



AGA KHAN FOUNDATION  
AGA KHAN TRUST FOR CULTURE AFGHANISTAN (AKTC-A)

## REQUEST FOR PROPOSAL (RFP)

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MACHINE KHANA MODERNIZATION  
Kabul, Afghanistan

RFP ID: **RFP/AKTC/KARIT/2019/001**

Title of Work: **FINANCIAL FEASIBILITY STUDY CONSULTANCY SERVICES**

Closing date: **30 May 2019**

Prepared by:  
**Aga Khan Trust for Culture | Afghanistan**  
April 2019



AGA KHAN FOUNDATION

## REQUEST FOR PROPOSAL

Date: 11 April 2019

The Aga Khan Trust for Culture (AKTC) is supporting a number of projects in Kabul aimed at protecting specific neighbourhoods or buildings at risk, and improving living conditions of the inhabitants, as part of a broader process of urban revitalization.

In the framework AKTC Programme for central Kabul, the AKTC Bids Evaluation and Award Committee ("BEAC") is issuing this Request for Proposals (RFP) seeking the services of a qualified firm to carry out Financial Feasibility Study, Market Analysis, and Program Design Consultant Services for its Machine Khana Modernization project located in Kabul, Afghanistan.

Only eligible Contractors will be allowed to purchase the Bidding Document and allowed to submit Bid.

Bids shall be valid for a period of 90 days after submission of Bids and shall be physically delivered to:

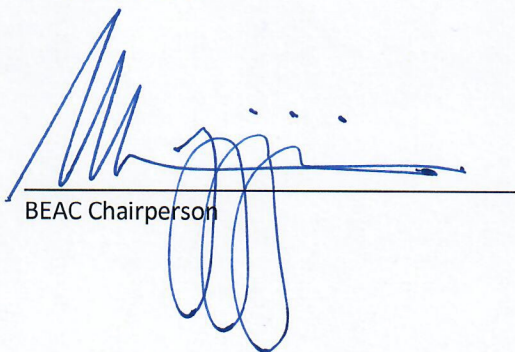
Aga Khan Trust for Culture  
Bids Evaluation and Award Committee (BEAC)  
Qale E Moen Afzal Khan –Gozargah Street- District 3-  
Kabul Afghanistan

on 30 May 2019, at 16:00 hours Kabul Standard Time. Late bids shall be rejected.

Bids will be opened at AKTC office on the above-mentioned address on 02 June 2019.

AKTC reserves the right to accept or reject any bids, and to cancel the procurement process and reject all bids at any time prior to award of Contract, without obligation to inform the affected Bidder/s of the ground for AKTC action.

Very truly yours,



BEAC Chairperson

*AKTC is encouraging companies to use recycled materials or materials coming from sustainable resources or produced using a technology that has lower ecological footprints.*

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## Section 1. INSTRUCTIONS TO BIDDERS

### A. General

- 1. Project Description**
  - 1.1. With funding from the German Federal Foreign Office through the KfW Development Bank, the Aga Khan Trust for Culture (AKTC) aims to plan and implement the 'Kabul Riverfront Transformation' (KARIT) project, which will be situated within the legal and policy framework of AKTC's contribution to the larger 'Heritage Zone' along the city's riverfront area. The KARIT project will be implemented in close cooperation and coordination with local communities and relevant governmental and non-governmental stakeholders, taking into consideration all plans for the urban development of Kabul. The Machine Khana Modernization project is an important component of the overall KARIT project.
  - 1.2. AKTC is an agency of the Aga Khan Development Network ("AKDN"). Specialized in historic building preservation, AKTC is a qualified entity to oversee the Project, under the legal auspicious of the Aga Khan Foundation-Afghanistan ("AKF-A"), an NGO registered under the laws of Afghanistan.
- 2. Scope of Bid**
  - 2.1. AKTC is issuing this Request for Proposals (RFP) seeking the services of a qualified firm to carry out Financial Feasibility, Study Market Analysis and Program Design Consultant Services for its Machine Khana Modernization project located in Kabul, Afghanistan.
  - 2.2. The successful Bidder will be expected to complete the Works by the Intended Completion Date, set at **11 October 2019**.
- 3. Eligible Bidders**
  - 3.1. All bidders shall provide a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by AKTC to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.
  - 3.2. Government-owned enterprises in the AKTC Mission's country may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of AKTC.
  - 3.3. Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by AKTC in accordance with sub-clause 30.1.
- 4. One Bid per Bidder**
  - 4.1. Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.
  - 4.2. Bids submitted by a joint venture of two or more firms as partners shall comply with the following:

- (a) the Bid shall include all the information listed in Sub-Clause 8.1 below for each joint venture partner;
- (b) the Bid shall be signed so as to be legally binding on all partners;
- (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

- 5. Cost of Bidding**      5.1 The Bidder shall bear all costs associated with the preparation and submission of his/her Bid, and AKTC will in no case be responsible or liable for those costs.
- 6. Site Visit**      6.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 6.2 AKTC will organize a joint visit to the Machine Khana site, which will tentatively take place on **02 May 2019 at 10:00AM**. AKTC will obtain the list of confirmed visitors among the bidders at least 2 days prior to the date of the visit for coordination with local authorities to ensure access to the site.
- 7. Project Schedule, Contract Period and Primary Work Location**      7.1 Below is the schedule that is expected to be followed for this RFP:
- |             |  |
|-------------|--|
| RFP Open:   | 11 April 2019                              |
| Site Visit: | 02 May 2019                                |
| RFP Closes: | 30 May 2019 at 4:00 PM KABUL STANDARD TIME |
| Bid Open:   | 02 June 2019                               |
| Award:      | By 13 June 2019                            |

## **B. Bidding Documents**

- 8. Content of Bidding Documents**      8.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:
- |           |  |
|-----------|--|
| Section 1 | Instructions to Bidders                  |
| Section 2 | Statement of Needs                       |
| Section 2 | Bid Form                                 |
| Section 3 | Acknowledgement Letter                   |
| Section 5 | Images and Plans of Machine Khana        |
| Section 6 | Sample copy of AKTC Consultancy Contract |
| Section 7 | Security Forms                           |
- 8.2 Complete copies of the bidding documents are supplied to the prospective Bidder. The number of copies to be completed and returned with the Bid

shall be one (1) original and (1) one duplicate.

- 8.3 You are kindly requested to return the attached forms duly signed by an authorized representative to the AKTC main office via e-mail advising whether or not your company intends to submit a bid prior to the designated closing date for receipt of bids. Please indicate the reason if you do not intend to submit a bid at this time. Failure to return the completed acknowledgement letter may result in removal of your company from the AKTC roster of registered suppliers.

**9. Clarification of Bidding Documents**

- 9.1 Questions relating to the RFP should be directed to the email address listed below. Information that is obtained from any other source is not official and may be inaccurate.

Those considering participation in this RFP are responsible for obtaining clarification on RFP requirements during the 'RFP Open' stage. Questions should be directed to the RFP Contact below in writing. Copies of AKTC's response will be forwarded to all bidders, including a description of the inquiry, but without identifying its source no later than 10 days before submission of bids. Only written responses from the RFP Contact will be considered an official response.

RFP Contact Email: [aktc.rfp@akdn.org](mailto:aktc.rfp@akdn.org)

**10. Amendment of Bidding Documents**

- 10.1 Before the deadline for submission of bids, AKTC may modify the bidding documents by issuing addenda.
- 10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to AKTC.
- 10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, AKTC shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 17.2 below.

**C. Preparation of Bids**

**11. Language of Bid**

- 11.1 All documents relating to the Bid shall be in English language.

**12. Bid Validity**

- 12.1 Bids shall remain valid for 90 days after the deadline for bid submission days.
- 12.2 In exceptional circumstances, AKTC may request that the bidders extend the period of validity for a specified additional period but in no case more than additional 60 days. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 13 in all respects.

**13. Bid Security**

- 13.1 The Bidder shall furnish, as part of the Bid, a Bid Security in the amount of USD 9,000.00 (Nine Thousand and 00/100)

- 13.2 The Bid Security shall, at the Bidder’s option, be in the form of a certified check, bank draft, letter of credit, or a bank guarantee from a reputable bank located in the country of AKTC Mission or abroad. The format of the Bid Security should be in accordance with the form of Bid Security included in Section 8 or another form acceptable to AKTC. Bid Security shall be valid for 28 days beyond the validity of the Bid.
- 13.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by AKTC. The Bid Security of a joint venture must define as “bidder” all joint venture partners and list them in the following manner: a joint venture consisting of “ \_\_\_\_\_,” “ \_\_\_\_\_,” and “ \_\_\_\_\_”.
- 13.4 The Bid Security of unsuccessful bidders will be returned within 28 days of the end of the Bid validity period specified in Sub-Clause 12.1.
- 13.5 The Bid Security of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security.
- 13.6 The Bid Security may be forfeited
  - (a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
  - (b) if the Bidder does not accept the correction of the Bid price, pursuant to Clause 22; or
  - (c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
    - (i) sign the Agreement; or
    - (ii) furnish the required Performance Security.

**14. Alternative Proposals by Bidders**

- 14.1 Alternative proposals to the requirements of the bidding documents will not be permitted.

**15. Format of Bid**

- 15.1 The Bid shall consist of two envelopes:  
Envelope one: documents proving eligibility under mandatory criteria and technical proposal  
Envelope two: Financial response/proposal

Envelope one “Eligibility and Technical Proposal”
Bid form Declaration of Undertaking Bid security <ol style="list-style-type: none"> <li>1. All financial calculations must be submitted in US dollars (USD).</li> <li>2. Proponent must have proven track record in writing business plans.</li> <li>3. Proponent must have proven track record in commercial and cultural service industry.</li> <li>4. Proponent must present its progress and final reports to AKTC Management in person as per section 2.2.</li> <li>5. At least five (5) years of experience with conducting</li> </ol>



<p>market analyses and feasibility studies related to commercial infrastructure development. Experience must include actuarial or other financial expertise necessary to project the number and level of participation that would be sufficient for the PROJECT to be self-sustaining.</p> <ol style="list-style-type: none"> <li>6. As of 2019, and for at least the 5 most recent continuous years, the firm must have a verifiable operating history with at least 5 institutional fund clients with similar size, complexity and asset mix to the PROJECT.</li> <li>7. As of 2019, the primary contact dedicated to the PROJECT contract must have at least 10 years of experience in providing consulting services to institutional fund clients.</li> <li>8. Must be qualified to do business in Afghanistan. Proof of filing (certificate of good standing, AISA registration, etc.) with the Government of Afghanistan must be provided. Proof of filing (certificate of good standing, AISA registration, etc.) with the Government of Afghanistan is also required for any subcontractor identified as personnel under Experience, Personnel, and References.</li> <li>9. Must have evidence of having bank account in Afghanistan. Provide copies of latest banking statements.</li> <li>10. All such licenses and registrations must be current and in good standing.</li> <li>11. Failure to satisfy each of the minimum qualifications will result in the immediate rejection of the proposal. The Consultant must address each of the qualifications substantiating how the responder satisfies each of the minimum qualifications. The responses must contain sufficient information as prescribed to assure AKTC of its accuracy. Failure to provide complete information will result in rejection of the proposal.</li> </ol> <p>Technical proposal</p> <ol style="list-style-type: none"> <li>1. Demonstrated Expertise</li> <li>2. Proponent References</li> <li>3. Proposed Approach/Process and Project Plan</li> <li>4. Proposed Resources, Resumes and References</li> </ol>
<p>Envelope two "Financial Proposal"</p> <p>The CONSULTANT is to prepare a fixed price per deliverable as described in section 2.1: Market Analysis, Building Space Program Design and Financial Feasibility Study for its proposed services regarding the services. Provide appropriate details to support these figures, including estimates of the work effort and a breakout of expected expenses and man-hours required for the completion of the tasks.</p>

The Bid shall contain no alterations or additions, except those to comply with instructions issued by AKTC, or as necessary to correct errors made by the

Bidder, in which case such corrections shall be initiated by the person or persons signing the Bid.

- 15.2 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

#### **D. Submission of Bids**

#### **16. Sealing and Marking of Bids**

- 16.1 Bids should be sent in one (1) clearly marked and signed original and two (2) copies. The Bid should be submitted in one sealed package containing two clearly marked separate and also sealed envelopes: one with "Eligibility and Technical Proposal" and the other with "Financial Proposal". If financial information is included in the Eligibility and Technical Proposal, the Tender shall be rejected.

- 16.2 The inner and outer envelopes shall

- a) be addressed to:  
Aga Khan Trust for Culture  
Bids Evaluation and Award Committee (BEAC)  
Qale E Moen Afzal Khan –Gozargah Street- District 3-  
Kabul Afghanistan
- b) bear the name and identification number of the RFP:  
RFP/AKTC/KARIT/2019/001 and
- c) provide a warning not to open before the specified time and date for Bid opening as defined in Sub-clause 20.1

- 16.3 In addition to the identification required in Sub-Clause 16.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 18.

- 16.4 If the outer envelope is not sealed and marked as above, AKTC will assume no responsibility for the misplacement or premature opening of the Bid.

#### **17. Deadline for Submission of Bids**

- 17.1 Bids shall be delivered to AKTC at the address specified above no later than **30 May 2019 at 14:00 hours KABUL STANDARD TIME.**
- 17.2 AKTC may extend the deadline for submission of bids by issuing an amendment, in which case all rights and obligations of AKTC and the bidders previously subject to the original deadline will then be subject to the new deadline.

#### **18. Late Bids**

- 18.1 Any Bid received by AKTC after the deadline prescribed in Clause 17 will be returned unopened to the Bidder.

#### **19. Modification and Withdrawal of Bids**

- 19.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in Clause 17.
- 19.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 16 and 17, with the outer and inner envelopes additionally marked

“MODIFICATION” or “WITHDRAWAL,” as appropriate.

- 19.3 No Bid may be modified after the deadline for submission of Bids.
- 19.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity or as extended pursuant to Sub-Clause 17.2 may result in the forfeiture of the Bid Security pursuant to Clause 13.
- 19.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

## **E. Bid Opening and Evaluation**

### **20. Bid Opening**

- 20.1 AKTC will open the bids on 02 June 2019 at the AKTC Kabul main office.
- 20.2 The bidders' names, , Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as AKTC may consider appropriate, will be announced by AKTC at the opening.
- 20.3 AKTC will prepare minutes of the Bid opening, including the information disclosed to those present.

### **21. Process to Be Confidential**

- 21.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence AKTC's processing of bids or award decisions may result in the rejection of his Bid.

### **22. Clarification of Bids and Contacting the AKTC**

- 22.1 To assist in the examination, evaluation, and comparison of bids, AKTC may, at AKTC's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by AKTC in the evaluation of the bids in accordance with Clause 22, or to confirm or not confirm any unclear issue on which AKTC requests confirmation.
- 22.2 No bidder shall contact AKTC on any matter relating to its bid from the time of bid opening to the time the contract is awarded. If the bidder wishes to bring additional information to the notice of AKTC, it should do so in writing.
- 22.3 Any effort by the Bidder to influence AKTC in the bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders' bid.

### **23. Examination of Bids and Determination of Responsiveness**

- 23.1 Prior to the detailed evaluation of bids, AKTC will determine whether each Bid (a) meets the eligibility criteria defined in Clause 3; (b) has been properly signed with every RFP original document signed and sealed; (c) is accompanied by the required securities and signed forms; and (d) is substantially responsive to the requirements of the bidding documents.

- 23.2 A substantially responsive Bid is one, which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the AKTC's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 23.3 If a Bid is not substantially responsive, it will be rejected by AKTC, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 24. Correction of Errors**
- 24.1 Bids determined to be substantially responsive will be checked by AKTC for any arithmetic errors. Errors will be corrected by AKTC as follows:
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and
  - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of AKTC there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.
- 24.2 The amount stated in the financial proposal will be adjusted by AKTC in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 13.6 (b).
- 25. Currency for Bid Evaluation**
- 25.1 Bids will be evaluated as quoted in USD.
- 26. Evaluation and Comparison of Bids**
- 26.1 AKTC will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 23 and as per Section 2, Statement of Needs, 4.3 , Stage 1 – Mandatory Criteria
- 26.2 Technical Evaluation will be done according to Section II, Statement of Needs, 4.4. , Stage 2 – Evaluation Criteria
- 26.3 Financial Evaluation: In evaluating the bids, AKTC will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to Clause 24
  - (b) excluding provisional sums and the provision, if any, for contingencies in the financial proposal, but including Day work, where priced competitively;
  - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 20; and
- 26.4 AKTC reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for AKTC will not be taken into

account in Bid evaluation.

- 26.5 The estimated effect of any price adjustment conditions during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

## F. Award of Contract

- 27. Award Criteria**
- 27.1 AKTC will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the best evaluated combination of following criteria:
- Companies will be evaluated technically against below indicated criteria.
  - Financial evaluation will be considered against the realistic and lowest bid.
- See Section 2, Statement of Needs, for further information.
- 28. AKTC's Right to Accept any Bid and to Reject any or all Bids**
- 28.1 AKTC reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the AKTC's action.
- 29. Notification of Award and Signing of Agreement**
- 29.1 The Bidder whose Bid has been accepted will be notified of the award by AKTC prior to expiration of the Bid validity period by email, cable, telex, or facsimile confirmed by registered letter. This letter (hereinafter called the "Letter of Acceptance") will state the sum that AKTC will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").
- 29.2 The Letter of Acceptance will be part of the Agreement, subject to the Bidder furnishing the Performance Security in accordance with Clause 30 and signing the Agreement.
- 29.3 The Agreement will incorporate all agreements between AKTC and the successful Bidder. It will be signed by AKTC and sent to the successful Bidder, within 14 days following the notification of award along with the Notice of Award. Within 14 days of receipt, the successful Bidder will sign the Agreement and deliver it to AKTC.
- 29.4 Upon the additional furnishing by the successful Bidder of the Performance Security, AKTC will promptly notify the other bidders that their bids have been unsuccessful.
- 30. Performance Security**
- 30.1 Within 21 days after receipt of the Notice of Award, the successful Bidder shall deliver to AKTC the ORIGINAL copy of the Performance Security in the amount of 5% of the total amount and as stipulated in the Contract Data and in the form of a Bank Guarantee, denominated in the type and proportions of currencies in the Notice of Award and in Accordance with the Conditions of Contract.

- 30.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder's option, by a bank located in Afghanistan or a foreign bank through a correspondent bank located in Afghanistan, or (b) with the agreement of AKTC directly by a foreign bank acceptable to AKTC.
- 30.3 Failure of the successful Bidder to comply with the requirements of Sub-Clause 28.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.
- 30.4 There will be no payments against any invoice if received before AKTC have received the Performance Security bond.

**31. Corrupt or Fraudulent Practices**

- 31.1 AKTC requires that all AKTC Staff, Bidders/Contractors, manufacturers, suppliers or distributors, observe the highest standard of ethics during procurement and execution of all contracts. AKTC shall reject any Bids put forward by Bidders or where applicable terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. In pursuance of this policy, AKTC:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (b) "corrupt practice" means the offering, giving, receiving or soliciting directly or indirectly anything of value to influence the action of the Procuring/Contracting Entity in the procurement process or in contract execution;
  - (c) "fraudulent practice" is any acts or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Procuring/Contracting Entity in the procurement process or the execution of a contract, to obtain a financial gain or other benefit to avoid an obligation;
  - (d) "collusive practice" is an undisclosed arrangement between two or more contractors designed to artificially alter the results of the tender procedure to obtain a financial gain or benefit;
  - (e) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities in a procurement process, or after the execution of a contract.
  - (f) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
  - (g) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded an AKTC financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, an AKTC financed contract.

**32. Declaration of Undertaking**

- 32.1 All participants in an invitation to tender for services are required to ensure fair and transparent competition, and to comply with, at a minimum those ILO core labor standards that have been ratified by Afghanistan. This is to be documented through a corresponding Declaration of Undertaking (see **Section 5**) by all participants in the

tender process. The Declaration of Undertaking must be signed with legal effect by sufficiently authorized representatives of the bidder, and in the case of joint bids by all partners. Failure to submit this Declaration of Undertaking or to comply with the requirements contained in it shall lead to exclusion from the tender process.

## Section 2. STATEMENT OF NEEDS

### 1. INTRODUCTION

The Aga Khan Trust for Culture (AKTC) is an agency of the Aga Khan Development Network (AKDN), which is composed of multi-sector, non-denominational agencies and institutions working to promote social development by creating broad, sustained improvements in overall quality of life. AKTC is a non-for-profit agency, focusing on the physical, social, cultural, and economic revitalisation of communities in the poorest parts of the developing world and has been active in Afghanistan since 2002. AKTC is the implementing arm of Aga Khan Foundation, Afghanistan (AKF-A).

With funding from the German Federal Foreign Office through the KfW Development Bank, the Aga Khan Trust for Culture (AKTC) aims to plan and implement the 'Kabul Riverfront Transformation' (KARIT) project, which will be situated within the legal and policy framework of AKTC's contribution to the larger 'Heritage Zone' along the city's riverfront area. The KARIT project will be implemented in close cooperation and coordination with local communities and relevant governmental and non-governmental stakeholders, taking into consideration all plans for the urban development of Kabul. The Machine Khana Modernization project is an important component of the overall KARIT project

#### 1.1. Situation Overview

The primary objective of the Machine Khana Industrial Complex (MKIC), hereafter known as the 'PROJECT', is to rehabilitate and re-utilise the facility for social, commercial, economic, and cultural use by the public. The goal of the PROJECT is to contribute to economic development and revitalization of the urban fabric of central Kabul through implementing project measures aimed at improving living conditions, working, social and commercial environments, and enhancing public spaces and open landscapes around the project area for local communities. Opportunities will be provided for economic growth and capacity development related to urban and heritage transformation and regeneration, and significant improvements will be made in key infrastructure and public spaces.

A strategic component of KARIT is the modernization, transformation, and reuse of the PROJECT, a series of underutilized historical buildings and warehouses built in the late 19<sup>th</sup> century, located along the Kabul riverfront. The site is currently vacant and in a dilapidated condition. See Section 6, Images.

AKTC has undertaken initial surveys of the PROJECT site in order to identify the dimensions, building typologies, and physical conditions of built areas and open spaces. See Section 6, Site Plan.

This complex will be repaired and modernized over the course of the project, which is commenced in 2018 and will reach completion by the end of 2020, creating a range of commercial spaces and units that generate sufficient funds to operate and maintain MKIC. Located in a strategic junction between the Sherdarwaza and Asmai mountains, the restoration of the complex's unique industrial architecture will link and consolidate its relationship to the wider ensemble of historic neighborhoods and heritage properties located along Kabul's riverfront. In addition to providing for commercial retail and trade on the site, the project proposes to identify suitable buildings within the complex for public services and civic uses, including a library, exhibition spaces, museum, and educational facilities. The transformation of the Machine Khana will encourage wider private and public investment and improve the utilization of land and historical buildings around the site.

The site's large warehouses, secondary buildings, and interwoven public spaces would provide suitable spaces for trade and commerce, small-scale industry and crafts production, public service facilities, and multi-purpose spaces for social, cultural, and educational programs. Large scale formal commerce, production, and retail activities would be located alongside small-scale vendors, traders, and food & beverage operators, reducing direct competition and increasing mutual advantages by providing a variety of services at a range of costs; supporting the formation of commercial relationships that are mutually beneficial. In order to provide opportunity for Afghan manufacturers and industries, which generate local employment and promote wider economic growth, a high proportion of the site will be allocated for services and products manufactured



locally. The type of commercial activities will fall mainly under, but not be limited to, the sectors/activities listed below:

- **Itinerant, mobile commercial activities;**
  - Food & Beverage †
  - Clothing accessories\*
  - Kites\*
  - Market Stall Operators
  - News Agents
  - Shoe repairs †
  - Tobacco Products
  
- **Mid-range commercial activities;**
  - Crafts products\*
  - Cosmetics / Beauty products
  - Antique Dealers\*
  - Bakers / Confectioners Shops\*
  - Book Retailers\*
  - Sporting Goods
  - Stationary Supplies
  - Carpet / Weaving Shops\*
  - Gift Shops\*
  - Music & DVD Shops\*
  - Florists\*
  - Herbalists\*
  - Clothing Retailers\*
  - Fabric Retailers\*
  - Footwear Retailers
  - Eye glasses / Opticians
  - Phone Retailers
  - F&B Operations / Restaurants †
  - Pharmacy
  - Ceramics Shop\*
  - Glassware\*

- **High-end commercial activities;**
  - Luxury Goods
  - Audio/Visual Equipment
  - Computer / Camera / IT / Electronics Equipment
  - Domestic Appliances
  - Jewelers\* (Gems & Precious Stones)

\* Locally Manufactured Goods  
 † Services

A ‘Commercial Survey’ was carried out by AKTC in the catchment area around the Machine Khana complex, the finding of which provides up to date baseline information on the type / scale/ revenue of commercial/retail activities in the wider area. While data gathered through the ‘Commercial Survey’ forms the basis of baseline information provided to the consultant, it is expected the consultant will prepare detailed financial models and a business plan on the basis of accurate data generated expanding on the already completed ‘Commercial Survey’ as part of their assignment. Such data will also be used to establish rental prices for the various programs and uses and project revenue forecasted from operations of the Machine Khana facility.

## 1.2. RFP Objectives

In an effort to determine the future viability of the PROJECT, AKTC expects to engage qualified companies on Consultancy Services, hereafter referred to as ‘CONSULTANT’, towards the preparation of documents as per the following phases:

- 1- **Market Analysis:** based on AKTC’s ‘Commercial Survey’ and additional information gathered by the CONSULTANT, a quantitative and qualitative assessment of a local market focusing on the size of the market (commercial activities) both in volume and in value, demand and supply, the various customer segments and buying patterns, the competition, and the economic environment in terms of barriers to entry and regulation.  
*Upon completion of this phase, an **workshop, presentation or something** shall take place with AKTC in Kabul.*
- 2- **Building Space Program Design:** provide a detailed description of the type of uses retail facility sizes and architectural programs within each of the buildings and open rentable spaces within the PROJECT site, with the goal of ensuring self-sustainability for the PROJECT.  
*Upon completion of this phase, an **see above** shall take place with AKTC in Kabul.*
- 3- **Financial Feasibility Study (including a Business Plan):** based on the above Market Analysis and Building Space Program Design – prepare a full feasibility study with additional sections on the following items:
  - a. On-Site Synergy
  - b. Relationship with surrounding commerce / market*Upon completion of this phase, an **see above** shall take place with AKTC in Kabul.*

As part of this study, the CONSULTANT would need to consider how best to integrate informal street vendors into the overall program at the facility. Whereas new commercial and infrastructure development typically results in the displacement of street traders, contributing to an increase in poverty through the loss of income, the envisioned reuse of the PROJECT could potentially provide ample low-rental spaces and facilities that enable use by a range of traders, including mobile vendors and mid / high-end retailers – resulting in a vibrant, diverse, and popular destination for a wide range of the population.

AKTC is issuing this Request for Proposals (RFP), seeking the services of a qualified firm, in order to reaffirm the premise that the PROJECT as a new retail and services center in downtown Kabul constitutes a viable investment project for the GoIRA.

## **2. SERVICE REQUIREMENTS**

### **2.1. Project Description/Deliverables**

- The CONSULTANT is expected to produce a written report of their proposed business plan for the PROJECT supported with illustrations, facts, and financial charts to substantiate their findings, assumptions and recommendations.
- The report should clearly state assumptions, limitations and methodology of the study.
- The financial components of the report are particularly important and should cover essential heads of Capital Expenditure, Profit and Loss Statement, Balance Sheets, Cashflow Statements, NPV & IRR and other key indicators supporting proposals. It is also vital that these charts include explanations that will help readers interpret findings. The financial projections should include provisions for replacement and maintenance expenditure in the form of reserves.
- Based on the financial review, the report should recommend an action plan for development and management of the PROJECT.
- The report must begin with an Executive Summary highlighting key recommendations followed by the detailed report.
- The report should be organized in sequential order to reflect the objectives listed in 1.2: i) Market Analysis, ii) Building Space Program Design, and iii) Financial Feasibility Study.

The Feasibility Report should consist of the following sections, but not limited to:

#### Executive Summary

- A summary that highlights the key elements of the plan.
- Include goals and objectives.

#### Market Analysis

##### Business Description

- An accurate description of the plan, the product and services to be provided.
- Physical location.
- Assets/equipment/facilities required, etc.
- Partnerships.

##### Industry/Market Analysis market study

- Conduct a market analysis to determine whether the necessary conditions for implementation of the PROJECT can be met, including, but not limited to, likely participation rates, participants' comfort with various investment vehicles and degree of risk, contribution levels, and the rate of account closures and rollovers.
- An analysis of the industry, the marketplace, and the potential clientele.
- The competition.
- How unique this model is.
- Compare this market to others.
- Leasehold Research & Recommendations.

- Submit a detailed report of the CONSULTANT's research, findings, analyses, conclusions, and recommendations.

#### Promotion/Marketing

- How will the stores be marketed? On the basis of product, price, promotion, and place.

#### **Building Space Program Design**

##### Program Design market study/ proposed business plan

Critical issues and related goals that affect the programming of the PROJECT's exterior and interior spaces:

- Specific use(s) of the space(s);
- Number and type of occupants;
- Activities of the occupants;
- Identify strategies;
- Determine quantitative requirements;
- Functional and spatial relationships between spaces; Prepare a comprehensive adjacency requirement diagram indicating critical relationships between different uses and support spaces;
- Cultural and community context;
- Building selection and site characteristics;
- Budget (overall, required expenses, restrictions, etc.);
- Other miscellaneous considerations.

#### **Financial Feasibility Study**

##### Project Costs and Financing

- Itemized schedule of project costs and financing.
- Capitol Costs Estimate.
- Need to consider if the Machine Khana Complex will be run as an integrated complex with a central entity assuming risk or will it be based on a building by building venture or a coop in parts?

##### Management/Personnel

- Outline the PROJECT's future management's education/qualifications, experience, drive and capacity to successfully implement and operate the proposed business.
- Include recommended pay scales.

\* The PROJECT, once completed will be owned and operated by agency of the GoIRA and will require its own management team.

##### Operations

- Provide a general description of the day-to-day operations of the market
- Describe in detail the services or product provided
- Include a list of potential suppliers
- Recommended hours of operations
- Partnerships to pursue
- Permits Required
- Leasehold Management

##### Financial Projections and Analysis

Financial projections should consist of the following: Opening Balance Sheet (at start of proposed project)

- Balance Sheet (at end of year 1, 2 & 3)
- Cash Flow Statement (for years 1-10, with the first 12-months being presented on a monthly basis)
- Income Statement (for years 1, 2 & 3, with the first 12-months being presented on a monthly basis)
- Estimates of the total economic output related to the construction and operation of the PROJECT:
  - Direct, indirect and induced spending (and derivation/source of multipliers);
  - Direct and indirect employment (and derivation/source of multipliers), with clear differentiation between temporary and permanent, and part-time and full-time positions; and

- Tax revenues generated, including all tax revenues from all sources for the Government.

Financial analysis should include:

- Breakeven analysis – how much sales volume is required to cover costs
- Ratio Analysis, e.g.
  - Liquidity: Current Ratio = Current Assets/Current Liability
  - Leverage: Debt to Equity (%) = Total Debt/Equity \* 100
  - Profitability: Return on Equity (%) = Net Income/Owner's Equity \* 100
  - Return on Investment (%) = Net Income/Total Assets \* 100
  - IRR

**General:**

Risks and Mitigation

- Describe all potential risk factors to the business (e.g. regulatory, legal, environmental, political, social, economic, financial, market).
- Outline the plans to manage these risks.

Social and Environmental Issues

- Outline whether or not any social and environmental concerns exist. If yes, how will they be addressed and at what cost?

Action Plan

- Steps required to implement the business plan to meet the goals and objectives.
- Steps to take from business plan development to opening.

Recommendation

- Provide an overall opinion of the project's viability and substantiate how it will be a success? Any similar ventures in South Asia or elsewhere as references?

Supporting Documents

The following is a suggested list of documents that should be attached to the plan:

- Organizational chart, job descriptions, resumes, pay scales.
- Detailed list of assets/investments.
- Contracts, letters of intent, business permits, licenses.
- Environmental reports and permits.
- Property appraisals, insurance coverage, etc.

The consultant is responsible for collecting all necessary information not provided by AKTC and the research conducted is from independent and quality sources.

The successful proponents must familiarize themselves with:

- The Mission, Vision, and Values of AKTC
- The conceptual design for the PROJECT as determined by AKTC

\*Additional information may be requested from AKTC during the course of this project.

**2.2. Milestones**

Below is the approximate schedule expected to be followed during the course of carrying out the services by the CONSULTANT. The requirements in this section will prevail as enduring requirements for service delivery throughout the effective period of any contract(s) resulting from this RFP after the award date. This schedule provides 12 weeks to complete the project.

- Initial Meeting: Week of 01 July 2019.

- Preparation of report outline and submission for approval: Fourth week of July 2019.
- End of Market Analysis Evaluation Session/Progress Report (In person): Second week of August 2019.
- End of Building Space Program Design Evaluation Session/Progress Report (In person): Fourth week of August 2019.
- End of Financial Feasibility Evaluation Session/Progress Report (In person): Fourth week of September.
- Project Complete and FINAL REPORT submission (in person): **11 October 2019**, tentative.

### **2.2.1. Work Plan and Work Schedule Requirements**

The CONSULTANT shall submit a work plan or schedule for task completion, identifying each major task, required subtasks, and/or specific milestones by which progress can be measured and payments made. The proposal should include a workplan as described plus a staffing schedule which visualizes the allocation of expert working days to time and milestones.

The CONSULTANT will be required to submit monthly 'Progress Reports' describing the work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices

## **3. PROPOSAL REQUIREMENTS**

This following sections describes the proposal requirements to be included, which will be evaluated as per section 4.

### **3.1. Mandatory Criteria**

Proponents must demonstrate that they meet all mandatory criteria as described in section 4.3 and 4.4.

### **3.2. Site Visit and Review**

The CONSULTANT shall conduct a thorough on-site visit to allow its team an opportunity to familiarize themselves with the site and strategic plans for other potentially affected sites or projects prior to the start of its works.

The team shall also review the existing urban form, the network of streets, blocks and lots, and building types adjacent to the site and in Central Kabul. This preliminary on-site visit shall also include an early examination of the land use, transportation, economic and urban design elements in the PROJECT's Study Area. Interviews will be conducted with appropriate stakeholders as defined by AKTC. Stakeholder groups will likely include public officials, property owners, potential facility user organizations, neighborhood representatives, local design professionals, developers, and business organizations.

### **3.3. Technical Response**

#### **3.3.1. Demonstrated Expertise**

The CONSULTANT is to outline the consultancy firm's experience with comparable projects, solicited by this Request for Proposals. Present the firm's credentials and samples of work carried out on similar projects in Afghanistan or internationally. Explain the size of your firm, including years in business, office locations and legal structure.

#### **3.3.2. Proponent References**

Provide three references for any work done by your firm in the past three years that is similar in nature, complexity and size to the requirements specified in this RFP. Provide the name of each project reference, along with his/her phone number, fax number and email address. The project reference information provided should identify the size of the projects conducted, as well as demonstrate the extent of your previous experience, the clients' overall satisfaction with your services and the results achieved, including your adherence to interim and final deadlines.

Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this assignment.

Assignment name:	Approx. value of the contract (in current US\$ or Euro):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total N° of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in current US\$ or Euro):
Start date (month/year): Completion date (month/year):	N° of professional staff-months provided by associated Consultants:
Name of associated Consultants, if any:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Narrative description of Project:	
Description of actual services provided by your staff within the assignment:	

### 3.3.3. Proposed Approach/Process and Project Plan

Describe the approach and/or process proposed to address the service requirements. Include any notable methodologies, innovative solutions, tools and techniques, and their respective suitability to this project. Also, provide a project plan that reflects your proposed approach/process and demonstrates your ability to meet the schedule requirements for this project, including any applicable milestones.

### 3.3.4. Proposed Resources, Resumes and References

The proponent should be able to demonstrate that its proposed team as a whole has the experience/skills to perform the services in accordance with the requirements.

Prepare the table below to identify all personnel who will be assigned to the project and contribute to:

- (i) the routine management and/or
- (ii) the performance of the required services. As shown, provide each person's name, title, role on this project, experience in this role and his/her respective employment status.

Name	Title	Project Role	Role Experience (Years)	Employment Status (Employed/Sub Contractor)

If contractors or partners are to be used for this project, they must be identified in your table. If so, describe the general range of services that the respective contractors (companies or individuals) will provide. Submit

the individual resumes for each proposed resource. The resumes should be structured to emphasize their relevant qualifications and experience in successfully completed projects of a similar size and scope to that required by this RFP. Each resume should include at least two project references where the proposed individual served in a similar role, including:

- Name of client Procuring Entity
- Name, title, telephone number and email of a client contact
- Brief description of the scope, complexity, dates and duration of the project
- Role the proposed individual played in the referenced project

\*The successful proponent will be responsible for all expenses related to its subcontractors.

Using the format below for Resume of Proposed Personnel

Position		
Personnel information	Name	Date of birth
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present <i>Employer</i>
Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.		
From	To	Company, Project , Position, and Relevant Technical and Management Experience

### 3.3.5. Resource Management

If at time of award the resources that have been proposed by a proponent are not available, and no replacements acceptable to AKTC procuring entity can be identified, the procuring entity reserves the right, in its sole discretion to refuse to proceed with award to that proponent.

### 3.4. Financial Response

The CONSULTANT is to prepare a fixed price per deliverable as described in section 2.1: Market Analysis, Building Space Program Design and Financial Feasibility Study for its proposed services regarding the services.

Provide appropriate details to support these figures, including estimates of the work effort and a breakout of expected expenses and man-hours required for the completion of the tasks. The breakdown should include but not limited to below:

- Cost of personnel
- Allowances
- International travel cost



- Local transport cost
- Cost for a local project office
- Cost for reporting
- Procurement of equipment if relevant
- Miscellaneous cost

All taxes assessed on and payable within and outside Afghanistan by the CONSULTANT and/or his personnel employed by him in connection with the Services to be performed herein shall be borne and paid, as the case may be, by the CONSULTANT. AKTC will deduct statutory taxes from invoices presented where required by tax code.

#### **4. PROPOSAL EVALUATION**

##### **4.1. General Information**

The Evaluation Team will consist of AKTC personnel, the PROJECT Monitoring Consultant and may include representatives of other organizations/institutions as deemed appropriate by the procuring entity. It is understood and accepted by the proponent that all decisions about the degree to which a proposal meets the requirements of this RFP are in the sole determination of this Evaluation Team.

To assist in the evaluation of proposals, the Evaluation Team may, but is not required to:

- Conduct reference checks relevant to the proposal with any or all of the references cited in a proposal to verify information regarding a proponent and rely on and consider any relevant information from such cited references in the evaluation of a proposal.
- Conduct any background investigations that it considers necessary and consider any relevant information resulting there from.
- Seek clarification from a proponent with respect to their proposal.
- A proposal will be examined in accordance with the evaluation process and criteria outlined in the sections below.

##### **4.2. Evaluation Process**

The proposal will be evaluated using the following process:

Stage 1: Proposal will be reviewed to determine compliance with all mandatory criteria identified in section 4.0

Stage 2: Proposals that meet all mandatory criteria will be evaluated and scored using the evaluation criteria and assigned weights set out in the table in section 4.4. Proposals that do not meet the qualifying score for subtotal A set out in section 4.4 will be given no further consideration. The compliant proposal that scores the highest number of rated points will be recommended for award of a contract.

##### **4.3. Stage 1 – Mandatory Criteria**

Proposals must meet all of the following mandatory criteria and clearly demonstrate that these are met. If a proposal fails to meet any one of these criteria, it will be deemed non-compliant and will be rejected.

12. All financial calculations must be submitted in US dollars (USD).
13. Proponent must have proven track record in writing business plans.
14. Proponent must have proven track record in commercial and cultural service industry.
15. Proponent must present its progress and final reports to AKTC Management in person as per section 2.2.
16. At least five (5) years of experience with conducting market analyses and feasibility studies related to commercial infrastructure development. Experience must include actuarial or other financial expertise necessary to project the number and level of participation that would be sufficient for the PROJECT to be self-sustaining.

17. As of 2019, and for at least the 5 most recent continuous years, the firm must have a verifiable operating history with at least 5 institutional fund clients with similar size, complexity and asset mix to the PROJECT.
18. As of 2019, the primary contact dedicated to the PROJECT contract must have at least 10 years of experience in providing consulting services to institutional fund clients.
19. Must be qualified to do business in Afghanistan. Proof of filing (certificate of good standing, AISA registration, etc.) with the Government of Afghanistan must be provided. Proof of filing (certificate of good standing, AISA registration, etc.) with the Government of Afghanistan is also required for any subcontractor identified as personnel under Experience, Personnel, and References.
20. Must have evidence of having bank account in Afghanistan. Provide copies of latest banking statements.
21. All such licenses and registrations must be current and in good standing.
22. Failure to satisfy each of the minimum qualifications will result in the immediate rejection of the proposal. The Consultant must address each of the qualifications substantiating how the responder satisfies each of the minimum qualifications. The responses must contain sufficient information as prescribed to assure AKTC of its accuracy. Failure to provide complete information will result in rejection of the proposal.

#### 4.4. Stage 2 – Evaluation Criteria

If a proposal meets the Mandatory Criteria it will be evaluated using the Evaluation Criteria set out in the table below. Scores will be recorded for each criterion and a total score will be determined by the Evaluation Committee. Prepare the table below, inserting references to the appropriate sections within your proposal that deal with each criterion under evaluation

Criterion	Weight	Score	Reference Page #
<b>A. Technical Response:</b>			
Proposed Approach/Process & Project Plan	25		
Demonstrated Expertise	20		
Proposed Resources, Resume, & References	20		
Building Capacity	5		
<b>Subtotal A</b>	<u>70</u>		
<b>B. Financial Response:</b>			
Pricing Response	<u>30</u>		
<b>Total:</b>	<u>100</u>		

For the purpose of a combined evaluation the Technical Proposal of a Tenderer will be weighted 70% as follows:

$P_T = 70 * T/T_o$ , with

- $P_T$  = attributed score for Technical Proposal,
- $T$  = Tenderer's score in the technical evaluation,
- $T_o$  = highest 'technical' score of all Tenderers.

The Financial Proposal of a Tenderer will be weighted 30% as follows:

$P_F = 30 * C_o/C$ , with

- $P_F$  = attributed score for the Financial Proposal (points),
- $C$  = Tenderer's corrected price of the Financial Proposal,
- $C_o$  = lowest corrected Financial Proposal.

The total score of the Tender is

$P = P_F + P_T$ ."

### Section 3. BID FORM

**Date of issue:**

Project title: **FINANCIAL FEASIBILITY STUDY CONSULTANCY SERVICES**

ITB Number: **RFP/AKTC/KARIT/2019/001**

The BID FORM must be completed, signed and returned to AKTC.

The Undersigned, having read the Instructions of this RFP number (RFP/AKTC/KARIT/2019/001) set out in the attached document, hereby offers to execute the services specified in the STATEMENT OF NEEDS set out in the document.

Name & Title of Authorized: -----

Representative: -----

Signature: -----

Company Name and Address: -----

Telephone No: -----

E-mail: -----

Currency of Offer: **USD**

## Section 4. ACKNOWLEDGMENT LETTER

**Date of issue:**

Project title: **FINANCIAL FEASIBILITY STUDY CONSULTANCY SERVICES**

RFP Number: **RFP/AKTC/KARIT/2019/001**

We, the undersigned, acknowledge receipt of your Invitation to Bid. We, having read the Instructions of this RFF (**RFP/AKTC/KARIT/2019/001**) set out in the attached document, hereby offers to execute the services specified set out in the RFQ document.

Name & Title of Authorized: -----

Representative: -----

Signature: -----

Company Name and Address: -----

Telephone No: -----

E-mail: -----

Company Seal/Stamp: -----

## Section 5. DECLARATION OF UNDERTAKING

### Date of issue:

Project title: **FINANCIAL FEASIBILITY STUDY CONSULTANCY SERVICES**

RFP Number: **RFP/AKTC/KARIT/2019/001**

*The DECLARATION OF UNDERTAKING must be completed, signed and returned to AKTC.*

1. We recognize and accept that KfW only finances projects of AKTC subject to its own conditions which are set out in the Funding Agreement it has entered into with AKTC. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. AKTC retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganization or being in any analogous situation;
  - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organization, money laundering, terrorist-related offences, child labor or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
  - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
  - 2.4) having been subject within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes in Afghanistan;
  - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or
  - 2.7) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:

- 3.1) being an affiliate controlled by AKTC or a shareholder controlling AKTC, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.2) having a business or family relationship with a AKTC's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of AKTC;
- 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for AKTC;
- 3.5) in the case of procurement of Works, Plant or Goods:
  - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
  - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of AKTC, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
  - 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
  - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
  - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labor standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labor Organization (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.
7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit AKTC and KfW or an agent appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on-the-spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to

auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by AKTC and KfW.

Name & Title of Authorized: -----

Representative: -----

Signature: -----

Company Name and Address: -----

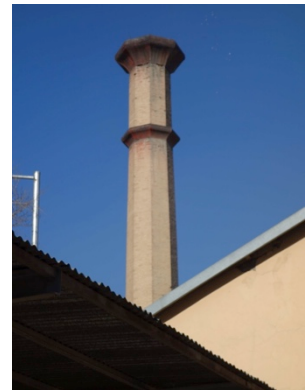
Telephone No: -----

E-mail: -----

**Company Seal/Stamp:** -----

## Section 6. IMAGES AND PLANS OF MACHINE KHANA

Images of Machine Khana







3D Scan of the PROJECT site



Survey of the PROJECT site

## Section 7. SAMPLE COPY OF AKTC CONSULTANCY CONTRACT

*This is provided only as an example of a Consultancy Agreement, subject to modifications by AKTC. Provisions such as Description of Designated Services and General Terms and Conditions will be part of the Agreement*

THE PROJECT OF THE  
**KABUL RIVERFRONT TRANSFORMATION (KARIT),**  
**KABUL, AFGHANISTAN:**

AGREEMENT BETWEEN:

PROJECT MANAGEMENT:

**AGA KHAN TRUST FOR CULTURE - AFGHANISTAN**  
QALA MOEEN AFZAL KHAN GOZARGAH STREET, DISTRICT 3, KABUL AFGHANISTAN

AND

**[TBD]**

**PART 1: FORM OF AGREEMENT:**

AGREEMENT made as of the [...]

BETWEEN the Project Management (hereinafter referred to as the “Client”):

The Aga Khan Trust for Culture - Afghanistan  
Qala Moeen Afzal Khan  
Gozargah Street, District 3, Kabul  
Afghanistan

And the [TBD] (hereinafter referred to as “Consultant”):

.....  
.....  
.....  
.....

FOR THE FOLLOWING PROJECT: KABUL RIVERFRONT TRANSFORMATION (KARIT)

1. KARIT (the “Project”) is an urban and environmental project sponsored by the German Federal Foreign Office (GFFO) and implemented by the Aga Khan Trust for Culture, (AKTC), and is one of several ongoing projects within the portfolio of AKTC’s Historic Cities Support Programme.
2. The Project is defined in a “Finance and Project” and a “Separate Agreement” agreement with the Ministry of Urban Development and Land of Afghanistan and the KfW (Donor Representative) of the Government of Germany and separately through a project MoU with Kabul Municipality. This agreements which include provisions for the post-rehabilitation operations and maintenance of the site under a newly formed management trust (Kabul Historic Gardens Trust) outline the objectives of the Project, the responsibilities of each Party, and the conditions under which each Project Component is envisioned as being undertaken from the planning and design stage through to implementation and sustainable operations.
3. *[More Information to be provided]*

NOW THEREFORE, in consideration of the mutual promises herein contained, the Client and the Consultant agree as set forth below:

### 1.1 SCHEDULE OF DESIGNATED SERVICES:

The full Services to be provided by the Consultant himself or his consultants under this Agreement for the above Project are as described in detail in Part 2: “Description of Designated Services”, herein. Unless the responsibility for a Project Stage or Service is specifically excluded or assigned to another Consultant or party, such Stage or Service shall be the responsibility of the Consultant under this Agreement.

### 1.2 CONSULTANT’S COMPENSATION:

The Client shall compensate the Consultant as follows:

1.2.1 For Designated Services as identified in Part 2 (Sections 2.1 through 2.8 inclusive), of this Agreement, the total remuneration payable under this Agreement shall be in the sum of [...] (US\$...), hereinafter referred to as the “Fee”. The components of this Fee are as detailed below.

1.2.2 Subject to the Invoices and Payments Procedures set out in Section 1.4 hereto, the Fee shall be paid in proportion to Services completed within each Work Stage of Services in accordance with the following Fee schedule by Work Stage for the Project:

TABLE 1: TOTAL FEE SCHEDULE: ALL STAGES:

Stage:	Stage:	USD	%
1	Market Analysis		
2	Building Space Program Design		
3	Financial Feasibility Study		
4	Final Report		
			100%

The Fee is, in turn, based upon the following sub-amounts per discipline for the Services under this Agreement:

### 1.3 *Not Used*

### 1.4 INVOICES AND PAYMENTS PROCEDURES

1.4.1 Invoicing of Fee and Reimbursable Expenses: Invoices for Fee and Reimbursable Expenses shall be rendered no more frequently than on a monthly basis; Reimbursable Expenses shall be invoiced only after such costs have been incurred. No deductions shall be made from the Consultant’s compensation on account of any penalty, liquidated damages, or other sums permitted to be withheld from payments to Contractors. However, in circumstances where the Consultant has, after Notice of breach from the Client under Section 3.12 herein in a particular respect, failed to perform its professional responsibilities relative to such characterized obligations or related obligations, the Client may withhold payments from the Consultant until such defective performance is remedied.

1.4.2 The Consultant shall prepare for the Client to verify for payment, monthly invoices in a form agreed by the Client, showing in detail its entitlement to Reimbursable Expenses actually paid during the previous month and the amount of the Fee then due during the previous month and the amount of the Fee in accordance with Section 1.2 hereof, which form of invoice shall contain the following:

- (a) A brief description of the Service(s) performed during the proceeding month by the Consultant and actual expenditures incurred and paid to the date of such invoice;
- (b) Back-up information, including receipts verifying payment and other documentation considered sufficient to enable the invoice to be promptly verified
- (c) A comparison of the actual expenses incurred with the approved budget and cash projection. Two copies of each invoice, with full substantiating back-up material shall be forwarded to the Client.

#### 1.4.3 Payment Procedure:

- (a) Provided the submission and contents of an invoice and its supporting data are in accordance with the provisions of this Agreement and are verified as being due, then the Client shall pay the account (or such part thereof as is proper for payment at the time) within thirty (30) days after its receipt by the Client.
- (b) Validation of Accounts: The Client reserves the right at any time to call for all original vouchers and additional supporting documents validating Reimbursable Expenses claimed and the Consultant shall make such information available within thirty days from the date of such request. If the Client exercises these rights, all previous payments shall be open to review and shall be appropriately modified in the light of the resulting validation.
- (c) Final Account: Upon completion of its services, acceptance of the works by the Client and the issuance of the Certificate of Final Completion in accordance with Section 2.7 hereof, the Consultant shall render his final account, together with appropriate evidence that all costs, materials, and other indebtedness incurred in connection with the project or on behalf of the Client have been paid or otherwise satisfied or accounted for.

#### 1.5 TIME AND COST:

Unless otherwise indicated, the Client and Consultant shall perform their respective obligations as expeditiously as is consistent with standard skill and care and the orderly progress of the Project. Upon the request of the Client, the Consultant shall prepare a schedule for the performance of the Consultant's Services which may be adjusted as the project proceeds, and shall include allowances for periods of time required for the Client's review and for approval of submissions by authorities having jurisdiction over the Project. The Consultant or the Client shall not, except for reasonable cause, exceed time limits established by this schedule upon approval by the Client. The Client's Requirements for the Project date of Completion for each portion of the Project and the Project Facility as a whole are as depicted in the *Project Schedule (Appendix..)*.

#### 1.6 EXTENT OF AGREEMENT:

1.6.1 This Agreement as executed by the parties, together with all appendices, annexes, attachments, and addenda incorporated therein, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

1.6.2 The parts of this Agreement between the Client and Consultant, except for amendments issued after execution of this Agreement, are enumerated as follows:

- (1) Part 1: Form of Agreement Between the Client and Consultant; (2) Part 2: Description of Designated Services;
- (3) Part 3: General Terms and Conditions
- (4) Part 4: Appendices

1.6.3 This Agreement between the Client and Consultant shall not in any way be deemed to have created a contractual relationship between the Client's AKTC Project Team and the Consultant nor does this Agreement create any enforceable rights in third parties against the Client or Consultant.

This Agreement entered into as of the day and year first written above.

CLIENT  
\*\*\*\*\*

CONSULTANT

## **PART 2: DESCRIPTION OF DESIGNATED SERVICES:**

### **2.1. GENERAL PROJECT CONDITIONS AND DIVISION OF RESPONSIBILITIES:**

This section provides a definition of the relationships between the Client and the various design team members and the general conditions that will govern the Consultant's services on the Project. Refer to Appendix [...] for representation in the form of an Organization Chart.

#### **2.1.1 Project Sponsor and Project Management:**

2.1.1.1 The Client's Team Structure: The Aga Khan Trust for Culture – Afghanistan operates under the legal umbrella of the Aga Khan Development Network's Representation office in Afghanistan. Consequently, the Machine Khana Project Team based in Kabul, will supervise the Project in all stages and take all Client actions as required.

2.1.1.2 Under the direction of its Chief Executive Officer, AKTC-A has assigned the AKTC Project Team who will participate in project decisions on the part of the Client. Client decisions will be transmitted by AKTC-A's representatives to the Consultant and directly, if required, to the various consultants.

#### **2.1.2. Project Consultants:**

*[Describe the Consultant team makeup]*

The Client reserves the right to terminate and replace or supplement the services of any member of the consultant team working in conjunction with the Consultant, in consultation with the latter.

#### **2.1.3 General Responsibilities of the Consultant:**

*[Describe in detail the Consultant's responsibilities]*

### **2.2 GENERAL SERVICES ALL STAGES:**

The following is an outline of professional design services to be provided by the Consultant during each stage of the project. Unless specifically noted otherwise, these services will be considered part of Basic Services by the Consultant.

The project stages are to be completed per the Project Programme with a complete documentation of the final, Client-approved output of each stage distributed to all parties prior to commencement of work on the next stage. Completion of each stage will also entail the submittal of an updated cost estimate for the project in agreed format and reflecting the work of the stage in question. Approval of the output of each Stage of the Project and for each Project Component by the Client will include review of proposals by the Machine Khana Coordination body, including representatives of relevant Afghan Government institution.

## **PART 3: GENERAL TERMS AND CONDITIONS:**

### **3.1 DEFINITIONS:**

In construing this Agreement the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

"Additional Service" means any professional service outside of the scope of Services of the Agreement requested by the Client of the Consultant and for which the Consultant's Fee, scope and duration have been agreed to by both parties in writing.

"Agreement" means this Agreement which includes Parts 1 "Form of Agreement", Part 2 "Description of Designated Services", Part 3 "general terms and Conditions", and Part 4 "Appendices", and all amendments from time to time added hereto in accordance with this Agreement and/or be the agreement of the parties.

“Consultant’s Fee” or “Fee” means the fee charged by the Consultant pursuant to Section 1.2 hereof.

“Budget” means the value of the Facilities as agreed in writing between the Client and the Consultant as well as between the Consultant and the Quantity Surveyor and as the same may be amend in writing at a later stage.

“Certificate of Final Completion” means the certificate issued pursuant to the General Conditions of the Construction Contract.

“Completion” means acceptance of the entire Facilities as provided in Section 2.8 hereto.

“Consent” means written consent or approval of the Client.

“Contract Period” means the period in the Master Programme referenced in.

“Construction Contract” means and includes any contract entered into by the Client for the construction and installation of all or any part of the Works and includes all of the documents defined as “Contract Documents” in any Construction Contract and all such written and draw documents and materials ancillary thereto.

“Facilities” has the meaning given in the first paragraph of this Agreement and includes all works and details set out in the Project Brief as described in Appendix [..] hereto.

“Consultant” means the Consultant, identified as one party to this Agreement and the provider of the Services under this Agreement.

“Notice” means any notice given in writing and delivered in the manner set forth in Section 3.12.

“Client” means Aga Khan Trust for Culture, its successors and assigns, and any successor to its right, title and interest in and to this Agreement.

“Client’s Requirement” means the requirements of the Client specified in accordance with this Agreement.

“Professional Contract” means any contract between the Client, and a Professional Consultant.

“Project” is the Rehabilitation of the Machine Khana in Kabul as defined in Form of Agreement.

“Project Component” means a spatial zone of the Machine Khana of building facility that is definable as a sub-entity of the entire Site that is treated as a special area of design or construction activity with its own programme and budget.

“AKTC Project Team” means a group of Professionals (Architects & Planners) employed directly by the Client specifically towards the Management and Implementation of the Project; its successors, assigns and any successors to its right, title and interest and, where the context permits, the Client’s staff - as notified to the Consultant in writing.

“Project Teams Services” means the scope of work of the Project Team under Attachment.

“Services” means the services to the performed by the Consultant under this Agreement.

## **3.2 GENERAL ROLE OF THE CONSULTANT, PROJECT MANAGEMENT TEAM, AND SITE CONSULTANT**

### 3.2.1 Interpretation

3.2.1.1 In this Agreement words importing the singular only also include the plural and vice versa where the context requires.

3.2.1.2 The headings shall not limit, alter or affect the meaning of this Agreement.

### 3.2.2 Validity of Agreement

This Agreement is considered to have come into force upon execution and shall be valid until the issue of the Certificate of Final Completion, the agreement of the Final Account and the issuance of a certificate from the Consultant to the effect that the services have been completed in accordance with the scope of work and applicable laws and requirements of appropriate agencies, whichever the later, without prejudice to the provisions contained under Section 3.12 hereof.

### 3.2.3 Period of Services

The Services and preparation of all documents shall commence and be completed in accordance with the information contained in Part 2: Description of Designated Services and as stated in Part 4: Appendix 6: "Master Programme", to this Agreement so as to ensure that the service shall not be delayed by any failure of the Consultant to supply information or to observe and perform his obligations.

### 3.2.5 General Role of the Consultant

(1) *[Describe Consultant's roles]*

(2) The Consultant shall advise the Client of the need for any additional design Sub-consultants or Professional Consultants required for the design and implementation of the Facilities.

(3) The Consultant shall attend meetings scheduled, conducted and called by the AKTC Project Team to discuss procedural, progress, problems and scheduling matters.

(4) The Consultant shall receive and act upon instructions from the AKTC Project Team, which relate to the administration of the project.

(5) The Consultant hereby accept the relationship of trust and confidence between him and the Client by this Agreement, and covenants with the Client to furnish his best professional skill and judgement in furthering the interests of the Client. The Consultant agrees to apply his professional efforts at all times in an expeditious and economical manner consistent with the interests of the Client.

### 3.2.6 General Role of the AKTC Project Team:

The AKTC Project Team is employed directly by the Client and shall be deemed to be acting under the direction and control of the Client. The AKTC Project Team will administer and monitor the Architectural design and construction of buildings within the Project area and will co-ordinate the work performed by the Consultant, Professional Consultants, Contractors and Suppliers.

The AKTC Project Team will provide technical assistance to the Client, the Consultant and the Professional Consultants engaged with respect to the Facilities and will establish with the consent of the Client the design and construction programmes for the Facilities.

Except as otherwise provided herein or within the Professional, Construction and Supply Contracts, all communications between the Client, the Consultant, the Site Consultant, Professional Consultants, Contractors or Suppliers shall be through the Client's AKTC Project Team. The AKTC Project Team will have no authority to



relieve the Consultant, Site Consultant, Professional Consultants, Contractors or Suppliers of any duty or obligation under this Agreement or consent of the Client obtained in each instance.

If the Consultant shall be dissatisfied by reason of any instruction of the AKTC Project Team then the Consultant shall be entitled to refer the matter to the Client who shall thereupon confirm or otherwise such instruction.

### 3.2.8 No Gifts, Inducements or Bribes

The Consultant represents that it has not offered and shall not offer, and has not paid and shall not pay any fee, commission, gratuity, gift or remuneration, in each or in kind, to any person employed by the Client or its affiliated organization, or to any broker, intermediary, commission agent, business agnate or the like, in connection with the Client or its affiliated organizations. The Consultant shall not accept any fee, commission gratuity, gift or remuneration, in cash or in kind, from any person or organization other than the Client in connection with the performance of its services under this Agreement and shall promptly advise the Client of any unusual requirements, conditions or features of which it becomes aware in the course of taking such action, including, without limitation, fees, commissions, gratuities, gifts or remuneration sought or offered from any person or organization in connection with the works.

### 3.2.9 Consultant's Local Representative

In carrying out the duties and functions under this Agreement, the Consultant shall provide effective, personal and continuous supervision of the services provided, as agreed with the Client.

### 3.2.10 Restriction on Assignment

The Consultant shall not without prior written consent of the Client assign this Agreement or any of its benefits or obligations to any other person, firm or company.

## 3.3 ROLE OF WITNESS:

The Consultant agrees that, if and when necessary, he shall at the request of the Client, render all assistance that may be required by the Client for prosecuting or defending any legal proceedings or arbitration before any court of law, tribunal, authority or other such forums whatsoever. The said assistance may include inter alia access to documentation in the said legal proceedings. All reasonable costs incurred by the Consultant for discharging this obligation shall be reimbursed by the Client. The obligations of the Consultant under this Section shall survive the expiration or termination of this Agreement.

## 3.4 TAXES:

All taxes assessed on and payable within and outside Afghanistan by the Consultant and/or his personnel employed by him in connection with the Services to be performed herein shall be borne and paid, as the case may be, by the Consultant. The Client will deduct statutory taxes from invoices presented where required by tax code.

## 3.5 CLIENT'S RESPONSIBILITY:

The Client shall retain the ultimate authority for all decisions with respect to the design, planning, management, and construction of the Project facilities. The Consultant acknowledges that the retention and exercise of such authority by the Client and the performance of the Client's responsibilities hereunder of the granting of any Consent or approval (whether or not by professionally qualified representatives) shall not in any manner relieve the Consultant of Professional responsibility hereunder or cause any inference to be made that the Client has assumed or exercised any of the Consultant's responsibilities hereunder, provided that the Consultant shall not be required to act in a manner inconsistent with its professional responsibilities.

Specific responsibilities shall include:

(a) **Client's Requirements:** The Client shall, with assistance from the Consultant, specify the Project design objectives and the Client's Requirements, including the establishment or approval of separate line items and the budget for the facilities, general level of quality, time, and cost constraints, and such other information as will be needed by the Consultant and other Professional Consultants in order to fully carry out the Client's wishes and intent. It is the Consultant's responsibility to elicit such additional information from the Client, the AKTC Project Team or from other sources without jeopardizing the programme, cost, cash flow, or quality of Works.

(b) **Performance Review:** The Client shall review the performance of the Consultant for conformity with the Client's requirements. This performance review shall also be made with respect to Master Programme dates, minutes of meetings, and all relevant correspondence from the Client. Any such review shall not relieve the Consultant from any of his responsibilities under this Agreement.

(c) **Approvals:** The Client shall use its best efforts to render, within the agreed approval guidelines set forth in the Master programme, technical responses, approvals, disapprovals, or decisions to the Consultant on all Budgets, programmes, problems, and recommendations presented to the Client for review, provided that no response, approval, or other decision of the Client shall in any way modify the duty of the Consultant to meet the standards of care required by the Agreement, nor in any other manner modify the obligations or liabilities of the Consultant.

(d) **Information and Documents:** The Client will furnish, where available, all plans, specifications, and requirements, together with all information available to the Client concerning information as to existing site conditions.

### **3.6 LIMITATION ON CLIENT'S LIABILITY:**

Except for the obligation to pay accrued portions of the Consultant's Fee earned as herein provided, the Client shall not be subject to any liability to the Consultant, either at law or in equity, for the non-performance of any of its obligations hereunder, it being understood that the Client's obligations set forth in Section 3.5 hereof are intended primarily to establish an appropriate allocation of functional responsibilities in accordance with accepted consultant management practice.

### **3.7 LIMITATION ON CONSULTANT'S LIABILITY:**

3.7.1 **Standard of Loyalty:** In performing his duties under the Agreement, the Consultant shall exercise that degree of loyalty towards the Client as is customarily exercised by a fiduciary, namely at all times to act in good faith in a manner in the best interests of the Client.

3.7.2 **Standard of Care:** In performing his duties within the scope of this Agreement, the Consultant owes to the Client the duty to exercise that degree of skill, efficiency, good judgement, and care commensurate with that which is normally exercised in performing Services of the type to be provided hereunder to ensure that:

(a) the services shall be in accordance with the Client's Requirements including any performance specifications or requirements and any variations or changes required by the Client under the Construction Contract;

(b) the Works are not delayed by any failure of the Consultant to supply information or to observe and perform in his obligations.

The Consultant shall be responsible to correct, at no additional Fee, Compensation, any deficiency in service which result from failure to meet the standard of care, skill, efficiency, and good judgement and if he fails to make such corrections he shall be liable to the Client for losses resulting therefrom. The Consultant shall indemnify and hold the Client harmless from all damage, loss, or expenses arising from acts of negligence, omissions which fail to meet the standard of care, skill, efficiency and good judgement of a professional Consultant holding himself as competent to undertake the services contained herein in respect to the Project.

3.7.3 **Confidentiality and Clientship of Documents:**

(a) The Consultant agrees and shall cause his employee(s) and direct consultant(s) to keep confidential all information and documents acquired in the course of performing the Services under this Agreement and shall not use the name of the Client (or persons associated with the Client) or such information or documents for public relations, media or sales purposes or any other purpose without the prior written Consent of the Client in each case obtained.

(b) All documents produced by the Consultant during the performance of his obligations hereunder shall be the property of the Client and may not be reproduced by the Consultant for any public relations, media, sales, or other purposes. The name of the Consultant may only be placed on project documents or used in connection with the Project for media or public relations purpose to the extent required by this Agreement or expressly previously authorized in writing by the Client, provided that nothing in this Agreement shall prohibit the Consultant from revealing such information or documents as may be necessary to comply with any law, order, or regulation of any governmental authority.

(c) All documents produced by the Client to publish the project shall at the sole option of the Client acknowledge the Consultant.

### **3.8 COMPLETION AND ACCEPTANCE OF THE WORKS:**

[To be defined]

### **3.9 PROFESSIONAL INDEMNITY INSURANCE:**

Insurance of the Consultants: The Consultant's team shall arrange for and maintain in force the following minimum levels of insurance coverage for each given category:

3.9.1 General Liability: as required by law

3.9.2 Professional Liability Insurance

### **3.10 SUSPENSION AND TERMINATION**

3.10.1 Suspension: The Consultant shall, on Notice of the Client, suspend the Services either in whole or in part as instructed for such time or times and in such manner as the Client may consider necessary.

3.10.2 Termination:

(a) This Agreement may be terminated by the Client (i) at any time at his sole option upon thirty (30) days Notice to the Consultant, or (ii) if the Consultant commits a breach or fails to observe or perform his obligation under this Agreement, which breach is not rectified within fourteen (14) days after Notice thereof to the satisfaction of the Client.

(b) The Consultant may terminate this Agreement (i) if the Client fails to make any payment required to be made hereunder, which failure is not rectified within sixty (60) days after Notice thereof, or (ii) upon thirty (30) days Notice to the Client if there is a suspension pursuant to Section 3.13.1 for One Hundred and Twenty (120) or more consecutive days not the result of Force Majeur.

(c) Upon termination, the Consultant shall be paid the proportionate amount of his Fee earned based on Section 1.4 and based on accurately reflecting work carried out, up to the date of the termination (except in the case of termination for default of the Consultant) and any amounts retained pursuant to Section 1.4 which shall be the sole entitlement of the Consultant by reason of such determination.

3.11. Reimbursement:

All reimbursements, guarantee or similar claimable payments and any insurance payments shall be made for account of the Project-Executing Agency to account at KfW, Frankfurt am Main, IBAN: DE53 5002 0400 3800 0000 00, BIG: KFWIDEFF, with KfW crediting such payments to the account of the Recipient. If such payments are made in local currency they shall be remitted to a special account of the Project-Executing Agency in the

country of the Project-Executing Agency, which may be drawn on only with the consent of KfW. Such funds may be re-utilized for the execution of the project with KfW's consent.

### **3.12 FORCE MAJEURE:**

Neither party shall be liable to a claim for default or breach of Contract for a failure or delay in the performance of its obligations to the extent that such failure or delay results from any cause beyond the reasonable control of such party as herein set forth in the next paragraph and in such event the agreed upon estimated time of completion established by the Master Programme extended for such additional time as may be necessary on account thereof and the timing (but not the amount) of payments of the Fee shall be similarly extended in accordance with Section 1.4.

Causes beyond the reasonable control of the parties means: (a) war, civil war, insurgency or other similar hostilities

(b) acts of government in its sovereign capacity

(c) earthquake, epidemic, or substantial fire not occasioned by the default of the Consultant

(d) strike or work stoppage not caused by, or restricted to, the personnel of the Consultant, which in each case halts the progress of the Work.

In such event the Client shall pay reasonable additional reimbursable expenses actually incurred by the Consultant. If any event of Force Majeur results in material damage to the Works in consequence of which the Consultant is required to perform further services, the Client shall pay such additional fees as have been agreed in Section 3.1.1 herein above.

No event arising from or in connection with the Consultant's own organization or staff, such as bankruptcy, strikes, death, illness, or other event shall be deemed to be an event beyond the reasonable control of the Consultant.

Should any of the foregoing events occur, the party claiming that such event has occurred must promptly notify the other parties hereto.

### **3.13 NOTICES:**

3.12.1 Any Notice to the Client provided for herein will be deemed sufficient if sent by Telex, facsimile, registered or certified mail, postage pre-paid, return receipt requested, addressed to the Client's main offices, (Aga Khan Trust for Culture, 1-3 Avenue de la Paix, 1202 Geneva, Switzerland) and any Notice to the Consultant shall be deemed sufficient if sent by telex, facsimile, registered or certified mail, postage pre-paid, return receipt requested, addressed (Consultant, TBD), or to such other address or addresses as the Client may hereinafter designate from time to time by Notice in writing to the party hereto.

3.12.2 Where the notice is served or sent by post it shall be deemed to be received five (5) business days from the date of posting. Notice sent by telex or facsimile shall be deemed to be received at the time of transmission unless outside the normal business hours of the receipt in which case shall be deemed to be 10:00 a.m. on the following business day.

### **3.14 ARBITRATION:**

3.13.1 Any claim, dispute or difference between the Client and the Consultant arising out of or in connection with the services performed hereunder or any matter connected therewith, which cannot be settled amicably shall be finally and conclusively resolved by arbitration under the law of Geneva.

3.13.2 The award rendered by the Arbitrator shall be final and binding and judgement may be entered upon it in any Court having jurisdiction to do so. In no event shall this Section be construed as conferring upon any Court authority jurisdiction to inquire into or review such award on its merit.

3.13.3 All official costs of Arbitration proceedings under this Section shall be borne equally by the parties hereto, but each party shall bear its own costs in respect of the proceedings.

3.13.4 In no event shall the existence of a dispute or the pendency of an Arbitration proceeding under this Agreement be permitted to impede the progress of the design or construction of the project, and the Arbitrators shall not enter upon a reference until after the date of issuance of the certificate of final completion of the Works, unless this Agreement is terminated earlier.

**3.15 COPYRIGHT:**

The copyright of all research findings, drawings, design, reports, and in models and architectural renderings and in the work executed from them shall remain the property of the Client and shall survive the expiration or termination of this Agreement.

**3.16 REASONABLE INFERENCE:**

In the event of a duty, obligation, or liability not specifically mentioned in this Agreement, but which is reasonably inferable as being necessary to produce the intended results, this Agreement shall be interpreted as requiring such a duty, obligation, or liability of the Consultant as if it were specifically mentioned.

**3.17 GOVERNING LAW:**

This Agreement shall be governed, construed and determined in all respects, including substantive and procedural rules, which may be applicable in arbitration proceedings, in accordance with the laws of Geneva (Switzerland).

**PART 4: APPENDICES:**

## Section 8. SECURITY FORMS

### Bid Security (Bank Guarantee)

WHEREAS, *[name of Bidder]* (hereinafter called "the Bidder") has submitted his Bid dated *[date]* for the construction of *[name of Contract]* (hereinafter called "the Bid").

KNOW ALL PEOPLE by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called "the Bank") are bound unto name of AKTC] (hereinafter called "the Employer") in the sum of *[amount]* for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

SEALED with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*.

THE CONDITIONS of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity:
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
  - (c) does not accept the correction of the Bid Price pursuant to Clause 27,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer's having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the two conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date 28 days after the date of the expiration of the Bid Validity, as stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

DATE \_\_\_\_\_ SIGNATURE OF THE BANK \_\_\_\_\_

WITNESS \_\_\_\_\_ SEAL \_\_\_\_\_

\_\_\_\_\_  
*[signature, name, and address]*

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**Performance Bank Guarantee**

To: [name and address of Employer]

WHEREAS [name and address of Contractor] (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. [number] dated [date] to execute [name of Contract and brief description of Works] (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of [amount of Guarantee] [amount in words], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of [amount of Guarantee] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

**In the event of any claim under this guarantee, payments shall be effected to KfW, Frankfurt am Main, IBAN: DE53 5002 0400 3800 0000 00, BIG: KFWIDEFF, for account of ..... (project-executing agency / Purchaser).**

**If such payments are made in local currency they shall be remitted to a special account of the Project-Executing Agency in the country of the Project-Executing Agency, which may be drawn on only with the consent of KfW. Such funds may be re-utilized for the execution of the project with KfW's consent.**

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

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**Bank Guarantee for Advance Payment**

To: [name and address of Employer]

[name of Contract]

Gentlemen:

In accordance with the provisions of the Conditions of Contract, ("Advance Payment") of the above-mentioned Contract, [name and address of Contractor] (hereinafter called "the Contractor") shall deposit with [name of Employer] a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of [amount of Guarantee] [amount in words].

We, the [Bank or Financial Institution], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to [name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding [amount of Guarantee] [amount in words].

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between [name of Employer] and the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of (client/project executing agency/purchaser).

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until [name of Employer] receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal:

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_