



REQUEST FOR PROPOSAL
Material Testing and Inspection Services

January 7, 2022

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1. INTRODUCTION

1A. About the Foundation and The Obama Presidential Center

The Barack Obama Foundation (“Foundation”) is a nonprofit tax-exempt organization under 501(c)(3) of the Internal Revenue Code. The Foundation’s mission is to inspire, empower and connect people to change their world. That mission begins at home, on the South Side of Chicago, where the Foundation is building the Obama Presidential Center (referred to herein as the “OPC”, “Center” or “Project”), in the heart of historic Jackson Park.

The OPC represents a historic opportunity to build a world-class museum and public gathering space that celebrates our nation’s first African American President and First Lady. The vision for the OPC is inspired by the legacy of civic engagement shared by Barack and Michelle Obama and will tell the story of the Obama Administration’s achievements, challenges, and lessons learned – as well as of the millions of Americans, in and out of government, at all levels of society, who made that journey possible. The OPC will be a home for recreation, engagement, storytelling, and story making, and will include a collection of public buildings, a plaza, walkways, and other spaces designed to communicate the message that all are invited here to learn, convene, converse, collaborate, and create.

Please visit our website at <https://www.obama.org/the-center/> to learn more about the OPC.

1B. Intent of This Request for Proposal

The Foundation is committed to assembling a diverse team of highly skilled designers, engineers, builders, and other professionals to work together to ensure the success of the OPC. It is the Foundation’s intent to hire an engineering firm to provide soil management services to join this team (“Consultant”) to provide the specialized services described in this RFP.

For vendors who provide other services and specialties, but are interested in working with the Foundation, please complete our vendor inquiry form at [obama.org/opc-vendors](https://www.obama.org/opc-vendors).

1C. Current Timeline for This Request for Proposal

January 7, 2022	RFP issued
January 7, 2022 – January 21, 2022	Submit queries regarding response to RFP (if any)
January 28, 2022	Answers issued to any queries
February 4, 2022	Proposal due
February 7, 2022 – March 2, 2022	Proposal evaluated by Foundation (this period may include interviews of Consultants)

March 3, 2022 – April 1, 2022	Negotiate, execute and award contract
April 4, 2022	Tentative agreement start date

2. OPC PROJECT INFORMATION

2A. Project Description

The OPC will be composed of three buildings (the "Museum", "Forum" and "Library" buildings) totaling approximately 300,000 GSF, with an approximately 440-space underground parking garage, on a landscaped, approximately 19.3-acre campus in Chicago, Illinois. The Project also includes closing and vacating portions of two existing roadways, South Cornell Drive and South Midway Plaisance.

To assist with preparing the Respondent's cost proposal, the following documents will be shared electronically:

- 100% Construction Documents (GMP 1A – ERS) dated February 24, 2020
- 100% Construction Documents (GMP 1B – Geothermal Wells) dated March 27, 2020
- Addendum 1 for GMP 1B dated September 18, 2020
- 100% Construction Documents (GMP 2) dated September 18, 2020
- Addendum 1 for GMP 2 dated March 31, 2021
- Addendum 1A for GMP 2 dated June 28, 2021
- ASI #005 dated June 11, 2021
- ASI #007 dated July 9, 2021
- ASI #008 dated August 23, 2021
- Lakeside OPC Monthly Update dated September 17, 2021

Note: Interested respondents must sign a non-disclosure agreement ("NDA") before receiving these documents. Please contact hstaley@opcpm.org via email to receive a copy of the Foundation's NDA. Please allow at least 24-hours to receive the NDA. Only after receiving an executed copy of the NDA will the Foundation be able to provide the above documents to an interested respondent. The completed NDA must be submitted no later than 5:00 PM CDT on February 1, 2022. The Foundation expects all Respondents to have reviewed these documents and incorporate them into their submittals.

2B. Project Schedule

Construction of the OPC commenced in September 2021 and will range between 44-45 months in duration. Below is a general timeline for the Project:

Groundbreaking	August 16, 2021
Substantial Completion	May 16, 2025

Note: Interested respondents should refer to the Project schedule, included in the documents listed in Section 2A above, for the relevant timeline for this RFP's scope of work.

2C. Project Team

Client	The Obama Foundation
Architect	Tod Williams Billie Tsien Architects Partners
Associate Architect	Interactive Design Architects (IDEA)
Landscape Architect	Michael Van Valkenburgh Associates, Inc. / Site Design Group Ltd. & Living Habitats
Civil Engineer	David Mason & Associates
Project Manager	Clayco-Ardmore Roderick
Construction Manager	Lakeside Alliance

2D. Sustainability

The Foundation is committed to ensuring the Center preserves and enhances what has always made Jackson Park unique, while investing in long-term sustainability. The landscaping plan for the Center restores and embraces the rich history of the park, giving new life to Frederick Law Olmsted's vision of a cohesive, walkable, and iconic Jackson Park by reunifying parkland, planting new trees, increasing biodiversity, and providing newly expanded habitat for birds and wildlife. It will be critical that the OPC exemplify best practices in sustainability for institutional buildings, both in the OPC's construction and its operations.

2E. Diversity & Inclusion

It is essential that the building of the OPC incorporates both a perspective and actuality of diversity throughout the design, development and construction phases of the Project. To ensure that this is accomplished, the Foundation has committed to awarding 50 percent of the construction subcontracting spend to diverse vendors, exceeding the City of Chicago's goal of 26 percent and 6 percent commitment to MBE/WBE vendors, based on the belief that the people building the Center should look like the community where the OPC will call home. Additionally, the Foundation

is committed to awarding 32.5% of non-construction project costs to diverse vendors, of which this procurement qualifies.

3. REQUIRED SCOPE OF SERVICES

The Foundation seeks an engineering firm to provide and/or perform the following scope of work:

1. Material testing services.
2. Inspection services.
3. Review all drawings, specifications and applicable approved submittals to ensure compliance.
4. Preparation and submission of all related reports as required by the City of Chicago Department of Buildings and owner.

Provide all owner testing requirements in the contract documents listed under Section 2A with these caveats:

- Section 071326 Self-Adhering Sheet Waterproofing (**do not include scope for the waterproofing at the Tower/Forum/Plaza/Library/Garage foundation walls, include scope for any other required waterproofing**).
- Section 312000 Earth Moving (**do not include scope for the slabs on grade and below in the Tower/Forum/Plaza/Library/Garage, include scope related to sitework**).
- Section 316329 Caissons (**Exclude**).
- Section 315000 Permanent and Temporary Excavation and Protection Systems (**Exclude**).
- Section 31000 Concrete Formwork (**Exclude slabs on grade, caissons, caisson caps, grade beams in Tower/Forum/Plaza/Library/Garage**).
- Section 33000 Cast-In-Place Concrete (**Exclude slabs on grade, caissons, caisson caps, grade beams in Tower/Forum/Plaza/Library/Garage**).
- Section 32000 Concrete Reinforcing (**Exclude slabs on grade, caissons, caisson caps, grade beams in Tower/Forum/Plaza/Library/Garage**).
- **Exclude all door related inspections.**
- **Exclude all indoor air quality testing.**
- **Exclude all atrium vent testing/oversight.**

4. SUBMITTAL REQUIREMENTS

The following subsections provide directions for preparing a response to this RFP. Please note that all of the following elements are required for a successful proposal.

4A. Letter of Interest

Include a brief cover letter highlighting:

- a) Why the Project is of special interest to the Consultant; and
- b) In what ways the Consultant is uniquely qualified to work on the Project.

4B. Experience

Describe three (3) projects for which your firm has provided services that align with the criteria outlined in Section 3 of this RFP. For selected examples, please include the following:

- Project name
- Location (Address, City, State, Country)
- Size in Square Feet
- Total permitted cost of project
- The project's scope, and how your work aligned with the scope of this RFP
- Client, as well as a contact name, telephone number, and email address for the client or client representative who may be contacted by the Foundation for references.

4C. Proposal for Services

Provide a detailed description of your plan for providing the scope of work outlined in Section 3 of this RFP.

4D. Project Timeline

Provide a high-level schedule outlining your key deliverables and durations related to each of the scope items outlined in Section 3 of this RFP.

4E. Qualifications and Staffing

Provide the following information for all staff that Consultant is proposing for this scope of work:

- Name
- Title
- Location
- Anticipated hours
- Years of experience
- Relevant experiences related to this project type
- Resume that notes relevant projects and their involvement on each project. Provide a contact (including name, email, and telephone number) that will have personal knowledge of the individual's performance on each job

4F. Diversity & Inclusion

Provide a (i) D&I Commitment and (ii) Detailed D&I Utilization Plan, *or* (iii) Justification for not utilizing diverse firms, as more fully set forth in Exhibit A.

The Foundation is committed to providing opportunities to historically disadvantaged businesses and professionals to meaningfully participate in every aspect of the development of the OPC. There are also opportunities to creatively address a lack of diversity in every field through things like internships and mentor-protege relationships. The Foundation expects the selected

Consultant to be equally committed to ensuring the meaningful participation in this RFP's scope of work.

4G. Compensation

Provide a lump sum fee based on your response to Section 3 of this RFP. Additionally, identify each individual for the project who would provide these services and hourly rates for each individual. Please also provide unit prices for the various types of testing and inspection that may be utilized if additional scope is required.

4H. Financial Information

Provide audited financial statements for your firm, including a balance sheet and profit and loss statements for the last three (3) years. If audited financial statements are not available, submit the equivalent along with a brief explanation of Proposer's financial stability.

4I. Legal Actions

Detail any criminal or civil investigations, legal claims that have been brought by private parties or governmental authorities, and all litigation involving your firm,, within the past three (3) years. Please also disclose the fact of any settlements entered into by your firm within that time frame.

4J. Insurance

Review and confirm the insurance requirements outlined in EXHIBIT B: INSURANCE are acceptable.

4K. Conflict of Interest

Disclose any known conflicts of interest that any member of your firm or its officers may have with the Foundation, the Foundation's Board of Directors, or consultants currently engaged for this project.

4K. Form of Agreement

Disclose any suggested amendments to the Foundation's Form of Agreement, which will be shared with Respondents after an executed NDA is provided. Respondents must provide a word document version (with redline changes) if there are any questions or suggested amendments to any of the terms and conditions.

5. SUBMISSION INSTRUCTIONS & GENERAL CONDITIONS

5A. Proposal Submission Instructions

- a) Send an email to hstaley@opcpm.org to receive a copy of the Foundation's NDA **as soon as possible**. Please allow at least 24-hours to receive the NDA.
- b) The NDA will be emailed to you from the Ironclad digital contract management software. Review and sign the NDA as soon as possible, but **no later than 5:00 PM CDT on February 1, 2022**. Please allow at least 24-hours to receive the additional information needed for your proposal.
- c) Submit your proposal in pdf form (except in Microsoft Word form for exceptions to the form of agreement) via email to hstaley@opcpm.org. ***Submissions must be received by 5:00 PM CDT on February 4, 2022. Please note that extensions will not be granted.***
- d) As part of its evaluation the Foundation may request to meet with you and key members of your proposed staff. Such meetings would likely occur on dates from February 7, 2021 through February 28, 2021. Please tentatively arrange for your key personnel to be available during this time period if at all possible.

5B. General Conditions

The Foundation reserves the right, in its sole discretion, to modify this RFP, including but not limited to changes to the timeline or response content; to request clarifications or additional information from any Respondent after the submission of RFP responses; or to reject any and all responses. Any changes to the timeline or response content of this RFP will be shared with interested respondents. The Foundation will not be responsible for any costs incurred by a Respondent or anyone affiliated with a Respondent in connection with this RFP.

5C. Confidentiality

As noted above in Sections 2A and 5A, any interested respondents to this RFP must execute an NDA. Nothing contained herein shall abrogate or in any way limit the terms and provisions of this NDA. Furthermore, the RFP contains confidential and proprietary information. You may not reproduce or distribute this information to third parties, without prior written authorization of the Foundation.

The Foundation shall have no obligation to treat any information submitted in or in connection with the RFP response as proprietary or confidential. By the submission of an RFP response, respondents thereby grant to the Foundation an unrestricted right to use all or portions of the RFP response, including all materials and/or accompanying information submitted therewith, as it considers necessary or desirable in connection with the Project.

5D. Limitations on RFP

The data, information, and assumptions used in this RFP are generally accurate to the best of the Foundation's knowledge at this time. The Foundation does not assume responsibility for the accuracy of such data, information or assumptions.

5E. Selection at the Discretion of The Foundation

The Foundation shall select, at its sole, absolute, and unreviewable discretion, the Consultant for the Project.

6. SCORING CRITERIA

The Foundation plans to use the following scoring criteria for evaluating submissions, but reserves the right, in its sole, absolute, and unreviewable discretion, to change the scoring criteria at any time.

Obama Presidential Center	
Evaluation Scoring Criteria & Weight	Weight
Quality of Proposal	25.0%
Scope of Services	20.0%
Personnel Plan	5.0%
Cost	25.0%
Diversity	25.0%
Diversity Status (Ownership)	15.0%
Diversity Plan	10.0%
Previous Experience	22.5%
Presentation of Proposal	2.5%
Financial Position	Pass/Fail
Insurance Requirements	Pass/Fail
Legal Actions	Pass/Fail
Conflict of Interest	Pass/Fail
TOTAL	100.0%

Exhibit A: Business Diversity & Inclusion

The Barack Obama Foundation (the “Foundation”) is committed to maintaining an environment within its organization in which diversity, equity, and inclusion are valued and respected in all aspects of its operations as well as the operations of its partners and vendors. The Foundation believes that diverse businesses strengthen its ability to act on its commitment to improve underserved communities, particularly those located near the Obama Presidential Center (the “Center”). The Foundation is also invested in growing the number of diverse persons participating in the fields required to make the Center a success and expect its partners and vendors to think creatively about how to create and share those opportunities to underserved communities.

I. Definitions

- A. “Certified Diverse Vendor” means a Prime Contractor or Subcontractor, that is at least 51% owned, managed, and controlled by one or more United States citizens or permanent residents, duly certified by a certifying agency as identified below, and identifying as being:
 - a. of Asian, Black, Hispanic, Alaskan Native, or Native American descent, such entity is designated as a Minority-Owned Business Enterprise (“MBE”);
 - b. a woman, such entity is designated as a Women-Owned Business Enterprise (“WBE”);
 - c. an individual with disabilities, such entity is designated as a Business Enterprise Owned by People with Disabilities (“BEPD”);
 - d. a veteran, such entity is designated as a Veteran-Owned Business Enterprise (“VBE”);
 - e. a service-disabled veteran, such entity is designated as an Enterprise Owned by Service-Disabled Veterans (“SDVBES”); or
 - f. lesbian, gay, bisexual, transgender, and/or questioning, such entity is designated as an LGBTQ Business Enterprise (“LGBTQBE”).
- B. “Prime Contractor” means any Diverse Vendor or Non-Diverse Vendor that enters into a direct contract, agreement, or other arrangement to provide Goods or Services to the Foundation.
- C. “Subcontractor” means any person or entity that enters into a direct contract, agreement, or other arrangement with a Prime Contractor to perform any portion of Services for the Foundation. A Subcontractor shall not include entities that contract directly with the Foundation. A Prime Contractor and Subcontractor may each be a Diverse Vendor.

II. Requirements for Certified Diverse Vendors

- A. To be eligible for contracts and subcontracts as a Certified Diverse Vendor, the Prime Contractor or Subcontractor (“Respondent”) must provide proof of certification as

described below. The Foundation reserves the right to seek independent assurance regarding the same.

The following sources of certification are acceptable to the Foundation:

- a. MBEs, certified by the National Minority Supplier Development Council;
 - b. WBEs, certified by the Women’s Business Enterprise National Council;
 - c. BEPDs, certified by the U.S. Business Leadership Network;
 - d. VBEs, certified by the U.S. Department of Veterans Affairs;
 - e. SDVBEs, certified by the U.S. Department of Veterans Affairs; and
 - f. LGBTQBEs, certified by National Gay and Lesbian Chamber of Commerce.
- B. In addition, the Foundation may accept certifications from other state and local government programs, *provided that* the submitting business demonstrates that the certification requirements are substantially similar to the requirements for the certification programs listed above. Acceptable certifications also include certifications from the City of Chicago Programs, the State of Illinois Business Enterprise Program, the State of Illinois Unified Certification Program, the Cook County, Illinois, Office of Contract Compliance, the New York State MWBE Program, and the Washington D.C. Certified Business Enterprise Program. The Foundation does not impose or recognize size or revenue limitations on Diverse Vendors.

III. Spending Goals

The Foundation’s diverse spending goals are as follows below. The goals may be met by the participation of one or more certified diverse vendor(s), provided that each contract or subcontract will only count towards achievement of a single diverse vendor goal. For example, if a Subcontractor is both an MBE and WBE, the payments on that subcontract must be reported as counting towards achievement of either the MBE goal or WBE goal, but not both. The Foundation reserves the right to make all final determinations regarding the calculation of diverse spend, in its sole discretion.

OPC DIVERSE VENDOR GOALS		
	Certified Diverse Vendors	
Non-Construction Costs	25%	MBEs
	5%	WBEs
	2.5%	Other Certified Diverse Suppliers

Note: The Foundation’s OPC Diverse Vendor Goals for Construction Costs are not included in the chart above because they are not applicable to this RFP’s scope of work.

IV. Submission Requirements

The following documents and information must be submitted at the time of the bid or proposal submittal:

- A) *D&I Commitment Statement* - A statement regarding the Respondent's understanding and commitment to comply with the Foundation's requirements for the utilization of diverse businesses. This statement shall include Respondent's commitment to ensuring that well-qualified, diverse personnel are assigned visible and meaningful roles in the performance of the work.
- B) *D&I Utilization Plan* - i) Respondent's proposed diversity and inclusion utilization plan ("**D&I Utilization Plan**"). The D&I Utilization Plan shall include the diverse company name(s), principal contact person, mailing address, email address, and telephone number of the principal contact person of the relevant diverse firms and/or outline plans to create meaningful and transformative opportunities for those of underserved communities to participate in the scope of work including but not limited to listing partner organizations or work plan explaining in the detail the creation of new programming. For respondents proposing the use of diverse subcontractors in the D&I Utilization Plan, include ii) **a fully executed Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier for each diverse subcontractor listed in the Utilization Plan**. This form is attached hereto as Exhibit A-1, and must accurately detail the work to be performed by the diverse firm and the agreed rates and prices to be paid, and iii) **current Letter of Certification as a Diverse Business for each Subcontractor identified in the Diversity Utilization Plan**.
- C) Respondent shall provide a detailed written description and justification in the event Respondent is unable to utilize diverse firms in the performance of this contract.

Respondents are responsible for calculating the dollar equivalent of diversity utilization as percentages of their total base bid.

Agreements between a Respondent and a diverse vendor in which the diverse vendor promises not to provide subcontracting quotations to other Respondents are prohibited.

Bidders shall not modify their Diversity Utilization Plan after submission of their bid without the prior written approval of the Foundation unless directed to do so by the Foundation. Therefore, all terms and conditions stipulated for prospective diverse subconsultants, subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Foundation of the Respondent's bid. If circumstances should arise, however, where a proposed diverse firm is no longer available or willing to perform services, the Foundation's Director of Planning and Construction shall be immediately notified via writing.

VI. Reporting Requirements

- A) The selected Respondent shall report all payments, including those to diverse vendors, working on the project on a monthly basis by registering and inputting such information

into the Foundation's diverse spend tracking system, B2GNow, and as otherwise requested by the Foundation. The Foundation reserves the right to update these requirements (reporting and otherwise) and will notify the selected Respondent of any such changes.

- B) The selected Respondent will provide the Foundation full access to the vendor payment and/or project personnel records or any duly authorized representative thereof. The selected Respondent will maintain all relevant personnel data for a period of at least 5 years after Final Completion and Acceptance of the Work.

Exhibit A1

**Letter of Intent to Perform As
Subcontractor, Subconsultant, and/or Material Supplier**

Name of Project: _____

FROM: _____
(Name of Subcontractor/Subconsultant/Supplier)

Check all that apply: MBE _____ WBE _____ VBE _____ SDVBE _____

The diversity status of the Subcontractor/Subconsultant/Supplier, if certified as a diverse firm, is confirmed by the attached Letter of Certification, dated _____.

TO: _____ and the Barack Obama Foundation
(Name of Contractor/Consultant)

The undersigned intends to perform work in connection with the above-referenced project as (check one): _____ a Sole Proprietor _____ a Corporation _____ a Partnership _____ a Joint Venture.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project.

The above described services or goods are offered for the following price and described terms of payment:

The proposed utilization of the undersigned Subcontractor/Subconsultant/Supplier represents _____% of the total proposed contract value.

The above named Subcontractor/Subconsultant/Supplier affirms that it will perform the work described above for the estimated dollar value as stated above, conditioned upon the Prime's contract execution with the Foundation.

Name of Subcontractor/Subconsultant/Supplier	Name of Contractor/Consultant
Signature	Signature
Print Name/Title	Print Name/Title
Date	Date

All proposers/bidders must search, at a minimum, the following directories to identify diverse firms to participate and include procurements with the Foundation.

- City of Chicago [Directory](#) of MBE, WBE, VBE, BEPD, DBE, and ACDBE certified vendors
- Cook County, IL [Government Cook County's M/W/VBE Certification Directory](#)
- Chicago Minority Supplier Development Council (member-driven organization)
- Women's Business Development Center (member-driven organization)
- Illinois Department of Central Management Services [Directory](#)

This list is not exhaustive. It is preferred that proposers/bidders maximize opportunities for diverse Chicago firms. Please include copies of certification letters of all applicable firms named and to be included in response. If uncertain if a certification is acceptable, submit questions during the RFI period.

Exhibit B: Insurance

- I. Consultant shall maintain the following minimum limits of insurance with insurers with an AM Best Company rating or the equivalent of at least A- VII.
 - A. Commercial General Liability:

\$3,000,000 per occurrence/\$3,000,000 aggregate, including products and completed operations and contractual liability coverage; coverage shall include independent contractor's coverage, and Consultant shall be responsible for assuring all subcontractors are properly insured.
 - B. Workers Compensation:

Statutory Limits
 - C. Employer's Liability:

\$500,000/each accident;
\$500,000/disease - each employee;
\$500,000/disease – aggregate
 - D. Auto Liability (for all owned, hired and non-owned vehicles):

\$1,000,000
 - E. Umbrella/Excess Liability:

Coverage excess of general liability, auto liability, and employer's liability in an amount of at least \$2,000,000 per occurrence with defense outside the limit.
 - F. Property Insurance:

All-risk, replacement cost property insurance to protect against loss of owned or rented equipment and tools brought onto and/or used on any property by Consultant.
 - G. Professional Liability / Errors and Omissions Coverage (covering property damage, bodily injury and economic loss):

\$3,000,000/claim;
\$3,000,000/aggregate

If such coverage is on a "claims made" basis, the insurance shall have a retroactive date of no later than the date design work commenced and must be maintained for at least three years after the completion and acceptance of the work performed. The retroactive date MUST be shown on the certificate of insurance provided.
- II. Consultant's commercial general liability and auto liability policies shall name the Foundation and its members, managers, partners, directors, officers, employees and agents as additional insureds. Such policies shall provide additional insured coverage for

the foregoing persons and entities by either: (i) an additional insured endorsement that provides coverage automatically by virtue of this written agreement or (ii) by specific endorsement using the form known as the Additional Insured: Designated Person or Organization Endorsement or a substantive equivalent thereof. The applicable endorsement (i.e., (i) or (ii)) must be attached to the insurance certificate as evidence of this coverage and shall describe the additional insured party as follows: "The Barack Obama Foundation and its members, managers, partners, directors, officers, employees and agents are additional insureds on the general liability policy if required by written contract with the Named Insured. The Barack Obama Foundation and its members, managers, partners, directors, officers, employees and agents are additional insureds on the commercial auto liability policy if required by written contract with the Named Insured. The Barack Obama Foundation and its members, managers, partners, directors, officers, employees and agents are additional insureds on the workers compensation policy if required by written contract with the Named Insured.

- III. None of the foregoing policies shall include a deductible or self-insured retention amount of more than \$10,000.
- IV. Consultant's primary and, if applicable, excess liability insurance shall be primary to any insurance carried by the Foundation and other additional insureds, whose insurance in all cases shall be non-contributing to any required from Consultant.
- V. Consultant's insurance shall be placed with a company or companies acceptable to the Foundation. Insurance certificates shall provide that at least thirty (30) days' advance notice be required to the Foundation of any cancellation, lapse, non-renewal, or material change in any policy.
- VI. Provision by Consultant of the insurance required hereunder or failure of Consultant to provide the required insurance shall not relieve Consultant of its liability arising under the Agreement or as may be imposed at law or in equity.
- VII. Consultant waives any and all rights of recovery, claim, action or cause of action against the Foundation and its members, managers, partners, directors, officers, employees and agents, for any loss or damage that may occur in the performance of the work or services to be provided by Consultant hereunder to the extent that such loss or damage would be covered by insurance required to be maintained by Consultant hereunder or which is otherwise in effect. Consultant will cause its insurers (other than with respect to the professional liability insurance, if applicable, required to be maintained herein) to waive its subrogation rights arising in any way out of this Agreement.