



TERM CONTRACT FOR PROFESSIONAL SERVICES

CHAPTER ONE

PROJECT TERMS AND CONDITIONS

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CONTRACT PARTIES

This Term Contract for Professional Services, dated as of «LOI_Date», 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 «Name_of_Firm», whose office is located at «Address_of_St», «City_State_Zip», (the “Professional”).

REPRESENTATIONS

- A. The Owner intends to perform rehabilitation and construction work at various sites within New York State. The rehabilitation and construction work that is the subject of a Work Authorization issued under this Term Contract for Professional Services is hereinafter referred to as a Project. The Owner is engaging the Professional to perform any or all of the services described herein for each Project.
- B. Work Authorizations shall be a part of this contract. The Professional shall provide the services as defined in the Work Authorization. All other terms and conditions of this Contract remain unchanged in full force in effect.
- C. The Owner and the Professional each acknowledge that it will act in good faith in carrying out its duties and obligations.
- D. 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 each 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 each Project; and (vi) is financially solvent.
- D. The Owner and Professional each acknowledge that it has reviewed and familiarized itself with this Term 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:

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DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this Term 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.

Actual Expense: Compensation for services based on the actual costs to perform the services, including hourly rate, hours worked and overhead expenses. Compensation for costs actual expenses is supported by applicable backup documentation such as timesheets and invoices.

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 an Amendment to an existing Work Authorization.

Approved Construction Budget: The Owner's designated budget for the Cost of Construction, which is based on an official estimate or client budget, and is inclusive of design contingency, bid contingency, and escalation to the midpoint of construction.

Basis of Design: Documentation of the design goals, ideas, and concepts considered by the Owner or Client to be important to each Project, based on information gathered during the early stages of design (programming, conceptual, Preschematic, 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 provided 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 Term Contract for Professional Services, payment of money, an extension of

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time, or other relief with respect to the terms of this Term 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 Term 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 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 each 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, in accordance with the DASNY Design Professional's Guide and Design Professional's Submission Requirements located on DASNY's website at <https://www.dasny.org/tools-forms/policies-guidelines/design-and-construction-guidelines-and-policies> and including but not limited to, drawings and specifications setting forth the structural, mechanical, electrical, civil, and all other systems and disciplines required for each 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 6 of Chapter Two of this Term Contract for Professional Services.

Construction Manager: A natural person, partnership, limited liability company, corporation, or

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

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 each 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.

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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 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.

Lump Sum: A fixed price for services based on a defined specification, scope of work and schedule, which covers the entire scope of services, at an amount mutually agreed to in writing by the Owner and the Professional prior to the performance of the services.

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

Not-to-Exceed: The maximum amount payable to the Professional that can be obligated and paid for authorized services.

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.

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 Term Contract for Professional Services.

OPR (Owner's Project Requirements): Written documentation that details the functional requirements of each Project and the expected use and operation of each Project, including but

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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, 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 Term Contract for Professional Services engaged directly by the Owner in this Term Contract for Professional Services.

Professional Contract Documents: The Request for Proposal, Addenda, Term Contract for Professional Services, Contract Amendment, Work Authorization 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 each Project.

Professional Contract Price: The total compensation due the Professional for performance of the Professional Services pursuant to this Term Contract for Professional Services and each Work Authorization.

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

Project: The planned undertaking, as more specifically described in Article 1 of Chapter Two of this Term Contract for Professional Services and each Work Authorization issued under this Term 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 each 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,

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Construction Documents, procurement, construction, coordination services and related activities and the timely completion of the Work of the Contract or Contracts to construct each Project.

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 each Project, and reimbursed by the Owner pursuant to Subsection 6.4 of Chapter One – Project Terms and Conditions and Section 7.2 of Chapter Three – General Terms and Conditions.

Required Base Services: Services, as set forth in Articles 3 through 9 of Chapter Two – Professional's Required Services, which the Owner expects to be performed by the Professional under this Term Contract for Professional Services and in each Work Authorization.

Site: The geographical location of each 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: A natural person, partnership, limited liability company, corporation, or other legal entity under contract with the Professional or Subconsultant to the Professional in connection with the Term Contract for Professional Services.

Subcontractor: 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.

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.

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

Unmanned Aircraft System (UAS or Drone): 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.

Work Authorization: A written instrument, signed by an authorized officer of the Owner, authorizing the Professional to perform Professional Services under this Term Contract, which details the scope of services to be performed and the compensation therefore.

Work Authorization Amendment: A written instrument, signed by an authorized officer of the Owner, amending, modifying, changing, or supplementing a Work Authorization.

ARTICLE 1 – TERM CONTRACT FOR PROFESSIONAL SERVICES

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

Term Contract for Professional Services • Chapter One • Professional's Required Services

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1. Chapter One – Project Terms and Conditions, including the foregoing Contract Parties, Representations, Definitions and documents and appendices attached hereto;
2. Chapter Two - Professional's Required Services and documents and appendices attached thereto;
3. Chapter Three - General Terms and Conditions and documents and appendices attached thereto;
4. the Owner's Request for Proposal, and documents and appendices attached thereto; and
5. 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:

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

Section 1.3 If any term of this Term 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 this Term 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 this Term 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 this Term 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 this Term 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 Term Contract for Professional Services constitutes the entire agreement and understanding between the Professional and the Owner with respect to each Project and supersedes all prior agreements, arrangements and understandings,

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and all trade custom and trade usage, and the construction of any provision of the Term 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 Term 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 Term 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 each Project or any other project. The meaning and intent of the Term Contract for Professional Services shall be interpreted solely by the Owner.

Section 1.6 This Term 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 Term Contract for Professional Services shall be the date upon which this agreement is duly executed by both parties.

Section 1.7 The Professional shall not commence work until the Owner executes and delivers a signed written Work Authorization. Commencing work without a written Work 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: Matthew Hunt, Assistant Procurement Administrator
Address: 515 Broadway
City, State, Zip: Albany, New York
Telephone: 518-257-3678
Email: mhunt@dasny.org
RFP Number: 7633
Description: Materials Testing and Special Inspections

PROFESSIONAL:

Representative: «Name_with_Abbreviations», «Title»
Address: «Address_of_St»
City, State, Zip: «City_State_Zip»

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Telephone: «Consultant_Phone»

Email: «Email»

ARTICLE 3 – TIME FOR PERFORMANCE

Section 3.1 The term of this Term Contract for Professional Services shall be four (4) years, starting on «Start_Date» and ending on «End_Date». The term shall be automatically extended an additional two (2) years on the anniversary of the term, provided that neither Party has given written notice of non-renewal to the other thirty (30) days prior to the annual extension pursuant to any provision herein.

The Owner may, at its sole discretion, further extend the term of this Term Contract for Professional Services and issue Work Authorizations. The Professional shall continue to render services for each Work Authorization issued, within the term of this Term Contract for Professional Services and any extension(s), until the completion of said Work Authorizations unless the Owner provides written notice otherwise.

Section 3.2 The Professional shall commence performance of services when the Professional receives from the Owner a copy of the Term Contract for Professional Services executed by the Owner and the Professional. Further, performance of services shall not commence for a specific Project until issuance of a Work Authorization thereunder.

Section 3.3 The date for completion of Professional Services will be provided with each Work Authorization issued under this Term Contract for Professional Services.

The Professional shall complete any and all Professional Services set forth in a Work Authorization(s) even though such Professional Services performed under said Work Authorization(s) may extend past the end date of the term of this Term Contract for Professional Services.

ARTICLE 4 – RESERVED

ARTICLE 5 – NOTICES

Section 5.1 Each notice from the Owner to the Professional relative to any part of this Term 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 Term 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 from 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 Term 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 Term Contract for Professional Services.

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The Owner may change the Owner's Representative or any of these addresses by written notice to the Professional. If any part of the Term 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 Term Contract for Professional Services.

Section 5.3 For notices from the Professional to the Owner required by any part of this Term 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 The Owner will compensate the Professional the Professional Contract Price for all Required Services, which includes reimbursable expenses, and additional services. The Professional Contract Price shall be the total of all Work Authorizations issued under this Term Contract for Professional Services, as Appendix A, Professional's Payment Schedule, Section A. Summary of Payments. Compensation for each item of service in a Work Authorization shall be established on a Lump Sum (LS) or Actual Expense (AE) basis, Not-to-Exceed the total amount approved for each Work Authorization. Each Work Authorization shall contain a detailed listing of the specific services to be performed and a revised Appendix A, Professional's Payment Schedule, A. Summary of Payments.

Section 6.2 The Owner shall calculate the amount of compensation to the Professional for Required Services rendered (as described in "Chapter Two – Professional's Required Services") for each Work Authorization utilizing one of the following methods:

1. Assignments shall be on a negotiated basis, time basis, or competitive basis.
2. Notwithstanding the above, DASNY Procurement, in its sole and absolute discretion, may agree to an alternate negotiated fee structure.

The calculation method(s) are further described as follows:

1. Negotiated Basis

Pursuant to the payment schedule contained in the Professional's Payment Schedule, Section F. Summary of Payments, 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. A negotiated fee may be established on a Lump Sum or Actual Expense basis, Not-to-Exceed the total amount approved for each

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Work Authorization.

2. Time Basis:

Compensation shall be based on the actual hourly rate and actual hours worked by the employee. Hourly rates shall not exceed those set forth in the Professional's Payment Schedule, attached hereto as Appendix A, and in accordance with the Provisions for Payment contained in each Work Authorization issued under this Term Contract for Professional Services.

3. Competitive Basis

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.

Section 6.3 Reserved

Section 6.4 The Owner shall compensate the Professional for customary, necessary and reasonable Reimbursable Expenses pursuant to Appendix A, Section C of this Chapter One. Reimbursable Expenses may be established on an Actual Expense basis, Not-to-Exceed the total amount approved for each Work Authorization.

Section 6.4 For the purpose of this Term Contract for Professional Services, any services added to the project following execution of an original Work Authorization or subsequent to an approved Work Authorization Amendment, shall be reviewed and approved by the Owner and shall be considered an Additional Service. Authorization for said Additional Services shall be through a Work Authorization Amendment. Payment for said services shall be pursuant to Appendix A, Section D of this Chapter One. Notice to proceed with additional services shall be provided solely by DASNY pursuant to a Work Authorization, without which the Professional is proceeding at its own risk, without which the Professional will not be reimbursed for any / all services provided.

ARTICLE 7 – RESERVED

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 each 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 Term Contract for Professional Services. Once this Term Contract for Professional Services is effective, the Professional shall promptly

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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 Term 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 each 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 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 Term Contract for Professional Services. Once this Term 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 an 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 Term 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 Term Contract for Professional Services or terminate this Term 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 each 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 Term Contract for Professional Services shall maintain such status so long as he or she is working on each 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 Term Contract for Professional Services shall maintain such status for the duration

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of this Term 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 each 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 Term Contract for Professional Services shall maintain such status so long as he or she is working on each 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 Subconsultant certified to provide engineering services in New York State by the New York State Department of Education on the effective date of this Term Contract for Professional Services shall maintain such status for the duration of this Term 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: _____

**«Name_of_Firm»
«Address_of_St»s
«City_State_Zip»**

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 – Professional

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 - Summary of Payments

Each work authorization, work authorization amendment, and work authorization cutback issued to the Professional shall be summarized as follows:

Date	Institution Name	Project Number	Amount	UOM

UOM = Unit of Measure

LS = Lump Sum

AE = Actual Expense (direct rate x multiplier)

NTE = Not to Exceed

Section B – Maximum Hourly Rates for Compensation for Professional Services

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

Technical Classification	Maximum Direct Hourly Rate			
	2023	2024	2025	2026
«C1»	\$ «R1».00	\$ 0.00	\$ 0.00	\$ 0.00
«C2»	\$ «R2».00	\$ 0.00	\$ 0.00	\$ 0.00
«C3»	\$ «R3».00	\$ 0.00	\$ 0.00	\$ 0.00
«C4»	\$ «R4».00	\$ 0.00	\$ 0.00	\$ 0.00
«C5»	\$ «R5».00	\$ 0.00	\$ 0.00	\$ 0.00
«C6»	\$ «R6».00	\$ 0.00	\$ 0.00	\$ 0.00
«C7»	\$ «R7».00	\$ 0.00	\$ 0.00	\$ 0.00
«C8»	\$ «R8».00	\$ 0.00	\$ 0.00	\$ 0.00
«C9»	\$ «R9».00	\$ 0.00	\$ 0.00	\$ 0.00
«C10»	\$ «R10».00	\$ 0.00	\$ 0.00	\$ 0.00
«C11»	\$ «R11».00	\$ 0.00	\$ 0.00	\$ 0.00
«C12»	\$ «R12».00	\$ 0.00	\$ 0.00	\$ 0.00
«C13»	\$ «R13».00	\$ 0.00	\$ 0.00	\$ 0.00
«C14»	\$ «R14».00	\$ 0.00	\$ 0.00	\$ 0.00
«C15»	\$ «R15».00	\$ 0.00	\$ 0.00	\$ 0.00
«C16»	\$ «R16».00	\$ 0.00	\$ 0.00	\$ 0.00
«C17»	\$ «R17».00	\$ 0.00	\$ 0.00	\$ 0.00

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«C18»	\$ «R18».00	\$ 0.00	\$ 0.00	\$ 0.00
«C19»	\$ «R19».00	\$ 0.00	\$ 0.00	\$ 0.00
«C20»	\$ «R20».00	\$ 0.00	\$ 0.00	\$ 0.00
«C21»	\$ «R21».00	\$ 0.00	\$ 0.00	\$ 0.00
«C22»	\$ «R22».00	\$ 0.00	\$ 0.00	\$ 0.00
«C23»	\$ «R23».00	\$ 0.00	\$ 0.00	\$ 0.00
«C24»	\$ «R24».00	\$ 0.00	\$ 0.00	\$ 0.00
«C25»	\$ «R25».00	\$ 0.00	\$ 0.00	\$ 0.00
«C26»	\$ «R26».00	\$ 0.00	\$ 0.00	\$ 0.00
«C27»	\$ «R27».00	\$ 0.00	\$ 0.00	\$ 0.00
«C28»	\$ «R28».00	\$ 0.00	\$ 0.00	\$ 0.00
«C29»	\$ «R29».00	\$ 0.00	\$ 0.00	\$ 0.00
«C30»	\$ «R30».00	\$ 0.00	\$ 0.00	\$ 0.00
«C31»	\$ «R31».00	\$ 0.00	\$ 0.00	\$ 0.00
«C32»	\$ «R32».00	\$ 0.00	\$ 0.00	\$ 0.00
«C33»	\$ «R33».00	\$ 0.00	\$ 0.00	\$ 0.00
«C34»	\$ «R34».00	\$ 0.00	\$ 0.00	\$ 0.00
«C35»	\$ «R35».00	\$ 0.00	\$ 0.00	\$ 0.00
«C36»	\$ «R36».00	\$ 0.00	\$ 0.00	\$ 0.00
«C37»	\$ «R37».00	\$ 0.00	\$ 0.00	\$ 0.00
«C38»	\$ «R38».00	\$ 0.00	\$ 0.00	\$ 0.00
«C39»	\$ «R39».00	\$ 0.00	\$ 0.00	\$ 0.00
«C40»	\$ «R40».00	\$ 0.00	\$ 0.00	\$ 0.00
«C41»	\$ «R41».00	\$ 0.00	\$ 0.00	\$ 0.00
«C42»	\$ «R42».00	\$ 0.00	\$ 0.00	\$ 0.00

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«C43»	\$ «R43».00	\$ 0.00	\$ 0.00	\$ 0.00
«C44»	\$ «R44».00	\$ 0.00	\$ 0.00	\$ 0.00
«C45»	\$ «R45».00	\$ 0.00	\$ 0.00	\$ 0.00
«C46»	\$ «R46».00	\$ 0.00	\$ 0.00	\$ 0.00
«C47»	\$ «R47».00	\$ 0.00	\$ 0.00	\$ 0.00
«C48»	\$ «R48».00	\$ 0.00	\$ 0.00	\$ 0.00
«C49»	\$ «R49».00	\$ 0.00	\$ 0.00	\$ 0.00
«C50»	\$ «R50».00	\$ 0.00	\$ 0.00	\$ 0.00
«C51»	\$ «R51».00	\$ 0.00	\$ 0.00	\$ 0.00
«C52»	\$ «R52».00	\$ 0.00	\$ 0.00	\$ 0.00

*Maximum direct hourly rate is inclusive of overhead and profit.

The Multiplier for all direct hourly rates, excluding those classification(s) identified above as inclusive of overhead and profit, is «Multiplier».

The rates listed represent the maximum payable under this Term Contract for Professional Services for each year of the contract term. Following year 1, the Professional's maximum direct hourly rate will be escalated by 2% effective on January 1st of each year. The maximum direct hourly rates for each year, as escalated, are indicated per the above table. This increase shall not apply to the Principal rate. 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, times the approved multiplier.

The Professional and subconsultants shall invoice based on the payroll cost of salaries or wages paid directly to the technical employees and supportable by payroll, timesheets, and appropriate backup documentation.

Section C – Reimbursable Expenses

Payment for approved Reimbursable Expenses pursuant to Subsection 6.4 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, from the CONSULTANT's closest office, which may include corporate

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headquarters, satellite offices, coworking spaces, employees' home offices, or any other location as determined by the OWNER. Reimbursement shall be limited to the rates provided herein:

- 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 authorized in advance by the Owner.
- b. Meals at the following rates and within the following timeframes:

Meal	NYC Rate*	Upstate Rate	Departure	Arrival
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.*

- c. 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).
 - d. Parking fees and tolls when travel is in excess of one hundred (100) miles in any given day.
1. Fees paid to Authorities Having Jurisdiction over the work of the Term Contract for Professional Services.
 2. 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.
 3. Specific approved Reimbursable Expenses as approved by the Owner.

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 each 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 as approved by the Owner.

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.

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

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APPENDIX B – PROFESSIONAL'S PERSONNEL CHART

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APPENDIX C – PROFESSIONAL’S SUBCONSULTANT CHART

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APPENDIX D – PREVAILING WAGE PROVISIONS

Section A – Proposal Requirements

For REQUIRED SUPPLEMENTAL SERVICES and ADDITIONAL SERVICES that require trade labor to be performed and are subject to the prevailing wage provisions of Section 9.3 of Chapter Three of this Term 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. Provide written justification if other than the lowest proposed price is recommended.

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 that require trade labor to be performed and are subject to the prevailing wage provisions of Section 9.3 of Chapter Three of this Term 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 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:
 - a. Memorandum from the Professional describing the bid review and evaluation

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- process and the rationale for proceeding with the selection;
- b. Bid Tabulation Worksheet;
 - c. Cost Leveling Worksheet;
 - d. Copies of all proposals from all prospective bidders; and
 - e. 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 Term 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 require trade labor to be performed and are subject to the prevailing wage provisions and requirements of Section 9.3 of Chapter Three of this Term Contract for Professional Services:

1. Prevailing Wage Rates

As may be required by this Term 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 Term 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 Term 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 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.