



Dormitory Authority

State of New York

CONTRACT FOR PROFESSIONAL SERVICES

CHAPTER ONE

PROJECT TERMS AND CONDITIONS

Contract For Professional Services • Chapter One • Project Terms and Conditions

Client

Dormitory Authority – State of New York

Rev. 08/11/09

Contract Number

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CONTRACT PARTIES

This Contract For Professional Services is entered into between:

“OWNER” Dormitory Authority – State of New York
515 Broadway
Albany, New York 12207-2964

And

“PROFESSIONAL”

RECITALS

- A. The Owner intends to _____ at _____, hereinafter referred to as the Project, and is engaging the Professional to perform _____ services for the Project.
- 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, licensed and registered to do business in the State of New York; (iii) is qualified, willing and able to perform professional services for the Project; and, (iv) 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 all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 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:

ARTICLE 1 – THE CONTRACT DOCUMENTS

- 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) this “Chapter One – Project Terms and Conditions”, including the foregoing

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“Contract Parties” and “Recitals”, and all documents and appendices attached hereto;

- (ii) “Chapter Two - Professional’s Required Services” and all documents and appendices attached thereto;
- (iii) “Chapter Three - General Terms And Conditions and all documents and appendices attached thereto;
- (iv) the Owner’s “Request for Proposal”, and all documents and appendices attached thereto; and
- (v) the Professional’s Response to the Owner’s “Request for Proposal”, and all documents and appendices attached thereto, as approved by the Owner.

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 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

1.3 If any term of the Contract for Professional Services or the application thereof to any person, firm or corporation, 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 persons, firms or corporations, 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.

1.4 In the event of a conflict between or among any parts of the Contract for Professional Services, including all attachments and appendices thereto having equal precedence, the better quality, greater quantity or more costly part shall govern, unless otherwise directed by the Owner.

ARTICLE 2 – ADDRESSES AND AUTHORIZED REPRESENTATIVES

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

OWNER:

Representative:
Address:

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City, State, Zip:
Telephone:
E-mail:

FAX:

PROFESSIONAL:

Representative:
Address:
City, State, Zip:
Telephone:
E-mail:
TIN / SSN:

FAX:

OWNER'S PROJECT IDENTIFICATION INFORMATION:

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

ARTICLE 3 – TIME FOR PERFORMANCE

3.1 Effective Date

This Contract For Professional Services shall be effective on the date executed by the last party to execute it.

3.2 Commencement of Professional's Services:

The Professional shall commence performance of services on or before _____. 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.

3.3 Completion Date:

The date of Design Completion is as determined in the Owner's *Scope, Budget and Schedule Confirmation* form, incorporated herein by reference.

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ARTICLE 4 – NOTICES

- 4.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by telex, facsimile, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by telex, facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of deposit with the United States Postal Service.

ARTICLE 5 – COMPENSATION OF PROFESSIONAL

The Owner will compensate the Professional the Professional Contract Price for all Required Services, Extra Services if necessary, and Reimbursable Expenses.

- 5.1 The Owner shall calculate the amount of compensation to the Professional for Required Services rendered (as described in “Chapter Two – Professional’s Required Services”) in one (1) of the following ways:

Negotiated Basis:

In accordance with the time schedule contained in the Professional’s Payment Schedule, attached hereto as Appendix A, the Owner shall pay the Professional payments the total of which is not to exceed _____ and 00/100 Dollars (\$_____.00).

Fee Schedule Basis:

In accordance with the fee schedule contained in the Professional’s Payment Schedule, attached hereto as Appendix A, the Owner shall pay the Professional payments the total of which is not to exceed _____ and 00/100 Dollars (\$_____.00).

Time Basis:

Based on the Professional’s time expended on an hourly-rate basis, at the rates actually paid by the Professional to its employees performing the service, not to exceed those set forth in the Professional’s Payment Schedule, attached hereto as Appendix A. The Owner shall pay the Professional payments the total of which is not to exceed _____ and 00/100 Dollars (\$_____.00).

- 5.2 The Owner and the Professional shall agree in writing prior to the Professional’s performance of Extra Services whether the Extra Services will be performed on a negotiated lump-sum basis or an hourly-rate basis. The Owner shall compensate the

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Professional for Extra Services

- (i) if rendered on a lump sum basis, in an amount mutually agreed to in writing by the Owner and the Professional prior to the performance of such services; and
 - (ii) if rendered on an hourly-rate basis, at the actual hourly rates of the staff performing the service times a multiplier set forth in the Professional's Payment Schedule, attached hereto as Appendix A. Actual rates shall not exceed those listed in Appendix A.
- 5.3 The Owner shall compensate the Professional for customary, necessary and reasonable reimbursable expenses pursuant to Paragraph 8.2 of Chapter Three, however, the parties agree that the aggregate of such reimbursable expenses shall not exceed _____ and 00/100 Dollars (\$_____.00).
- 5.4 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 the Authority for the Project specifically available for the Contract for Professional Services, or (ii) moneys made available by the Client for the Contract for Professional Services, or (iii) other non-Authority 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 6 – DESIGN NOT TO EXCEED

- 6.1 The Professional understands and acknowledges that the Owner has established a budget for the Project. The Approved Construction Budget is \$_____.00 Dollars.
- 6.2 The Professional agrees to design the Project so that the actual Total Project Construction Cost does not exceed the Approved Construction Budget recited above.
- 6.3 In the event it is discovered at any phase of design that the estimated Total Project Construction Cost 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 its own cost and expense, all or any part of the Schematic Deliverables, the Design Development Deliverables, the Construction Documents or the Bid Documents necessary to bring the estimated Total Project Construction Cost within the Approved Construction Budget. In order to reduce the estimated Total Project Construction Cost 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 Total Project Construction Cost to the Approved Construction Budget; (ii) assist the Owner in redefining the scope of the Project; (iii) incorporate all scope reductions and Project modifications into the modified Schematic Deliverables, Design Development Deliverables, Construction Documents or Bid Documents; and (iv) develop and incorporate bid alternates into the Construction Documents and Bid

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Documents.

ARTICLE 7 – SPECIFIC INSURANCE REQUIREMENTS

7.1 The Professional shall purchase at its own expense and maintain until final acceptance of the Project by the Owner, from a company or companies licensed or authorized to do business in New York State, insurance policies containing the following types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Professional Services by the Professional or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. The Professional shall not commence work under the Contract for Professional Services until the Professional has obtained all the insurance required under this Article:

(i) Workers' Compensation Law Requirements

(a) Workers' Compensation (including occupational disease) and Employer's Liability New York Statutory Endorsement with a minimum limit of one million Dollars (\$1,000,000) as evidenced by **ONE** of the following **(ACORD certificates are not acceptable)**:

- (1) C-105.2 (September 2007, or most current version) - Certificate of Workers Compensation Insurance. The insurance carrier will provide a completed form as evidence of in-force coverage.
- (2) U-26.3-Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund will provide a completed form as evidence of in-force coverage.
- (3) GSI-105.2/SI-12-Certificate of Workers Compensation Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office or the contractor's Group Self Insurance Administrator will provide a completed form.

(b) Disability Benefits

- (1) DB-120.1 (May 2006, or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law. The insurance carrier will provide a completed form as evidence of in-force coverage.
- (2) DB-155-Certificate of Disability Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office will provide a completed form.

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- (3) CE-200-Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Authority will *not* accept this as an exemption from providing Workers' Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at www.wcb.state.ny.us/content/main/forms.htm. The CE-200 cannot be used for multiple projects. Therefore, a new form will have to be completed prior to award of any subsequent contracts.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

- (ii) Commercial General Liability which names the Owner, the Construction Manager, if applicable, and **[Procurement staff to enter names of specific Additional Insured(s) here for each contract]** as Additional Insureds, with per-occurrence and aggregate limits of not less than two million Dollars (\$2,000,000.00). The Professional shall list any deductible or SIR and provide a copy of the Endorsement.

Combined single limit for Bodily Injury, Personal Injury and Property Damage. Include Blanket contractual liability.

Products Liability and Completed Operations Aggregate limit of \$2,000,000. The limit may be provided through a combination of primary and umbrella/excess liability policies.

Completed Operations term must be for no shorter than three (3) years, however it is acceptable to request a five (5) year term.

- (iii) Commercial Comprehensive Automobile Liability covering all owned, leased, hired and non-owned vehicles used in connection with the Work with combined single limits of not less than one million Dollars (\$1,000,000.00) per each person/each accident for bodily injury and property damage.

Umbrella and/or Excess Liability policies used to comply with CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability.

- (iv) Professional Liability, with limits of not less than two million Dollars (\$2,000,000.00) each claim/\$2,000,000 annual aggregate subject to a deductible or self insured retention of not more than one hundred thousand Dollars (\$100,000.00) per claim or an amount acceptable to the Owner.

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- (a) If applicable, Asbestos Professional Liability, with a limit of two million dollars (\$2,000,000.00) each claim/\$2,000,000 annual aggregate and a maximum self-insured retention of one hundred thousand Dollars (\$100,000.00) or an amount acceptable to the Owner.
- (b) If applicable, Environmental Engineers and Consultants Professional Liability, with a limit of two million dollars (\$2,000,000.00) each claim/\$2,000,000 annual aggregate and a maximum self-insured retention of one hundred thousand Dollars (\$100,000.00), or an amount acceptable to the Owner, for Professionals involved in the removal, repair, installation and testing of underground petroleum storage tanks or in petroleum remediation operations, or Professionals engaged in or performing Work related to excavation, loading, transporting or unloading of hazardous and/or contaminated materials.
- (c) If applicable, should the Professional exercise design delegation under the terms of Article 7.15, of Chapter Two of this agreement, then the Professional shall require as part of the Contract Documents, the delegatee design professional to obtain professional liability insurance with limits of not less than one million Dollars (\$1,000,000.00) each claim/\$1,000,000 annual aggregate subject to a deductible or self insured retention of not more than one hundred thousand Dollars (\$100,000.00) per claim or an amount acceptable to the Owner. The Professional shall specify the above requirements as part of the Contract documents and shall require the delegatee design professional to submit proof of insurance in the amount identified above. This submittal shall be required prior to any receipt of documents prepared by the delegatee design professional.

ARTICLE 8 – PERSONNEL AND CONSULTANT CHARTS

- 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. Thereafter, 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). The Owner shall have the right to reject any and all proposed replacement personnel.
- 8.2 The Professional shall (i) prepare and submit to the Owner for attachment hereto as Appendix C, the Professional's Consultants Chart which lists by name and general duties each consultant retained by the Professional who will provide services with respect to the Project (Subconsultant), 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

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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). The Owner shall have the right to reject any proposed replacement.

- 8.2.1 The Professional shall require that any Subconsultant providing engineering services required under the Professional's Required Services of this Contract for Professional Services shall provide a Certificate of Authorization to Provide Engineering Services in New York State issued by the New York State Department of Education. A copy of said Certificate shall be kept by the Professional and upon request furnished to the Owner.
- 8.3 The Owner shall provide and attach hereto as Appendix D the Owner's Consultants Chart that lists by name and general duties each consultant retained by the Owner who will provide services with respect to the Project (Consultant). At any time during the term of this Contract for Professional Services, the Owner reserves the right to engage any other consultants which it deems necessary or desirable for the Project, and, at its sole discretion, to remove any Consultant from the Project.

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SIGNATURES

In WITNESS WHEREOF, the Professional has caused this Contract to be signed by its duly authorized officer on the _____ day of _____, 20____.

Professional
Address
City, State Zip

By: _____¹

Title: _____

Date: _____

- ¹ If a **corporation**, signer must be President, Vice-President or other authorized officer.
If a **Limited Liability Company (LLC)**, signer must be a member or manager.
If a **Limited Liability Partnership (LLP)**, signer must be a partner.
If a **Limited Partnership**, signer must be an authorized partner.
If a **general partnership**, signer must be a partner.
If a **sole proprietorship**, signer must be the owner.

In WITNESS WHEREOF, the Owner has executed this Contract on the _____ day of _____, 20____.

Dormitory Authority
515 Broadway
Albany, NY 12207-2964

By: _____

Title: _____

Date: _____

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OWNER'S ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF DORMITORY AUTHORITY OFFICER EXECUTING CONTRACT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the _____ day of _____ in the year 20____, before me personally came JAMES B. DALL, to me known, who, being by me duly sworn, did depose and say that he resides at 37 Linda Lane, Schenectady, New York 12309; that he is the Chief, Professional Services of the Dormitory Authority, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the Board of said corporation.

Notary Public

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APPENDIX A – PROFESSIONAL’S PAYMENT SCHEDULE

A. SCHEDULE FOR PAYMENT OF THE PROFESSIONAL’S REQUIRED SERVICES ON A NEGOTIATED BASIS OR A FEE SCHEDULE BASIS

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 of each phase of the Professional’s Required Services:

<u>Phase</u>	<u>Percentage of Professional’s Required Services</u>	<u>Dollar</u>	<u>Amount</u>
Preschematic	5 %	\$	.00 LS
Schematic 30% Submission	10 %	\$	.00 LS
Design Development	18 %	\$	.00 LS
Design Development Quality Control	2 %	\$	.00 LS
100% Construction Documents	34 %	\$	.00 LS
100% Construction Documents Quality Control	4 %	\$	.00 LS
Bid Documents	5 %	\$	.00 LS
Construction Administration	10 %	\$	.00 LS
Construction Fieldwork	10 %	\$	.00 AE
Post-Construction Deliverables	2 %	\$	.00 LS
 Total	 100 %	\$	.00 NTE

[Procurement staff to edit percentages and add allowances as appropriate for the project.]

LS = Lump Sum

AE = Actual Expense (Rate X Multiplier)

NTE = Not to Exceed

B. MAXIMUM HOURLY RATES FOR COMPENSATION FOR PROFESSIONAL SERVICES RENDERED

Should payment for the Professional’s Required Services be on a time and hourly rate basis or should Extra Work 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

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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 unless otherwise approved. Actual payment for services shall be based on the actual direct hourly salary paid by the Professional to the staff performing the service as determined by certified payroll or other means acceptable to the Owner.

The Professional shall submit any requests for changes to the approved Direct Hourly Rates in writing to the Owner for review and action by the Director, Procurement. The Consumer Price Index for the New York - Northeastern New Jersey area shall be used as a guide for any rate adjustment negotiations.

C. REIMBURSABLE EXPENSES

Payment for approved Reimbursable Expenses pursuant to Paragraph 5.3 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 fifty (50) miles one way from the Professional's closest office.
 - (a) Mileage at the standard business mileage rate allowed by the Internal Revenue Service in effect at the time the travel occurs.
 - (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	\$5.00	\$4.00	Before 7:00 a.m.	After 8:00 a.m.
Lunch	\$8.00	\$5.00	Before 11:30 a.m.	After 2:00 p.m.
Dinner	\$35.00	\$25.00	Before 6:00 p.m.	After 7:00 p.m.

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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.policyworks.gov/perdiem).
- 2. Long distance telephone calls and telegrams specifically related to the Project.
- 3. Fees paid to authorities having jurisdiction over the Work.
- 4. 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 with reproductions for the Professional's and its Subconsultants' own use are excluded from Reimbursable Expenses.
- 5. Overtime work requiring higher than regular rates when authorized in advance by the Owner.
- 6. Cost of renderings or models for the Owner's use.
- 7. Film and film processing.

D. COMPENSATION FOR EXTRA SERVICES

Should Extra Services be required, payment for Extra 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 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. Direct salaries of approved Subconsultants pursuant to Paragraph 8.2 of this Chapter One, plus a mark-up paid to the Professional at a maximum of ten (10)

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percent of the actual direct salary costs of the Subconsultant. The mark-up compensates the Professional for the administration and coordination of providing Subconsultant services, or for Extra Work in which the Professional does not participate.

3. Specific approved Reimbursable Expenses.

E. PAYMENT REQUISITIONS

Payment for services may be made monthly in proportion to services performed and approved by the Owner or at the successful completion of a particular phase of the work as determined by the Owner. Payments shall be requisitioned on the Owner's form *Professional Services Contract Payment Requisition* with a completed *Compliance Report*, individual timesheets or a summary report thereof as may be required by the Owner, and other appropriate supporting documentation. 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. 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.

[Procurement staff to delete next section if no funding caveat required.]

F. FUNDING CAVEAT

Current funding for the Project is limited to planning funds only. Therefore, while the Owner and the Professional have reached agreement regarding the amount of the Professional Contract Price, the Professional's authorization to proceed is limited to the _____ services only as outlined in Article _____ of "Chapter Two – Professional's Required Services". Accordingly, the Owner's liability is limited to _____ and 00/100 Dollars (\$_____.00), which is that portion of the compensation for the Professional's Required Services due at the completion of the _____ services, plus an allowance for Reimbursable Expenses.

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APPENDIX B – PROFESSIONAL'S PERSONNEL CHART

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APPENDIX C – PROFESSIONAL'S CONSULTANTS CHART

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APPENDIX D – OWNER’S CONSULTANTS CHART

