



Request for Proposals

On-Call Design Services

RFP Issue Date:	January 21, 2022
Pre-Submission Conference:	February 2, 2022 at 11:30 am
Questions Due:	February 11, 2022
Proposals Due:	March 1, 2022

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I. Invitation

The Trust for Governors Island (“The Trust”) is seeking to engage design consultants to perform on-call design services for various projects including, but not limited to, master planning, building renovations, landscaping and site improvements, and maritime improvements located on Governors Island (“the Island”) and the Battery Maritime Building (“BMB”) at 10 South Street in Manhattan. With a \$300 million capital budget, upcoming projects include upgrading and expanding major infrastructure systems, restoring and renovating celebrated buildings in the Governors Island Historic District, building new amenities throughout the Island’s public open spaces and award-winning park, and planning for over 5 million square feet of new development.

Firms who submit a response (“Submission”) to this Request for Proposals (“RFP”) will hereafter be referred to as “Proposer(s)”. The successful Proposer(s) will be referred to as the “Consultant(s)”.

The **Categories of Design Services (“Categories” collectively or “Category” individually)** to be performed include, but are not limited to:

1. Master Planning & Urban Design Services

Master planning and programmatic studies leading a diverse group of stakeholders:

- Historic district or Island-wide master plans, conceptual drawings, and renderings
- Public space planning
- Pedestrian, bicycle and vehicular circulation and planning
- Code/zoning studies and consulting
- Sustainability and resiliency infrastructure and improvements

2. Architectural Design Services

Design services for adaptive reuse, historic façade restoration, and major renovation projects of buildings within the Governor Island Historic District, as well as new construction opportunities:

- Feasibility and assessment reports (structural, MEP systems, ADA compliance)
- Programming studies for new facilities
- Design drawings and construction documents
- DOB filing and permitting (Alt 1, Certificate of Occupancy, TPA)
- LPC/SHPO presentations and approvals
- Bidding and construction administration services
- Green building systems integration and design

3. Landscape Architecture/Civil Engineering/Maritime Engineering Services

Design services for public parks and open spaces, maritime infrastructure and coastal resilience:

- Park and public space improvements and amenity structures
- Recreation facilities (athletic fields, tennis bubbles, pools)
- On-site stormwater management (site drainage, grading, bioswales)
- Maritime infrastructure improvements (ferry landings, piers, wharf redevelopment and seawall improvements)

Note that each Proposer may provide services for one or more of the Categories of Design Services. Proposers need not specialize in all the services listed in each Category and should note and illustrate areas of their expertise in the proposal, as well as their general approach to providing those services.

Women and Minority-owned Business (“M/WBE’s”) are strongly encouraged to respond to this RFP. Any proposing design firm must identify in its proposal whether it , or if applicable, if any of the proposed sub-consultants are M/WBE firms. Proposers are also encouraged, if applicable, to include M/WBE’s as sub-consultants.

Preference will be given to firms with demonstrated experience working with historic buildings, and to firms with demonstrated sustainability, resiliency, and green building design practices.

Subject to the responses to this RFP, The Trust may select multiple Proposers for each Category of Design Services. The Trust also reserves the right to select none or one Proposer for each Category of Services at its discretion.

The selected Proposer, once executed a successful ‘Contract’ (See Exhibit D for a Contract Template) will then be known as the ‘Consultant(s)’ will perform design services on a “When and Where” basis in accordance with the processes described in this RFP and in compliance with all applicable Legal Requirements. The anticipated Contract term for the on-call services is for 3-years with 2 (two) 1-year extension options, at the Trust’s option, up to a total Contract term of 5 (five) years.

II. Governors Island and The Trust

Governors Island

Governors Island is a 172-acre island in the heart of New York Harbor. Just minutes from Lower Manhattan and the Brooklyn waterfront by ferry, the Island is a popular year-round destination for New Yorkers and visitors from around the world. An award-winning park complements its dozens of historic buildings, year-round educational and cultural facilities, rich arts and culture program and 22-acre National Monument managed by the National Park Service.

The Governors Island Historic District, composed of 92 acres encompassing the entirety of the North Island, was federally designated in 1985 and designated by the New York City Landmarks Preservation Commission in 1996. The district was home to the United States Army from 1821 to 1966, and the United States Coast Guard from 1966 to 1997. Buildings range from early 19th century to mid-20th century, and include former arsenals, munitions buildings, stately officer residences and other military lodgings.

Looking ahead, the long-term vision for Governors Island focuses on continuing to expand public access by enlivening the Island with transformative public art and culture, extraordinary recreational and open space, and research and education dedicated to addressing the global climate crisis. With unparalleled historic, natural and waterfront resources, Governors Island—open to the public year-round for the first time in its history starting in 2021—will be further activated as a vibrant and constantly evolving public place and resource for all New Yorkers to enjoy.

Trust for Governors Island

The Trust for Governors Island is the 501(c)3 non-profit organization created by the City of New York responsible for the planning, operations, and ongoing development of Governors Island. The Trust's mission is to realize the full potential of Governors Island for the inspiration and enjoyment of all New Yorkers, demonstrating a bold vision for public space.

Since its transfer from federal to local control in 2003, Governors Island has undergone one of the most remarkable transformations in New York City's history. The Trust for Governors Island and the City of New York, working in partnership with the National Park Service and the non-profit Friends of Governors Island, have worked to build over 43 acres of new, award-winning park space, created public programs and commissioned artworks to welcome nearly 1M visitors annually from all five boroughs of New York City, rehabilitated historic buildings in partnership with educational and cultural tenants, and invested in infrastructure to ready the Island for its next chapter.

Following nearly two decades of planning and investment, The Trust is embarking on a growth strategy centered on transformative arts and culture, extraordinary open space, and education and research focused on the climate crisis. These efforts will together advance the mission of The Trust to continue Governors Island's transformation as an extraordinary public place, furthering support for year-round, 24/7 expanded public access and creating a path towards financial sustainability.

III. Services Description

The Trust is seeking proposals from professional design firms to perform on-call design services as described below. It is anticipated that the Proposer will provide services in one or more of the Categories outlined in Section I of this RFP. Proposers may, but are not required to, include potential subconsultants as part of the proposal. Once the Contract is executed and future tasks are defined, the successful 'Proposer', now 'Consultant' can propose appropriate subconsultants to the Trust; all subconsultants to the Consultant must be approved by the Trust in writing.

A. CONSULTANT SERVICES

Anticipated Design Services include:

- Master Planning and Urban Design
- Architecture
- Landscape Architecture
- Civil Engineering
- Maritime Engineering

Note that each Proposer contracting with The Trust as a Consultant under the Contract must be either an architecture, landscape architecture, or engineering firm licensed to practice in New York State and in good standing.

B. SAMPLE SCOPE OF SERVICES

Although the extent of the required services and consultant team members will vary from project to project, a sample Scope of Services to be provided by Proposer is outlined below:

1. Provide an Initial Study of an adaptive reuse of a landmarked, wood-framed residential building by developing a programmatic study of possible uses and user groups, create three schematic design concepts exploring various scales of intervention and develop cost estimates and schedules for each concept.
2. Provide comprehensive architecture and engineering services for the selected concept, including:
 - Design and engineering services required for the renovation--including client presentations, schematic design, design development, construction documents, filing, and support during bidding;
 - Preparation of detailed cost estimates and phased project schedules for each phase of the renovation work;
 - Review of all applicable Federal, State and City codes related to renovations and intended uses of the building;
 - Obtaining all approvals required for the project, including, but not limited to, filing with the NYC Department of Small Business Services Waterfront Permitting Unit and/or Department of Buildings, NYC Landmarks Preservation Commission (LPC), New York State Historic Preservation Office (SHPO), Manhattan Community Board 1, Fire Department of New York (FDNY) and Department of Environmental Protection (DEP);
 - Coordination with The Trust or utility companies for service upgrades or new service connections;
 - Construction Administration services; and
 - Closeout, including obtaining a Notice or Certificate of Completion for completed portions of the project.

C. PROJECT-BASED SERVICES

The Trust may, within its sole discretion, solicit requests for Services in regard to this RFP (each request, a “Project Assignment”) amongst the group of Consultants that is 1) engaged by The Trust under a Contract resulting from this RFP and 2) whose Scope of Services under its Contract with The Trust is within the scope of Services requested by The Trust (any awarded Service, a “Task Order Assignment”).

Consultants shall respond to each Project Assignment by, among any other additional requirements under its Contract, submitting a response including:

- 1) The Consultant’s proposed approach to the Project Assignment, including a description of all specific tasks to be performed for the Project Assignment;
- 2) A projected timeline for all tasks;
- 3) The names of staff that would work on the Project Assignment and any subconsultants that may be brought on, with The Trust’s approval, as-needed per Project Assignment;
- 4) An estimate of fees in accordance with the Staff and Fee Schedule as set forth in its Contract with The Trust.

D. DELIVERABLES

Any Consultant providing Services through an awarded Task Order Assignment shall submit deliverables as required under its Contract with The Trust, including, but not limited to, conceptual drawings and renderings, feasibility and assessment reports, construction documents, meeting minutes, field reports, masterplans, photo reports, and presentation slides in accordance with a schedule approved by The Trust, or at The Trust’s request (as further described in the Contract Draft attached to this RFP).

IV. Proposal Requirements

Each Proposer responding to this request shall submit, on or before the submission deadline date and time, one (1) sealed package containing two (2) bound hard copies, and one (1) digital copy via downloadable link sent to gibids@govisland.org or flash drive of their proposal with the following proposal sections:

A. STATEMENTS OF QUALIFICATION

1. Cover Letter

A letter summarizing the Proposer's capabilities, qualifications and experience, company profile, and the company's full name and address, and the name, address and telephone number of the person authorized to represent the responding firm in all aspects of contract negotiations. Highlight understanding of the Scope of Services, experience with public sector clients, historic preservation and adaptive reuse, work in a campus setting, and sustainable/resilient design in New York City.

2. Consultant Team and Services Provided

Indicate proposed Category of Design Services to be provided by Proposer and a list of all proposed sub-consultants, if any. The Trust requires that if a contract is awarded, the successful Consultant will provide the same sub-consultants as proposed in the response to the RFP. Any changes to the sub-consultants list must be approved by The Trust.

The Proposer should address the following capabilities: client relations, design processes, cost control, quality control, schedule control, and risk management. Identify whether the Proposer or any of the proposed sub-consultants are M/WBE firms.

3. Relevant Experience and Client References

Provide examples of five relevant projects for which the Proposer has provided design services within the last ten years. For each project, include specific services performed (whether in joint venture, sub-consultant or as prime), start and completion dates, construction estimate and actual value, client reference with phone numbers, and the names of the firm's staff assigned to each project. Provide a portfolio including photos of completed work and drawings from various phases of design for each project.

Proposers to this RFP must possess and provide evidence that it is a properly formed and registered entity(s) in "Good Standing" with the appropriate State regulatory agencies. The Proposers must also provide evidence that all proposed architects, engineers, professional services firms, individuals or subcontractors proposed as part of the proposed team are licensed to provide services or perform work for which they are proposed.

4. Organizational Chart and Key Personnel

Provide a clear and descriptive organizational chart for the Proposer, indicating key Project staff members with their qualifications, level of responsibilities and skills, as well as any proposed sub-consultants. Provide detailed resumes of key Project staff members showing the individual's firm and position therein, Project responsibility, education, license or registration (where applicable), affiliations, publications, awards, and relevant experience over the last five years. Proposers are reminded that after selection, significant changes in the composition of the proposed team's firms and personnel may not be made without the consent of the Client Team.

5. Signed RFP Page

Provide signed last page of the RFP document.

6. Declaration of Understanding

Provide signed Declaration of Understanding, attached as Exhibit A hereto.

7. PASSPort Compliance

Provide confirmation of PASSPort Compliance, see Exhibit B.

8. Local Law 34 Doing Business Data Form

Provide completed Doing Business Data Form, see Exhibit C.

9. Contract Comments

Provide any contract comments, see Exhibit D1. Add additional sheets as necessary.

B. FEE PROPOSAL

1. Proposer for on-call services shall submit a fee proposal listing all anticipated staff members with job titles, hourly rates, and any applicable multipliers, including fringe benefits. A sample Fee and Cost Schedule is included as Exhibit F.
2. Provide hourly rates and any mark-up percentages for proposed or future subconsultants.
3. Provide list of any reimbursable costs and mark-up percentages.

V. Proposal Evaluation and Selection

A. PROPOSAL EVALUATION

The Trust will form an evaluation committee (the “Committee”) and perform a two-part evaluation of all Submissions received by the submission deadline.

The Committee will review, evaluate, and score each proposal on its merits in accordance with established qualitative and quantitative criteria (the “Selection Criteria”). This evaluation and scoring will determine the Proposer’s Submission Rating. A Proposer may be invited for an interview for the purpose of clarifying its Proposal, after which its Proposal Rating will be reviewed. Proposers will be ranked in accordance with the total Proposal Rating.

The Selection Criteria include, but are not limited to, the following:

1. The Proposer’s, and as applicable, the proposed Team’s experience in providing services similar to the Scope of Services described in the RFP and the quality of the work.
2. History in contracting or doing business with the City of New York.
3. The Proposer’s, and as applicable, the proposed Team’s general organization and experience. Preference will be given to firms with demonstrated historic building and sustainability/resiliency design experience.
4. Quality of the proposal and the degree to which it demonstrates the Proposer’s full understanding of and the ability to perform the Services to be rendered.
5. Reference information.
6. Demonstrated experience with sustainable and historic rehabilitation design.
7. The Proposer’s, and as applicable, the proposed Team’s M/WBE participation.
8. Fee Proposal.

Each of the above evaluation criteria is weighted by a factor of importance that will remain confidential.

The Proposer(s) determined by The Trust to have the best Proposal Rating in each category of work (or designated portion thereof) will be engaged as prequalified Design Consultants, and as such, will be eligible to respond to future Project Assignments and Task Order Assignments under its Contract with The Trust.

B. SELECTION OF DESIGN FIRM

Upon Selection, each selected Proposer must execute a Contract for on-call Design Services substantially in the form of the Contract Draft attached hereto as Exhibit D. The Trust shall not be bound to the terms of the Contract Draft but shall use such form as a basis for negotiating a final Contract with the selected Consultant(s), if any. Please note that if any Proposer desires any changes to the Contract Draft must include any such proposed change(s) as part of its response to this RFP in Exhibit D1, Contract comments.

The contents of the selected proposal, together with this RFP and any formal questions and answers provided during the proposal processes, may be incorporated into any final Contract at The Trust’s discretion. The anticipated term of Contract is up to five (5) years.

The Trust reserves the right to select and contract with any number of design teams, or none at all, for each category of design services based on the qualifying responses received in this RFP.

VI. RFP Timeline and Contact

A. PRE-SUBMISSION CONFERENCE

A recommended pre-submission conference will be held via Zoom at 11:30 AM on February 2, 2022. Please email gibids@govisland.org to receive a meeting invite.

B. QUESTIONS

Any questions regarding this RFP must be emailed and received by The Trust no later than 5:00 PM on February 11, 2022. The Trust will evaluate the need to respond to inquiries. No verbal responses to questions will be provided, and any information given to a prospective Proposer will be furnished to all prospective Proposers as an addendum to the RFP (an “Addendum”). All questions must be directed to gibids@govisland.org with the RFP title in the subject line. Answers to all questions will be issued as an addendum by February 22, 2022.

C. SUBMISSION DEADLINE

All submissions must be delivered on or before 5:00 PM on March 1, 2022. Proposers shall deliver their digital proposals via email to gibids@govisland.org with a download link, with the RFP title in the subject line, or include the digital proposal on a flash drive with the two (2) bound hard copies to be delivered to:

Battery Maritime Building
10 South Street, Slip 7
New York, NY 10004
Attn: Hillary Zhao

D. ADDENDA

Receipt of an Addendum to this RFP must be acknowledged by attached a signed copy of the addendum to the statement. Any Addendum shall become a part of the requirements for this RFP.

E. INTERVIEWS

Interviews may be held with selected Proposers after receipt and initial review of proposals.

F. SCHEDULE

Pre-Submission Conference	February 2, 2022 at 11:30 AM
Questions Due	February 11, 2022 by 5:00 PM
Responses Provided	February 22, 2022 by 5:00 PM
Proposals Due	March 1, 2022 by 5:00 PM
Issue Contract	Spring 2022

VII. RFP Procedures and Policies

- A. Any information which may have been released verbally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither The Trust nor the Proposer.
- B. No Proposer will be selected if an individual who is a member or partner or otherwise a principal and/or its management team is determined, in The Trust's sole discretion, to be in arrears or in default of any debt, contract or obligation to or with the City or State of New York, or any other of their instrumentalities or otherwise to be a prohibited person as defined by The Trust. All principals, members or partners of a Proposer must complete a background questionnaire and are subject to investigation by The Trust and the City. The selection of a Proposer may be revoked in the event that any derogatory information is revealed by such investigations.
- C. The Trust is not required to accept the proposal that includes the lowest fee offer.
- D. Proposal as Offer to Contract. Unless a specific exemption is noted, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful proposer to execute the Contract substantially in the form annexed hereto as Exhibit D. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. Proposer's Submission shall remain open for acceptance by The Trust and shall remain firm and binding upon the Proposer for at least ninety (90) days after the date on which the proposals are received by The Trust, except that The Trust may by written notice to the Proposer extend that date for an additional forty-five (45) days.
- E. All RFP submission materials become the property of The Trust. The Trust is subject to the New York State Freedom of Information Law ("FOIL"), which governs the process for the public disclosure of certain records maintained by The Trust. (See Public Officers Law, Sections 87 and 89.) Proposal submission material will generally be made available for inspection and copying by interested parties upon written request, except when specifically exempted from disclosure under the requirements of FOIL. **Individuals or firms that submit proposals to The Trust may request that The Trust except all or part of such a proposal from public disclosure, on the grounds that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the individual or firm submitting the information.** Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and state, in detail, the specific reasons for the requested exception. It must also specify the proposal or portions thereof for which the exception is requested. If The Trust determines that the requested exemption from public disclosure qualifies for an exemption from disclosure under FOIL, The Trust will grant such requested exception to the extent permitted under FOIL.
- F. The Trust will not be liable for any costs incurred by Proposers in the preparation of proposals or for any work performed in connection therein.
- G. Proposal Withdrawals: Proposers may withdraw their proposals from consideration at any time before the proposal submission deadline by submitting written notice to The Trust. Technical addenda posted to The Trust's website will be the only authorized method for communicating information to all potential Proposers. Proposers should contact The Trust before submitting a proposal to verify that they have received any addenda issued. Proposers should acknowledge the receipt of any addenda in their proposal submissions.
- H. The Trust reserves the right to postpone or cancel this RFP and reject all proposals.
- I. The Trust Rights. This is a "Request for Proposals" and not a "Request for Bids." The Trust shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the

merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, The Trust reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any proposers to this RFP; award a contract to as many or as few or none of the proposers as The Trust may select; accept or reject any or all proposals received in response to this RFP; extend the deadline for submission of proposals; negotiate or hold discussions with one or more of the proposers; permit the correction of deficient proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more proposers; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in The Trust's sole discretion. The Trust may exercise any such rights at any time, without notice to any proposer or other parties and without liability to any proposer or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals become the property of The Trust.

- J. The Proposer attests and confirms that where applicable, the Proposer has read and understands all RFP documents, and the proposal is made in accordance therewith.
- K. Prevailing Wage: Except for any employees whose prevailing wage is required to be fixed pursuant to New York State prevailing wage laws, which employees should be paid such prevailing wage, all persons employed by Contractor, its subcontractors or subconsultants should be paid not less than the minimum hourly rate required by law.
- L. Conflicts of Interest:
 - a. The Proposer and all subcontractors should disclose in writing as part of their proposal any possible or potential conflicts of interest which are known to, or reasonably should be known to the Proposer or subcontractors, which may exist between their firms, the City of New York and/or Governors Island Corporation d/b/a The Trust for Governors Island. All Proposers and their subcontractors and business partners must disclose with their proposal, the name of any officer, director, agent or employee who is also employee or family member of an employee of Governors Island.
 - b. Further, the Proposer must disclose the name of any employee or family member of any elected official who owns, directly or indirectly, an investment or other proprietary interest, in the firm or any of its parent company, subsidiaries or affiliates.
 - c. The Proposer and all subcontractors and business partners should disclose in writing as part of their proposal, any familial, personal or business relationships between members of Proposer's, subcontractor's or business partner's firms and members of Governors Island, whether or not there is any belief that the relationship might constitute a possible conflict of interest.
- M. Anti-Collusion: The Proposer, by virtue of issuing a proposal certifies that it has not divulged, discussed or compared the proposal with others and has not colluded with any other proposer or participating parties whomsoever. Proposer further certifies and agrees that premiums, rebates or gratuities are prohibited whether with, prior to, or after any delivery of material or services. Any such violation will result in the cancellation of this proposal and the offending parties will be excluded from participating in future RFPs.

The undersigned further attests and confirms that:

- A. Where applicable, the Proposer has read and understands all RFP documents, and the proposal is made in accordance therewith.
- B. The Proposer is not presently barred from bidding or performing work in any jurisdiction, due to non-compliance with Affirmative Action or Equal Opportunity regulations.
- C. The Proposer has satisfied itself before bidding as to the correctness and sufficiency of its proposal regarding the difficulty and cost of work, and that same is sufficient to cover all obligations under the proposal documents and all matters and things necessary for the proper completion of the work as described herein.
- D. By submitting a proposal, the Proposer acknowledges that if written notice of acceptance of this proposal is received by undersigned within ninety days (written notice can be in the form of a draft contract) after date of opening of proposals, or any time thereafter before this proposal is withdrawn, undersigned will, within ten days after receipt of such notice, execute and deliver the Contract agreement included in the RFP documents.

Respectfully submitted by

Proposing Firm _____

Signature _____

Print Name _____

Title _____

Date _____

NOTE: A representative empowered to execute contracts must sign this Proposal. If this is anyone other than a company officer, a letter must be prepared by a company officer authorizing the above individual and submitted with the Proposal.

Exhibit A Declaration of Understanding

By signing in the space provided below, the undersigned certifies that the Proposer (i) has read and understands the scope and requirements of this project, as described in the RFP and all attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the standard Contract, attached hereto as Exhibit D, and (iv) will, if its proposal is accepted, enter into the attached Contract with The Trust for Governors Island.

The undersigned further stipulates that the information in his Proposal is, to the best of his/her knowledge, true and accurate.

Authorized Signature, Title

Date

Contractor or Consultant

Business Address

City State Zip

Telephone Number

Federal Tax Identification Number

☐ Corporation ☐ Partnership

☐ Individual

☐ Other (State)

(Seal, if a Corporation)

Exhibit B Confirmation of Passport Compliance

PASSPORT Identification Number: _____

The Proposer shall submit this Confirmation of PASSPort Compliance, which replaces VENDEX and shall include its PASSPORT identification number. All VENDEX processes are now completed in the PASSPort Portal, this replaces the paper forms. Please register and complete new questionnaires as soon as possible. PASSPort will not be importing any information from VENDEX. The main purpose of PASSPort is to be a completely paperless interactive system.

Please access to the NYC.gov PASSPort website thru the link below:
<https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page>

Exhibit C Doing Business Data Form

Local Law 34 of 2007 (LL34) requires the creation of a database containing information about entities that do business with the City as defined by the law, and principal officers, owners and senior managers of these entities. This information will be collected on Doing Business Data Forms that are distributed, collected and reviewed by agencies, and forwarded to the Doing Business Accountability Project (DBAP) at MOCS for processing. Collected data will be used to identify entities and people who are subject to LL34's limitations on campaign contributions in municipal elections.

The doing business data form can be downloaded at:

<https://www1.nyc.gov/html/dot/downloads/pdf/open-street-doing-business-data-form.pdf>

and should be attached to the RFP submission.

For any questions about the doing business data form, please refer to:

https://www1.nyc.gov/assets/hra/downloads/pdf/business/doing_business_qanda_standard.pdf

If you have any questions or concerns, please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.

Exhibit D Contract Template

THE TRUST FOR GOVERNORS ISLAND
[]
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF [] SERVICES
TRUST CONTRACT NO. []

CONSULTANT CONTRACT

THE TRUST FOR GOVERNORS ISLAND
[]
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF [] SERVICES
TRUST CONTRACT NO. []

PART I SPECIFIC TERMS AND CONDITIONS

PART II GENERAL TERMS AND CONDITIONS

PART III APPENDICES

THE TRUST FOR GOVERNORS ISLAND
[]
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF [] SERVICES
TRUST CONTRACT NO. []

PART I
SPECIFIC TERMS AND CONDITIONS

The Trust for Governors Island (the “Corporation” or “The Trust”) and the Consultant identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other valuable and good consideration, do hereby agree to all of the terms and conditions set forth in (i) these Specific Terms and Conditions (Part I) set forth immediately below, (ii) the General Terms and Conditions (Part II) annexed hereto and made a part hereof and (iii) the Appendices (Part III) annexed hereto and made a part hereof. Capitalized terms shall have the meaning set forth in Appendix A (Definitions) unless otherwise defined in this Contract or the context otherwise requires.

1. The Contract

- 1.1 **Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
- 1.2 **The Trust Contract No.** []
- 1.3 **Contract Date:** The date of the Contract is as of []
- 1.4 **Commencement Date:** []
- 1.5 **Term:** []
- 1.6 **Maximum Contract Price:** []
- 1.7 **Project:** []
- 1.8 **Project Site:** Various locations throughout Governors Island
- 1.9 **Allowable Additional Costs:** The Allowable Additional Costs are defined in Appendix B (Scope of Services) and the amount set forth in Appendix C (Payments).
- 1.10 **Retainage:** []
- 1.11 **Retainage Payment Date:** []
- 1.12 **M/WBE Participation Goal:** Based on each task order.

2. Parties

- 2.1 **The Corporation:** The Trust for Governors Island, a not-for-profit corporation, organized under the laws of the State of New York.
- 2.2 **Director:**
- 2.3 **The Consultant:**
- 2.4 **Principal:**
- 2.5 **Person in Charge:**

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**

The Trust for Governors Island
10 South Street, Slip 7
New York, NY 10004
Attn: General Counsel

with a copy to:

The Trust for Governors Island
10 South Street, Slip 7
New York, NY 10004
Attn: President

3.2 **Notices to the Consultant:**

Attn:

This Contract may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully executed instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the Contract Date hereinabove written.

GOVERNORS ISLAND CORP.
d/b/a The Trust for Governors Island

[_____]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

THE TRUST FOR GOVERNORS ISLAND
[]
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF [] SERVICES
TRUST CONTRACT NO. []

PART II
GENERAL TERMS AND CONDITIONS

ARTICLE 1 PERFORMANCE OF SERVICES	1
ARTICLE 2 COMPENSATION	4
ARTICLE 3 SUSPENSION OR TERMINATION	5
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THE TRUST FOR GOVERNORS ISLAND
[]
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF [] SERVICES
TRUST CONTRACT NO. []

PART II
GENERAL TERMS AND CONDITIONS

The Corporation and the Consultant agree as follows:

ARTICLE 1
PERFORMANCE OF SERVICES

1.1 Services. The Corporation hereby retains and engages the Consultant and the Consultant agrees to perform the On-call [] Services as described in **Appendix B** (Scope of Services), attached hereto and pursuant to Task Orders, as shown within Exhibit 2 to Appendix C, attached hereto, that shall be duly signed by the Parties.

1.2 Time for Performance of Services/Term/Delays and Force Majeure.

1.2.1 The Consultant shall commence the Services upon or promptly after the Commencement Date and shall complete the Services and each phase of the Services within the time or times stated for Final Completion pursuant to specific terms detailed in each Task Order as shown in Exhibit 2 to Appendix C annexed hereto, and in accordance with any directive given and Progress Schedule approved by the Corporation, unless this Contract is earlier terminated pursuant to Article 3 hereof.

1.2.2 This Contract shall be for the Term as set forth in Part I, Section 1.5 unless sooner terminated pursuant to Article 3 hereof.

1.2.3 If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefor, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the Director in his or her sole discretion. The decision of the Director as to the granting of the extension and its length shall be binding upon the Consultant.

1.2.4 Subject to the Corporation's determination and approval, the Corporation may extend the time or times for performance of the Services where such performance has been substantially obstructed, hindered or delayed by reason of acts of Force Majeure. The Consultant shall have no claim against the Corporation or the City for any loss or damage sustained by the Consultant nor for any extra compensation in the form of an increase in the Maximum Contract Price, or otherwise, through such delay, hindrance or obstruction.

1.3 Complete Work and Timing and Sequence/Meetings. It is the intent of the parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the Services shall include all acts necessary to fully and finally complete the work described in **Appendix B** hereof and specified work detailed in a Task Order as shown in Exhibit 2 to Appendix C annexed hereto. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge and such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Director or her or his designee as often as necessary to effectively perform the Services, and as often as may be specified in **Appendix B**.

1.4 Authority of Director/Performance of Services.

1.4.1 The Services to be performed by the Consultant shall at all times be subject to the review, direction and control of the Director, whose decision shall be final and binding upon the Consultant. The Director shall have the right to determine the amount, quality, acceptability and fitness of the Services and her or his approval shall be a condition precedent to the right of the Consultant to receive any compensation under this Contract. The Director shall act reasonably in exercising her or his authority under this Contract. The Director and any other person or agent duly authorized to act for and on behalf of the Corporation shall not, by virtue of such authority or action, be liable in any manner to the Consultant.

1.4.2 The Consultant shall perform all of the Services in a prudent and professional manner and in accordance with standards and practices as are customary for such Services in the New York City Metropolitan Statistical Area.

1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services per each Task Order without prior written authorization from the Director. The Consultant shall revise or correct any Work Product submitted in accordance with this Contract until accepted by the Director and accepted by all agencies whose approval is required by law, without additional compensation or time extension. Any changes to the performance of the Services or the Work Product which are necessary due to improper performance of the Services pursuant to a Task Order, a defect of design, unworkability of details or other fault or error of the Consultant shall be made by the Consultant, also without additional compensation or time extension.

1.5.2 The Director shall have the right to alter the Services in any Task Order, provided however, that if the Consultant believes that any work or services that it has been directed to perform as a result of such alteration is beyond the Scope of Services and constitutes Extra Work, the Consultant shall so Notify the Director within three (3) days of such directive. The Director shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work requiring an amendment to the Scope of Services and the Contract. The Director's determination shall be final, binding and conclusive.

1.5.3 The Director reserves the right to reduce the Scope of Services under any Task Order by Notice to the Consultant specifying the nature and extent of such reduction. The Consultant shall be compensated for all Services satisfactorily performed prior to the reduction

and for Services satisfactorily performed thereafter. If said reduction results in a credit for the Corporation, such credit shall be immediately due and owing to Corporation, and the Consultant shall either pay such credit to the Corporation or the Corporation may withhold the credit amount from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

1.6 Equipment.

1.6.1 The Consultant, at its own expense, shall secure all supplies, materials and equipment required to perform and complete the Services.

1.6.2 The Consultant, at its sole cost and expense, shall bear the risk of loss for any supplies, materials and equipment used to perform the Services whether such loss arises by reason of fire, theft, vandalism, negligence or any other cause whatsoever. Consultant, at its sole cost and expense, shall promptly replace or repair all such lost, stolen or damaged supplies, materials and equipment.

1.6.3 The Consultant, at its sole cost and expense, shall maintain all of its supplies, materials and equipment in good working and serviceable order so as to enable the Consultant to perform the Services in a first-class and professional manner.

1.6.4 The Consultant shall be solely responsible for the means and methods and the safety and protection of all its employees and shall assume all liability for injuries, including death, that may occur to such employees due to the act, omission, negligence, fault or default of the Consultant.

1.7 Services Subject to City Contract, Indemnification and Third Party Beneficiary. This Contract is a subcontract under the City Contract. The Consultant acknowledges that it has the right to review the City Contract and, as such, agrees to comply with the City Contract with respect to the Services and not to violate, or through its acts or failure to act cause the Corporation to violate, the City Contract. The Consultant agrees to defend, indemnify and hold harmless the Corporation from any claim, liability or judgment to which the Corporation may be subject because of any such action or failure to act. The City shall be a third party beneficiary of this Contract and shall have a direct cause of action against the Consultant in the event that any claim be made or any cause of action be brought against the Corporation or City or if the Consultant breaches this Contract.

1.8 Acts to be Performed by the Corporation. The Corporation shall perform the following acts in connection with this Contract:

1.8.1 The Corporation shall make available to the Consultant all relevant technical data (subject to the provisions of Part II, Section 5.3 herein) in regard to the Contract which is in the possession of the Corporation.

1.8.2 The Corporation shall designate a Project Manager to serve as a liaison between the Corporation and the Consultant.

ARTICLE 2

COMPENSATION

2.1 Payments.

2.1.1 Subject to, and in accordance with this Article 2, the Corporation shall pay to the Consultant, and the Consultant agrees to accept, in full consideration for the Services pursuant to any Task Order, and for all expenses of the Consultant in connection therewith, including Subcontractors' Costs and Allowable Additional Costs, an amount not to exceed the Maximum Contract Price, payable as provided for in this Section 2.1 and in Appendix C.

2.1.2 Requisitions for each Task Order shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.5 and, where applicable, the time sheets of the Consultant's staff and its Principal.

2.1.3 Each Requisition submitted to the Corporation by the Consultant shall constitute a representation that, except as specifically set forth in the Requisition, as of the date of the Requisition, all representations and warranties made by the Consultant in Article 7 are true, complete and accurate as if made as of the date of the submission of the Requisition.

2.1.4 The Director shall review the Requisitions and the Work Product. If, in her or his judgment, the Services have been satisfactorily performed in accordance with this Contract, the Director will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.5 Subject to Section 3.5, Final Payment will be due only upon Final Completion.

2.1.6 The Consultant, with the Director's prior approval, may exceed the Maximum Payment allocated to a particular Portion of the Services in a Task Order if the Consultant by Notice determines that the Maximum Payment initially allocated to the Portion is insufficient to adequately perform the Portion of the Services and if the Consultant demonstrates to the Director a savings with respect to another Portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall the Corporation pay the Consultant more than the Maximum Contract Price.

2.1.7 All Requisitions must be submitted to the Corporation's Finance Department.

2.2 Miscellaneous Payment Provisions.

2.2.1 In addition to its rights under Section 9.10, if the Corporation shall have reasonable grounds for believing that:

(i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule, or

(ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract, then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

2.2.2 The Corporation shall not be deemed to have released the Consultant from any claim or liability, or to have waived any cause of action arising from any breach of this Contract by virtue of making payments to the Consultant.

2.2.3 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to a Task Order, the Consultant agrees that it shall be deemed to have fully released the Corporation and the City from any and all claims, demands and causes of action whatsoever which the Consultant has or may have against the Corporation or the City in connection with this Contract and, upon the request of the Corporation, shall execute a release to such effect.

2.2.4 All payments to the Consultant under this Contract shall be subject to all applicable Legal Requirements.

ARTICLE 3

SUSPENSION OR TERMINATION

3.1 Delay, Postponement or Suspension of Work.

3.1.1 The Corporation shall have the right to delay, postpone or suspend the Services contained in a Task Order, or any Portion thereof, immediately or upon a specified date, for a period of not more than ninety (90) days, upon Notice to the Consultant, for any reason deemed by the Corporation to be in its interest. The Consultant and all of its Subcontractors and Representatives shall cease all Services, or any specified Portion thereof, immediately or as of the date specified in the Notice.

3.1.2 Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the Corporation or the City, but the Term specified in Part I of this Contract and the Consultant's time for performance of the Services shall be extended for the period of the delay, postponement or suspension.

3.1.3 In the event of any delays, postponements or suspensions, the Consultant shall resume the Services upon the date specified in the Notice or upon such other date as the Corporation may thereafter specify by Notice.

3.2 Termination for Convenience. The Corporation shall have the right to terminate the Services, or any Portion thereof, immediately or upon a specified date, upon Notice to the Consultant and for any reason deemed by the Corporation to be in its interest.

3.3 Defaults and Termination for Cause.

3.3.1 In addition to any other right that the Corporation may have, upon the occurrence of an Event of Default, the Corporation shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving Notice to the Consultant of the cause and the date of such termination.

3.3.2 An Event of Default shall be deemed to have occurred if any of the following events has occurred, each an “Event of Default”:

- (i) The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;
 - (ii) The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;
 - (iii) The Consultant materially violates any term, covenant or provision of this Contract;
 - (iv) The Consultant materially fails to comply with any Applicable Requirements or any Applicable Agreements;
 - (v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;
 - (vi) The Consultant becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;
 - (vii) The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;
 - (viii) The Consultant fails to comply with the M/WBE Requirements in Article 9;
- or
- (ix) The Consultant or any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the City’s *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

3.4.1 The Contract, or such portion of the Contract described in the Notice of termination, shall terminate as of the termination date set forth in the Notice given pursuant to Section 3.3.1, or immediately if no date is specified.

3.4.2 Upon receipt of a Notice of termination for cause or for convenience, the Consultant shall cease any or all Services, immediately or on the date specified, in accordance with the terms of the Notice.

3.4.3 Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against the Corporation or the City.

3.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to the Corporation all Work Product and any other materials related to this Contract requested by the Corporation including, without limitation, all materials, equipment and supplies purchased by the Consultant on behalf of the Corporation in connection with this Contract.

3.5 Payment Upon Termination.

3.5.1 Upon termination with or without cause, the Consultant shall promptly present to the Corporation a verified statement of all costs actually incurred prior to the date of termination, together with all documents in the Consultant's possession related thereto that the Corporation may demand in order to verify such statement of costs including, without limitation, canceled checks, subcontracts, and paid receipts and bills from Subcontractors. The Corporation will review the statement of costs and review or audit any supporting documentation provided by or in the Consultant's possession. The Corporation will Notify the Consultant of the results of such review or audit and the amount approved for payment.

3.5.2 If the termination was without cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation after consultation with the Consultant, subject to any rights of audit provided herein. Such payment will be processed by the Corporation after Consultant provides all information and documentation required hereunder. Such payment shall constitute full and Final Payment to the Consultant.

3.5.3 If the termination was for cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation, subject to any rights of audit provided herein, and subject to set-off by the Corporation for any additional expenses the Corporation incurs to complete the Project satisfactorily, including the expenses of engaging another consultant and the costs set forth in Section 9.10(ii). The sum of (i) such additional expenses incurred to the Corporation for the completion of the Project, and (ii) payments made to the Consultant prior to the termination of the Contract shall hereafter be referred to as the "Contract Completion Costs".

(i) If the Contract Completion Costs exceed the Maximum Contract Price, Consultant shall pay such difference to the Corporation, as described in Section 3.5.4 below.

(ii) If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

3.5.4 If the termination was for cause, the Corporation will, upon full completion of the Project, deliver a written notice to the Consultant advising the Consultant that the Project under a

Task Order has been completed and setting forth the Contract Completion Costs. If the Contract Completion Costs exceed the Maximum Contract Price, the Consultant shall promptly pay such difference to the Corporation upon receipt of such notice. If the Contract Completion Costs are less than the Maximum Contract Price, then, subject to (i) the Consultant's providing to the Corporation all information and documentation required by this Section, and (ii) any other applicable provisions of this Contract including, without limitation, Sections 3.5.5 and 3.5.6 hereof, the Corporation will pay the Consultant the amount described in Section 3.5.3(ii). Such payment shall constitute full and Final Payment to the Consultant.

3.5.5 The Corporation need not wait until the completion of the Services to seek the enforcement of its rights against the Consultant if there has been a termination for cause, but no monies shall be due or payable to the Consultant terminated for cause until the Services are completed.

3.5.6 The provisions of this Section 3.5 shall be in addition to any other rights the Corporation may have under this Contract, any Applicable Requirement, any Applicable Agreement, or otherwise, in law or in equity.

3.6 No Release. Termination of this Contract, whether by expiration of its Term or otherwise, shall not release the Consultant from any liability to the Corporation or from the Consultant's indemnification and other obligations under this Contract that have not been specifically terminated pursuant to this Article of the Contract.

ARTICLE 4

PERSONNEL AND SUBCONTRACTORS

4.1 Personnel.

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of the Corporation including, without limitation, the Director, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

4.1.2 The Consultant shall submit to the Director, prior to performance of Services by such personnel, resumes of the Consultant's personnel and those of its Subcontractors' personnel who will perform the Services. The experience and training of such personnel is a material inducement for the Corporation to enter into this Contract and make payment for the Services. The Consultant and its Subcontractors are expected to use such personnel to perform the Services. If the Consultant or a Subcontractor proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution. Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract

shall be employees of the Consultant or approved Subcontractors of the Consultant and not employees or subcontractors of the Corporation or the City.

4.2 Subcontractors.

4.2.1 The Consultant is authorized to enter into subcontracts for specialized professional services as required for performance of the Services subject to the prior written approval of the Director as to the Subcontractor, the scope of services, compensation, and the Principal or other member(s) of the Consultant's staff responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not the Corporation, is responsible for the Subcontractor's work, acts and omissions.

4.2.2 The Consultant shall pay any Subcontractors approved by the Corporation for work that has been satisfactorily performed no later than thirty (30) days from the date of Consultant's receipt of payments from the Corporation.

4.2.3 The Consultant is solely responsible for the payments to the Subcontractors. Upon receipt of evidence of Consultant default hereunder with respect to its obligations to make payments to its Subcontractors, the Corporation reserves the right, after three (3) calendar days prior Notice, to retain any money due the Consultant and pay directly for labor, materials, equipment, Services and all other obligations of the Consultant and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Consultant.

4.2.4 The Consultant shall inform all Subcontractors fully of the terms and conditions of this Contract. All subcontracts shall provide that:

- (i) there is no privity of contract between the Subcontractor and the Corporation or the City;
- (ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;
- (iii) the Subcontractor shall indemnify, defend, and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;
- (iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1 3;
- (v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;
- (vi) the subcontract may be assigned without the written consent of the Subcontractor to the City, The Trust or any other corporation, agency or instrumentality having authority to accept the assignment; and
- (vii) all work and services performed under the subcontract shall strictly comply with the requirements of this Contract.

If the Consultant fails to include the provisions set forth in this Section 4.2.4 in any subcontract, the Consultant hereby agrees to indemnify, defend and hold harmless the Corporation and the City and their Representatives against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon the Corporation and the City and their Representatives, including reasonable fees, as a result of said failure.

4.2.5 The Consultant shall provide the Corporation with a list of all Subcontractors employed for the performance of the Services whose subcontract amount totals \$25,000 or more. The Consultant will furnish each such Subcontractor whose Subcontract amount totals less than \$100,000 with the Corporation's internal qualification and background investigation forms. The Consultant will furnish each such subcontractor whose subcontract amount totals \$100,000 or more with the Mayor's Office of Contracts Investigations Forms. These forms will be provided by the Corporation to the Consultant. The Consultant shall cause each such Subcontractor to fill out and complete the forms in a timely fashion but in no event later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

4.3 Person in Charge. The Consultant has designated a Person-in-Charge who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the Director. Failure to make such person(s) available to the extent necessary to perform the Services skillfully and promptly shall be a material violation of the terms of this Contract.

ARTICLE 5

DOCUMENTS AND MATERIALS

5.1 Approval. All Work Product to be prepared or furnished by the Consultant pursuant to this Contract or publicizing the work of the Consultant hereunder must be:

- (i) approved in writing by the Director before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;
- (ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and
- (iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

5.2.2 The Consultant shall not use, transmit, display, publish or otherwise license such Work Product without the Corporation's prior written consent.

5.2.3 The Work Product shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the Corporation is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a “work-made-for-hire”, the Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to the Corporation, free and clear of any liens, claims or other encumbrances. The Consultant shall retain no copyright or other intellectual property interest in the Work Product.

5.2.4 To the extent that the Work Product does not qualify as a “work-made-for hire”, Consultant acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), and knowingly executes this Contract on the following terms: (i) this waiver applies to the Work Product and to any promotional materials connected with the Work Product; (ii) the Consultant hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. § 106A, or any other type of moral right or *droit moral*.

5.2.5 The Consultant represents and warrants that, except for material which is in the public domain and non-original material that meets the requirements of §5.2.6, the Work Product

- (i) shall be wholly original material not published elsewhere;
- (ii) shall not violate any copyright, trademark or other applicable law; and
- (iii) shall not, to the best of Consultant’s knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide the Corporation with copies of all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract. Since some licenses for materials may be for a limited duration, the Consultant shall provide and/or specify the following to the Corporation with respect to all non-original materials included in its Work Product:

- (i) all information as to any durational limitations on use;
- (ii) any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Consultant’s license; and
- (iii) a statement certified by the Principal verifying the foregoing in the form annexed hereto as Appendix D.

Consultant will update the foregoing information and promptly provide such updates to the Corporation during the Contract Term.

5.2.7 The Consultant acknowledges that the Corporation or the City may, in their sole discretion, register copyright in the Work Product with the U.S. Copyright Office or any other

government agency authorized to grant registrations to copyright. The Consultant will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

5.2.8 The Consultant agrees that the Corporation and the City may use the Consultant's name and the names, biographies and likenesses of its members, in advertising and promotion related to the Work Product, and in any and all ancillary products related to the Services regardless of the format in which such use occurs.

5.2.9 Prior to acceptance of any Work Product by the Director, upon the Director's request and within a reasonable time following delivery of the Work Product, the Consultant shall submit revised Work Product incorporating any revisions, changes or alterations reasonably requested by the Director. If the original Work Product or the revised Work Product is not acceptable to the Director, the Corporation shall have the right to use the Work Product, to prepare or finalize the Work Product or to commission a third party to do so without further employment of or compensation to the Consultant.

5.2.10 The Consultant acknowledges that the decision to accept the Work Product for use, incorporation, transmission, display or publication is within the sole discretion of the Director.

5.2.11 Consultant agrees that it will cooperate in providing any other documentation necessary to effectuate the intent of this Section of the Contract.

5.2.12 The Consultant shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Corporation and the City and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Consultant's infringement or unauthorized use of any such material or property.

5.3 Confidential Information.

5.3.1 The Consultant shall hold all Confidential Information provided by the Corporation in the strictest confidence. Consultant agrees to:

- (i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- (ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- (iii) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and
- (iv) not disclose the Confidential Information for three (3) years following Final Completion.

5.3.2 Consultant represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized

employees as necessary for the performance of the Services. All Confidential Information provided to Consultant shall remain the property of the Corporation.

5.3.3 Consultant agrees that money damages would not be a sufficient remedy in the event of any breach of this Section 5.3 and that, in addition to all other remedies which may be available, the Corporation shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Consultant shall defend, hold harmless and indemnify the Corporation for any and all claims, losses, expenses and/or damages arising out of breach of this Section 5.3 or unauthorized use of the Confidential Information.

ARTICLE 6

INDEMNIFICATION, CLAIMS AND INSURANCE

6.1 Indemnification of the Corporation and the City.

6.1.1 To the fullest extent permitted by Law, the Consultant shall indemnify, defend, and hold harmless The Trust and the City, and their respective officers, directors, employees, agents and assigns (collectively, the "Indemnitees") from and against any and all costs, claims, judgments, liabilities, damages or expenses of every kind and nature (including, without limitation, court costs and attorneys' fees) to which they may be subject because of any act or omission of Consultant, its agents, employees or subcontractors in connection with this Agreement or because of any gross negligence or intentional misconduct of Consultant, its agents, employees or subcontractors. Insofar as the facts or Law relating to any of the foregoing would preclude the Corporation or the City, their officials or employees from being completely indemnified by the Consultant, the Corporation and the City and their officials and employees shall be partially indemnified by the Consultant to the fullest extent permitted by Law.

6.1.2 Infringement Indemnification. To the fullest extent permitted by Law, the Consultant shall defend, indemnify, and hold harmless the Corporation and the City, including their officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the Corporation or the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Consultant and/or its employees, agents, contractors or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Consultant shall defend, indemnify, and hold harmless the Corporation and the City, their officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the Corporation or the City, their officials and employees from being completely indemnified by the Consultant, the Corporation and the City and their officials and employees shall be partially indemnified by the Consultant to the fullest extent permitted by Law.

6.1.3 Indemnification Obligations Not Limited By Insurance Obligation. The Consultant's obligation to indemnify, defend and hold harmless the Corporation and the City and their officials and employees shall neither be (i) limited in any way by the Consultant's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Corporation or the City or their officials or employees to avail themselves of the benefits of such insurance.

6.2 Claims or Actions Against the Corporation.

6.2.1 The Consultant shall look solely to the funds appropriated by the Corporation for this Contract for the satisfaction of any claim or cause of action the Consultant may have against the Corporation in connection with this Contract or the failure of the Corporation to perform any of its obligations hereunder. In no event shall the Corporation's aggregate liability hereunder in connection herewith or related to the performance of the Services exceed the Maximum Contract Price.

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

6.2.3 No member, director, employee, servant, officer, agent or other person authorized to act on behalf of the Corporation shall have any personal liability in connection with this Contract or any failure of the Corporation to perform its obligations hereunder.

6.2.4 No person or entity shall have any right against the Director or any member, director, employee, servant or officer, agent of the City or the Corporation or other person authorized to act on their behalf or any claim against the City or the Corporation by reason of the failure or refusal to withhold money pursuant to Section 2.2.1 hereof.

6.2.5 The Consultant agrees that no cause of action against the Corporation in connection with this Contract or the Services shall lie or be maintained by the Consultant, its successors or assigns unless such action is commenced within six months after (i) the termination of this Contract, or (ii) the accrual of the cause of action, whichever is earlier.

6.2.6 If any claim is made or any action brought relating to this Contract or the Services, whether or not the Consultant is a party, the Consultant shall diligently render to the Corporation any and all assistance that the Corporation may require of the Consultant, without compensation.

6.2.7 The provisions of this Section shall not waive, limit or in any way prejudice any other right of the Corporation or the City.

6.3 Insurance.

6.3.1 At all times during the performance of the work or Services in connection with this Contract or for such other time periods as the Corporation may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in this Section 6.3 and the annexed Appendix E, as may be applicable and as may be required by the Corporation.

6.3.2 Consultant shall purchase and maintain insurance with insurance companies that:

- (i) are acceptable to the Corporation;
- (ii) are rated A-:VII or better by A.M. Best Company; and
- (iii) are licensed to issue such insurance by the New York State Department of

Insurance.

6.3.3 The insurance policies purchased and maintained by the Consultant shall:

- (i) be in form and substance satisfactory to the Corporation;
- (ii) be in the minimum face policy amounts set forth in Appendix E;
- (iii) list all individuals and entities identified in Appendix E as Additional Insureds except in the case of any workers' compensation, automobile liability and professional liability policies required to be maintained hereunder;
- (iv) include a waiver of the right of subrogation with respect to all additional insureds named therein as well as the required Workers' Compensation coverage; and
- (v) contain the provisions set forth in Appendix E.

6.3.4 Coverage for the individuals and entities identified in Appendix E as Additional Insureds shall be written into those policies set forth in Section 6.3.3 above as an endorsement at least as broad as ISO Form CG 20 10 (07/04 ed.).

6.3.5 The Consultant shall make and maintain timely premium payments for all policies required hereunder.

6.3.6 The Consultant shall require that each of its Subcontractors, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to the Corporation or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in this Article 6 and Appendix E. The Consultant hereby covenants and warrants that its Subcontractors shall purchase and maintain the policies required by this Section in the amounts and for the periods required by this Section.

6.3.7 Prior to the commencement of the Services the Consultant shall forward to the Corporation's Contract Administration and Procurement Department at least three (3) original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Appendix E. The Consultant shall also provide an original certificate of insurance to each of the Additional Insureds.

6.3.8 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder no less than five (5) days prior to the expiration of any such policy.

6.3.9 Unless otherwise agreed to in writing by the Corporation, the types of insurance to be purchased and maintained by the Consultant and its Subcontractors are as follows:

- (i) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation, disability benefits insurance in statutory amounts, and employer's liability insurance in the amounts set forth in Appendix E, for all of its employees engaged in the Services. The failure of the Consultant to comply with this Section 6.3.9(i) shall make this Contract voidable at the option of the Corporation.
- (ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The commercial general liability insurance policy must also include products and completed operations coverage, which shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the Corporation of all of the Services. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as the most current ISO Form CG 00 01. The additional insured protection must be as broad as coverage that would be afforded through use of ISO Forms CG 20 26, CG 20 33 and CG 20 37. The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation.
- (iii) Automobile Liability Insurance. The Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles.
- (iv) Umbrella/Excess Liability Coverage. If the Consultant purchases or maintains umbrella/excess liability insurance, such insurance should specifically list the Consultant's commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subcontractors from any and all claims in excess of the underlying policy limits for such primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.9(iv) is on a "per occurrence" basis and an aggregate basis.
- (v) If applicable, any additional policies as may be described in Appendix E.

6.3.10 As a condition precedent to payment of any amounts owing to the Consultant by the Corporation, the Consultant shall, unless otherwise expressly agreed to in writing by the Corporation, provide to the Corporation the original certificates of insurance required under this

Contract and shall on demand provide true copies of policies and endorsements to policies showing compliance with the insurance requirements set forth in this Article 6 and Appendix E.

6.3.11 The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in Section 6.3.3 (iii) above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Corporation, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same.

6.3.12 The insurance provisions of this Article 6 shall be in addition to any rights that the Corporation, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.

6.3.13 The Commercial General Liability and Umbrella Excess Liability Coverage policies must be endorsed to show that these primary and/or excess policies are to be considered primary and non-contributory. In addition, the Commercial General Liability and Umbrella/Excess Liability Coverage policies must provide that (i) the Additional Insured protection afforded under the Consultant's policies shall be primary and not on an excess or contributing basis with any policies which may be available to the Corporation, and (ii) that the Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available.

6.3.14 In order to ensure vertical erosion of liability limits provided by the Consultant under this Contract, the Consultant agrees to permit the Corporation's staff and/or the Corporation's insurance consultants to review the Consultant's liability policy language for all liability policies and to endorse those policies to clarify the hierarchy of policies in the event of a claim.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms. The Consultant is authorized to do business in the City of New York.

7.2 The authorization, execution and delivery of this Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or, to the knowledge of the Consultant, any order, rule or regulation of any

court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

7.3 The Consultant has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract.

7.4 The Consultant has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full-time employees of the Consultant, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

7.5 The Consultant has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Services or any interest in any corporation, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Services. The Consultant further represents and covenants that in the performance of this Contract no person having any such conflicting interest shall be employed by the Consultant.

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

7.7 All questionnaires and/or disclosure forms delivered by the Consultant and its Representatives to the Corporation to date are, to the best of the Consultant's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Consultant, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed that would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

ARTICLE 8

APPLICABLE LAWS, RULES AND REGULATIONS

8.1 New York Law Governs; New York Courts. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the Corporation arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York. To effect this agreement and intent, the Consultant agrees as follows:

8.1.1 If the Corporation initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant in person, wherever the Consultant may be found, or by registered mail addressed to the Consultant at its address as

set forth in this Contract, or to such other address as the Consultant shall have provided to the Corporation in writing.

8.1.2 With respect to any action between the Corporation and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, and (ii) to move for a change of venue to a New York State Court outside New York County.

8.1.3 With respect to any action between the Corporation and the Consultant in Federal Court located in the City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

8.1.4 If the Consultant commences any action against the Corporation in a court located other than in the City and State of New York, then, upon request of the Corporation, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

8.3 Compliance with the Law. The Consultant agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all Legal Requirements, including without limitation, Applicable Requirements and Applicable Agreements. Failure by the Consultant to abide by such Legal Requirements shall be a material default under this Contract.

8.4 Equal Employment Opportunity/Employment Reports.

8.4.1 The Consultant shall comply with the applicable provisions of the Equal Employment and Affirmative Action Compliance for Non-Construction Contracts Addendum (the "Executive Order No. 50 (1980) Supply and Service Rider" or "E.O. 50") attached hereto as Appendix F and made a part hereof. Appendix F shall be attached to and made a part of any subcontract entered into by the Consultant pursuant to this Contract that exceeds \$100,000.

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to the Corporation in the section identified in Appendix G. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.4.3 The Consultant and any subcontractor that provide any on-site construction activity shall complete and submit the Payroll Report to the Corporation in the form annexed to this Contract as Appendix C.

8.4.4 The Consultant shall give consideration to employing City residents who are economically disadvantaged or are eligible under any applicable Legal Requirements including, without limitation, the Workforce Investment Act of 1998, and who have qualifications and skills commensurate with the requirements for the position available. To the greatest extent feasible, the Consultant shall give opportunities for training and employment to lower income persons in the Project area.

8.4.5 The provisions of this Section 8.4 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, and other applicable Legal Requirements.

8.5 Minimum Wages. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or any subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

8.6 No Tropical Hardwoods. Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be used in the performance of this Contract except as expressly permitted by the foregoing provision of law.

8.7 Sales and Use Tax.

8.7.1 The Consultant acknowledges that the Corporation and the City are exempt from sales and use taxes imposed by Article 28 of the New York State Tax Law for purchases of tangible personal property, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of real property. This exemption does not apply to tools, machinery, equipment or other property leased by the Corporation's contractors and subcontractors or to supplies, materials or other property that are consumed in the construction or for any reason not incorporated into real property.

8.7.2 The Consultant shall inform its Subcontractors of this exemption and shall advise its Subcontractors to exclude sales and use taxes from their bids, as applicable.

8.8 Whistleblowers.

8.8.1 In accordance with Section 12-113 of the New York City Administrative Code (the "Administrative Code"),

8.8.1.1 The Consultant shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of

information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of the Consultant or any of its Subcontractors to (i) the Corporation, (ii) the City's Department of Investigation, (iii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iv) the City Chief Procurement Officer, DSBS Chief Contracting Officer ("DSBS ACCO") or DSBS Commissioner.

8.8.1.2 If any of the Consultant's officers or employees believes that s/he or has been the subject of an adverse personnel action in violation of paragraph 8.8.1.1 above, s/he shall be entitled to bring a cause of action against the Consultant to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the DSBS ACCO or DSBS Commissioner of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the City, any public agency or other public entity, or the Corporation, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

8.8.2 In accordance with Section 6-132 of the Administrative Code, the Consultant shall post a notice in the form annexed hereto at Appendix I.

8.8.3 For purposes of this Section, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

8.9 MacBride Principles. The Consultant stipulates and agrees to comply with the MacBride Principles.

8.10 Iran Divestment Act. The Contractor shall comply with Section 165-a of the New York State Finance Law.

8.11 Paid Sick Leave Law. The Consultant shall comply with Title 20, Chapter 8 of the New York City Administrative Code related to paid sick leave for Consultant's employees.

8.12 Doing Business Data Form Requirements.

8.12.1 Local Law No. 34 of 2007 amended the City's Campaign Finance Law and required the City to establish a database containing the names of any "person" that has "business with the city", as such terms are defined in LL 34. The Consultant shall comply with all requirements of LL 34 applicable to this Contract.

8.12.2 The Consultant shall complete and submit a Doing Business Data Form. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.12.3 The Consultant's failure to complete and submit a Doing Business Data Form and/or its submission of a form that is not accurate or complete may result in appropriate sanctions.

ARTICLE 9

M/WBE REQUIREMENTS

9.1 M/WBE Program. Section 6-129 of the Administrative Code of the City of New York (hereinafter the "Code") establishes a program for participation in City procurement by Minority-owned Business Enterprises ("MBEs") and Women-owned Business Enterprises ("WBEs," and collectively, "M/WBEs"), certified in accordance with Section 1304 of the City Charter by the New York City Department of Small Business Services ("DSBS"). The Trust has adopted the M/WBE Program to further participation by MBEs and WBEs in the Trust's related projects. Participants in the M/WBE Program shall comply with all requirements of the M/WBE Program set forth herein.

9.2 Minority and Women -Owned Business Enterprises. M/WBE firms must be certified by DSBS to credit such firms' participation toward attainment of the Participation Goal. Such certification must occur prior to the firms' commencement of work. A list of M/WBE firms may be obtained from the DSBS website at <http://mtprawvwsbswtp1-1.nyc.gov/>, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William Street, New York, New York, 10038, 7th Floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing M/WBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20) of the Code.

9.3 M/WBE Participation Goal.

9.3.1 The Participation Goal for this Contract will be determined in each Task Order. The Participation Goal represents a percentage of the total dollar value of each Task Order that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs or WBEs, and/or by crediting the participation of the Consultant.

9.4 Contractors: The total dollar amount that Consultant has paid or is obligated to pay to contractors certified with DSBS as MBEs or WBEs shall be credited toward fulfillment of the M/WBE Participation Goal, provided that the value of such a contractor's participation shall be determined by subtracting from this total dollar amount any amounts that the contractor has paid or is obligated to pay to direct subcontractors or suppliers upon completion of such subcontractors or suppliers work or services.

9.5 Direct Subcontractors: The total dollar amount that a contractor has paid or is obligated to pay to subcontractors certified with DSBS as MBEs or WBEs shall be credited toward fulfillment of the M/WBE Participation Goal, provided that the value of such a direct subcontractor's

participation shall be determined by subtracting from this total dollar value any amounts that the direct subcontractor has paid or is obligated to pay to indirect subcontractors or suppliers upon completion of such indirect subcontractors or suppliers work or services.

9.6 Indirect Subcontractors: The total dollar amount that a subcontractor has paid or is obligated to pay to its subcontractors certified with DSBS as MBEs or WBEs shall be credited toward fulfillment of the M/WBE Participation Goal.

9.7 M/WBE Compliance Reports.

9.7.1 The Consultant shall provide the Corporation with written statements ("M/WBE Compliance Reports"), certified under penalty of perjury, reporting the status of the Consultant's compliance with its M/WBE Subcontractor Participation Plan as set forth in each Task Order. The Consultant shall submit a M/WBE Compliance Report to the Corporation:

- (i) with each Requisition for payment under a Task Order; and/or
- (ii) on a periodic basis as the Corporation may require.

9.7.2 Each M/WBE Compliance Report shall set forth the following for the period covered by the report:

- (i) the total amount paid to Subcontractors (including Subcontractors that are not MBEs or WBEs);
- (ii) the names, addresses and contact numbers of each MBE or WBE hired as a Subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE.

9.7.3 In addition to the foregoing, the Consultant shall submit a final, cumulative M/WBE Compliance Report to the Corporation with its Requisition for Final Payment under a Task Order. The Consultant shall set forth in such final report the information required in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

9.8 Subcontractor Payment Tracking. The Trust requires contractors and consultants to track subcontractor award and payment information. Consultants are responsible for entering contact and award information on all subcontractors associated with the project, and ensuring that any direct subcontractors do the same for second-tier subcontractors they are using on the project. When Consultants receive payments from The Trust, they will inform the Trust as to how much of that payment was retained and the amounts paid to each subcontractor, along with dates of payment. Consultants have seven days from receipt of this notification to provide this information to The Trust.

9.8.1 Good Faith Efforts. Good faith efforts should be documented by Consultant requesting a modification and such documentation provided to the Corporation upon the Corporation's request. In determining whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, conducted the following:

9.8.1.1 Direct Outreach. The Consultant provided timely notice to M/WBEs of specific opportunities to participate in the Contract;

9.8.1.2 Trust Assistance. The Consultant submitted timely requests for assistance to the Corporation's M/WBE officer and provides the Corporation with a description of how the Corporation's recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs;

9.8.1.3 Advertised Opportunities. The Consultant advertised opportunities to participate in the Contract in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations;

9.8.1.4 Follow Up with M/WBEs. The Consultant sent timely written notices to advise M/WBEs that their interest in the Contract was solicited;

9.8.1.5 Substitution of Work. The Consultant made efforts to identify portions of the Contract Work that could be substituted for portions originally designated for the participation by M/WBEs in the M/WBE Subcontractors Participation Plan and for which the Consultant claims an inability to retain M/WBEs;

9.8.1.6 Meeting with M/WBEs. The Consultant held meetings with M/WBEs prior to the date their proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their proposals were solicited;

9.8.1.7 Negotiated with M/WBEs. The Consultant made efforts to negotiate with M/WBEs as relevant to perform specific subcontracts, or acts as suppliers or service providers; and

9.8.1.8 Interested Subcontractor List. The Consultant made efforts to contact interested M/WBEs listed on the Website's Interested Subcontractor list.

9.8.2 The Corporation's M/WBE Director or General Counsel will provide written notice to the Consultant of the determination on whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal.

9.9 Compliance Audits. This Contract may be audited by the Corporation, DSBS and the City Comptroller to determine the Consultant's compliance with the requirements of the Corporation's M/WBE Program and the Consultant's M/WBE Subcontractors Participation Plan.

9.10 Enforcement. In the event the Corporation determines that the Consultant or its Subcontractors have violated the requirements of the Corporation's M/WBE Program or the M/WBE Subcontractors Participation Plan including, without limitation, a determination that the Consultant has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Consultant's M/WBE Subcontractor Participation Plan (unless the Corporation has permitted the Consultant to modify the Consultant's M/WBE Subcontractors Participation Plan in accordance with Section 9.8), the Corporation may terminate this Contract.

9.11 Evaluations. The Consultant's record in implementing its M/WBE Subcontractor Participation Plan shall be a factor in the evaluation of its performance.

ARTICLE 10

MISCELLANEOUS

10.1 Consultant as Independent Contractor. Notwithstanding anything contained herein to the contrary including, without limitation, the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Corporation or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

10.2 Assignment. This Contract is intended to secure the Services of the Consultant or a competent Representative or Representatives of the Consultant approved by the Director. The Consultant shall not assign, convey, subcontract, or transfer this Contract or the Consultant's rights hereunder without the written consent of the Director, which consent shall be manifested by Notice. The Corporation shall have the right to assign, convey, subcontract or transfer this Contract or the Corporation's rights hereunder without the written consent of the Consultant to the City or any other corporation, agency or instrumentality having authority to accept the assignment.

10.3 Right to Inspect. The Corporation, the City Comptroller, the Inspectors and any other individual or entity authorized under any Legal Requirement shall have the right on reasonable Notice to inspect the operations and records of the Consultant and its Subcontractors relating to this Contract.

10.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services performed by it, its employees, and its Subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by the Corporation, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable Notice. Said records shall be maintained for a period of six (6) years after termination of this Contract.

10.5 Modification in Writing. No modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted.

10.6 Captions. The tables of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of the Contract or in any way affect this Contract.

10.7 Completeness. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the parties hereto.

10.8 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

10.9 Notices.

10.9.1 Each Notice, demand, request or other communication in connection with this Contract shall be either: (i) served in person, with delivery of service acknowledged in writing by the party receiving the same; (ii) sent by nationally known overnight delivery service or telefax; or (iii) deposited in the U.S. mails, first class mail, postage prepaid, and addressed to the respective address herein set forth in Part I, Section 3 or to such other address as may be specified by Notice sent in accordance herewith.

10.9.2 Every Notice hereunder shall be deemed to have been given: (i) at the date of receipt by the respective party in the case of personal delivery, overnight delivery or telefax and (ii) five (5) business days after the date of deposit in the first class U.S. mails.

10.10 Non-Waiver. Failure of the Corporation or its Representatives to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the Corporation and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the Corporation.

10.11 Refusal to Testify.

10.11.1 The Consultant agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

10.11.2 If:

(i) any person who has been advised that her or his statement, and any information from such statement, will not be used against her or him in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political

subdivision or public authority thereof, or the PANYNJ, or the Corporation, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or

(ii) any person refuses to testify for a reason other than the assertion of her or his privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or the Corporation, or any local development corporation within the City, then the commissioner or agency head (each of which is hereinafter referred to as the "Commissioner") whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

10.11.3 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing or the Corporation may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subsection 10.11.5 below without the City or the Corporation incurring any penalty or damages for delay or otherwise.

10.11.4 The Corporation or the City may impose the following penalties after a final determination by the Commissioner that penalties should attach for the failure of a person to testify:

(i) the disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or the Corporation, as the case may be; and/or

(ii) the cancellation or termination of any and all such existing City or Corporation contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or the Corporation incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City or the Corporation, as the case may be.

10.11.5 The Commissioner shall consider and address, in reaching her or his determination, and the Corporation and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in subparagraphs (i) and (ii) below. The Commissioner and the Corporation may also consider, if relevant and appropriate, the criteria established in subparagraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including, but not limited to, the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City or the Corporation.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity (subject to penalties under subsection 10.11.4 above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in subsection 10.11.2(2) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

10.11.6 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

10.11.7 The term "entity" as used herein shall mean any firm, partnership, corporation, association, joint venture or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

10.11.8 The term "member" as used herein shall mean any person associated with another person or entity as a partner, director, officer, principal or employee.

10.11.9 The term "person" as used herein shall mean any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

10.12 No Political Activity. The Consultant agrees that there shall be no political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

THE TRUST FOR GOVERNORS ISLAND
[]
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF [] SERVICES
TRUST CONTRACT NO. []

PART III
APPENDICES

APPENDIX A	DEFINITIONS
APPENDIX B	SCOPE OF SERVICES
APPENDIX C	PAYMENTS
APPENDIX D	FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS
APPENDIX E	INSURANCE REQUIREMENTS
APPENDIX F	EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM
APPENDIX G	E.O. 50 EMPLOYMENT REPORT FORM
APPENDIX H	SUBCONTRACTORS PARTICIPATION PLAN
APPENDIX I	WHISTLEBLOWER POSTER

APPENDIX A

DEFINITIONS

SAMPLE

APPENDIX A

DEFINITIONS

The defined terms listed below shall have the following corresponding meanings in the annexed Contract (as defined herein) unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate. The gender used in the annexed Contract shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the persons being referred to may require.

Additional Insured	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific “Applicable Agreements” identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific “Applicable Requirements” identified in Part I
Borough	The City borough where the Project is located
City	The City of New York
City Contract	The Contract between the City and the Corporation, dated as of July 1, 2016, as it may be amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or his or her designee
Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4
Comptroller General	The United States Comptroller General

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by The Trust and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than The Trust, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from The Trust, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Section 3.5.3
Contract Date	The date of this Contract, as stated in Part I, Section 1.3
Corporation	The Trust for Governors Island, a not-for-profit corporation organized pursuant to laws of the State of New York
CPL	Contractor Pollution Liability Insurance
DBEs	Disadvantaged Business Enterprises
Director	The person set forth in Part I, Section 2.2, or such other person as may be subsequently designated by the Corporation

Disability Benefit	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
DCAS	New York City Department of Citywide Administrative Services
DCP	New York City Department of City Planning
DEP	New York City Department of Environmental Protection
Division	Division of Labor Services of DSBS
DOB	New York City Department of Buildings
Doing Business Data Form	The form to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
DOT	New York City Department of Transportation
DPR	New York City Department of Parks and Recreation
DSBS	New York City Department of Small Business Services
DSNY	New York City Department of Sanitation
E.O. 50	Executive Order No. 50 (1980), as amended or revised from time to time
Employment Report(s)	The reports described in Appendix G to be completed and submitted to the Corporation pursuant to Executive Order 50
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
FDNY	New York City Fire Department
Federal Courts	United States Federal Courts located in New York City
FHWA	United States Federal Highway Administration
Final Completion	The performance of all Services contemplated in this Contract to the satisfaction of the Director

Final Payment	The last payment by the Corporation to the Consultant under the Contract upon Final Completion or as provided in Part II, Sections 3.5.2 and 3.5.4
Force Majeure	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
FTA	United States Federal Transit Administration
Funding Agencies	All federal, State or local agencies or entities that are the source of the Funds including, without limitation, any specific “Funding Agencies” identified in Part I
Funds	All funds from the federal, State or local sources to be applied to payments for Services under this Contract including, without limitation, any specific “Funds” identified in Part I
IDA	New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized pursuant to Article 18-A of the General Municipal Law of the State of New York
Inspectors	All individuals or entities specifically identified as “Inspectors” in Part I, if any
Insurer	Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2
Joint Venture	An association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in

	reasonable proportion to the economic value of its contribution.
Landmarks Preservation Commission (LPC)	The City of New York Landmarks Preservation Commission
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MBEs	Minority-owned Business Enterprises
M/WBE Compliance Reports	As described in Part II, Section 9.5
M/WBEs	MBEs and WBEs, collectively
M/WBE Subcontractors Participation Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1

Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof
Notify	To give a Notice pursuant to Part II, Section 10.9.1
NYCTA	New York City Transit Authority
NYPD	New York City Police Department
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
OMB	New York City Office of Management and Budget
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
PANYNJ	The Port Authority of New York and New Jersey
Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.3.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete
Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C

Principal	The Consultant's most senior officer of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
Public Design Commission ("PDC")	Public Design Commission of the New York City (f/k/a The Art Commission)
Qualified Joint Venture ("QJV")	A Joint Venture between one or more MBEs and/or WBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the Contract, as set forth in the joint venture agreement, is at least 25% of the total profit.
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Retainage	Any sum withheld from any payment to the Consultant including, without limitation, those set forth in Part II, Sections 1.5.3, 2.2.1 and 4.2.3
Retainage Payment Date	The date by which any Retainage identified in Part I, Section 1.10 will be paid to the Consultant, as identified in

	Part I, Section 1.11, subject to the provisions of Part II, Article 2 and Part III, Appendix C
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B
Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
SHPO	State Historic Preservation Officer
Specific Terms and Conditions	Part I of this Contract
Fee and Cost Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
Task Order	An agreement entered into between the Trust and Consultant for a particular scope of work and price pursuant to the terms of this Contract.
Term	The duration of this Contract, as stated in Part I, Section 1.5
The Trust for Governors Island	The Corporation
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
UST	Underground storage tanks

WBEs	Women-owned Business Enterprises
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Work-Made-For-Hire	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101
Work Product	All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, <u>provided however</u> that Work Product shall not include any Consultant's Underlying Intellectual Property

APPENDIX B
SCOPE OF SERVICES

SAMPLE

APPENDIX C

PAYMENTS

SAMPLE

APPENDIX C

PAYMENTS BASED ON HOURLY RATES

Prior to the execution of a Task Order, the Consultant shall provide to the Director an estimate of the number of hours members of the Consultant's staff, as set forth on the annexed Staff and Fee Schedule (Exhibit 1), and its Principal are anticipated to spend providing the Services. Such estimate shall be subject to the Director's approval.

To request an interim payment, the Consultant shall submit to the Corporation's **Finance Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

- (i) Services performed by Consultant's Principal and by its professional and technical staff;
- (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period;
- (iii) actual salaries incurred during such month;
- (iv) Allowable Additional Costs incurred;
- (v) Subcontractors' Costs incurred during the billing period;
- (vi) the amount of partial payment requested; and
- (vii) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

No multiplier overhead, administrative fee or other mark up will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs. Except as may permitted under Part II, Section 2.2.1 of the Contract, Retainage will not be applied against Allowable Additional Costs.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

EXHIBIT 1 TO APPENDIX C

Hourly Rates

SAMPLE

EXHIBIT 2 TO APPENDIX C

Task Order

SAMPLE

APPENDIX D

**FORM OF CERTIFIED STATEMENT REGARDING
USE OF NON-ORIGINAL MATERIALS**

SAMPLE

APPENDIX D

**FORM OF CERTIFIED STATEMENT REGARDING
USE OF NON-ORIGINAL MATERIALS**

STATE OF _____)
) ss.:
COUNTY OF _____)

The undersigned, being first duly sworn, deposes and states as follows:

1. I am the Principal of the Consultant named below in connection with the contract (the "Contract") identified below between the Consultant and The Trust for Governors Island ("The Trust").
2. I make this affidavit pursuant to Section 5.2.6(iii) of the Contract to verify certain information regarding non-original materials included in the Work Product (as defined in the Contract) furnished by the Consultant to The Trust pursuant to the Contract.
3. I hereby certify that the information set forth on the "List of Rights, Limitations and Requirements Regarding the Use and Display of Non-Original Materials Included in Consultant's Work Product" (the "Non-Original Materials List") annexed hereto and made a part hereof, and the licenses, releases, permissions, clearances and other documents (collectively, the "Licenses") annexed thereto, are complete, true and accurate as of the date of this affidavit, and I acknowledge and understand that The Trust shall rely thereon in connection with any use and display of such materials.
4. In particular, I hereby certify that the annexed Non-Original Materials List and Licenses set forth (i) all non-original materials included in Consultant's Work Product; (ii) all information as to the source of such materials; (iii) all information as to any durational limitations on use of such materials; (iv) all requirements as to notices that must be displayed in connection with display, including the specific owner of the rights to be credited; and (v) all other limitations on the use and display under the Licenses.

Dated: _____

Signature: _____

Consultant: _____

Printed Name: _____

The Trust Contract No.: _____

Title: _____

Sworn to before me this
day of _____, 20____

Notary Public

[illegible]

Appendix D - 3

APPENDIX E

INSURANCE REQUIREMENTS

- 1. Required Policies and Amounts**
- 2. Additional Insureds**
- 3. Required Provisions**

SAMPLE

APPENDIX E

INSURANCE REQUIREMENTS

1. Required Policies and Amounts*

Workers' Compensation/
Disability Benefits:

In statutory amounts

Employer's Liability:

The greater of statutory amounts or \$1,000,000

Commercial General
Liability:

A minimum of \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate

The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$25,000

Automobile Liability:

\$1,000,000 combined single limit per occurrence

Umbrella/Excess Liability:

\$2,000,000 on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer's primary liability limits

If the Consultant or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Consultant and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

U.S. Harbor Workers'
Long Shoremens'
Compensation Act:

In statutory amounts

Marine Protection and
Indemnity:

\$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$25,000,000 in the aggregate per year

****Umbrella/Excess Liability coverage is not required for Subcontractors, with the exception of site inspection Subcontractor team members that are performing active site investigations.**

If the Consultant or any of its Subcontractors is performing professional services in its capacity as a professional, including as may be evidenced by a license to practice that profession, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following type and in the following amount in connection with the performance of the Services and any work incidental thereto:

Professional Liability/Errors & Omissions Insurance:

Professional liability (“PL”) and/or errors and omissions (“E & O”) insurance policies shall be written with a minimum amount of \$5,000,000 per claim and in the aggregate.

If the Consultant cancels its PL or E & O policy during, or lets its PL or E & O policy coverage lapse after, the policy period in which the term for services under the Consultant Contract ends, the Consultant must obtain tail coverage, or an extended reporting period endorsement, that extends coverage of the professional liability insurance for a period of at least three years.

***All required policies shall include a waiver of the right of subrogation with respect to all additional insureds named therein as well as the required Workers’ Compensation coverage.**

APPENDIX E

INSURANCE REQUIREMENTS

2. Additional Insureds

For the purposes of this Contract and the requirements of Article 6 thereof including, without limitation, Section 6.3.3 (iii), the term “Additional Insureds” shall include the following individuals and entities:

The Trust for Governors Island
The City of New York
United States of America National Park Service

and such other entities and individuals as the Corporation may direct from time to time.

APPENDIX E

INSURANCE REQUIREMENTS

3. Required Provisions

The policies required under Section 6.3.9 (ii) of the Contract shall contain the following provisions, if available:

“A. Notices from the insurer (the “Insurer”) to the The Trust for Governors Island (the “Corporation”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, The Trust for Governors Island, at 10 South Street, Slip 7, New York, New York 10004 (with a copy to the Corporation’s Contract Administrator at the same address);

B. The Insurer shall accept notice of accident from the Corporation or the City as soon as practicable after receipt by an official of such Additional Insured (as identified in Appendix E of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City as soon as practicable after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, as soon as practicable after receipt by such party as valid and timely notice under this policy;

D. Notice of accident or claim to the Insurer by the Consultant, the Corporation or the City shall be deemed notice by all under this policy;

E. This policy shall not be canceled, terminated or modified by the Insurer or the Consultant unless thirty (30) days prior written notice is sent by registered mail to the Corporation or the City;

F. The presence of engineers, inspectors or other employees or agents of the Consultant, the Corporation or the City at the site of the Services performed by the Consultant shall not invalidate this policy of insurance; and

G. Violation of any of the terms of any other policy issued by the Insurer to the Consultant or a subcontractor of the Consultant shall not invalidate this policy; and

H. Insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer.”

APPENDIX F

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

SAMPLE

APPENDIX F

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

[Note: for purposes of this rider, the “contractor” means the Consultant identified in this Contract]

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) as revised (“E.O.50”) and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

- (1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) will not discriminate in the selection of subcontractors on the basis of the owner’s, partners’ or shareholders’ race, color, creed, national origin, sex, age, handicap, marital status or sexual orientation or citizenship status;
- (3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status, or it is an equal employment opportunity employer;
- (4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder; and
- (5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14), the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (the “Division”). Copies of all required reports are available upon request from the contracting agency; and
- (6) will permit the Division to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, such noncompliance shall

constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

- (i) disapproval of the contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of New York City's small purchase limit established by rule of New York City's Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

APPENDIX G

E.O. 50 EMPLOYMENT REPORT FORM

The Consultant shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Corporation.

If the Consultant cannot access or download these forms, the Corporation will, upon request, send the Consultant the required forms. The text of said section reads as follows:

Non-Construction Consulting Contracts

Non-construction consulting contracts require a Supply & Service employment report. Generally, the “under 50 employees” form should be used by companies with fewer than 50 employees, and the longer “full form” should be used for companies with more than 50 employees. Please refer to the Supply & Service instructions document to learn more about the forms. Please contact Director to learn more about the forms.

APPENDIX H

M/WBE SUBCONTRACTORS PARTICIPATION PLAN

The Participation Goal for this Contract will be determined by the Trust based on the services to be provided in a Task Order. The Participation Plan represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs or WBEs, and/or by crediting the participation of Consultant.


APPENDIX I

WHISTLEBLOWER POSTER

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT
RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION
212-825-5959




DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:
New York City Department of Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:
www.nyc.gov/doi

All communications are confidential

**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages



← Scan the QR Code at Left to File a Complaint

Exhibit D1 Contract Comments

Full Name of Proposer: _____

Address: _____

City _____ State _____ Zip Code _____

Telephone Number: _____

Email Address: _____

Proposing firms must list below any term, identified by section and paragraph, which would require further negotiation prior to endorsement.

	Contract Terms (Section and Paragraph)	Comments* (if any)
1		
2		
3		
4		
5		

* Please note: broad negotiation language will not be acceptable.

The undersigned Proposer affirms and declares that said Proposer shall accept, without any further negotiation or amendments, The Trust's Contract, and shall negotiate only the Contract terms listed above.

By: _____

Signature:** _____

Title: _____

** Must be signed by a senior officer or duly authorized representative who is authorized to bind the proposing entity. Such signatory must also have direct responsibility for the proposed engagement.

Exhibit E Non-Disclosure Agreement

CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT (this “**Agreement**”), dated as of _____, 2022, by and between GOVERNORS ISLAND CORPORATION, doing business as The Trust for Governors Island, a New York not for profit corporation having an address at 10 South Street, Slip 7, New York, NY 10004 (the “**Disclosing Party**”) and _____, a corporation having its principal office at _____ (the “**Receiving Party**”).

1. Evaluation Material

The Receiving Party is considering a possible transaction with the Disclosing Party for _____ (the “**Transaction**”). To assist the Receiving Party in evaluating the Transaction, the Disclosing Party will make available to the Receiving Party certain confidential, non-public, or proprietary information, so designated by the Disclosing Party by prominently marking it “Confidential” or otherwise indicating its confidential nature (including by electronic mail in connection with the transmission thereof) and referencing this Agreement, with respect to environmental conditions at the afore-mentioned Site, including, without limitation, _____ (collectively, the “**Evaluation Material**”), for use in connection with the _____ for purposes of the Transaction. As a condition to the Evaluation Material being furnished to the Receiving Party, the Receiving Party agrees to treat the Evaluation Material in accordance with the provisions of this Agreement.

2. Non-Disclosure of Evaluation Material

(a) Subject to the terms herein, the Receiving Party agrees that (i) it will make the Evaluation Material available only to its employees, representatives, agents and contractors (collectively, “**Related Parties**”) directly involved in the _____ or who, in the Receiving Party’s reasonable judgment, need to know such information for the purpose of evaluating or carrying out the Transaction, (ii) without the prior written approval of the Disclosing Party, it will not and it will cause its Related Parties not to, intentionally disclose in any way to anyone (other than to its Related Parties as provided in the preceding clause (i)), any Evaluation Material within its or its Related Parties possession or knowledge, and (iii) it will exercise due care to prevent unintentional disclosure of the Evaluation Material ((i), (ii) and (iii), collectively, the “**Confidentiality Obligations**”).

(b) The Receiving Party shall be responsible for any breach of the Confidentiality Obligations by any of its Related Parties.

3. Excluded Information

(a) The Confidentiality Obligations shall not apply to Evaluation Material that: (i) is or becomes publicly available other than as a result of acts by the Receiving Party or any of its Related Parties in breach of this Agreement, (ii) is already known by the Receiving Party without an obligation of confidentiality as can be shown by documentation of the Receiving Party,

(iii) is in the Receiving Party's possession before disclosure by the Disclosing Party, or (iv) is independently obtained or developed by the Receiving Party without the aid, application, or use of any of the Evaluation Material.

(b) Notwithstanding anything to the contrary in this Agreement, the Receiving Party may disclose any of the Evaluation Material: (i) in accordance with, and to the extent required by, the standards specified in the Freedom of Information Law ("FOIL"); provided, however, that upon receipt of a request pursuant to FOIL for any Evaluation Material, the Receiving Party shall make good faith efforts to promptly notify the Disclosing Party of such request, provided further that any such notification shall not be deemed to limit the Receiving Party's discretion in determining how it will respond to such FOIL request, (ii) to comply with any law, regulation or ruling, including concerning imminent public health or safety measures, and (iii) pursuant to a valid court order or subpoena or to defend itself in any legal proceeding.

4. Return or Destruction of Evaluation Material

Promptly upon the written request of the Disclosing Party, the Receiving Party (a) will return all hard copies of the Evaluation Material to the Disclosing Party and (b) will also destroy all notes based on the Receiving Party's or its Related Parties' review of the Evaluation Material or, in the alternative, Receiving Party may certify to the Disclosing Party that the Evaluation Material (and/or such notes) has been destroyed; as an exception to the foregoing general obligation, however, the Receiving Party may retain in its files such notes of the Evaluation Material as is necessary to _____, and with respect to all such retained notes, the Receiving Party will continue to be bound by its Confidentiality Obligations under this Agreement.

5. Subpoena or Court Order

If the Receiving Party receives a request or any Related Party to which it discloses any portion of the Evaluation Material has received a request to disclose all or any part of the Evaluation Material under the terms of a subpoena or other order issued by a court of competent jurisdiction or by a government agency, the Receiving Party shall: (a) make good faith efforts to promptly notify the Disclosing Party of the existence, terms, and circumstances surrounding such a request, and (b) consult with the Disclosing Party on the Disclosing Party's, at its sole cost and expense, taking steps to seek a protective order or other appropriate remedy to resist or narrow that request, or at the Disclosing Party's discretion, waiving compliance with the terms of this Agreement; provided, however, nothing in this Agreement would require or obligate the Receiving Party to delay complying with the subpoena or other order beyond the time deemed appropriate in the Receiving Party's sole discretion. If the Disclosing Party does not waive compliance with the terms of this Agreement and disclosure of Evaluation Material is required, the Receiving Party shall (x) furnish only such portion of the Evaluation Material as the Receiving Party is advised by its counsel is legally required to be disclosed, and (y) cooperate with the Disclosing Party, at the Disclosing Party's sole cost and expense, in the Disclosing Party's efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to that portion of the Evaluation Material that is required to be disclosed.

6. Expiration

This Agreement shall expire and terminate on _____.

7. Entire Agreement

This Agreement represents the entire understanding and agreement of the parties with respect to the subject matter hereof and may be modified or waived only by a separate writing expressly so modifying or waiving this Agreement.

8. Governing Law

The terms of this Agreement shall be governed by the laws of the State of New York, without regard to the laws of conflicts of laws. All disputes arising under this Agreement, unless resolved by mutual agreement of the parties, shall be resolved in a Federal Court located in the borough of Manhattan in the City of New York or, if such court does not have jurisdiction, by the Supreme Court of the State of New York, located in the County of New York. The parties hereby irrevocably (i) consent to the jurisdiction of the Federal Court or Courts of the State of New York located in the borough of Manhattan, for all purposes in connection with any action or proceeding that arises under, or relates to this Agreement, (ii) waive all objections as to venue and any and all rights they may have to seek a change of venue with respect to any such action or proceedings, and (iii) waive the right to trial by jury in any action that may be brought hereunder.

9. No Waivers

No failure or delay by the Disclosing Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

10. Captions

The captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.

11. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12. Successors and Assigns

Subject to the provisions of this Agreement, the terms, covenants, agreements, conditions, representations and warranties contained in this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

13. Counterparts and Facsimile Signatures

This Agreement may be executed in two (2) or more counterparts (including facsimile or emailed counterparts), each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

DISCLOSING PARTY:

By: _____
Name:
Title:

RECEIVING PARTY:

By: _____
Name:
Title:

Exhibit F Sample Fee and Cost Schedule

The Proposer shall set forth the names, position and hourly rates and, if applicable, multipliers for the staff Proposer proposes to use to perform the services. These schedules are for evaluation purposes only and shall not be used to determine payments or to define the Scope of Work. If selected, prior to Contract execution, the Proposer will provide a detailed Fee and Cost schedule which may be utilized for payment purposes.

Fee and Cost Schedule

Year One (add a section for each year of the Contract through Year 3)

Position/Title	Hourly Rate

Exhibit G RFP Checklist

- ☐ Final page of RFP document signed
- ☐ Statements of Qualification
 - ☐ Cover Letter
 - ☐ Consultant Team and Services
 - ☐ Portfolio of Relevant Projects and Client References
 - ☐ Organizational Chart & Key Personnel Resumes
- ☐ Exhibit A: Declaration of Understanding
- ☐ Exhibit B: Confirmation of NYS PASSPort compliance
- ☐ Exhibit C: Doing Business Data Form
- ☐ Exhibit D1: Contract Comments
- ☐ Exhibit E: Non-Disclosure Agreement
- ☐ Exhibit F: Hourly Fee and Cost Proposal
- ☐ Exhibit G: RFP Checklist

Proposing Firm _____

Signature _____

Print Name _____

Title _____

Date _____

Exhibit H Island Map

