



CONTRACT FOR PROFESSIONAL SERVICES

CHAPTER ONE

PROJECT TERMS AND CONDITIONS

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CONTRACT PARTIES

This Contract for Professional Services, dated as of [____], 20____, is entered into by and between the Dormitory Authority of the State of New York, a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Title 4 of Article 8 of the Public Authorities Law, as amended and having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964 ("DASNY" or the "Owner") and [____], whose office is located at _____, (the "PROFESSIONAL").

REPRESENTATIONS

- A. The Owner (defined herein) intends to _____ at _____, and is engaging the Professional to perform _____ services for the Project (defined herein).
- B. The Owner and the Professional each acknowledge that it will act in good faith in carrying out its duties and obligations.
- C. The Owner's engagement of the Professional is based upon the Professional's representations to the Owner that it (i) is an organization of professionals experienced in the type of services the Owner is engaging the Professional to perform; (ii) is authorized and registered to do business in the State of New York with the New York State Department of State; (iii) if an architect, is licensed and registered to provide architectural services, and if an engineer, is licensed, registered and certified to provide engineering services, in the State of New York by the New York State Department of Education; (iv) is qualified, willing and able to perform professional services for the Project; (v) has the expertise and ability to provide professional services which will meet the Owner's objectives and requirements, and which will comply with the requirements of governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (vi) is financially solvent.
- D. The Owner and Professional each acknowledge that it has reviewed and familiarized itself with this Contract for Professional Services, including the documents enumerated in Article 1 of this Chapter One, and agrees to be bound by the terms and conditions contained therein.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this Contract for Professional Services, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

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Additional Insured: An entity, including but not limited to the Client and the Construction Manager, designated by the Owner to be included in an endorsement to the Professional's Commercial General Liability Policy naming such entity as an additional insured under said policy.

Additional Services: Services defined in Chapter Two, Appendix B, which includes services that are initiated only through a Contract Amendment.

Approved Construction Budget: The Owner's designated budget for the Cost of Construction.

Basis of Design: Documentation of the design goals, ideas, and concepts considered by the Owner or Client to be important to the Project, based on information gathered during the early stages of design (programming, conceptual, pre-schematic, schematic). The Basis of Design is developed, prepared and/or confirmed by the Professional from information provided by Owner or Client and the Owner's and Client' Project Requirements, objectives and guidelines.

The Basis of Design documentation shall include, but is not limited to, the concepts, calculations, decisions, assumptions, parameters, systems preferences, product selections and the intended means by which applicable programmatic, regulatory and sustainability requirements, standards, guidelines and objectives shall be met. It shall include a narrative description and delineation of (1) the intended design components and systems, design parameters, the objectives of the design components and systems, and the means by which the design components and systems will meet those objectives; (2) the occupancy, space and process and operational requirements, reference to and excerpts from applicable codes, policies and standards; design parameters and assumptions; performance standards, benchmarks or metrics; interactions between systems affecting intended performance; and control systems appropriate for the operating and maintenance staff; (3) data and delineation regarding space temperature and humidity criteria, thermal zoning criteria, level of occupancy control over HVAC systems, ventilation requirements and related indoor air quality criteria; performance criteria related to energy efficiency, facility functional and environmental needs; and commissioning criteria; and (4) other data and information in conformance with the Consultants Design Guideline and applicable Client Guidelines and requirements.

Certificate of Authorization: Business entities legally permitted to provide professional engineering and/or land surveying services in New York State are required to obtain a "Certificate of Authorization to Provide Engineering or Land Surveying Services in New York State" from the State Education Department according to section 7210 of the New York State Education Law.

Claim: A demand by the Professional seeking, as a matter of right, adjustment or interpretation of the terms of this Contract for Professional Services, payment of money, an extension of time, or other relief with respect to the terms of this Contract for Professional Services. The term Claim also includes other disputes and matters in question between the Owner and Professional arising out of or relating to the Contract for Professional Services.

Client: The entity for whom the Owner is performing services, including subsidiaries, agents, related corporations, or fiduciaries of the entity.

Commissioning: A quality assurance and quality control process that documents the process by which specified systems and components are designed, installed, properly started-up and then functionally tested to verify and document proper operation through specified modes of operation and conditions in accordance with the Basis of Design for Commissioning, Design Intent and

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Owner's Project Requirements. In addition, necessary and proper training of operating and maintenance personnel, identified by the Owner, is verified and final project operating and maintenance documents are reviewed to verify completeness

Commissioning Agent: The Commissioning Agent is responsible for carrying out the detailed planning and implementation of Commissioning the work of its contract. The Commissioning Agent shall execute its obligations through individuals and entities with the expertise for their task or tasks and the authority to act on behalf of the Commissioning Agent.

Commissioning Authority: The entity, contracted directly by the Owner, responsible for ensuring that the Commissioning is properly executed. The Commissioning Authority defines, directs, and coordinates the Commissioning and makes final recommendations to the Owner regarding the performance of the commissioned building systems. The Commissioning Authority can be a natural person, partnership, limited liability company, corporation, or other legal entity regularly engaged in Commissioning.

Commissioning Plan: The document prepared for the Project by the Commissioning Authority that describes all aspects of the Commissioning for the Project, including, but not limited to, schedules, responsibilities, documentation requirements, and functional performance test requirements. The level of detail depends on the scope of Commissioning specified.

Commissioning Report: The document prepared by the Commissioning Authority during the acceptance phase of Commissioning after functional performance tests are completed. It summarizes the results of the Commissioning, including, but not limited to, conformance to the Contract Documents, the Owner's Project Requirements, the Design Intent, the Basis of Design for Commissioning, and the as-built system performance.

Construction Contract Price: The dollar amount for which a Contractor agrees to perform the Work set forth in a Contract.

Construction Documents: Documents prepared by the Professional, including but not limited to, drawings and specifications setting forth the structural, mechanical, electrical, civil, and all other systems and disciplines required for the Project, indicating in detail the quality levels and performance criteria of materials and systems and other requirements for construction of the Work. The Construction Documents are more fully described in Article 5 of Chapter Two of this Contract for Professional Services.

Construction Manager: A natural person, partnership, limited liability company, corporation, or other legal entity regularly engaged in the management of construction projects, and so designated by the Owner.

Contract: The agreement between the Owner and a Contractor, consisting of the Contract Documents, to construct all or part of the Project.

Contract Amendment: A written instrument, signed by an authorized officer of DASNY and either (1) an authorized officer of the Professional, amending, modifying, changing, or supplementing the Contract for Professional Services; or (2) an authorized officer of the Contractor amending, modifying, changing, or supplementing the Contract.

Contract Documents: The documentation, including that prepared by the Professional, which sets forth, or is designed and intended to set forth, the Work which forms the basis of the

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agreement between the Owner and Contractor to construct all or part of the Project. The Contract Documents include but are not limited to the Construction Documents.

Contract for Professional Services: This written agreement between the Owner and the Professional for the provision of Professional Services.

Contractor: A natural person, partnership, limited liability company, corporation, or other legal entity with whom the Owner enters into the Contract to perform the Work.

Cost of Construction (or Construction Cost): The total cost to the Owner to complete construction of the Project, including, but not limited to, total building and sitework costs, allowable construction contingencies, general conditions whether provided by a trade contractor or construction manager; and an appropriate cost escalation factor.

DASNY: Dormitory Authority of the State of New York, a public benefit corporation and public authority established by the Public Authorities Law of the State of New York with its principal place of business at 515 Broadway, Albany, New York 12207-2964.

Design Intent: The Professional's assessment and determination regarding the Work delineated in the Construction Documents, and the conformance of construction quality, materials, equipment, components and proposed substitutions with the project requirements, objectives and goals.

False Claim: Any Claim which is, either in whole or part, false or fraudulent.

False Representation: This action takes place when a person has knowledge of the value of the work and materials supplied, performed, or proposed (the "Information") constituting a Claim, change order, Contract Amendment or Application for Payment and either acts in deliberate ignorance of the truth or falsity of the Information or acts in reckless disregard of the truth or falsity of the Information.

Hazardous Material: any substance (gas, liquid, or solid) or agent (biological, chemical, radiological, physical, or having two or more of the preceding characteristics) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors, including but not limited to heavy metals, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, herbicides, dioxins, biological wastes, carcinogens, asbestos or any substance containing asbestos, polychlorinated biphenyls, lead, urea formaldehyde, explosives, radionuclides, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials, and any item defined as a hazardous, special, or toxic material, substance, or waste under any Hazardous Material Law, including, but not limited to, the NYS Environmental Conservation Law and Title 6 of the New York Code of Rules and Regulations.

Hazardous Material Laws: collectively, any present federal, state or local law, including valid amendments, relating to public health, safety, or the environment, including without limitation, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Clean Air Act, 42 U.S.C. §7401 et seq.; the Hazardous Materials

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Transportation Act, 49 U.S.C. §5101 et seq.; the Clean Water Act, 33 U.S.C. §1215 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq.; the Atomic Energy Act, 42 U.S.C. §2201 et seq.; the NYS Environmental Conservation Law; the NYS Labor Law; the NYS Public Health Law; and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter enacted or promulgated under any such statute.

Inspect: The periodic visual observation of construction work for the purpose of ascertaining that the work is in compliance with the Contract Documents and consistent with the Design Intent.

Instruments of Service: Representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Professional and the Professional's consultants under their respective professional services agreements.

Multiplier: The factor by which the cost of the Professional's direct labor expended on the Project is multiplied to determine the total payment to the Professional for its direct labor, overhead and profit.

Notice of Physical Completion: Written notice, in a standard Owner's form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Physical Completion.

Notice of Substantial Completion: Written notice, in standard Owner's form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Substantial Completion and constitutes the start of the guarantee period.

Notice to Proceed:

A . Written notice, signed by the Owner, to the Contractor, that directs the Contractor to start performance of the Work or to start performance of a change in the Work; or

B . Written notice, signed by the Owner, to the Professional, that directs the Professional to start performance of the Contract for Professional Service or to start performance of a change to or specific portion of the Contract for Professional Services.

Owner: DASNY.

Owner's Related Parties: Any parent, subsidiary, Client or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

Owner's Representative: A natural person, partnership, limited liability company, corporation, or other legal entity so designated by the Owner to act on behalf of the Owner and designated as such in Article 2 of this Chapter One of this Contract for Professional Services.

OPR (Owner's Project Requirements): Written documentation that details the functional requirements of the Project and the expected use and operation of the Project, including but not limited to the criteria for a successful Project, the Owner and Client requirements and guidelines, the applicable regulatory and legal requirements, the environmental and sustainability goals, the energy efficiency goals, the indoor environmental quality requirements, the equipment and system expectations, the building occupant and operating and maintenance personnel requirements,

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measurable performance criteria, cost considerations, and other benchmarks and goals important to the Owner and/or Client.

Physical Completion: The stage in the performance of the Work when Work to be performed at the Site, except Work that may be required in the future by warranty or guarantee in the Contract Documents, is complete in accordance with the Contract Documents, evidenced by the Notice of Physical Completion executed by the Owner. Physical Completion requires that punchlist work be completed by the Contractor such that the Contractor is no longer required to perform Work at the Site.

Professional: The entity identified in the "Contract Parties" section of Chapter One of this Contract for Professional Services engaged directly by the Owner in this Contract for Professional Services.

Professional Contract Documents: The Request for Proposal, Contract for Professional Services, Addenda, Contract Amendment and all provisions of law deemed to be included in the agreement between the Owner and Professional for the provision of professional services in connection with the Project.

Professional Contract Price: The total compensation, including reimbursable expenses, due the Professional for performance of the Professional Services pursuant to this Contract for Professional Services.

Professional Services: The obligations explicitly and implicitly imposed upon the Professional by the Contract for Professional Services, including but not limited to, services and related items required to design or engineer the Project in compliance with requirements of this Contract for Professional Services.

Project: The planned undertaking, as more specifically described in Article 1 of Chapter Two of this Contract for Professional Services, to be constructed by one or more Contracts.

Project Design Schedule: The timetable that sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, Construction Documents and related activities.

Project Construction Schedule: The timetable that sets forth the required relationships between, and pertinent dates for, required completion of construction services, coordination services and related activities and the timely completion of the Work of the Contract or Contracts to construct the Project.

Project Management Program: The Owner's systems, programs and processes used for project management, coordination, control, information exchange and repository, including but not limited to: planning, budgeting, cost control, scheduling, resource allocation, change management, payments to vendors, quality management, management of contracts, and project documentation.

Project Schedule: The timetable that sets forth the required relationships between, and pertinent dates for, required completion of predesign services, design and engineering services, Construction Documents and related activities, procurement, construction services, coordination services and related activities and the timely completion of the Work of the Contract or Contracts to construct the Project.

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Reimbursable Expenses: Customary, necessary and reasonable expenses incurred by the Professional and/or its Subconsultants in the performance of the Professional's Required Services including, but not limited to, transportation, living and administrative expenses directly related to the Project, and reimbursed by the Owner pursuant to Subsection 6.1 (E) of Chapter One – Project Terms and Conditions and Section 7.2 of Chapter Three – General Terms and Conditions.

Required Base Services: Standard services, as set forth in Articles 1 through 8 of Chapter Two – Professional's Required Services, which the Owner expects to be performed by the Professional in any Contract for Professional Services.

Required Supplemental Services: Services indicated in Appendix A of Chapter Two that are not set forth as Professional's Required Base Services but are identified as the Professional's responsibility at the time the Contract for Professional Services is executed.

Site: The geographical location of the Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Subconsultant: An entity, including but not limited to, an architect or engineer, engaged directly or indirectly by the Professional, for the provision of services and related items required to design or engineer part or all of the Project, as described and agreed to in the Contract for Professional Services.

Subcontractor:

A. A natural person, partnership, limited liability company, corporation or other legal entity under contract with the Contractor, or under contract with any Subcontractor to the Contractor, in connection with the Contract, or

B. A natural person, partnership, limited liability company, corporation or other legal entity under contract with the Professional or a Subconsultant to the Professional in connection with the Contract for Professional Services, which entity is not obligated to perform design or engineering services.

Substantial Completion: The stage in the performance of the Work when Work is sufficiently complete in accordance with the Contract Documents so the Owner or Client can occupy or utilize the Work for its intended use, evidence only by the Notice of Substantial Completion executed by the Owner. Issuance of a temporary certificate of occupancy or a temporary approval for occupancy does not establish Substantial Completion.

Unmanned Aircraft System (UAS or DRONES): An aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) operated without the possibility of direct human intervention from within or on the aircraft.

Work: The obligations explicitly and implicitly imposed upon the Contractor by the Contract Documents.

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PROJECT SPECIFIC DEFINITIONS

Project Specific Requirements/Terms/Definitions *[Editor's Note: update based upon project specific needs]*

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PREAMBLE

The Professional is advised that, pursuant to specific provisions of this Contract for Professional Services, DASNY expects the Professional to provide design services that are coordinated amongst the Professional, subconsultants and various trade disciplines, and deliver a design and associated documents that are coordinated, code-compliant and constructable. If at any time DASNY determines that the design fails to meet such parameters, the Professional is obligated to timely remedy such defects at its own cost.

The Professional is further advised, pursuant to specific provisions of this Contract for Professional Services, that (1) DASNY, as the Owner, is the entity charged with implementing the Project, from design through completion of construction, including authority over, among others, its consultants and contractors engaged with and on behalf of various Client agencies and entities, that (2) the Professional's services require and involve DASNY direction, authorization, review and approval, typically provided in coordination with its Client agencies and entities, as well with regulatory authorities' requirements, reviews and approvals, and that (3) the Professional is advised that authorization and direction to the Professional for, among other things, the scope of work to be performed, to proceed, for changes and/or for additional work, shall be provided solely by DASNY and its duly authorized representatives, without which the Professional is proceeding at its own risk.

This Preamble is not exhaustive. Please refer to the individual contractual provisions of this Contract for Professional Services for their specific legal meaning and intent.

ARTICLE 1 – THE CONTRACT FOR PROFESSIONAL SERVICES

Section 1.1 The Contract for Professional Services between the parties is comprised of the agreements, terms and conditions set forth in the following documents:

- (i) Chapter One – Project Terms and Conditions, including the foregoing Contract Parties, Representations, Definitions and documents and appendices attached hereto;
- (ii) Chapter Two - Professional's Required Services and documents and appendices attached thereto;
- (iii) Chapter Three - General Terms and Conditions and documents and appendices attached thereto;
- (iv) the Owner's Request for Proposal, and documents and appendices attached thereto; and.
- (v) the Professional's Response to the Owner's Request for Proposal, and documents and appendices attached thereto, as approved by the Owner.

Section 1.2 In the event of any discrepancy, disagreement or ambiguity among the following documents, they shall be given precedence in the following order to interpret and resolve such discrepancy, disagreement or ambiguity:

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1. Chapters One through Three of the Contract for Professional Services
2. Owner's Request for Proposals
3. Professional's Response to the Owner's Request for Proposals as approved by the Owner

Section 1.3 If any term of the Contract for Professional Services or the application thereof to any natural person, partnership, limited liability company, corporation, or other legal entity or circumstance, shall to any extent be determined to be invalid or unenforceable, the remainder of the Contract for Professional Services, or the application of such terms or provisions to natural persons, partnerships, limited liability companies, corporations, or other legal entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract for Professional Services shall be valid and be enforced to the fullest extent permitted by law. It is the intent of the Owner and the Professional that the provisions of the Contract for Professional Services shall be construed to be valid under applicable law and shall be enforced to the maximum extent possible.

Section 1.4 In the event of a conflict between or among any parts of the Contract for Professional Services, including attachments and appendices thereto, having equal precedence, the better quality, greater quantity or more onerous provision in the Owner's judgment shall govern, regardless of cost, unless the Owner, in writing, directs otherwise. In each conflict, the Owner, in its sole and exclusive discretion, shall determine whether the quality, quantity or onerous provision method will be used to resolve the conflict.

Section 1.5 This Contract for Professional Services constitutes the entire agreement and understanding between the Professional and the Owner with respect to the Project and supersedes all prior agreements, arrangements and understandings, and all trade custom and trade usage, and the construction of any provision of the Contract for Professional Services shall not be affected by the wording of any other agreement, whether between the Professional and the Owner or involving other parties. The Contract for Professional Services may not be amended, modified, supplemented, or changed in any way except in accordance with a Contract Amendment. The legal relationship between the Owner and the Professional shall be governed solely by the Contract for Professional Services and no rights shall arise on any other basis, including but not limited to, oral agreement, partial performance, estoppel, conduct of the parties, course of conduct or any other course of dealing involving the Project or any other project. The meaning and intent of the Contract for Professional Services shall be interpreted solely by the Owner.

Section 1.6 This Contract for Professional Services may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The effective date of this Contract for Professional Services shall be the date upon which this agreement is duly executed by both parties.

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Section 1.7 The Professional shall not commence work until the Owner executes and delivers proper written authorization. Commencing work without any written authorization is at your own risk of non-payment or otherwise.

Section 1.8 The Professional agrees that it will take direction solely from Owner. Where the Professional takes direction from the Client or any other entity without approval by Owner, the Professional acknowledges that it is in breach of contract and proceeding at its own risk.

ARTICLE 2 – ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the Owner and the Professional are:

OWNER:

Representative:
Address:
City, State, Zip:
Telephone:
FAX:
Email:

PROFESSIONAL:

Representative:
Address:
City, State, Zip:
Telephone:
FAX:
Email:

OWNER'S PROJECT IDENTIFICATION INFORMATION:

Project Title:
Project Location:
Address:
City, State, Zip:
Project ID Number:
Project Description:
RFP Number:

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ARTICLE 3 – TIME FOR PERFORMANCE

Section 3.1 – Effective Date

This Contract for Professional Services shall be effective on the date when duly executed by both parties.

Section 3.2 – Commencement of Professional's Services:

The Professional shall commence performance of services when the Professional receives from the Owner a copy of the Contract for Professional Services executed by the Owner and the Professional. Prior to the commencement of design phase services, the Professional shall submit, for the Owner's approval, a schedule for the performance of the Professional's services during design and construction that includes allowances for the periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause, be exceeded by the Professional.

Section 3.3 – Completion Date:

The date for completion of this Contract for Professional Services is .

ARTICLE 4 – M/WBE AND SDVOB CONTRACT GOALS

Section 4.1 The New York State certified Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) goals for this Contract for Professional Services are %MBE, %WBE, and %SDVOB. The goals refer to the utilization of M/WBE and SDVOB sub-consultants on this Contract for Professional Services.

Commented [RS1]: OPG to assign goals in PMWeb.

ARTICLE 5 – NOTICES

Section 5.1 Each notice from the Owner to the Professional relative to any part of this Contract for Professional Services shall be in writing and considered complete when the notice is sent, or delivered in person, to the Professional, or its authorized representative, at the street address, postal address, or email address in Article 2 of Chapter One of this Contract for Professional Services. The Professional may change any of these addresses by written notice to the Owner's Procurement Unit, 515 Broadway, Albany, New York 12207 – 2964; such change shall not be effective until the Professional receives form the Owner's Procurement Unit a written acknowledgment that the change has been received.

Section 5.2 Each notice from the Professional to the Owner required by any part of this Contract for Professional Services shall be in writing and shall be sent or delivered to the Owner's Representative at the street address, postal address, or email address in Article 2 of Chapter One of this Contract for Professional Services. The Owner

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may change the Owner's Representative or any of these addresses by written notice to the Professional. If any part of the Contract for Professional Services shall require the Contractor to provide notice to any other employee or unit of the Owner, the notice to such employee or unit is in addition to, and does not replace, the notice to the Owner's Representative. Notice to the Owner may be delivered by certified mail, overnight delivery by a nationally recognized courier or, if an email address is provided, email. The Owner's Representative will endeavor to provide a written acknowledgment of receipt of the notice but any failure to provide such written acknowledgment shall not be a breach of contract, shall not in any way alter the Professional's obligation to provide timely notice and shall not in any way alter any of the other obligations of the Professional under this Contract for Professional Services.

Section 5.3 For notices from the Professional to the Owner required by any part of this Contract for Professional Services, the Professional shall have the burden of proving the Owner's receipt of the notice.

ARTICLE 6 – COMPENSATION OF PROFESSIONAL

Section 6.1 – Base Contract Services

For the purpose of this Contract for Professional Services, services included at the time of execution shall be considered Required Services. Services added to the project post-contract execution shall be reviewed and approved by the Owner and may be considered an Additional Service and shall be authorized through a Contract Amendment.

The Owner shall compensate the Professional the Professional Contract Price for Required Services, inclusive of Required Supplemental Services (as described in Chapter Two – Professional's Required Services, Articles 1 through 8 inclusive and Appendix A) and Reimbursable Expenses in the following ways:

- A. **Negotiated Basis (Lump Sum)**
Pursuant to the time schedule contained in the Professional's Payment Schedule, attached hereto as Appendix A of this Chapter One, the Owner shall pay the Professional payments the total of which has been negotiated and agreed upon by the Owner and the Professional.
- B. **Fee Percentage Basis**
In accordance with the fee percentage table contained in the Professional's Payment Schedule, attached hereto as Appendix A of this Chapter One, the Owner shall pay the Professional payments the total of which has been agreed upon by the Owner and the Professional.
- C. **Time Basis (Actual Expense)**
Pursuant to the time schedule contained in the Professional's Payment Schedule, attached hereto as Appendix A of this Chapter One, compensation for some or all Professional Services shall be based on the actual expense hourly rate and actual hours worked, supported by a cost proposal. Cost proposal shall include employee

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classifications, hours worked, and multiplier. Hourly rates shall not exceed those set forth in the Professional's Payment Schedule, attached hereto as Appendix A of this Chapter One.

- D. Subconsultant Labor, Payment and Competitive Procurement
To the extent that services or sub-consultant services require trade labor, such labor shall be provided in accordance with the applicable prevailing wage requirements, the payment provisions of Section 9.3 of Chapter Three, and the competitive procurement provisions of Appendix D of this Chapter One.
- E. Reimbursable Expenses
The Owner shall compensate the Professional for customary, necessary and reasonable Reimbursable Expenses pursuant to Appendix A, Section C of this Chapter One and Section 7.2 of Chapter Three of this Contract for Professional Services.

Section 6.2 – Additional Services (to be paid through a Contract Amendment)

For the purpose of this Contract for Professional Services, any services added to the project post-contract execution shall be reviewed and approved by the Owner and may be considered an Additional Service. Authorization for said Additional Services shall be through a Contract Amendment. Payment for said services shall be pursuant to Appendix A, Section D of this Chapter One.

Section 6.3 – Contract Deemed Executory

The Professional agrees that this Contract for Professional Services shall be deemed executory to the extent of moneys available from either (i) the proceeds of bonds issued by DASNY for the Project specifically available for the Contract for Professional Services, or (ii) moneys made available by the Client specifically for the Contract for Professional Services, or (iii) other non-DASNY moneys made available from whatever source specifically for the Contract for Professional Services, and that no liability shall be incurred by the Owner beyond the moneys available therefore.

ARTICLE 7 – DESIGN NOT TO EXCEED

Section 7.1 The Professional understands and acknowledges that the Owner has established a budget for the Project. The Construction Budget is \$25,000,000.00 Dollars.

Section 7.2 The Professional agrees to design the Project so that the actual Cost of Construction does not exceed the Approved Construction Budget.

Section 7.3 In the event it is discovered at any phase of design that the estimated Cost of Construction of the work is in excess of the Approved Construction Budget, or the bids received are in excess of the Approved Construction Budget, the Professional shall revise, at the Owner's request, at no additional cost to the Owner, and at the Professional's own cost and expense, all or any part of the Pre-Schematic Deliverables, the Schematic Deliverables, the Design Development Deliverables, the Construction Documents or the Bid Documents necessary to bring the

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estimated Cost of Construction within the Approved Construction Budget. In order to reduce the estimated Cost of Construction to the Approved Construction Budget, the Professional shall, in addition to the above, at the Owner's request and at no additional cost to the Owner, (i) provide value engineering to reduce the estimated Cost of Construction to the Approved Construction Budget; (ii) assist the Owner in redefining the scope of the Project; (iii) incorporate scope reductions and Project modifications into the modified Pre-Schematic Deliverables, Schematic Deliverables, Design Development Deliverables, Construction Documents or Bid Documents; and (iv) develop and incorporate bid alternates into the Construction Documents and Bid Documents.

Section 7.4 Only a Contract Amendment shall change the Approved Construction Budget, except that the Owner may change the Approved Construction Budget by written notice to the Professional.

ARTICLE 8 – PERSONNEL AND CONSULTANT CHARTS

Section 8.1 The Professional shall prepare and submit to the Owner, for attachment hereto as Appendix B, the Professional's Personnel Chart that lists by name, job category and responsibility the Professional's technical employees who will work on the Project, identifying any deviations from the personnel proposed in the Professional's Response to the Owner's Request for Proposal and the reasons therefore. Owner shall not permit any change from the personnel proposed in the Professional's Response to the Owner's Request for Proposal unless the Professional provides an explanation acceptable to Owner and replacement personnel acceptable to Owner. If the Professional fails to provide an explanation acceptable to Owner and replacement personnel acceptable to Owner, the Owner may rescind award of the Contract for Professional Services. Once this Contract for Professional Services is effective, the Professional shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). Owner shall not permit any change in the Professional's Personnel Chart unless the Professional provides an explanation acceptable to Owner and replacement personnel acceptable to Owner. If Professional fails to provide an explanation acceptable to Owner and replacement personnel acceptable to Owner, Owner may terminate this Contract for Professional Services for cause. The Owner shall have the right to reject any and all proposed replacement personnel.

Section 8.2 The Professional shall (i) prepare and submit to the Owner for attachment hereto as Appendix C, the Professional's Subconsultants Chart which lists by name and general duties each Subconsultant retained by the Professional who will provide services with respect to the Project, and the names of technical employees in each Subconsultant's firm who will be performing services on behalf of the Subconsultant; (ii) not enter into any agreement with any Subconsultant to which the Owner raises a timely objection; and, (iii) promptly inform the Owner in writing of any proposed replacements, the reasons therefor, and the name(s) and

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qualification(s) of proposed replacement(s). Owner shall not permit any change from the Subconsultants and Subconsultant's technical employees proposed in the Professional's Response to the Owner's Request for Proposal unless the Professional provides an explanation acceptable to Owner and replacement acceptable to Owner. If the Professional fails to provide an explanation acceptable to Owner and replacement acceptable to Owner, Owner may rescind award of the Contract for Professional Services. Once this Contract for Professional Services is effective, the Professional shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). Owner shall not permit any change in the Professional's Subconsultants and Subconsultant's technical employees unless the Professional provides a explanation acceptable to Owner and replacements acceptable to Owner. If Professional fails to provide an explanation acceptable to Owner and replacements acceptable to Owner, Owner may terminate this Contract for Professional Services for cause. The Owner shall have the right to reject any proposed replacement. If Professional enters into an agreement for this Project with any Subconsultant to which the Owner has objected, the Owner may rescind award of the Contract for Professional Services or terminate this Contract for Professional Services for cause.

Section 8.3 Professional, if a natural person, each partner, member, shareholder, and officer of Professional, if Professional is a legal entity, and each employee of Professional who works on the Project and is licensed and registered to provide architectural or engineering services in the State of New York by the New York State Department of Education on the effective date of this Contract for Professional Services shall maintain such status so long as he or she is working on the Project and shall notify Owner within five days if such license or registration lapses, or is suspended or revoked, or if he or she receives notice of any proceeding that could result in the suspension or revocation of such license or registration. Any Professional certified to provide engineering services in New York State by the New York State Department of Education on the effective date of this Contract for Professional Services shall maintain such status for the duration of this Contract for Professional Services, shall notify Owner within five days if such status lapses, or is suspended or revoked, or if Professional receives notice of any proceeding that could result in the suspension or revocation of such certification; Professional shall provide to the Owner upon request a Certificate of Authorization to Provide Engineering Services in New York State issued by the New York State Department of Education.

Section 8.4 Each Subconsultant, if a natural person, each partner, member, shareholder, and officer of a Subconsultant, if a Subconsultant is a legal entity, and each employee of a Subconsultant who works on the Project and is licensed and registered to provide architectural or engineering services in the State of New York by the New York State Department of Education on the effective date of this Contract for Professional Services shall maintain such status so long as he or she is working on the Project and shall notify Owner within five days if such license or registration lapses, or is suspended or revoked, or if he or she receives notice of any

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proceeding that could result in the suspension or revocation of such license or registration. Any Subconsultant certified to provide engineering services in New York State by the New York State Department of Education on the effective date of this Contract for Professional Services shall maintain such status for the duration of this Contract for Professional Services, shall notify Owner within five days if such status lapses, or is suspended or revoked, or if Subconsultant receives notice of any proceeding that could result in the suspension or revocation of such certification; Subconsultant shall provide to the Owner upon request a Certificate of Authorization to Provide Engineering Services in New York State issued by the New York State Department of Education.

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SIGNATURES

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

**Dormitory Authority of the State of New York
515 Broadway
Albany, NY 12207-2964**

By: _____

Title: Authorized Officer

Date: _____

**Firm Name
Firm Address
Firm Address**

By: _____

Authorized Officer/Signatory

Title: _____

Date: _____

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NEW YORK STATE ACKNOWLEDGEMENT – DASNY

State of New York)
) SS:

County of _____)

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared: _____ **(NAME)**

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature of Notary

Stamp or seal containing printed name, county of qualification of notary public and expiration date of notary commission

NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant

State of New York)

) SS:

County of _____)

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared: _____ **(NAME)**

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature of Notary

Stamp or seal containing printed name, county of qualification of notary public and expiration date of notary commission

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APPENDIX A – PROFESSIONAL’S PAYMENT SCHEDULE

Section A – Schedule for Payment of The Professional’s Required Services, Required Supplemental Services And Reimbursable Expenses

REQUIRED SERVICES

The Owner shall pay, and the Professional agrees to accept, as compensation for the Professional’s Required Services the following amounts at the successful completion and the Owner’s acceptance of each phase of the Professional’s Required Services and upon receiving required supporting documentation as identified in Section E of this Appendix A of this Chapter One or as required by the Owner. The payment is subject to the terms and conditions of Article 7 of Chapter Three.

REQUIRED SUPPLEMENTAL SERVICES AND REIMBURSABLE EXPENSES

The Owner shall pay, and the Professional agrees to accept, as compensation for the Professionals Required Supplemental Services, pursuant to Chapter Two, Appendix A, the following amounts at the successful completion and Owner’s acceptance of each task, and upon receiving required supporting documentation as identified in Section E of this Appendix A of this Chapter One or as required by the Owner. The payment is subject to the terms and conditions of Article 7 of Chapter Three.

[Procurement staff to insert Required Supplemental Services, in the below table, as appropriate for the project. Cross reference Chapter Two Appendix A.]

Required Services	Dollar Amount	Unit of Measure
Preschematic	\$0.00	LS
Schematic Design	\$0.00	LS
Design Development	\$0.00	LS
Construction Documents	\$0.00	LS
Bid Documents	\$0.00	LS
Construction Administration	\$0.00	LS
Construction Fieldwork	\$0.00	AE
Post Construction Deliverables – Closeout	\$0.00	LS
<i>Sub-Total Required Services</i>		
Required Supplemental Services		
Expediting	\$0.00	AE
Hazardous Materials Testing	\$0.00	AE
Other	\$0.00	AE/LS
<i>Sub-Total Required Supplemental Services</i>	\$0.00	NTE
Reimbursable Expenses	\$0.00	AE
TOTAL	\$0.00	NTE

LS = Lump Sum

AE = Actual Expense (Rate X Multiplier)

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NTE = Not to Exceed

Section B – Maximum Hourly Rates For Compensation For Professional Services Rendered

Should payment for the Professional's Required Services or Required Supplemental Services be on a time and hourly rate basis or should Professional's Additional Services on an actual cost basis be required, the hourly rates for the technical classifications listed shall not exceed the following:

<u>Technical Classification</u>	<u>Direct Hourly Rate</u>
Principal	\$00.00 to \$00.00
Architect	\$00.00 to \$00.00
Engineer	\$00.00 to \$00.00
Estimator	\$00.00 to \$00.00
Drafter	\$00.00 to \$00.00
Reviewer	\$00.00 to \$00.00
Field Inspector	\$00.00 to \$00.00

[Procurement staff to insert ranges or exact rates as appropriate for the project.]

The Multiplier for all direct hourly rates excluding that of the Principal(s) is _____.

[Procurement staff to insert multiplier or remove this paragraph as appropriate for the project.]

The rates listed represent the maximum payable under this Contract for Professional Services. Actual payment for services shall be based on the actual hourly rate of the employee times the hours worked by the employee performing the service as determined by payroll records or other means acceptable to the Owner.

Section C – Reimbursable Expenses

Payment for approved Reimbursable Expenses pursuant to Subsection 6.1 (E) of this Chapter One shall be made monthly on the basis of invoices submitted by the Professional and approved by the Owner.

Reimbursable Expenses of the Professional and its Subconsultants must be supported by detailed receipts and documentation and are limited to the following items:

1. Transportation and living expenses in connection with out-of-town travel when authorized in advance by the Owner and when travel is in excess of one hundred (100) miles in any given day.
 - (a) Mileage at the standard business mileage rate allowed by the Internal Revenue Service in effect at the time the travel occurs. Other types of transportation (rental car, bus, etc.) are allowed when deemed to be cost effective and are

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authorized in advance by the Owner.

(b) Meals at the following rates and within the following timeframes:

<u>Meal</u>	<u>NYC Rate</u>	<u>Upstate Rate</u>	<u>Departure</u>	<u>Arrival</u>
Breakfast	\$6.00	\$5.00	Before 7:00 a.m.	After 8:00 a.m.
Lunch	\$10.00	\$7.00	Before 11:30 a.m.	After 2:00 p.m.
Dinner	\$43.00	\$31.00	Before 6:00 p.m.	After 7:00 p.m.
Incidentals	\$3.00	\$2.00	(Overnight Travel)	

The NYC Rate is also applicable to Nassau, Suffolk, Rockland and Westchester Counties and out-of-state travel. Departure and Arrival are predicated upon residence.

(a) Lodging per receipt up to the maximum United States Government Services Administration allowable lodging rates for the New York metropolitan and upstate New York areas in effect when the travel occurs (see www.gsa.gov).

(b) Parking fees and tolls when travel is in excess of one hundred (100) miles in any given day.

2. Fees paid to authorities having jurisdiction over the work of the Contract for Professional Services.
3. Reproductions, postage and handling of complete sets of drawings, specifications and other documents for the interim submissions required for the Owner's design reviews. Costs associated when the Professional engages the services of a printing firm.
4. Cost of physical renderings or physical models for the Owner's use.

Section D – Compensation For Additional Services

Should Additional Services be required, payment for Additional Services shall be on the basis of Negotiated Lump Sum or Actual Cost as determined by the Owner:

Actual Cost shall include the following items:

1. Direct salaries of technical employees employed on the Project computed on a time and hourly rate basis using the actual rates of pay of the employees, not to exceed those set forth in Section B of this Appendix A times the Professional's agreed-upon Multiplier set forth in the same Section. Technical employees shall mean employees trained in areas of technical competence, such as architecture, engineering, drafting, surveying and related specialties, but does not include clerical or administrative support.
2. Lump sum basis, in an amount mutually agreed to in writing by the Owner and the Professional prior to the performance of the services. The fee shall be further supported by a cost proposal. The cost proposal shall include the employee classification, hours, and multiplier.

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3. Specific approved Reimbursable Expenses.

Section E – Payment Requisitions

Payment for services shall be made at the successful completion of a particular phase of the work as determined by the Owner. In the sole and exclusive discretion of the Owner, payment for services may be made prior to the successful completion of a particular phase in proportion to services performed and approved by the Owner. Payments shall be requisitioned on the Owner's form *Professional Services Contract Payment Requisition* with individual timesheets or a summary report thereof as may be required by the Owner, and other appropriate supporting documentation as required by Owner. Timesheets and/or payroll registers shall show the names, actual rates of pay, position classifications and hours worked for all personnel performing services during the payment period. If the Professional performed services which are subject to prevailing wages, such as surveying and test boring, certified payrolls as described in the New York State Labor Law shall be required. Payment requisitions in any other format will not be accepted.

The Professional is required to submit payment requisitions on behalf of its Subconsultants to the Owner within thirty (30) days of receiving approvable Subconsultant invoices. Owner may require proof, acceptable to the Owner, of payment of Subconsultants by Professional.

Denied Payment:

The OWNER may, at its sole discretion deny payment to the Professional for: 1) failure to invoice for services within 90 days of the services being rendered, 2) invoices provided without proper back-up documentation as defined in the Contract for Professional Services.

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APPENDIX B – PROFESSIONAL'S PERSONNEL CHART

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APPENDIX C – PROFESSIONAL’S CONSULTANT CHART

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APPENDIX D – PREVAILING WAGE SERVICE PROVISIONS

Section A – Proposal Requirements

For REQUIRED SUPPLEMENTAL SERVICES and ADDITIONAL SERVICES performed pursuant to Chapter Two, services that are subject to the prevailing wage provisions and requirements of Section 9.3 of Chapter Three of this Contract for Professional Services, the Professional shall procure services on a competitive basis as follows:

1. Provide one (1) written proposal for work \$10,000 or less, which may be awarded to the lowest qualified vendor after the receipt and documentation of a minimum of one (1) or more written proposals. A breakdown of the services (labor, materials and equipment) and any associated costs shall be provided by the proposing vendor.
2. Provide two (2) written proposals for all work greater than \$10,000 and less than \$15,000, which may be awarded to the lowest qualified vendor after the receipt and documentation of a minimum of two (2) or more written proposals. A breakdown of the services (labor, materials and equipment) and any associated costs shall be provided by all proposing vendors.
3. Provide three (3) written proposals for all work in excess of \$15,000, which may be awarded to the lowest qualified vendor after the receipt of a minimum of three (3) written proposals. A breakdown of the services (labor, materials and equipment) and any associated costs shall be provided by all proposing vendors.
4. If less than three quotes are received, or if other than the lowest proposed price is recommended, the Procurement Record shall contain a written justification and supporting documentation approved by the Chief, Procurement. The price must be reasonable, not necessarily the lowest possible price. Reasonableness of price can be documented by historical price comparison, by consultation with Cost Control or such other method as the Chief, Procurement deems practicable under the circumstances.

The Professional shall provide certified payroll pursuant to the prevailing wage provisions and requirements of Section 9.3 of Chapter Three for any and all disciplines and trades covered under Labor Law, Section 220.

Section B – Bid Process Requirements

For REQUIRED SUPPLEMENTAL SERVICES and ADDITIONAL SERVICES performed pursuant to Chapter Two, services that are subject to the prevailing wage provisions and requirements of Section 9.3 of Chapter Three of this Contract for Professional Services, the Professional shall:

1. Prepare a Bid that describes the project and services to be provided.
2. Submit a list of potential bidders to the OWNER for review. The OWNER shall have

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the right to reject any proposed bidder. The Professional shall submit the name of any proposed replacement.

3. Distribute the Bid to the list of prospective bidders.
4. As may be required, the Professional and OWNER may hold a pre-bid meeting to answer questions from prospective bidders.
5. Conduct a pre-award meeting with the apparent low bidder to determine if the bid is the lowest, most qualified bid, as may be required.
6. Determine the lowest, most qualified bidder, prepare and assemble a recommendation, and submit the recommendation package to the OWNER for approval. The Recommendation package shall include:
 - Memorandum from the Professional describing the bid review and evaluation process and the rationale for proceeding with the selection;
 - Bid Tabulation Worksheet;
 - Cost Leveling Worksheet;
 - Copies of all proposals from all prospective bidders; and
 - Additional relevant backup documentation, as may be required.
7. The Professional shall not enter into any agreement with the apparent low bidder until they receive an executed Contract for Professional Services from the OWNER.

Section C – Prevailing Wage Requirements

For REQUIRED SUPPLEMENTAL SERVICES and ADDITIONAL SERVICES performed pursuant to Chapter Two, services that are subject to the prevailing wage provisions and requirements of Section 9.3 of Chapter Three of this Contract for Professional Services:

1. Prevailing Wage Rates

As may be required by this Contract for Professional Services, services may be included which are subject to Article 8 of the New York State Labor Law. The wages paid for a legal day's work shall not be less than the prevailing rate of wages and defined by New York State Labor Law. Each laborer, worker or mechanic employed by the Professional, the Professional's Subconsultant, or any other person doing or contracting to do the whole or any part of the work contemplated by the Contract for Professional Services shall be paid not less than the prevailing rate of wages as defined by New York State Labor Law and shall be provided not less than supplements as required by New York State Labor Law.

2. Prevailing Wage Rate Differential

For services that are subject to the prevailing wage provisions and requirements of Section 9.3 of Chapter Three of this Contract for Professional Services, the Professional shall:

When applicable Labor Law Section 220 titles are utilized, the prevailing wage rates and supplemental benefits requirements of the Labor Law must be met. If

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the actual hourly rate of the Professional's employee performing the Labor Law Section 220 title work is less than the prevailing wage hourly rate, then only the actual hourly rate shall be subject to multiplier. The difference of the prevailing wage hourly rate and the actual hourly rate is not subject to multiplier and shall be paid on a straight rate basis as an out-of-pocket expense. Also, if the supplemental benefit rate is greater than the actual benefit rate paid by company, then only the difference shall be paid on a straight rate as an out-of-pocket expense.