

PROFESSIONAL SERVICES AGREEMENT
(Facility Design and Related Services – Public Works Fleet Facility)

This Professional Services Agreement (“Agreement”) is made on _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”), and **ACAI ASSOCIATES, INC., a Florida corporation (“CONSULTANT”)**.

WHEREAS, the City issued Request for Qualifications (No. 20-300) for Facility Design and Related Services for a new Public Works Fleet Facility project in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide design and related services for the new Public Works Fleet Facility; and

WHEREAS, the City finds making the award of the RFQ to the CONSULTANT as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the CONSULTANT, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

The City awards the CONSULTANT the right to provide the City with the services set forth in the RFQ, which is incorporated herein by reference, and as supplemented in the CONSULTANT’s proposal attached hereto as **Exhibit “A”** (“services”). The services shall be provided consistent with the terms of this Agreement and the RFQ.

ARTICLE 2 - TERM OF AGREEMENT

This non-exclusive Agreement shall be effective upon approval by the City Commission and shall continue until such time as all services are provided by the CONSULTANT, unless earlier terminated as stated herein.

ARTICLE 3 – COMPENSATION

A. Compensation: The City shall pay the CONSULTANT the amounts set forth in **Exhibit “A”** for Basic Services, Additional Services & Allowances, and Direct Project Expenses. The CONSULTANT expressly acknowledges and agrees that the total cost to complete all services is set forth in **Exhibit “A”** and no additional compensation or costs shall be authorized or paid by the City for the services unless approved by written amendment to this Agreement by the City Manager or City Commission (depending on the City’s required level of approval for such additional compensation or costs). In no case shall the CONSULTANT bill the City for any amount not stated in **Exhibit “A”** or in a written amendment thereto.

B. Direct Project Expenses: All direct project expenses shall be as stated in Exhibit “A” and billed at cost to the City. The CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses. Receipts for direct project expenses which exceed Twenty-Five and 00/100 Dollars (\$25.00) shall be provided with each of the

CONSULTANT's invoices to the City.

C. Allowances: Exhibit "A" identifies certain not-to-exceed allowances that the CONSULTANT may utilize in providing the services. The CONSULTANT shall obtain at least e-mail approval from the City's representative prior to utilizing the allowances. Failure to obtain at least e-mail approval may result in the City not paying the allowance amount.

D. Additional Services: If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such additional services based upon the hourly rates set forth in **Exhibit "A"**. The negotiated fee must be approved by the City in the form of an amendment to this Agreement prior to said additional services being provided by the CONSULTANT.

F. Status Report: The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City.

ARTICLE 4 - TERMS OF PAYMENT

A. Monthly Invoices: The CONSULTANT shall submit detailed invoices once each month to the City for the services performed and the expenses and other charges accounted for under this Agreement consistent with the services and compensation schedule as set forth in Exhibit "A". The CONSULTANT's invoice must be submitted to:

City of Lake Worth Beach
Finance Dept. – Accounts Receivable
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City Manager or designee will review each invoice to ensure the services as detailed have been provided and the compensation requested is consistent with Exhibit "A". Once the invoice is approved by the City Manager or designee, payment as prescribed in Article 3 for services rendered by the CONSULTANT during the previous month shall be processed. Payment will normally be made by the City within thirty (30) days of the City Manager or designee's approval. However, the City reserves the right to dispute any invoice not consistent with the terms herein.

B. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT's final/last invoice to the City. This shall constitute CONSULTANT's certification that all services have been properly performed and all charges and costs have been invoiced to the City. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

C. Tax: The City is exempt from payment of Florida State Sales and Use Tax. The City will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the CONSULTANT authorized to use the City's tax exemption number in securing materials. The CONSULTANT shall be responsible for payment of its own share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

D. Fiscal Non-funding: The City's fiscal year ends September 30th of each year. In the event sufficient budgeted funds are not available for a new fiscal year, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for

all services rendered through the date of termination.

ARTICLE 5 - TERMS OF PERFORMANCE

A. Starting Work: The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City.

B. Ownership of Documents: The drawings, specifications, calculations, supporting documents, or other work products which are listed as deliverables by the CONSULTANT in Exhibit "A" or such other drawings, specifications, calculations, supporting documents, or work products prepared for the City under this Agreement shall become the property of the City upon delivery or completion of the services. The CONSULTANT may keep copies or samples thereof and shall have the right to use such drawings, specifications, calculations, supporting documents, or other documents. The City accepts sole responsibility for its reuse of any such documents in a manner other than as initially intended, or for any use of incomplete documents unless prior written approval is obtained from the CONSULTANT.

C. Account Records: The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five and 00/100 Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

D. Force Majeure: Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible.

Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its subconsultants fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

E. Approval of Changes: The City, through the City Commission or the City Manager (as specifically identified herein) must approve in writing any changes in the services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

F. Authorized Representative: Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a

clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

G. Time of the Essence: Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the schedule set forth in Exhibit "A".

H. Design/Construction Phase Services: Visits to construction sites and observations made by the CONSULTANT as part of the services shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

I. Personnel: The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The CONSULTANT shall comply with all applicable laws in the provision of services under this Agreement. The CONSULTANT agrees that it is fully responsible to the City for the acts and omissions of subconsultants and of persons either directly or indirectly employed by the CONSULTANT. Nothing contained herein shall create any contractual relationship between any subconsultant and the City. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

J. Conflict of Interest: The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to

whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

K. Status as an Independent Contractor: The status of the CONSULTANT under this Agreement is that of an independent contractor. Nothing in this Agreement shall create or be construed as creating a partnership or joint venture between the City and the CONSULTANT. The CONSULTANT does not have the power or authority to bind the CITY in any promise, contract or representation other than as specifically provided for in this Agreement (if any).

L. News Releases / Publicity: The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the tasks associated with the services without prior written City approval.

M. Nondiscrimination: The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONSULTANT shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 6 - CITY'S RESPONSIBILITIES

A. Service of Others: The City shall furnish to the CONSULTANT, if required for performance of the CONSULTANT's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the underlying project.

B. Examine Work of the Consultant: Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

ARTICLE 7 – SUSPENSION BY CITY FOR CONVENIENCE

The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least five (5) days advance notice unless such order is immediately necessary for the protection of the

public health, safety or welfare or for the protection of property.

ARTICLE 8 –TERMINATION

A. Termination for Default by the City: If the City's authorized representative deems that the CONSULTANT is in default for failure to supply adequate personnel, or services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Agreement, the City's authorized representative may give written notice to the CONSULTANT specifying the default(s) to be remedied within five (5) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONSULTANT does not remedy defaults within five (5) days or commence steps to remedy default to the reasonable satisfaction of the City's authorized representative, the City may do one or all of the following: secure such services from another consultant; withhold any money due or which may become due to the CONSULTANT for such services related to the claimed default(s); and/or, elect to immediately terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits or other costs incurred due to termination of this Agreement for default.

B. Termination for Default by the Consultant: This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the City in the event of a failure by the City to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT; provided the City fails to cure same within that thirty (30) day period.

C. Termination Without Cause: Notwithstanding the foregoing, the parties reserve the right and may elect to terminate this Agreement at any time upon ten (10) days' notice to the other party. At such time, the CONSULTANT shall be compensated only for those services which have been performed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits or other costs incurred due to termination of this Agreement without cause.

D. Early Termination: If this Agreement is terminated before the expiration of the term by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated services.
3. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
4. Continue and complete all parts of the services that have not been terminated.

ARTICLE 9 –INDEMNIFICATION AND INSURANCE

A. Indemnification: The CONSULTANT agrees to indemnify and hold harmless the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees (at all trial and appellate levels), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, its agents, officers, subconsultants, employees, or anyone else employed or utilized by the CONSULTANT in the performance of this Agreement. The CONSULTANT's liability hereunder shall include all attorney's fees and

costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the CONSULTANT against the City and the CONSULTANT hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.08, Florida Statutes, as amended. CONSULTANT expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.08, Florida Statutes, as amended. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

B. Insurance: The CONSULTANT shall not commence any services in connection with this Agreement until it has obtained all of the types of insurance required pursuant to the RFQ and such insurance has been approved by the City. The City shall be named as an additional insured on all insurance except for Worker's Compensation Coverage and Professional Liability on a primary and non-contributory basis. The CONSULTANT shall require all subconsultants to obtain the same insurance as required herein (without the City named as an additional insured) and no subconsultant shall commence any services under this Agreement until the CONSULTANT has obtained a copy of all subconsultant(s) proofs of insurance. The CONSULTANT shall provide the City with proof of all subconsultant's insurance upon request by the City. The CONSULTANT's insurer shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance authorizing it to write insurance policies in the State of Florida and be conducting business in the State of Florida. Insurers shall have at least a Policy Holders Rating of A-, and Financial Rating of Class IV as identified in the latest issue of "Bests Key Rating Guide" unless otherwise accepted by the City in writing. The CONSULTANT's insurance shall be considered primary and shall not be canceled or materially changed without at least thirty (30) days' notice to the City. The City's insurance, if any, shall be considered excess, as may be applicable to claims which arise out of indemnifications, insurance, certificates of insurance and any additional insurance provisions of this Agreement. The CONSULTANT shall procure and maintain all insurance listed above for the life of this Agreement. Receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives which indicate less coverage than required by this Agreement does not constitute a waiver of the CONSULTANT's obligations to fulfill the requirements of this Article.

ARTICLE 10 - SUCCESSORS AND ASSIGNS

The City and CONSULTANT each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assignees of such other party in respect to all covenants of this Agreement. The CONSULTANT shall not assign, sublet, or transfer any interest in this Agreement without the prior written consent of the City, which the City may withhold in its sole and absolute discretion. Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the City, nor shall it be construed as giving any rights or benefits hereunder to any third party other than the City and CONSULTANT.

ARTICLE 11 - REMEDIES

A. Claims, Counter-Claims, Disputes, Etc.: Prior to the filing of any claim, proceeding or litigation related to the Agreement, all claims, counter-claims, disputes, and other matters in questions between the CONSULTANT and the City will be first reviewed by authorized representatives of both parties for a recommended solution. If no solution or resolution is forthcoming, either party may pursue its claim, proceeding or litigation.

B. Governing Law and Venue: This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submits itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court, in and for Palm Beach County, Florida for state actions, and the jurisdiction of the United States District Court for the Southern District of Florida, West Palm Beach Division for federal actions, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense or otherwise in any suit, action or other proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever, and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any party hereto is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts.

ARTICLE 12 – NOTICE

A. Any notice required to be given under this Agreement shall be given in writing and delivered by hand or through the instrumentality of certified mail of the United States Postal Service (return receipt requested) or other nationally recognized overnight courier service, such as Federal Express.

B. Unless otherwise notified in writing of a new address, all notices shall be made to each party at the below listed addresses. Any party shall have the right, from time to time, to change the address to which notices shall be sent by giving the other party at least ten (10) days prior notice of the address change.

All notices to the CONSULTANT shall be sent to:

ACAI Associates, INC
ATTN: Adolfo Cotilla, AIA, President
2937 W. Cypress Creek Rd, Suite 200
Fort Lauderdale, FL 33309

All notices to the City shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 North Dixie Highway
Lake Worth Beach, FL 33460

ARTICLE 13 – NO CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT any

fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability and at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

ARTICLE 14 – TRUTH-IN-NEGOTIATION CERTIFICATE

The signing of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The lump sum not to exceed price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the lump sum not to exceed price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 15 – PUBLIC ENTITIES CRIMES AND SCRUTINIZED COMPANIES

As provided in Sections 287.132 and 289.133, Florida Statutes, by entering into this Agreement or performing any service in furtherance thereof, the CONSULTANT certifies that it, its affiliates, suppliers, subconsultants and contractors who will perform under the terms and conditions of this Agreement have not been placed on the convicted vendor list maintained by the Florida Department of Management Services within the 36 months immediately preceding the date of this Agreement.

Consultant certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if Consultant or any of its subcontractors are found to have submitted a false certification; or if Consultant or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

If this Agreement is for one million dollars or more, Consultant certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if Consultant, or any of its subcontractors are found to have submitted a false certification; or if Consultant or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

Consultant agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

Consultant agrees that if it or any of its subcontractors' status changes in regards to any certification herein, Consultant shall immediately notify the City of the same.

As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

ARTICLE 16 - NONEXCLUSIVE AGREEMENT

This Agreement is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other professional consulting firms to perform services contemplated by this Agreement without liability to the City.

ARTICLE 17 - MISCELLANEOUS

A. Validity, Severability and Reformation: The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part of this Agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

B. Headings: The headings of the sections of this Agreement and capitalizations are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

C. Entire Agreement and Conflicts: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior negotiations, representations, agreements, and understandings, either written or oral. This Agreement consists of the terms and conditions provided herein; the RFQ (including all drawings, maps, specifications, exhibits and addenda attached thereto or referenced therein); and Exhibit "A". To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the RFQ next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

D. Waiver: No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Agreement.

E. Waiver of Jury Trial: **To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation, claim or proceeding related to this Agreement.**

F. Counterparts and Digital Execution: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument. The City may digitally execute this Agreement.

G. Preparation: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

H. Survivability: Any provision of this Agreement which is of a continuing nature or imposes

an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

ARTICLE 18 - PALM BEACH COUNTY INSPECTOR GENERAL

In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

ARTICLE 19 - PUBLIC RECORDS

The CONSULTANT shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.
- D. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT (561) 586-1660, DANDREA@LAKEWORTHBEACHFL.GOV, OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

ARTICLE 20 – E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- c. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the City upon request;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- f. Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

ARTICLE 21 - REPRESENTATIONS/BINDING AUTHORITY

By signing below, CONSULTANT's signee has full power, authority and legal right to execute and deliver this Agreement and perform all of its obligations under this Agreement. By signing this Agreement, CONSULTANT hereby represents to the City that it has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement for Facility Design and Related Services – Public Works Fleet Facility on the date first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONSULTANT: **ACAI ASSOCIATES, INC.**

By: _____

Print Name: Adolfo J. Cotilla, Jr.

Title: President

[Corporate Seal]

STATE OF Florida)
COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 1st day of December, 2020, by Adolfo J. Cotilla Jr., who was physically present, as President (title), of **ACAI ASSOCIATES, INC.**, a Florida corporation, and who is personally known to me or who has produced the following _____ as identification.

Notary Public



Lynn Hillis
Print Name: Lynn A Hillis
My commission expires: 3-26-2021

EXHIBIT "A"
Consultant's Proposal
(dated October 1, revised November 2, 2020)
Hourly Rates
(Dated August 31, 2020)

October 1, 2020
November 2, 2020 (revised)

Via email: flofaso@lakeworthbeachfl.gov

Mr Felipe Lofaso, Assistant Director
Public Works Department
CITY OF LAKE WORTH BEACH
1749 3rd Ave South
Lake Worth, FL 33460

Re: Architectural & Engineering Services
New Fleet Maintenance Facility
ACAI Project No.: SA2070

Dear Mr. Lofaso:

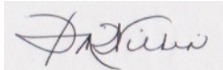
As requested, ACAI Associates, Inc. (ACAI) is pleased to submit this revised proposal for Programming, Pre-Design, Design and Post-Design Services associated with the delivery of the New Fleet Maintenance Facility project for the City of Lake Worth.

The project scope, including a breakdown of the Basic and Optional Services fees, is included herein as part of the attached Exhibit A.

Thank you for the opportunity to work with you and the City of Lake Worth.

As always, if you have any questions or comments please feel free to contact us.

Sincerely yours,
ACA I ASSOCIATES, INC.



Donald M. Wilkin, RA
Sr Principal

DMW/na

Encl: Exhibit A

C.c. AJC/JS/File – ACAI Associates, Inc.

EXHIBIT "A"

ARCHITECTURAL/ENGINEERING SERVICES FOR THE DESIGN OF NEW PUBLIC WORKS FACILITY

SCOPE OF SERVICES AND FEE SCHEDULE

The following identifies the Professional Architectural/Engineering services related to a proposed new Fleet Maintenance /Office Facility for the City of Lake Worth. The proposed facility is to be located on the south portion of the site currently developed and occupied by the Public Works Dept at 1749 3rd Ave South, Lake Worth Beach, Florida 33460 identified on the attached.

The proposed development includes the demolition of the existing facilities on the site and the development of a new Fleet Maintenance building including related site improvements and infrastructure associated with the operation of this facility including:

- Maintenance Garage - Multi-story (Min. 2 level, max. 3 level) Public Works Maintenance and Administrative Facility
- Office Space with EOC Component
- Site Civil / Landscape/ Irrigation / demolition of existing fleet building associated with the new Fleet Building

The scope includes the design and development of a complete / ready to occupy facility based on a preliminary program of spaces to be provided by the City which will be reviewed and updated as needed as part of services identified below.

The following are included in the Overall Scope of Services as further defined below.

- Programming & Planning
- Site Planning & Design inclusive of demolition of the existing fleet facility
- Building Planning & Design
- Landscape Planning & Design
- Investigation of existing records and documents
- Surveying Services
- Geotechnical Services
- Environmental Surveying and Testing Services
- LEED Certification (LEED Certified Level)
- Coordination with permitting agencies
- Coordination of utilities for relocation/connection with agencies (Lake Worth Beach Electric, Lake Worth Water Utilities) on/off site
- Preparation of Plans & Specifications for permitting, bidding and construction
- Bidding Assistance
- Contract Administration during Construction inclusive of Inspection Services

- Preparation and processing conceptual design documents and project information as needed for the Development Review, Planning & Zoning and City Commission approval
- Develop presentation graphics related to obtaining Development Review approval.
- Attend meetings related to the development of Programming, Predesign, Planning, Construction Documents, Bidding and Contract Administration.

A. **Programming, Predesign and Planning Services**

Includes the development of program information to meet the project design requirements. The following disciplines are anticipated during this phase and are included in our proposed fees: Architecture, Mechanical, Electrical, Plumbing, Fire Protection and Facility Planning. Tasks to be completed include the following:

- Meet with Public Works personnel to:
 - Review and update the program and space size requirements, vehicle inventory and related documents provided by the City
 - Review and develop specific objectives for the relationship (adjacency) of spaces within and between departments.
 - Define specific goals and objectives for systems (structural, mechanical, electrical, plumbing, IT, materials & finishes, etc) to be included in final design including any special requirements for the Emergency Operations Center (EOC) component.
 - Assist in the selection, placement and specification of maintenance shop equipment and storage systems.
 - Define specific goals for sustainability and energy efficiency (solar, electric vehicle charging, lighting, building orientation, etc)
- Develop a Facility Program based on the information obtained from meetings and correspondence with the City. Meet with the City to review and obtain approval
- Complete site survey including identifying existing underground utilities in the project area.
- Complete Phase 1 - Site Environmental assessment and report.
- Complete asbestos survey and testing of the existing structures to be demolished as required by permitting agencies.
- Identify required agency approvals and permitting requirements including local zoning and development regulations.
- Prepare and submit a Design Phase schedule.
- Coordinate meeting with City and Consultants to review LEED goals and objectives and develop Basis of Design based on Owners Project Requirements provided by the City.

Deliverables: Facility Program

List of permitting / approvals required for the project

Design Phase Schedule

B. **Schematic Design (15%)**

Following the City's approval of the Facility Program the design team will develop Schematic plans illustrating the location, size and relationship of the spaces within and around the buildings and review with Public Works personnel. Based on the departments approval of the

Schematic plans the design team will develop a final overall Site Plan illustrating the location of the new Fleet Maintenance and Offices along with the existing parking, fueling and vehicle wash areas, open space, site access and other required site amenities for review and approval by the City.

Provide an Estimate of Probable Cost based on the Schematic Design documents.

Deliverables: Schematic Building plans
Conceptual Site Plan
Estimate of Probable Cost

C. Design Development (30%)

Following approval of the Schematic building and site plans the design team will develop architectural floor plans, elevations and building sections to illustrate the overall project as required for Development Review and approval by the City (DRC). This phase also includes the development of structural, HVAC, electrical, lighting, plumbing and fire protection system plans including the selection and identification of system types, fixtures and materials illustrating the general systems and components incorporated in the project.

Develop Civil, Landscape and Irrigation plans as required for Development Review by the City, (DRC).

Develop an exterior building rendering of the new Fleet Maintenance and Office building illustrating the overall design /aesthetics as required for DRC.

Provide an Estimate of Probable Cost based on the Design Development documents.

Deliverables: Design Development documents
DRC submittal documents
Exterior Building rendering
Estimate of Probable Cost

D. Construction Documents

Following development approval by the City the design team will complete and provide 60% plans and specifications for review by the Public Works Dept. Comments received from this review will be incorporated into 90% plans and specifications for review and approval by the City and a dry-run review by the Building Dept. Design team will revise and update the documents as needed based on the comments received.

Provide an Estimate of Probable Cost based on the 60% and 90% Construction Documents.

Deliverables: 60% Construction Documents
90% /100% Construction Documents
Estimate of Probable Cost (60 & 90%)

E. Permitting & Bidding

Following the receipt of 90% document review comments from the Public Works and the Building Dept, the design team will finalize and submit plans and specifications as required for permitting to the Building Dept including addressing the 90% comments received. The design team will respond to comments, resubmit as required and obtain preliminary permit approval from the Building Dept. Final permit approval to be obtained by the selected contractor following bidding.

Following approval of the plans for permitting by the Building Dept, the Consultant will assist the City in the selection of a contractor including responding to RFI's from bidders, assistance in preparing addendum as needed, review of responsible bids from general contractors and ranking of bidders.

Deliverables: 100% Construction Documents (post-bid)

F. **Construction Administration Services**

Following the selection of a Contractor the following services will be provided by the design team during construction.

- Pre-construction meeting with the Contractor and City.
- Visit the site ~~two (2) times per month~~ once (1) per week to review the status of the work, address any questions from the Contractor and issue a field report documenting the status of the project. Includes one (1) Owner-Architect-Contractor, (OAC), meeting every other week to review and update the overall status of the project in lieu of the field visit.
- Provide Special Inspections as required by permitting agencies (refer to Optional Services for Special Inspections other than those required to be completed by the Civil Engineer based on outside agency requirements.)
- Coordinate with Public Works personnel as needed for specific systems affecting the function of the facility.
- Respond to RFI's to assist and clarify the documents where needed.
- Review submittals and shop-drawings to ensure compliance with project requirements including LEED certification
- Review Contractor Monthly Pay applications.
- Prepare punch-list based on receipt of Substantial Completion documents and request from the Contractor.
- Provide final project review including review of the required close-out documents, including as-builts, warranties and maintenance documents based on final completion by the Contractor.
- Review final pay application from the Contractor.

G. **Reimbursable Expenses (Allowance)**

Printing and other reproductions, overnight delivery, transportation and mileage outside Miami-Dade, Broward and Palm Beach Counties, project photos, etc to be billed at cost. Any unused amount will be retained by the City at the completion of the project.

H. **Timetable for Development of Improvements**

A project design schedule will be prepared and used to track milestone events as best as possible based on the following proposed development timetable.

- **Programming and Schematic Building Design.** Within (60) days after the Effective Date of the Agreement, (____ TBD____), Consultant will meet with Public Works personnel, develop and present a Facility Program and Schematic design of the buildings for approval. (Contingent on the availability of information to be provided by the City as part of the Programming process.)
- **Conceptual Site Plan.** Within (30) days of the City’s approval of the Program and Schematic design of the building(s) the Consultant will meet with Public Works staff and present Conceptual Site Plan options for review and approval by the City.
- **Development Approval.** Within (60) days of the City’s approval of a final Site Plan the Consultant will submit required sets of the Development Plans to the City for approval. Upon approval the Consultant will submit required documents to the City’s Development Review Committee (“DRC”) for their review and approval.
- **Construction Document Phase.** Within (60) days after DRC approval of the Development Plans the Consultant shall submit (30%) Design Development documents to the City for review and approval. Within (75) days of City approval of the Design Development documents the Consultant shall submit (60%) Construction Documents to the City for review and approval. Within (75) days of City approval the Consultant shall develop (90%) Construction Documents and submit to the City for review and submittal to the Building Department for dry-run permit review. Within (45) days of receipt of comments from the Building Dept the Consultant will submit 100% permit plans to the Building Dept for final plan review and permitting.
 Within the Construction Document Phase, the City shall be provided the following time frame for document review: 10 days for 30% documents, 10 days for 60% documents and 15 days at 90% completion.
- **Construction Administration Services.** Consultant’s term for Construction Administration Services shall run concurrent with that of the construction of the project. The estimated duration of construction [sixteen (16) months] shall be the basis of the Consultant’s Construction Administration Services fee. Services beyond that period shall be completed on a per day rate based on the per day rate established in the Agreement for these basic services.

I. **Basic Services**

• Architectural, Structural and MEP	\$ 398,240
• Civil Engineering	\$ 95,312
• Landscape / Irrigation Design	\$ 26,330
• Equipment Planning / Design	\$ 103,510
• Lubrication & Air System	\$ 31,020
• Exhaust Extraction System	\$ 4,950

J. **Additional Project Services**

1. Site Surveying	\$ Incl above
2. Underground Utility Locating / Mapping	\$ Incl above
3. Geotech	\$ Incl above
4. Asbestos Testing & Ph 1 Environmental	\$ Incl above
5. Traffic Study (if required)	\$ by City
6. Special Inspections (Allowance-NTE)	\$ 8,000
7. Furniture selection and specifications	\$ NIC
8. Contract Administration beyond eighteen (16) months.	\$ TBD
9. Cost Estimating (Schematic to 90% CD phases)	\$ 20,000
10. LEED (LEED Certified Level Only)	\$ 43,906
11. Energy Modeling (LEED Requirement)	\$ 13,500
12. DRC/PZB/City Commission processing (Allowance-NTE)	\$ 8,000
13. Graphics (Allowance-NTE)	\$ 8,000
Direct Project Expenses (Allowance-NTE))	\$ 20,000

ACAI Associates, Inc.

Fee Structure Form

Schedule of Hourly Rates*

Staff Title	Hourly Rate
Principal	\$197.00
Senior Project Manager/Sr Architect/Engineer/Landscape Architect	\$165.00
Project Manager/Architect	\$150.00
Jr. Project Manager	\$125.00
Job Captain	\$140.00
Senior Designer	\$145.00
Sr. Construction Administrator	\$165.00
Construction Administrator	\$150.00
BIM Technician	\$120.00
Cadd Technician	\$100.00
Administrative/Clerical	\$ 75.00


Signature

08.31.2020

Date

President
Title

**Rates for other categories will be negotiated as requested by the City of Lake Worth on an as needed basis.*