptual Opinion of Probable Cost
- All deliverables electronic unless otherwise stated.

### **Compensation**

Compensation for services described above is on a lump sum fee of thirty-six thousand dollars (\$36,000).

Reimbursable expenses not included in the design fee include travel, such as airfare, mileage, lodging, and meals as well as reproduction cost. These will be billed at cost in addition to the design fee and are estimated to be under \$3,000.

Per phone conversation with Keith Oropeza on March 11, 2022, full Planning Approval (Minor Development) Landscape Design Services, including attendance at all meetings, will be an additional \$10,000, for a total of \$46,000 plus reimbursables.

Planning | Urban Design  
Landscape Architecture  
Economics | Real Estate

Please do not hesitate to contact me at 407.222.9583 if you have any questions or wish to discuss this Proposal. If this Proposal is acceptable, please sign where indicated below and return one copy for our file. This also will serve as authorization for GAI to proceed. GAI's performance of the Scope of Services will be governed by the GAI Standard Terms and Conditions for Professional Services, attached hereto as Exhibit A and incorporated herein by reference.

Sincerely,  
**Community Solutions Group,  
a GAI Consultants, Inc.  
Service Group**

Keith Oropeza, PLA, ASLA  
Director, Landscape Architecture

Frank Bellomo, PLA  
Senior Director, Landscape  
Architecture  
Assistant Vice President

KO:FB/bna

Attachments:

Exhibit A – GAI Standard Terms and Conditions for Professional Services  
Exhibit B – 2022 GAI Standard Rate Schedule

REQUESTED AND AUTHORIZED BY:

**Bender & Associates Architects**

BY: \_\_\_\_\_

PRINTED  
NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

March 11, 2022  
GAI Project R220044.00

| Planning | Urban Design  
| Landscape Architecture  
| Economics | Real Estate

## **EXHIBIT A**

# **GAI Standard Terms and Conditions for Professional Services**

**EXHIBIT A**  
**GAI Consultants, Inc.**  
**Standard Terms and Conditions**  
**For Professional Services**

1. Scope of Services and Extent of Agreement - GAI shall perform the Services as described in GAI's Proposal to which these Terms and Conditions are attached for the specified Project, incorporated herein by reference.

No modification or changes to these Terms and Conditions may be made except by written instrument signed by the parties. CLIENT acknowledges that he/she/it has read these Terms and Conditions, understands them, agrees to be bound by them, and further agrees that they are the complete and exclusive statement of the AGREEMENT between the parties, superseding all proposals, oral or written understandings, or other prior agreements other than those above referred to and all other communications between the parties relating to the subject matter thereof.
2. Compensation – GAI hereby agrees to accept and CLIENT agrees to pay the compensation on either a time (hourly) and expense basis in accordance with GAI's rates in effect at the time of performance, or lump sum basis as set forth in GAI's Proposal to perform the Services.

If GAI's services are performed on an HOURLY BASIS, GAI will be paid for all time rendered to the project, including project scoping by professional, technical, and clerical personnel in accordance with the attached Hourly Rate Schedule. Time required for personnel of GAI to travel between GAI's office and the Site (or any other destination applicable to the project) is charged in accordance with the rates shown in the attached Hourly Rate Schedule. If overtime for non-exempt personnel (as defined by statute) is required, the overtime rate charged will be 1.50 times the invoice rate shown on the attached Hourly Rate Schedule.
3. Invoicing/Payment
  - A. GAI will submit invoices periodically, but not more frequently than every two weeks, for Project services performed during the period or upon completion of the Project, whichever is earlier.
  - B. Invoices are due and payable in U.S. dollars within 30 days from date of invoice. All charges not paid within 30 days are subject to a service charge of 1-1/2 percent per month or a fraction thereof, plus all costs and expenses of collection, including without limitation, attorneys' fees. In addition to the foregoing, should CLIENT fail to pay any invoice within 45 days of the invoice date, GAI may, in its sole discretion, upon 3 days written notice to CLIENT, stop work and recover from CLIENT payment for all services performed prior to the work stoppage, plus all amounts for interest, penalties and attorney's fees that may be recoverable under applicable law, including without limitation, prompt payment and/or lien laws. GAI will resume performance once CLIENT pays all outstanding amounts due plus any advance payment(s) or other security in GAI's sole discretion deemed necessary by GAI.
  - C. CLIENT will be invoiced for external expenses, such as travel, lodging, sub-contracted services, etc., at direct cost plus a 10% handling and administrative fee.
  - D. Payments shall include the GAI invoice number and be mailed to 385 East Waterfront Drive, Homestead, PA, 15120, to the attention of Accounts Receivable.
4. Changes – CLIENT and GAI may make additions to the scope of work by written Change Order. CLIENT may omit work previously ordered by written instructions to GAI. The provisions of these Terms and Conditions, with appropriate changes in GAI's Compensation and Project Schedule, shall apply to all additions and omissions.
5. CLIENT Responsibilities – CLIENT represents, with the intent that GAI rely thereon, that it has sufficient financial resources to pay GAI as agreed to in these Terms and Conditions and, as applicable and necessary for GAI to perform its services, CLIENT will:
  - A. Provide all criteria and full information as to its requirements for GAI's services, including design or study objectives, constraints, third party certification requirement(s), standards or budget limitation(s).
6. Schedule/Delays – GAI shall commence performance upon receipt of the CLIENT's written authorization to proceed and shall perform its professional services in accordance with the schedule set forth in its Proposal, provided however, the performance of these Terms and Conditions, except for the CLIENT's payment of money for services already rendered, shall be excused in the event performance of these Terms and Conditions is prevented or delays are occasioned by factors beyond GAI's control, or by factors which could not reasonably have been foreseen at the time this Exhibit A was prepared and executed. The delayed party's performance shall be extended by the period of delay plus a reasonable period to restart operations.
7. Document Ownership, and Reuse
  - A. All reports, drawings, specifications, manuals, learning and audio/visual materials, boring logs, field data, laboratory test data, calculations, estimates, and other documents (collectively "Work Product") prepared by GAI are instruments of service shall remain the property of GAI. Unless otherwise notified by CLIENT, GAI will retain all pertinent records relating to the Services performed for a period of two (2) years following submission of the report, design documents or other project deliverables, during which period the records will be made available at GAI's office to the CLIENT at reasonable times.
  - B. Assist GAI by placing at its disposal all available information pertinent to the Project and/or GAI's services including the actual or suspected presence of hazardous waste, materials or conditions at or beneath the Project site, record ("As-Built") drawings, surveys, previous reports, exploration logs of adjacent structures and any other data relative to the Project. Unless otherwise noted, GAI may rely upon such information.
  - C. Upon identification by GAI and approval by CLIENT of the necessity and scope of information required, furnish GAI with data, reports, surveys, and other materials and information required for this Project, all of which GAI may rely upon in performing its services, except those included in GAI's scope of services.
  - D. Guarantee access to the property and make all provisions for GAI to enter upon public and private lands and clear all exploration location(s) for buried utilities/piping/structures as required for GAI to perform its services under these Terms and Conditions.
  - E. Examine all studies, reports, sketches, opinions of the construction costs, specifications, drawings, proposals and other documents presented by GAI to CLIENT and promptly render in writing the decisions pertaining thereto within a period mutually agreed upon.
  - F. Designate in writing a person to act as CLIENT'S representative with respect to the services to be rendered under these Terms and Conditions. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to materials, equipment, elements and systems pertinent to GAI's services.
  - G. Give prompt written notice to GAI whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of GAI'S services, or any defect in the Project or work of Contractor(s).
  - H. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
  - I. Furnish such legal and insurance counseling services as CLIENT may require for the Project.

**EXHIBIT A**  
**GAI Consultants, Inc.**  
**Standard Terms and Conditions**  
**For Professional Services**

- B. Any reuse of the Work Product described above without written verification or adaptation by GAI, as appropriate, for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to GAI. CLIENT shall indemnify and hold harmless GAI from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting there from. Any future verification or adaptation of such Work Product will entitle GAI to further compensation at rates to be agreed upon by CLIENT and GAI.
- C. Unless specified otherwise in GAI's Proposal, GAI will dispose of all materials and samples obtained in the investigation portion of the project 90 days after completion of the report. Further storage or transfer of samples will be made at CLIENT's expense.
- D. CLIENT recognizes that site conditions where samples and data are gathered do vary with time and that particularly subsurface conditions may differ from those encountered at the time and location where explorations or investigations are made and, therefore, the data, interpretations, and recommendations of GAI are based solely on the information available at the time of the investigation. GAI shall not be responsible for the interpretation by others of the information it develops.
8. Standard of Performance – GAI will perform its Services with that level of care and skill ordinarily exercised by other professionals practicing in the same discipline(s), under similar circumstances and at the time and place where the Services are performed, and makes no warranty, express or implied, including the implied by law warranties of MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
9. Insurance
- A. GAI shall procure and maintain such insurance as is required by law as of the date first written above and during the performance of the Agreement, and subject to the terms and conditions of the policies, keep in force the following insurance:
- Worker's Compensation Insurance with other State's endorsement, including Employer's Liability Insurance for its employees in the amount of \$500,000; Comprehensive General Liability Insurance, including Protective and Completed Operations, covering bodily injuries with limits of \$1,000,000 per occurrence, and property damage with limits of \$1,000,000 per occurrence; Comprehensive Automobile Liability Insurance, including operation of owned, non-owned and hired automobiles, with combined single limits for bodily injury and property damage of \$1,000,000 per occurrence; Excess Umbrella Liability Insurance with limits of \$1,000,000 in the aggregate.
- B. If CLIENT requires additional types or amounts of insurance coverage, GAI, if specifically directed by CLIENT, will purchase additional insurance (if procurable) at CLIENT's expense; but GAI shall not be responsible for property damage from any cause, including fire and explosion, beyond the amounts and coverage of GAI's insurance specified above.
- C. CLIENT will require that any Contractor(s) performing work in connection with GAI's Services will name GAI as an additional insured on their insurance policies. In addition, in any hold-harmless agreements between CLIENT or Owner and any contractor who may perform work in connection with any professional services rendered by GAI, CLIENT will require such contractor(s) to defend and indemnify GAI against third party suits.
- D. It is agreed that GAI shall have no responsibility: 1) To supervise, manage, direct, or control CLIENT or its Contractors', subcontractors' or their employees; 2) For any of CLIENT's or its contractors, subcontractors or agents or any of their employees' safety practices, policies, or compliance with applicable Federal, State and/or local safety and health laws, rules or regulations; 3) For the adequacy of their means, methods, techniques, sequencing or procedures of performing their services or work; or 4) For defects in their work.
10. Indemnity – Subject to the Limitation(s) of Liability provision(s) below in Articles 11 and 12, GAI agrees to indemnify and hold harmless CLIENT, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses including reasonable attorneys' fees, or other loss (collectively "Losses") to the extent caused by GAI's negligent performance of Services under these Terms and Conditions.
11. Limitation of Liability – In the event of any loss, damage, claim or expense to CLIENT resulting from GAI's performance or non-performance of the professional services authorized under these Terms and Conditions, GAI's liability whether based on any legal theory of contract, tort including negligence, strict liability or otherwise under these Terms and Conditions for professional acts, errors, or omissions shall be limited to the extent any such claims, damages, losses or expenses result from the negligent act, errors or omissions of GAI or its employees occurring during performance under these Terms and Conditions. The total cumulative liability of GAI arising out of professional acts, errors, or omissions shall not exceed the greater of \$50,000 or two times the total compensation GAI receives from CLIENT under these Terms and Conditions. GAI's aggregate liability for all other acts, errors, or omissions shall be limited to the coverage and amounts of insurance specified in Article 9, above. The limitations stated above shall not apply to the extent any damages are proximately caused by the willful misconduct of GAI and its employees.
12. Disclaimer of Consequential Damages – Notwithstanding anything to the contrary in these Terms and Conditions, neither party shall have any liability to the other party for indirect, consequential or special damages including, but not limited to, liability or damages for delays of any nature, loss of anticipated revenues or profits, increased cost of operations or costs of shutdown or startup whether such damages are based on contract, tort including negligence, strict liability or otherwise.
13. Probable Construction Cost Estimates – Where applicable, statements concerning probable construction cost and detailed cost estimates prepared by GAI represent its judgment as a professional familiar with the construction industry. It is recognized, however, that neither GAI nor CLIENT has any control over the cost of labor, materials or equipment, over the contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, GAI cannot and does not guarantee that bids, proposals, or actual costs will not vary from any statement of probable construction cost or other cost estimate prepared by it.
14. Confidentiality/Non-Disclosure – GAI shall not disclose, or permit disclosure of any information developed in connection with its performance under these Terms and Conditions or received from CLIENT or the PROJECT OWNER, or their affiliates, subcontractors, or agents designated by CLIENT as confidential, except to GAI's employees and subcontractors who need such information in order to properly execute the services of these Terms and Conditions, and shall require any such of its employees and subcontractors and their employees not to disclose or permit disclosure of any of such information, without the prior written consent of CLIENT. The foregoing shall not prohibit GAI from disclosing information in response to any Federal, State or local government directive or judicial order, but in the event GAI receives or is threatened with such an order or has actual knowledge that such an order may be sought or be forthcoming, GAI shall immediately notify CLIENT and assist CLIENT in CLIENT's undertaking such lawful measures as it may desire to resist the issuance, enforcement and effect of such an order. GAI's obligation to resist such an order and assist CLIENT and the PROJECT OWNER is contingent upon GAI receiving further compensation for such assistance plus all costs and expenses, including without limitation reasonable attorney's fees, incurred by GAI.



**EXHIBIT A**  
**GAI Consultants, Inc.**  
**Standard Terms and Conditions**  
**For Professional Services**

15. Certifications – GAI shall not be required to execute any certification with regard to work performed, tested, and/or observed under these Terms and Conditions unless:

- A. GAI concludes that it has performed, tested and/or observed sufficient work to provide a sufficient basis for it to issue the certification; and
- B. GAI believes that the work performed, tested or observed meets the certification criteria; and
- C. GAI gave its written approval of the certification's exact form before executing these Terms and Conditions.

Any certification by GAI shall be interpreted and construed as an expression of professional opinion based upon the Services performed by GAI, and does not constitute a warranty or guaranty, either expressed or implied.

16. Miscellaneous Terms of Agreement

- A. These Terms and Conditions shall be subject to, interpreted, and enforced according to the laws of the Commonwealth of Pennsylvania without giving effect to its conflict of law principles. If any part of these Terms and Conditions shall be held illegal, unenforceable, void, or voidable by any court of competent jurisdiction, each of the remainder of the provisions shall nevertheless remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- B. Neither the CLIENT nor GAI may delegate, assign, sublet, or transfer their duties or interest as described in these Terms and Conditions and GAI's Proposal without the written consent of the other party. Both parties relinquish the power to assign and any attempted assignment by either party or by operation of law shall be null and void.
- C. These Terms and Conditions shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assignees. In the event that a dispute should arise relating to the performance of the Services to be provided under these Terms and Conditions and GAI's Proposal, and should that dispute result in litigation, it is agreed that each party shall bear its own litigation expenses, including staff time, court costs, attorneys' fees, and other claim-related expenses.
- D. CLIENT shall not assert any claim or suit against GAI after expiration of a Limitation Period, defined as the shorter of (a) three (3) years from substantial completion of the particular GAI service(s) out of which the claim, damage or suit arose, or (b) the time period of any statute of limitation or repose provided by law.

In the event of any claim, suit or dispute between CLIENT and GAI, CLIENT agrees to only pursue recovery from GAI and will not to seek recovery from, pursue or file any claim or suit, whether based on contract, tort including negligence, strict liability or otherwise against any director, officer, or employee of GAI.

- E. No modification or changes in the terms of this Agreement may be made except by written instrument signed by the parties. CLIENT acknowledges that they have read this AGREEMENT, understands it, agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the AGREEMENT between the parties superseding all work orders, oral or written understandings, or other prior agreements other than those above referred to and all other communications between the parties relating to the subject matter thereof.
- F. Either the CLIENT or GAI may terminate or suspend performance of these Terms and Conditions without cause upon thirty (30) days written notice delivered or mailed to the other party.
  - (1) In the event of material breach of these Terms and Conditions, the party not breaching the AGREEMENT may terminate it upon ten (10) days written notice delivered or

mailed to the other party, which termination notice shall state the basis for the termination. The AGREEMENT shall not be terminated for cause if the breaching party cures or commences to cure the breach within the ten day period.

- (2) In the event of the termination, other than caused by a material breach of these Terms and Conditions by GAI, CLIENT shall pay GAI for the Services performed prior to the termination notice date, and for any necessary services and expenses incurred in connection with termination of the project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination or subcontractor and/or subconsultant contracts. Such compensation shall be based upon the schedule of fees used by GAI.
- (3) In the event CLIENT delays providing written authorization to proceed within 45 days of the date of GAI's Proposal or suspends GAI's performance for 45 days or more after authorization has been given, GAI reserves the right, in its sole discretion, to revise its cost, compensation and/or hourly rates to its then current rates prior to resuming performance under these Terms and Conditions.
- G. All notices required to be sent hereunder shall be either hand delivered, with signed receipt of such hand delivery, or sent by certified mail, return receipt requested.
- H. The paragraph headings in these Terms and Conditions are for convenience of reference only and shall not be deemed to alter or affect the provisions hereof.
- I. Unless expressly stated to the contrary, the professional services to be provided by GAI do not include meetings and consultations in anticipation of litigation or arbitration or attendance as an expert witness in any deposition, hearing, or arbitration. If requested, these services will be provided by an amendment to these Terms and Conditions, setting forth the terms and rates of compensation to be received by GAI.
- J. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT, the PROJECT OWNER if different than CLIENT and GAI.
- K. GAI is an Equal Opportunity Employer. GAI complies with the Office of Federal Contract Compliance Programs Affirmative Action Programs as outlined in 41 CFR 60-1.4(a)(b), 41 CFR 60-250.5(a)(b), and 41 CFR 60-741.5(a)(b).

END OF TERMS AND CONDITIONS

March 11, 2022  
GAI Project R220044.00

| Planning | Urban Design  
| Landscape Architecture  
| Economics | Real Estate

**EXHIBIT B**  
**2022 GAI Standard Rate Schedule**

## 2022 Community Development Florida Rate Schedule

Professionals include Economists, Planners, Designers, Landscape Architects, and Engineers.

Any changes in hourly rates to reflect increases in cost of living, taxes, benefits, etc. will take effect on January 1, 2023. Rates in the below table are "loaded" hourly rates and include all overhead, costs, and benefits per hourly unit rate.

Labor Classification	Invoice Rate
CSG Expert Witness	\$350.00
CSG Senior Director / VP	\$325.00
CSG Senior Director	\$265.00
CSG Director	\$225.00
CSG Senior Manager / Asst. Director	\$205.00
CSG Manager	\$185.00
CSG Assistant Manager	\$165.00
CSG Senior Project Professional	\$145.00
CSG Project Professional	\$130.00
CSG Senior Professional	\$115.00
CSG Professional	\$110.00
CSG Senior Technician	\$95.00
CSG Technician 2	\$85.00
CSG Technician 1	\$65.00
Environmental Manager	\$160.00
Project Environmental Specialist	\$100.00
Expert Witness	\$350.00
Principal	\$330.00
Technical/Professional 30	\$310.00
Technical/Professional 29	\$295.00
Technical/Professional 28	\$285.00
Technical/Professional 27	\$250.00
Technical/Professional 26	\$240.00
Technical/Professional 25	\$235.00
Technical/Professional 24	\$230.00
Technical/Professional 23	\$225.00
Technical/Professional 22	\$220.00
Technical/Professional 21	\$210.00
Technical/Professional 20	\$205.00
Technical/Professional 19	\$200.00
Technical/Professional 18	\$195.00
Technical/Professional 17	\$185.00
Technical/Professional 16	\$180.00
Technical/Professional 15	\$170.00
Technical/Professional 14	\$160.00
Technical/Professional 13	\$150.00
Technical/Professional 12	\$140.00
Technical/Professional 11	\$135.00
Technical/Professional 10	\$130.00
Technical/Professional 09	\$125.00
Technical/Professional 08	\$110.00
Technical/Professional 07	\$105.00
Technical/Professional 06	\$100.00
Technical/Professional 05	\$95.00
Technical/Professional 04	\$90.00
Technical/Professional 03	\$85.00
Technical/Professional 02	\$75.00
Technical/Professional 01	\$70.00
Technical/Support 1	\$50.00
Survey Crew - 3 Person	\$230.00
Surveyor	\$200.00
Survey Crew - 2 Person	\$180.00
Survey Senior CAD Operator	\$100.00
Survey Crew Chief	\$85.00



**PEREZ ENGINEERING**  
**& DEVELOPMENT, INC**

February 12, 2022

Mr. David Salay, LEED AP, NCARB  
Bender & Associates Architects  
410 Angela Street  
Key West, Fl. 33040

**RE: Professional Services Agreement – City of Key West Bayview Park**

Dear David:

Perez Engineering & Development, Inc. is pleased to submit this proposal to assist you with professional civil engineering services for the redevelopment of Bayview Park located in Key West, Florida. We understand the City would like to see the park be brought back to life for the visitors and residents. The improvements will include landscape, open lawn/space, new restrooms, new tennis pro shop, new courts, stormwater improvements, and utility improvements.

**SCOPE OF WORK**

**TASK 1 – MAJOR DEVELOPMENT PLAN**

- 1.1 Collect and review available as-built documents within the area.
- 1.2 Perform project area inspection to determine and confirm existing physical conditions pertaining existing sidewalks, drainage elements, patterns and characteristics.
- 1.3 We shall assist the City and Design Team with the development of a site plan (prepared by others) for submittal as part of the Major Development Plan Application. We shall review preliminary drainage/stormwater storage areas, conveyance methods, site grading including roadways, building pads and terrain features.
- 1.4 We shall prepare a Conceptual Drainage Plan to accompany the Major Development Plan Application submittal. The Conceptual Drainage plan shall include, but not be limited to: delineation of drainage areas, proposed topography (spot elevations or contour lines as appropriate to express hardscape/roadway/soil grades), drainage structure locations, slope arrows

**Key West Office:**

1010 Kennedy Dr. Suite 202 • Key West, Florida 33040  
tel: (305) 293-9440 Fax: (305) 296-0243

with % of slope indicated, swale locations, injection well locations, surface conveyance structures (curbs, curb inlets, etc...).

## **TASK 2 – PRELIMINARY DESIGN PHASE**

- 2.1 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, and outline specifications.
- 2.2 These drawings shall consist of site geometry plan, paving, grading, and drainage plan, water and sewer plan and all the appropriate details. These drawings will be of presentation quality intended to reflect the final product.
- 2.3 Make available all design calculations and associated Data.
- 2.4 Furnish copies of the Preliminary Design documents and present and review them with the City.

## **TASK 3 – FINAL DESIGN PHASE**

- 3.1 Prepare a final on-site Geometry Plan for location of roadway and site improvements, including:
  - Roadway centerline geometry with bearings, curve data, vertical and horizontal profiles (Profiles as applicable to project).
  - Edge of pavement signature indicating curb type, edge type, etc...with supporting details.
  - FEMA Flood Lines to be shown on plans.
  - Roadway Striping and Signage information with supporting details.
  - Handicap parking spaces, curb, ramps and supporting details.
  - Layout data for all structures, structure spacing, setbacks, buffers, etc...
- 3.2 Prepare stormwater calculations and Grading and Drainage Plans including:
  - FFE of all structures on site relative to crown of road and responsive to proposed grade changes.
  - Delineate all drainage basins, swales, and sub-surface conveyance systems including piping, structures, injection wells, etc...
  - Provide proposed contours or spot elevations for all drainage improvements and roadways.
  - Provide proposed contours or spot elevations for all building pads, around all existing trees to remain and site finish grades.

- All plans to show FEMA flood lines, existing trees to remain, etc...
  - Provide all inverts, pipe sizes, pipe slopes, and other data relative to sub-surface conveyance systems.
- 3.3 Prepare a water and sewer plan depicting the proposed potable water, and sanitary sewer services/improvements.
  - 3.4 Prepare construction documents which shall include but not be limited to drawings and technical specifications, and descriptions and design data necessary for permitting by governmental authorities.
  - 3.5 Make available all design calculations and associated Data.
  - 3.6 Furnish copies of the 100% Complete Design documents and present and review them with the City for final comments and revisions.

#### **TASK 4 – BID PHASE SERVICES**

- 4.1 We shall assist the City and Design Team in obtaining bids or negotiated proposals, assist in awarding and preparing contracts for construction, attend pre-bid conferences, and prepare addenda.
- 4.2 We shall issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

#### **TASK 5 – CONSTRUCTION PHASE SERVICES**

- 5.1 Shop Drawing Review – We shall review sets of shop drawings supplied by Contractor for conformance with the engineering design concept of the project and information given in the contract documents. Review of any shop drawing is limited to general design concepts and general compliance with the information in the construction plans and specifications.
- 5.2 Limited Construction Observation – We shall provide limited construction observation services as shown below:
  - We shall provide project representation by staff to inspect water, sanitary sewer, and storm sewer in order to provide construction observation to determine, in general, if it is proceeding in accordance with the contract documents and permit conditions. Project representation in the field shall be as required in order to complete agency certifications.
  - We shall conduct at least one (1) walk through at the end of construction to determine if the project is substantially complete and one (1) final construction observation visit to determine if the project

- has been completed in substantial accordance with the contract documents and permit conditions.
- Our representatives will attend the appropriate utility system tests (water main pressure test), as required to make engineering certifications to appropriate governmental agencies.

5.3 Record Drawings – We shall prepare record drawings based on “as-built” drawings to be provided to the engineer by the contractor. The “as-built” drawings must be signed and sealed by a Professional Land Surveyor registered in the State of Florida. The contractor shall also provide the ACAD files of the survey for our use in development of the record drawings. The record drawings prepared by us shall be submitted to the Client and to the applicable municipal/regulatory agencies.

**ITEMS NOT INCLUDED**

1. Topographic survey,
2. Traffic studies/evaluations,
3. Lighting/electrical design,
4. Off-site utility design, our scope assumes water and sewer are readily available at the site,
5. Off-site roadway/parking improvements.

**COMPENSATION – BASIC SERVICES**

The proposed total lump sum fee compensation for this scope of work is **\$43,810**. A summary of compensation is shown below.

Task 1 – Major Development Plan	\$ 8,880	Per email with Allen Perez on March 14, 2022, Civil Design for Planning Approval will be Task 1 and 50% of Task 2, for a total of \$15,280.
Task 2 – Preliminary Design	\$12,800	
Task 3 – Final Design	\$15,160	
Task 4 – Bid Phase Services	\$ 1,530	
Task 5 – Construction Phase Services	\$ 5,440	
Basic Services Total	\$43,810	

**ADDITIONAL SERVICES**

*Regulatory Approvals*

1. SFWMD Environmental Resource Permit - We shall prepare and submit the appropriate permit applications for construction of the stormwater management system.

Fee                    \$ 6,800

**Total Fee        \$50,610**

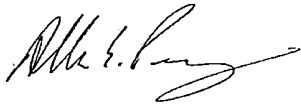
Mr. David Salay, LEED AP, NCARB  
February 12, 2022  
Page 5

No site permitting with FDEP or FDOT are anticipated nor are they included in this proposal.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and approved as of the date written below, by their duly authorized officers and/or representatives.

**PEREZ ENGINEERING  
& DEVELOPMENT, INC.**

**Bender & Associates**



Allen E. Perez, P.E.

\_\_\_\_\_  
Name and Title Date



**SPOTTSWOOD, SPOTTSWOOD, SPOTTSWOOD & STERLING, PLLC**  
ATTORNEYS AND COUNSELORS AT LAW  
500 FLEMING STREET  
KEY WEST, FLORIDA 33040

JOHN M. SPOTTSWOOD, JR.  
ERICA H. STERLING  
ROBERT A. SPOTTSWOOD, JR.  
RICHARD J. McCHESNEY

Telephone | 305-294-9556  
Facsimile | 305-504-2696

OF COUNSEL:

JOHN M. SPOTTSWOOD (1920 – 1975)  
ROBERT A. SPOTTSWOOD of Counsel  
WILLIAM B. SPOTTSWOOD of Counsel  
WILLIAM B. SPOTTSWOOD, JR. of Counsel

March 28, 2022

SENT VIA EMAIL TO:

Bender & Associates Architects  
410 Angela Street,  
Key West, FL 33040  
(dsalay@benderarchitects.com)

Re: Bayview Park Minor Development Plan  
1320 Truman Avenue, Key West

Dear David:

Thank you for selecting Spottswood, Spottswood, Spottswood & Sterling, PLLC to serve as your counsel and land use advisor with regard to the above captioned matter. The purpose of this engagement letter (also referred to herein as the “**Agreement**”) is to outline the nature of this engagement and our respective responsibilities and expectations under this Agreement.

Based upon our initial conversations and correspondence, we anticipate this engagement to cover various land use, permitting and planning issues relating to referenced property that comprises Bayview Park, Key West, Florida. The scope of services we expect to provide is set forth in more detail by Donald L. Craig on the outline enclosed with this letter. Mr. Craig will be your lead contact on this matter.

During this engagement, our fees will be determined as follows:

- (1) All services included in the Scope of Services shall be provided for a fixed fee of \$9,000.

We are committed to rendering our services in an efficient and timely manner and will keep you updated as your matter progresses.

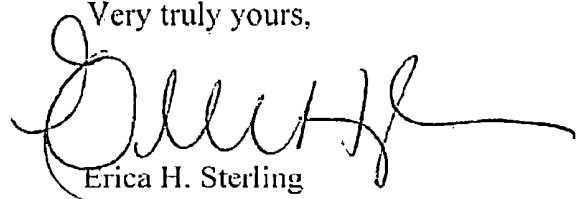
Bender & Associates  
March 2022

All of the service, counsel and advice provided by our firm as part of this engagement shall be done in accordance with the terms set forth in our firm's standard Terms and Conditions, attached hereto as Exhibit A.

Please review this letter carefully and let me know if you have any questions or concerns. If you agree to the terms of this letter, please sign it and return it to my attention. You may retain the enclosed copy for your files.

We appreciate the chance to be of service and look forward to working with you.

Very truly yours,



Erica H. Sterling

ACCEPTED AND AGREED to by Bender and Associates Architects:

\_\_\_\_\_  
Representative

Date: \_\_\_\_\_

Enclosures: Outline  
Exhibit A – Terms and Conditions

## Scope of Services

Donald L. Craig and Lori Thompson will be your lead contacts for this project. All communications should be directed to them with a copy to the attorney in charge, Erica Sterling.

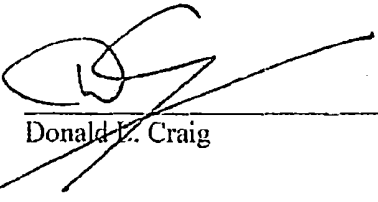
We anticipate the scope of our services for this project to include the following:

- Prepare all required application forms and obtain authorizations
- Provide a written project narrative and project description
- Provide written zoning and Comprehensive Plan consistency statements
- Provide proof of coordination with inter-governmental agencies and utilities
- Provide concurrency analysis as required
- Coordinate the planning effort with Architects, Landscape Architects and Civil Engineers
- Other professional and legal services as may be required when authorized the client.

Representation of the application and/or assist in the preparation of the following public meetings:

1. Pre -application meeting with city staff
2. Development Review Committee
3. Planning Board
4. Tree commission
5. HARC
6. City Commission

This process will require 6 to 8 months to complete.

  
Donald L. Craig

**EXHIBIT A**  
**Terms and Conditions**

**Fees:** Generally, our fees for services are based upon the applicable hourly rates for the attorneys and legal assistants who do the work. Our hourly rates are based on experience, training and level of professional attainment. To minimize your legal costs, we will utilize junior attorneys and legal assistants where appropriate. We also may retain contract attorneys, who are supervised by our attorneys but not employed by our firm. Currently, our hourly rates for attorneys range from \$195.00 to \$500.00. We bill our rates in six (6) minute intervals (increments of tenths (1/10) of an hour). Our rates are reconsidered from time to time.

**Retainer:** Your retainer, if any, will be held in a non-interest bearing trust account at First State Bank of the Florida Keys. We will draw down on your retainer to satisfy our billing statements, copies of which will be sent to you. When your retainer is exhausted, we will so advise you and we may request a supplemental retainer for us to draw upon for future statements.

**Expenses:** In addition to our fees, in the course of providing services to you, we may incur expenses for services including items such as delivery services and filing fees. The actual expenses incurred depend on the services that we provide to you. Expense items incurred on your behalf will be itemized separately on our billing statements.

**Billing:** Generally, our billing statements are prepared and mailed monthly. The balance on these billing statements will be applied against the retainer. When the retainer is depleted, payment is due within ten (10) days after the statement date. In the event that you fail to remain current in the payment of legal fees as provided herein, you agree that we may at any time thereafter cease any further legal work in the matters and withdraw as counsel, on notice, subject to any necessary approval by the appropriate courts or other tribunals and to our general ethical obligations.

**Waiver:** Because of our firm's history and experience in the Florida Keys and its broad legal practice, it is possible that our attorneys may now or in the future represent parties in matters in which their interests are adverse to your interests. You hereby agree that we may continue to represent or may in the future represent new or existing clients in any matter that is not directly related to our work for you. In the event that an actual conflict arises, we may need to withdraw as counsel, which may result in increased expenses and delay. This risk is minimal, as we will not undertake any representation that is directly adverse to your interests in this engagement. In addition, sensitive, proprietary or other confidential information of a non-public nature concerning you will remain confidential under all circumstances.

**Termination of Representation:** Upon written notice to the firm, you shall have the right at any time to terminate our services and representation under this Agreement. Such termination shall not, however, relieve you of the obligation to pay for all services rendered and costs or expenses paid or incurred on your behalf in accordance with this Agreement prior to the date of such termination. Any unused portion of the retainer will be returned to you at the end of the engagement.

**Client Documents:** During the engagement, we will maintain all documents relevant to this representation. At the conclusion of this engagement, we will retain your original documents for a period of one (1) year unless you request that they be returned to you. If you have not requested possession of the file or any of its contents at the end of one (1) year, the file will be destroyed in accordance with our record retention program.

**Communication:** It is important for us to maintain open communication with each other throughout the engagement. We will regularly keep you informed of the status of the matter and will promptly notify you of any major developments. We will consult with you whenever appropriate. Unless you specifically direct us otherwise, we may use cell phones, e-mail and facsimile machines in the course of this engagement. Our e-mail and facsimile transmissions may not be encrypted so the use of such forms of communication under current technologies may place confidential or privileged information at risk. Similarly, the use of cell phones may place confidential or privileged information at risk. By signing below, you consent to our use of these forms of communication.

**Choice of Law and Forum:** This Agreement, and all questions relating to its validity, interpretation, performance and enforcement, is governed by Florida law without regard to its principles of conflicts of law. In the event that a dispute arises between us, unless you are entitled to and elect to arbitrate your claims, all such matters shall be resolved by a court. You agree that the state or federal courts of Florida located in Monroe County shall be the exclusive forums for litigation concerning this Agreement or any aspect of our engagement. You consent to personal jurisdiction in such courts as well as service of process by notice sent by regular mail to the address set forth above and/or by any means authorized by Florida law.

**Privacy:** In the course of providing legal services to you, we may receive nonpublic personal information about you. All such information will be held in strict confidence and will not be disseminated to any person or entity outside this law firm without your consent, unless such disclosure is required under the applicable law. We may store some or all of your files on a variety of platforms, including third-party cloud-based servers. Although we take every precaution to make sure these servers are encrypted and secure, there is still a risk that your confidential or privileged information may be disclosed. By signing below, you consent to our use of such storage services.

**Attorney-Client Privilege:** Generally, information we receive from you is subject to the attorney-client privilege. However, we may be under an independent ethical duty to reveal privileged information if it involves (a) the commission of illegal or fraudulent acts that are committed in the course of this engagement, (b) the intent to commit a crime or (c) if we are required to disclose the information by law or court order.

**Entire Agreement:** This Agreement constitutes the sole and entire agreement between us with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter.

\* \* \* \* \*



**THE CITY OF KEY WEST**  
1300 White Street Key West, FL 33041-1409 (305) 809-3700

September 25, 2020

Bert Bender,  
Bender & Associates Architects  
410 Angela Street  
Key West, FL 33040

RE: Amendment to Resolution 20-141 – Architectural Services Agreement

Mr. Bert,

Upon both parties fully executing this Amendment, the enclosed City Commission Resolution 20-141 exercises the option to renew current professional services contracts per agreed terms for a period of two (2) additional years through August 1, 2022.

Bender & Associates, Inc.

City of Key West

By:

Signature

10/5/2020

Date

By:

Gregory W. Veliz, City Manager

10/5/2020  
Date

*Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.*