AGREEMENT
5th September 2017

CONSULTANCY AGREEMENT

Architect Commission
HOLOCAUST NAMES MEMORIAL AMSTERDAM

This consultancy agreement (the "Agreement") is made and entered into as of the 5th day of September, 2017 (the "Effective Date") between

The Client: Netherlands Auschwitz Comite
Postbus 74131
1070 BC Amsterdam
The Netherlands

(hereinafter referred to as the "Client")

and

The Architect: Studio Daniel Libeskind, Architect LLC
150 Broadway, 18th Floor
New York, NY 10038
USA

(hereinafter referred to as the "Architect") (collectively, the "Parties")

in which the Parties have agreed as follows:

1. Basis of the Agreement

1.1 De Nieuwe Regeling 2011 (The New Rules 2011), legal relationship client – architect, hereinafter to be referred to as: "DNR 2011", shall apply to the present agreement, except if and to the extent that one or more provisions from the DNR 2011 have expressly been deviated from in this agreement.To the extent any provisions set forth in this Agreement conflict with any provisions of the DNR, the provisions of this Agreement shall prevail. By signing this agreement, the Client and Architect declare to have been given a copy of the DNR 2011 or to be otherwise familiar with these terms and conditions.

1.2 Services for the Project are described in Appendix 1.. At the time of signing this Agreement, the Project is in Definitive Design phase.



1.3 This agreement represents the entire agreement between the Client and the Architect. The letter of agreement dated on March 13, 2017 hereby expires and is replaced by this agreement.

2. Validity

2.1 This Agreement shall be valid from the Effective Date until the date on which the scope of work has been fulfilled, expectedly in the first half of year 2018. The provisions of sections 9, 10 and 14 shall survive indefinitely.

3. Project Description

3.1 The Project is located on Weesperstraat on the site of a landscaped area of approx. 1.738 sq.m., adjacent to the Hoftuin.

3.2 The Project consists of approx. 2.3 m high brick walls and metal clad structures in the shape of the 4 Hebrew characters forming the words 'In Memory Of'. The names of 102.000 Dutch victims of the Holocaust are individually etched in the bricks of the wall.

3.3 The preliminary maximum target budget had been defined by the Client as 5 Mill. Euro. An initial cost estimate has set the costs at 3.283.388 Euro of construction costs and 1.422.215 Euro additional costs, total net costs of 4.705.602 Euro.

4. Scope of Services

4.1 The Architect agrees will provide partial architectural services for the Project.

The Design Phases of Consultancy Services are:
Preliminary Design
Definitive Design
Technical Design
Construction Phase

Rijnboutt will provide partial architectural services under separate contract with the Client.

The services and responsibilities of either architectural firm are further described in the Services and Responsibilities Schedule, attached hereto as Appendix 1. Between them, the Architect and Rijnboutt will provide the architectural services that are necessary to carrying out the project.

4.2 The Definitive Design phase will be completed under the terms of the letter agreement dated March 13, 2017.

4.3 The start of each of the following phases is to be initiated by the Client. No work related to each of the project phases shall be started without the approval of the Client.

[redacted]

4.4 Services beyond the scope of basic services according to DNR 2011 and as described in Appendix 1, will be regarded Additional Services (refer to DNR 2011, Article 9). In particular, making revisions to drawings will be regarded Additional Services if such revisions are

a) significantly inconsistent with instructions or approvals previously given by the Client;

b) required because of significant changes to the Project including size, quality, complexity, schedule, budget or procurement method;

c) required by the enactment or revisions of codes, laws or regulations subsequent to approval of documents;

d) due to changes required as result of Client's failure to render decisions in a timely manner

e) required to reduce the cost of the Project if the budget approved by the Client is reduced.

f) Under separate contract with the Client, Rijnboutt provides project management services in collaboration with project manager [redacted] Under separate contract with the Client, IMD Raadgevende Ingenieurs provides structural engineering services.

5. Responsibilities of the Client

5.1 The resposibilities of the Client includes:

a) services according to DNR 2011, Article 12

b) conducting the Clients responsibilities regarding administration and management

c) defining the maximum target budget for the construction cost, ref. 3.3

d) initiating each of the project phases, ref. 4.3

e) preparation and coordination of consultancy agreements with Rijnboutt, IMD and other consultants for the project, ref. to DNR 2011, Article 6

f) conducting the contractual matters of law regarding assessing the draft documents prepared by the consultant

g) coordinating and negotiating with the authorities, including submitting the building application

h) coordinating with the Staadsdeel Centrum and other partners involved

[redacted]

i) coordinating interfaces to other projects in relation to the Project, particularly to theadjacent subway station and tunnel.

6. Time Schedule

6.1 The agreed time schedule for the Project is attached as Appendix 2. Time limits established in these schedules shall not, except for reasonable cause, be exceeded by the Client or the Architect (ref. to DNR 2011, Article 19). However, the time schedule may be adjusted from time to time in agreement between Client and Architect.

7. Fee and Reimbursable Expenses

7.1 A fixed fee (according to DNR 2011, Article 54) of Euro 375.000 exclusive of VAT (the "Total Payment Amount") will be paid to the Architect for architectural services as described in detail in Appendix 1. Within this fee, a fixed fee of Euro 175,000 will be paid to the Architect for architectural services related to Preliminary Design and Definitive Design phases (Stage I of the project).

7.2 Additional fees (according to DNR 2011, Article 55, 3) will be paid if the Architect is required to provide Additional Services as described in Clause 4.4 above. Unless otherwise agreed between the Architect and the Client prior to the provision of such Additional Services, Additional Fees will be paid on an hourly rate basis as follows:

- [redacted]	time rate:	Euro 275
- [redacted]	time rate :	Euro 200
- [redacted]	time rate:	Euro 175
- Associate	time rate:	Euro 150
- Architect 1	time rate :	Euro 125
- Architect 2	time rate :	Euro 100
- Intern	time rate :	Euro 000

7.3 Any payments shall be subject to Durch VAT. VAT shall be paid by the Client in addition to the Total Payment Amount (according to DNR 2011, Article 49), Reimbursable Expenses and Additional Fees, if any, to the relevant tax authorities in the Netherlands.

7.4 All invoicing shall be on according to the Payment Schedule, attached as Appendix 3, which shall be amended from time to time based on the actual progress of the Project.

7.5 Reimbursable expenses will be paid by the Client according to DNR 2011, Article 50, 4, with the following specifications:

a) The Client will reimburse the consultant for the expenses of project related trips, if they have been approved in writing by the Client prior to the trip. Expenses of project-related trips include costs of travel and accommodation. [redacted] travel in First Class, Partners, Principals and Associates travel in

[redacted]

Business Class. [redacted]odge in 5-star hotels, Partners, Principals, Associates and Project Architects in 4-star hotels.

b) Drawings and other documents are generally submitted in electronic format. If the Client requests printed documents, the Client will approve of the costs of the prints and reimburse the Architect for these expenses.

c) Presentation models and renderings are not included in the Total Payment Amount. If the Client requests such models and renderings the Client will approve of the costs and reimburse the Architect for these expenses.

d) The Client will reimburse the Architect for costs for obtaining approvals and certificates.

8. Key Personnel

8.1 The Architect has appointed the following key personnel, which have been approved by The Client:

- [redacted]
- [redacted]Partner-In-Charge
- [redacted]Principal-In-Charge and Project Architect

8.2 It is the intent of the Client and the Architect to retain the key personnel for the life of this Agreement to the extent practicable. If the Architect decides to replace any of its key personnel, the Architect shall be required to replace any such person with a person of like qualifications and experience. For any such replacement, the Architect shall seek the approval of the Client, which the Client shall not withhold unreasonably. [redacted] however can not be replaced.

8.3 For all matters relating to this Agreement, the Client's authorized representatives will be:

- [redacted]Netherlands Auschwitz Comite

9. Intellectual property rights

9.1 In addition to the provisions of DNR 2011, Article 45 and 46, Client and Architect agree on the following terms.

9.2 Drawings, specifications and other documents, including those in electronic form prepared by the Architect and the Architect's consultants are Instruments of Service (refer to Clause 15 below) for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

[redacted]

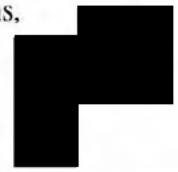
9.3 The Client will be granted the right (the "License", refer to Clause 15 below) to retain, use, reproduce, exhibit and distribute copies, including reproducible copies and (scale) models (and copies of computer disks or other computer memory storage devices) of the Instruments of Service for any of the following purposes:

a) constructing, using and maintaining the Project;

b) promotion and support of the Project, including providing the public with information on the Project in any form (such as brochures, cards, videos, (scale) models etc.).

9.4 In the case of termination for the Architect's substantial failure to perform, as referred to in Clause 12.1 below, the Client will retain the full License herein granted. If the project is terminated for any reason not the fault of the architect as described in Clause 12.2 and 12.3, the Architect is entitled to revoke the License granted to the Client as described above. In either case, the Architect will be credited for the work done to the date of termination but will not be credited or held liable in any way for the further development of that work. And in such a case, the Client agrees that the Architect will not have any liability to the Client for any revision or addition to, alteration or deviation from the Instruments of Service occurring subsequent to termination in accordance with the Agreement. To the fullest extent permitted by law, the Client shall defend, indemnify and hold the Architect, its officers, directors, shareholders, partners, principals, agents, employees, consultants, successors and assigns, harmless from and against all liability, loss, damages, costs and expenses, including attorneys' fees and disbursements, which any of them may at any time sustain or incur by reason of any substantial revision or substantial addition to, evident misuse of or substantial deviation from the Instruments of Service occurring subsequent to the Architect's completion of services under or the earlier termination of this Agreement.

9.5 The Client recognizes that, upon approval of the Client, the Instruments of Service may be generated, stored, transmitted or published in various media, including, but not limited to traditional hard-copy (i.e., blue-prints), CADD formats, via Internet or Extranet websites (including a project FTP site, if one exists) and the Instruments of Service may be subject to tampering, modifications by parties over whom the Architect has no control. The Instruments of Service are also subject to discrepancies as a result of numerous factors, including, transmission and translation errors resulting from differences in computer software, hardware and equipment-related problems, disc malfunctions and user error. If requested and provided the Architect has been paid in accordance with this Agreement, the Architect shall provide the Client with the Instruments of Service in electronic form. The Architect's provision of documents in electronic form in accordance with this provision shall be part of his services under this Agreement. The Client releases the Architect from any claims as a result of differences between the Architect's filed hard copy and the electronic form of Instruments of Service. For each recipient to whom the Client provides the Instruments of Service in electronic form or to whom the Architect provides the Instruments of Service in electronic form at the Client's request or under this Agreement the Client agrees to defend, indemnify and hold the Architect harmless from all claims,



causes of action, suits, demands and damages, arising from any differences between the filed hard copy and the electronic form of Instruments of Service.

9.6 At the end of each design phase, the Architect shall provide the Client with a copy of the Instruments of Service that are deliverable in this phase according to the List of Deliverables, attached as Appendix 2. These may include drawings, specifications and other documents, including those in electronic form such as 3d model and DWG files.

10. Confidentiality

10.1 The Architect undertakes to keep all information relating to this Agreement and all dealings relating hereto confidential.

10.2 The Architect hereby represents and warrants to the Client that only employees of the Architect shall have access to the information relating to this Agreement, but only to the extent disclosure of such information is necessary to permit such persons to assist the Architect fulfil its obligations under this Agreement.

10.3 The Architect shall maintain this Agreement and all communications, dealings and interactions with the Client confidential and not use or refer to the Client in any advertisement, promotion, marketing material or the like without the prior written consent of the Client.

11. Assignability

11.1 The Client may, upon the written consent of the Architect, which shall not unreasonably withheld, assign or transfer his rights and obligations under this Agreement to any other party, for example Stadsdeel Centrum, but only if the Assignee agrees to the terms and conditions of this Agreement.

11.2 The Architect shall not, without the prior written consent of the Client, assign its obligations hereunder to any third parties in the performance of any of its obligations under this Agreement.

12. Suspension and Termination

12.1 This Agreement may be terminated by either party upon not less than fourteen (14) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If the defaulting party fails to cure its default within the fourteen (14) days notice period, or fails to undertake reasonable efforts to cure its default when the cure cannot reasonably be completed within fourteen (14) days, the termination shall take effect without further notice.



12.2 The Client may terminate this Agreement upon not less than seven (7) days written notice for the Client's convenience and without a cause. In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and as described in Clause 7.5, together with Termination Expenses (refer to Claus 14 below). Termination Expenses include expenses directly attributable to termination.

12.3 This Agreement may be suspended by the Client upon written notice to the Architect. If the Project is suspended by the Client for more than thirty (30) consecutive days, then the Architect shall be compensated for services performed until the date of suspension and Demobilization Expenses (refer to Clause 14 below) in connection with such suspension. Demobilization Expenses are all expenses related in any way to the Architect's suspension of services. Upon resumption of the Project, the Architect shall be compensated for costs reasonably incurred as a result of the suspension.

12.4 In any case, termination for the Clients convenience and without a cause will be subject to clause 9.4. For the avoidance of a doubt, the client must not continue the project with another Architect, unless he ceases to use the name of [redacted] in connection with the project.

12.5 Notwithstanding Clauses 12.2 and 12.3 above, the Client may suspend or terminate this Agreement for the Client's convenience and without a cause, upon written notice, when Project Proposal Phase A is completed. In this case, the Architect will be paid the Fees agreed for the phase together with Reimbursable Expenses then due and as described in Clause 7.5 but no Demobilization or Termination Expenses. If the Client decides to terminate the Agreement upon completion of Project Proposal Phase A, Clause 9.4 will apply.

12.6 Notwithstanding Clauses 12.2 and 12.3 above, the Client may suspend this Agreement for the Client's convenience and without a cause, upon written notice, if the Project is delayed due to approval withheld by the authorities.

12.7 If this Agreement is terminated by the Client for the Architect's substantial failure to perform in accordance with this Agreement, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and as described in Clause 7.5.

13. Dispute Resolution

13.1 In the event of any dispute arising under or relating to this Agreement or the Parties' dealings hereunder, the Client and the Architect shall attempt to resolve such dispute through the amicable discussion between the parties. If the parties cannot resolve the dispute, the dispute shall be resolved by mediation. If mediation is unsuccessful, the dispute shall be resolved in the Court of Amsterdam, The Netherlands and all proceedings related thereto will be conducted in English. This Agreement, all rights and obligations

[redacted]

granted or imposed herein, and all disputes arising under or relating to the foregoing shall be governed exclusively by Dutch law.

14. Insurance

14.1 The Architect shall maintain professional liability insurance in the amount of US$ 500,000 per claim up to US$ 500,000 aggregate per annum from the commencement of the project until 6 years after practical completion of the project. The certificate of insurance is attached to this Agreement as Appendix 4. The Architect's liability shall be limited to the professional liability required in this Agreement.

15. Definitions

Instruments of Service

Drawings, specifications and other documents, including those in electronic form (as e.g. 3D models, dwg-files or similar) prepared by the Architect or the Architect's consultants are Instruments of Service.

License

The right to retain, use, reproduce, exhibit and distribute copies, including reproducible copies (and copies of computer disks or other computer memory storage devices) of the Instruments of Service (see above), which have been delivered by Architect to Client.

Termination Expenses

Termination Expenses are expenses that are directly attributable to termination (for example costs for personnel which cannot be reassigned to other projects and whose contracts cannot be immediately terminated; costs of computers that have been exclusively been bought for the project team; office space that has been rented for the project and which lease cannot immediately be terminated).

Demobilization Expenses

Demobilization Expenses are expenses related in any way to the Architect's suspension of services (for example costs for personnel which cannot be reassigned to other projects and whose contracts cannot be immediately terminated; costs for the resourcing and instruction of new personnel once the project is being resumed).



This Agreement shall be signed in two counterpart originals, which form one and the same instrument, of which one executed counterpart original shall be held by the Architect and one shall be held by the Client.

[redacted]

Appendices:

1. Services and Responsibilities Schedule
2. Time Schedule
3. Payment Schedule
4. Studio Daniel Libeskind Professional Indemnity Insurance Certificate
5. DNR 2011