Date **Client**

 **Project Name**

**CONSTRUCTION PHASE** **Contract No.**

#### CONTRACT

A Contract is hereby made by and between DASNY, having its principal office and place of business as 515 Broadway, Albany, New York 12207-2964, hereinafter referred to as the OWNER, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose office is located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as the CONSTRUCTION MANAGER AT RISK or “CM”; and

**WHEREAS**, the OWNER intends to (***insert project description***), hereinafter referred to as the Project; and

**WHEREAS**, the CM has provided Consulting Services during the Pre-Construction Phase of the Project;

**WHEREAS**, the OWNER desires the CM to provide Construction Management Services for the Construction Phase of the Project, including the administration of the General Conditions Work;

**NOW, THEREFORE**, the OWNER and the CM hereby mutually covenant and agree as follows:

1. **DEFINITIONS**

***APPROVED CONSTRUCTION BUDGET*** is the OWNER’s designated budget for the total project construction cost, which includes the estimated value of all Trade Contracts, General Conditions expenses, design contingency, escalation and the CM GMP Contingency. General Conditions expenses are generally defined as work, services or facilities to support the overall construction effort. Examples include but are not limited to; field offices, temporary services, fencing, site security, etc.

***CLIENT*** is defined as the entity for whom the OWNER is performing services, including subsidiaries, agents, related corporations or fiduciaries.

***CONSTRUCTION COMPLETION*** means acceptance of Work by the OWNER as evidenced by a Notification of Substantial Completion (NOSC) from the OWNER.

***CONSTRUCTION MANAGER AT RISK* (CM)** means a Construction Manager who has contracted to submit a Guaranteed Maximum Price (GMP) for the construction of the Project, and has assumed the risk that the actual cost of the construction may exceed the GMP.

***GUARANTEED MAXIMUM PRICE*** is the amount the OWNER has agreed to pay the CM for the costs of the project subject to the terms of this Contract, including all construction costs, and all other projected costs including, the CM’s fees, the CM’s GMP contingency and the General Conditions allowance. The GMP will not include the CM’s pre-construction costs.

***OWNER*** means DASNY.

***PROJECT*** means all structures, buildings, site work, landscaping, or other improvement to real property of every kind and nature provided for or reasonable inferable from the Construction Documents published at the end of the Pre-Construction Phase of the project by the Project Designer.

***PROJECT DESIGNER*** means the firm or firms of architects or engineers or both (and their consultants) which have undertaken to design the Project pursuant to a contract with the OWNER (Hereinafter: the Design Contract).

***TRADE CONTRACTOR*** means a firm employed directly by the CM to complete the construction of the project.

**ARTICLE I: SCOPE OF SERVICES**

The CM's Services shall include, but not be limited to, all Articles of this Contract and all Services enumerated in Appendix "A", entitled **SCOPE OF SERVICES**, (hereinafter the Work), which is attached to and made a part hereof.

**ARTICLE II: ADDITIONAL SERVICES**

The OWNER reserves the right to direct the CM to provide Additional Services and the CM shall provide said Additional Services when so directed.

**ARTICLE III: EXTRA WORK**

If the CM believes that any work it has been directed to perform is beyond the scope of this Contract and constitutes Extra Work, it shall promptly so notify the OWNER in writing. The OWNER shall determine whether or not the work is in fact beyond the scope of this Contract and is Extra Work. If the OWNER determines that the work is Extra Work, this Contract shall be modified to equitably reflect the cost of said Extra Work, per Article VII of the General Conditions For Construction..

### ARTICLE IV: CONSULTANTS AND TRADE CONTRACTORS

A. The OWNER may retain a Consultant or Consultants to furnish services throughout the term of this Contract, and the CM shall cooperate with said Consultant or Consultants.

B. The CM shall require that any Consultant providing engineering services, required under the Scope of this Contract, provide a **Certificate of Authorization in New York** issued by the New York State Department of Education. A copy of said Certificate shall be kept by the CM, and upon request furnished to the OWNER.

C. Prior to execution of a contract between the CM and proposed Trade Contractor, the CM shall submit a copy of the proposed Trade Contractor agreement to the OWNER. The OWNER shall not be liable for payment to the CM for any cost incurred under any Trade Contractor agreements unless such copy is provided. The fees of any Trade Contractors retained by the CM for services required under Article I shall be deemed covered by the compensation as stipulated in Article V.A.1.

D. The CM shall pay its Consultants or Trade Contractors the full amount due to them from their proportionate share of each requisition for payment submitted by the CM and paid by the OWNER. The CM shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.

**ARTICLE V: PROVISION FOR PAYMENT**

A. Construction Phase Payments

The MAXIMUM AMOUNT PAYABLE for all services and work pursuant to Appendix "A" of this Construction Phase Contract shall be the not to exceed amount of \_\_\_\_\_\_\_\_\_ and 00/100 ($.00). The MAXIMUM AMOUNT PAYABLE is summarized in Appendix "B", entitled SUMMARY OF PAYMENTS, which is attached to and made a part hereof. Such amount shall be comprised of the following:

* 1. Trade contract work in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_and 00/100 ($.00) which includes work bid in accordance with Section 4 of Appendix A of this Construction Phase Contract, all Trade Contractor bonds and insurance and the CM-GMP contingency.

Payments for Services shall be made monthly 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 accompanying certified payroll, Compliance Report, and other appropriate backup. Certified payroll shall show the names and rates of pay of all personnel performing services during the payment period, and their position classification. Only said form shall be used for reimbursement of Services. The OWNER shall retain five percent (5%) of the amount of each payment. Reduction in retainage may be considered in relation to phased completion of the work.

The Final Amount Payable under this Article shall be based on the actual cost of the work performed, as certified by the CM and approved by the OWNER in accordance with Section 9.2 of Appendix A of this Construction Phase Contract, except where such amount exceeds the OWNER approved GMP referenced in Article V.B. If the Final Amount Payable exceeds the GMP, the OWNER shall only be liable to pay an amount equal to the GMP.

The CM is required to submit payment requests to the OWNER, on behalf of Trade Contractors and Subconsultants within Thirty (30) days of receiving approvable Trade Contractor and Subconsultant invoices.

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.

1. Guaranteed Maximum Price

Pursuant to Appendix “C” of this contract and the assumptions and clarifications therein, the Guaranteed Maximum Price for all services performed pursuant to this Construction Phase Contract and the General Conditions Work Phase Contract, executed in conjunction with and in addition to this Construction Phase Contract, is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and 00/100 ($.00).

**ARTICLE VI: WITHHOLDING OF PAYMENTS**

The OWNER may withhold from the CM any part of any payment as may, in the judgment of the OWNER, be necessary:

1. to assure payment of just claims of any persons supplying labor or materials for the Work;

2. to protect the OWNER from loss due to defective Work not remedied;

1. to protect the OWNER, Client, CM, if applicable, or other such entities as identified by the OWNER as Additional Insureds from loss due to failure to defend, loss due to injury to persons or

4. to assure payment of fines, liquidated damages and penalties which may be imposed on the CM pursuant to the provisions of this Contract; or

1. to assure payment of fines and penalties which may be imposed on the CM pursuant to Article 20 – Opportunity Programs, Section 20.07 paragraph D, of the General Conditions for Construction.  The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

**ARTICLE VII: FINAL PAYMENT AND RELEASE**

Final payment shall be made to the CM upon satisfactory completion and acceptance by the OWNER of all services required, including all deliverables pursuant to Section 18.4 of Appendix A, by the CM pursuant to this Contract, or all services performed prior to the termination of said Contract if so terminated and upon submission of a certification that all Subconsultants/Trade Contractors have been paid their full and agreed compensation.

Acceptance by the CM of final payment hereunder shall operate as, and shall be, a release to the OWNER from all claims and liability to the CM and its successors, legal representatives, and assigns for anything done or furnished under or arising out of the provisions of this Contract. No payment, final or otherwise, shall release the CM from any obligations under this Contract.

**ARTICLE VIII: OWNER'S PROCEDURE**

The CM agrees to comply with all procedural requirements of the OWNER as they apply to reports or other aspects of the Project. In addition, during the Construction Phase of this Contract, the CM shall comply with all procedural requirements of the Client. Client is herein defined as the entity for whom the OWNER is performing services, including subsidiaries, agents, related corporations, or fiduciaries.

**ARTICLE IX: INSURANCE PROVIDED BY CM**

A. CM shall procure and shall maintain all the insurance required under this Article until Final Acceptance of all the Work. The CM shall not commence work under this Contract until the CM has obtained and required each of its Trade Contractors to obtain all of the insurance required under this Article.

The CM and each of its Trade Contractors of every tier shall provide insurance as follows:

1. Workers Compensation Law Requirements

1. 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.
2. 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.
	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. DASNY 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](http://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.

2. Commercial General Liability (CGL) with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least $5,000,000 ($2,000,000 for its Trade Contractors and consultants) per project/per occurrence and general aggregate. Include Products Liability Completed Operations Coverage for $5,000,000 aggregate limit ($2,000,000 for Trade Contractors). The limit may be provided through a combination of primary and umbrella/excess liability policies.

Coverage shall provide and encompass at least the following:

a. Excavation, Collapse and Underground Hazards (where applicable);

b. Independent Contractors;

c. Blanket Written Contractual Liability covering all Indemnity Agreements, including all indemnity obligations contained in the General Conditions;

d. Products Liability and Completed Operations Coverage for a term no less than three years;

e. CGL coverage written on an occurrence form;

f. An Endorsement naming DASNY, the Client, and other entities as an additional insured as specified by DASNY;

g. Policy or policies must be endorsed to be primary as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by the OWNER. Any other insurance maintained by the Owner shall be excess of and shall not contribute with the CM’S, its Contractor’s or Trade Contractor’s insurance, regardless of the “other insurance” clause contained in the OWNER’S own policy of insurance. A copy of the endorsement reflecting this requirement may be requested by the OWNER.

h. CM shall list any deductible or SIR applicable to their CGL and provide a copy of the endorsement.

3. Commercial Automobile Liability and Property Damage Insurance covering all owned, leased, hired and non-owned vehicles used in connection with the Work with a combined single limit for Bodily Injury and Property Damage of at least $1,000,000 each person/each accident. The limit may be provided through a combination of primary and umbrella/excess liability policies.

4. 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, but not excess to other insurance maintained by the OWNER. The Owner may request a copy of the Umbrella/Excess Liability Policy Declarations Page and the Underlying Schedule of Insurance.

5. Asbestos Abatement Contractors and Subcontractors Only.

Asbestos Abatement Contractors Liability with a limit of $2,000,000 per occurrence and aggregate. Coverage shall provide and encompass at least the following:

* + 1. An endorsement naming DASNY, the Client, the Construction Manager (if applicable), and other entities as an additional insured as specified on DASNY Sample Certificate of Insurance in the Supplement to Information for Bidders.
		2. Coverage is on an “occurrence basis”.

6. Hazardous/Contaminated Materials Contractors and Subcontractors including Underground Petroleum Storage Tanks Contractors and Subcontractors Only.

Excavation including Removal, Repair, Installation, Testing and Petroleum Remediation Operations.

 Coverage shall provide and encompass at least the following:

1. Pollution Liability with a combined single limit of $2,000,000 per occurrence/$2,000,000 aggregate;
2. Endorsement naming the following as additional insured’s: DASNY, The State of New York, the Construction Manager (if applicable) and other entities specified on the sample Certificate of Insurance provided by the Owner. Coverage is on an “occurrence basis”;
3. If coverage is on a claims-made policy form then an extended reporting provision of up to three years after Work is completed is required. If coverage is cancelled or not renewed, then the Construction Manager will purchase the extended reporting provision for a period of three years for claims made during the project but reported after the cancellation of the coverage.
4. Maximum Self-Insured Retention of $50,000, or an amount approved by Owner.

B.A Certificate of Insurance, indicating the Project, must be submitted and approved by the OWNER prior to the commencement of work. It is further agreed that if the insurance policy’s term stated on the certificate expires, it is the responsibility of the CM to provide an updated certificate of insurance to the Risk Management Unit and Contracts Unit 30 days prior to expiration of the insurance. Non-compliance to this request may result in the OWNER withholding payment to the CM. Certificate shall provide thirty (30) days written notice prior to the cancellation, non-renewal, reduction in the limits of liability, or change in deductible or Self Insured Retention requirements of any policy. Upon request, the CM shall furnish the OWNER with certified copies of each policy.

Certificate is to be forwarded to:

Procurement Unit

DASNY

515 Broadway

Albany, New York 12207

Sample forms of the Certificate(s) of Insurance are attached. Certificate(s) of Insurance, when submitted to the OWNER, constitutes a warranty by the CM that the insurance coverage described is in effect for the policy term shown and will provide insurance for the life of the entire project.

C. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the OWNER.

D. Should the CM fail to provide or maintain any insurance required by this contract, the OWNER may, after providing written notice to the CM, purchase insurance complying with the requirements of this Article and charge back such purchase to the CM.

E. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CM shall immediately cease work on the Project. The CM shall not resume work on the Project until authorized to do so by the OWNER. Any delay or time lost as a result of the CM not having insurance required by this Article shall not give rise to a delay claim or any other claim against the OWNER or the Client.

F**.** Notwithstanding any other provision in this Article, the OWNER may require the CM to provide, at the expense of the OWNER, any other form or limit of insurance necessary to secure the interests of the OWNER.

G. The CM shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the CM. The requirement to secure and maintain such insurance is solely for the benefit of the CM. Failure of the CM to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

H. Neither the procurement nor the maintenance of any type of insurance by the OWNER, a Trade Contractor or the CM shall in any way be construed or deemed to limit, discharge, waive or release the CM from any of the obligations or risks accepted by the CM or to be a limitation on the nature or extent of said obligations and risks of the CM.

I. The Contract may, at the sole option of the OWNER, be declared void and of no effect if the Contractor fails to comply with the provisions of this Article.

J. The CM and its Trade Contractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and of the insurance companies issuing such policies.

K. For Projects/Work in close proximity to railways that the Contractor determines will require entrance upon railway rights of way, the Contractor must provide Railroad Protective Liability coverage. Policy forms AASHO or ISO-RIMA will be required and must be submitted prior to award of Contract.

L. For information and use the Transit Authority provides the following information:

A Railroad Protective Liability policy covering Work to be performed at the job site and affording protection for damages arising out of bodily injuries or death, an injury to or destruction of property, will be required. The Protective Liability insurance policy (I.S.O. Form CG 00 35 11 85 or equivalent) must name the New York City Transit Authority (NYCTA), Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA), Staten Island Rapid Transit Operating Authority (SIRTOA), Metropolitan Transportation Authority (MTA), its subsidiaries and affiliated companies, the City of New York and all other indemnified parties as Named Insureds with limits of liability of $2,000,000 each occurrence on a combined single limit basis (aggregate must be at least $4,000,000) for injuries (bodily injuries, including death and personal injuries) to persons and for damage to property and physical damage to all property owned by, leased by or in the care, custody and control of the Transit Authority.

**ARTICLE X: INSURANCE PROVIDED BY THE OWNER**

A. The OWNER shall, except as otherwise specified, at all times during the period of construction and until physical completion and acceptance, procure and maintain, at the cost and expense of the OWNER, “All Risk” Builders Risk Insurance. The CONSTRUCTION MANAGER, Contractors and Subcontractors will be covered for their work. Losses up to and including $5,000 shall be borne by the CONSTRUCTION MANAGER, PRIME CONTRACTORS and/or its Subcontractors. Reimbursement for loss, if any, is to be made payable to the OWNER. The OWNER shall, at the OWNER’S sole discretion, have power to adjust and to settle with the insurer any loss or claim under said insurance.

B. Coverage shall include sub-limits for property in transit and for property in storage on and off the job site. Specific higher limits for transit/storage are available as circumstances may require upon request by any Named Insured to the OWNER’S Risk Management Unit.

ARTICLE XI: INSURANCE PROVIDED BY TRADE CONTRACTORS

 The CM shall include in the contracts between the CM and each of the separate Construction Trade Contractors the following requirements:

A. The CM be specifically named as an indemnity in the Indemnification and Hold Harmless furnished by each of the Construction Trade Contractors to the OWNER; and

B. That the CM be specifically included as an Additional Insured in all liability insurances furnished by each of the Construction Trade Contractors to the OWNER.

C. Insurance provided by the Construction Trade Contractors is required to be endorsed as primary with respect to the coverage afforded to the additional insureds.

D. It shall be the responsibility of the CM to obtain a copy of each Construction Trade Contractors Certificate of Insurance, in order to ensure that the CM is included as an additional insured there under.

**ARTICLE XII: PROTECTION OF RIGHTS, PERSONS, AND PROPERTY**

A. Accident Prevention

The CM shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of the Work on the Job Site. The CM shall establish and maintain, at all times, safety procedures in connection with the Work as required by the current New York Labor Law and regulations of the Occupational Safety and Health Act (OSHA).

B. Protection of Work and Property

1. The CM shall enforce the provisions of the construction contracts regarding the Contractor and Trade Contractors obligation to guard the OWNER’s property from injury or loss in connection with the Work, the Contractor’s work, and adjacent property.

2. The CM shall make inspections as necessary in order to confirm that the Contractor shall be responsible for protecting the materials stored by the Contractor both on and off site. The CM shall report any loss, theft, burglary, vandalism, or damage of materials or installed work to the OWNER by telephone and “FAX” as soon as it is discovered. If vandalism, theft, or burglary are suspected as the cause of the loss, the CM shall notify site security personnel and the municipal police. The CM shall also ensure the protection of the place of the loss until released from protection by the OWNER or the OWNER’s Representative. The CM shall ensure that no potential evidence relating to the loss is removed from the place of the loss. Failure of the CM to comply with all of the above shall result in the CM bearing full financial responsibility for any losses.

C. Risks Assumed by the CM

1. The CM solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the Work, and whether said risks involve any legal duty, primary or otherwise, imposed upon the OWNER or the Client excepting only risks which arise from faulty designs as shown by the plans and specifications or from the negligence of the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, (hereinafter Protected Persons), that caused the loss, damage, or injuries hereinafter set forth:

a. The risk of loss or damage to the Work or to any plant, equipment, tools, materials, or property furnished, used, installed, or received by the Protected Persons. The CM shall bear said risk of loss or damage until the Work is

completed or until completion or removal of said plant, equipment, tools, materials or property from the site and the vicinity thereof, whichever event occurs last, and in the event of said loss or damage, the CM shall timely repair, replace or make good any said loss or damage after notification to the OWNER’s representative and Risk Management Unit, and;

b. The risk of claims, just or unjust, by third persons against the Protected Persons on account of wrongful death, bodily injuries, and property damage, arising or alleged to arise out of, or as a result of, or in connection with the performance by the CM of the Work. The CM shall bear the risk for all deaths, injuries, damages, or losses sustained or alleged to have been sustained prior to the Final Acceptance of the Work, or resulting from the CM's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the OWNER, and;

c. The CM assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the CM or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the negligent or alleged negligent execution of the Work. The CM shall assume the defense and pay on behalf of the Protected Persons, any and all loss, expense, damage, or injury that the Protected Persons, may sustain as the result of any claim, provided however, the CM shall not be obligated to indemnify the Protected Persons for their own negligence, if any. The CM agrees to assume, and pay on behalf of the Protected Persons, the defense of any action at law or equity which may be brought against the Protected Persons. The assumption of defense and liability by the CM includes, but is not limited to: the amount of any legal fees associated with defending, all costs of investigation, expert evaluation, and any other costs including any judgement or interest or penalty that may be entered against the Protected Persons, in any said action.

2. The CM's obligations under this Article shall not be deemed waived, limited, or discharged by the enumeration of procurement of any insurance for liability for damages.

3. Neither Final Acceptance of the Work nor making any payment shall release the CM from the CM's obligations under this Article. The enumeration elsewhere in the Contract of particular risks assumed by the CM or of particular claims for which the CM is responsible shall not be deemed to limit the effect of the provisions of this Article or to imply that the CM assumes, or is responsible for, only risks or claims of the type enumerated; and neither the enumeration in this Article nor the enumeration elsewhere in the Contract of particular risks assumed by the CM of particular claims for which the CM is responsible shall be deemed to limit the risks which the CM would assume or the claims for which the CM would be responsible in the absence of said enumerations.

D. Protection of Lives and Health

1. The CM shall make daily observations of the safety practices of all Trade Contractors or Sub-contractors work activities on the job site and check their compliance with municipal, state and federal safety requirements. If a safety violation is found, the CM shall give the Trade Contractor or Sub-contractor immediate written notice of the deficiency, and require correction of the safety violation before work continues. If the Trade Contractor or Sub-contractor does not correct the deficiency within three (3) hours of notice from the CM, the CM may require the Trade Contractor or Sub-contractor to leave the job site or may authorize a separate Trade Contractor or Sub-contractor to erect or provide the required safety structures, equipment, or procedures. All costs related to using a separate Trade Contractor or Sub-contractor to provide safety structures, equipment, or procedures shall be paid by the Trade Contractor or Sub-contractor that failed to comply in a timely manner to the CM's notice.

The CM shall conduct weekly safety meetings with all Trade Contractors and their Sub-contractors to review compliance with the safety precautions and programs required by their respective contracts.

The CM shall provide a copy of all notices under this section to the OWNER's Risk Management Unit.

Any slow down or delay in work caused by actions under this section shall not be a valid basis for a delay or loss of income claim by the CM.

2. The CM shall ensure that the Trade Contractors and their Sub-contractors on the project shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of Work under the Contract, and shall immediately notify the OWNER in writing of any injury which results in hospitalization or death. The CM shall require the Trade Contractor and their Sub-contractors to provide to the OWNER a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any job related injury on the OWNER's job site. Further, a copy of the OSHA Log of Injury and Illness shall also be provided to the OWNER for any reporting period in which a job related injury or illness is recorded. The CM shall also provide a list of witnesses to the OWNER. The list shall at least include the full name, home address, occupation, and telephone number of each person who saw or has knowledge of the incident which caused the injury or illness.

3. The OWNER or OWNER's Representatives may inspect the job site at any time without notice to the CM. If the OWNER finds that the CM is not complying with sections A. through D., the OWNER may send written notice to the CM to correct any deficiency. If upon reinspection, the OWNER finds the deficiencies have not been corrected, the OWNER may let a separate contract to correct any deficiencies and charge back the cost of the separate Contract to the CM at a premium rate. The CM cannot pass these additional charges onto the OWNER. No action taken under this section shall be deemed as a basis for any delay claim or any other claim against the OWNER by the CM.

4. The CM shall preserve and safeguard the scene of any jobsite accident involving a ladder, scaffold, mobile machinery, equipment, safety railing, or uncovered floor opening, or any other accident where the injured person required emergency medical treatment. The CM shall "tape off" the area, and not allow any material object or property to be altered, changed, moved, or removed from the accident site. In addition to "taping off" the accident site, the CM shall telephone and "FAX" the OWNER’s Project Manager and Risk Management Unit immediately, and post a person at the accident site to protect it. Safeguarding and protecting the accident site shall only be abandoned by the CM upon release by the OWNER or the OWNER's Representative. Failure of the CM to comply with the provisions of this paragraph shall be deemed a breach of this Contract.

5. The CM shall prepare and deliver to the OWNER a site specific job safety and security program. Special emphasis must be given to access to emergency medical treatment, first aid, evacuation, and basic safety training including orientation of each worker on the specific inherent safety risks of the jobsite and specific training required by OSHA. The security element of the plan shall include special consideration for protection if the project is in a high crime area.

**ARTICLE XIII: HOLD HARMLESS**

In addition to any risks specifically assumed by the CM under Article XII, the CM hereby agrees to indemnify and hold harmless the OWNER, the Client, the OWNER's members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the CM, and shall pay any judgment or expense, including interest, imposed against any of them for injury, wrongful death or property damage, and to defend and pay the costs and expenses thereof, any action, proceeding or lawsuit brought against the parties indemnified and held harmless herein.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment for which the OWNER is responsible, and the OWNER agrees to pay the CM the percentage of defense costs which the CM incurred based upon an apportionment of the OWNER's allocated responsibility.

**ARTICLE XIV: OWNER'S RIGHT TO AUDIT AND INSPECT RECORDS**

The CM shall maintain, and shall keep for a period of six (6) years after the date of final payment, all records and other data relating to the Project, including records of Trade Contractors and suppliers. The OWNER or the OWNER's Representative shall have the right to inspect and audit all records and other data of the CM, Trade Contractors, and material suppliers relating to the Project.

**ARTICLE XV: APPENDIX "D" GENERAL CONDITIONS FOR CONSTRUCTION**

Appendix "D", entitled GENERAL CONDITIONS FOR CONSTRUCTION is included as an attachment.

**ARTICLE XVI: ASSIGNMENT**

The CM shall not assign the Contract in whole or in part without prior written consent of the OWNER, however, the OWNER may assign the Contract in whole or in part without prior written consent of the CM.

 **ARTICLE XVII: THE CONTRACT DOCUMENTS**

The Contract for Construction Management Services between the OWNER and the CM sets forth the CM’s scope of services and is comprised of the following documents:

* this **Construction Phase Contract**, and all attached documents and appendices;
* the **General Conditions Phase Contract,** and all attached documents and appendices, incorporated herein by reference;
* the **OWNER’s General Conditions for Construction and General Requirements.**

### ARTICLE XVIII: INTERPRETATION

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

1. Construction Phase Contract
2. General Conditions Phase Contract

**ARTICLE XIX: TIME OF COMPLETION**

The planned Completion Date for the trade work for this portion of this Construction Phase shall be ***(insert schedule***), however, this Contract shall survive and remain in full force and effect until the Work of this Contract is completed.

**IN WITNESS WHEREOF**, the OWNER has executed this Contract on the day of 20 .

DASNY

515 Broadway

Albany, NY 12207-2964

By

Title

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **IN WITNESS WHEREOF**, the CM has caused this Contract to be signed by its duly authorized officer on the \_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_.

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 a partner.

If a **general partnership**, signer must be a partner.

If a **sole proprietorship**, signer must be the owner.

**OWNER’S ACKNOWLEDGEMENT FORM**

**ACKNOWLEDGEMENT OF DASNY 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 DASNY, 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

# CONSTRUCTION MANAGER’S ACKNOWLEDGEMENT FORM

 **ACKNOWLEDGEMENT OF CONSTRUCTION MANAGER EXECUTING CONTRACT, IF A CORPORATION**

STATE OF )

 ) ss. :

COUNTY OF )

On the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (include street and street number, if any); that he/she/they is (are) the \_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the corporation described in and which executed the foregoing instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the Board of Directors of said corporation.

 Notary Public

**ACKNOWLEDGEMENT OF CONSTRUCTION MANAGER EXECUTING CONTRACT, IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL**

STATE OF )

 ) ss. :

COUNTY OF )

On the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known 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.

 Notary Public

APPENDIX "A"

SCOPE OF SERVICES

CONSTRUCTION PHASE SERVICES

The Construction Phase services shall consist of those required to effect the complete construction of the Project and to maintain the established Guaranteed Maximum Price (GMP) of the Project.

1. Consultation During Continuing Project Development:

Upon acceptance of the GMP, the Construction Manager at Risk (CM) shall continue to advise and assist the OWNER and Project Designers during any continuing Design Activities as described in the Pre-construction Phase Contract.

2. Project Construction Costs:

2.1 The CM recognizes that the OWNER will have a limit on the project construction costs. That limit is represented by the GMP. The GMP is inclusive of all trade contracts, a General Conditions allowance, CM Fees and the CM-GMP contingency, but excludes the OWNER's Construction Contingency and the CM’s preconstruction costs. The GMP will not exceed the amount referred to in Appendix A, Section 6.5 of the pre-construction phase contract as the Approved Construction Budget.

2.2 Upon completion of the Work, any and all non-expended funds remaining in the GMP, including the CM-GMP Contingency will be retained by the OWNER.

3. Project Schedule

**Responsibility**

The Construction Manager shall provide the following service:

GENERAL

**Summary**

1. The Construction Manager shall provide administrative and procedural requirements to plan, schedule and document the progress of construction during the performance of the Work on multi Contracts, including the following:
2. Project schedule and reports.
3. Contractor’s Baseline Schedule
4. Material location reports.
5. Field condition reports.
6. Special reports.
7. Related Work Items:
8. Contractor’s Submission Schedule.
9. Schedule of Tests and Inspections.

**Definitions**

1. Project: Work at the Site carried out pursuant to one or more sets of Contract Documents.
2. Activity: A discrete part of each Contract that can be identified for planning, scheduling, monitoring, and controlling the Project. Activities included in a CPM schedule consume time and resources.
3. Critical Activity: An activity on the critical path that has no total float.
4. Predecessor Activity: An activity that precedes another activity in the network.
5. Successor Activity: An activity that follows another activity in the network.
6. Bid Milestone Schedule: Interim milestones, included in the Contract Documents, which each Contractor utilizes to formulate their Baseline Schedule.
7. Contractor’s Baseline Schedule: Initial schedule, prepared by each Contractor, to complete the Work of their Contract in accordance with the Contract duration and starting point to which schedule updates are compared.
8. Project Schedule: Contemporaneous schedules, prepared by the Construction Manager, which combines and coordinates activity of each Contractor’s Baseline Schedule into one coordinated Project Schedule.
9. CPM: Critical path method is a scheduling method used to plan and schedule construction projects where activities are arranged based on activity relationships creating a time scaled network diagram.
10. PDM: Precedence diagram method follows the standard CPM calculations and allows for special logic relationships creating an interdependent relationship throughout the network.
11. Critical Path: The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall Project duration and contains no total float.
12. Data Date: The date when the status of the Project schedule is determined, showing the calendar start date for the update period.
13. Float: The measure of leeway in starting and completing an activity.
14. Float time is not for the exclusive use or benefit of the Owner, Construction Manager or any Contractor, but is a jointly owned, expiring Project resource available to all parties as needed to meet schedule milestones and Substantial Completion date.
15. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
16. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned Substantial Completion date.

**Informational Submittals**

1. Format for Submittals: Submit required submittals in both electronic (PDF) file format and as electronic backup file in native software format.
2. Project Schedule: Schedule, of size required to display entire schedule for entire construction period for all Contracts.
3. Submit a working electronic copy of the Project schedule, using software indicated, and labeled to comply with requirements for submittals.
4. Reports: Concurrent with the Project schedule, submit each of the following reports. Format for each activity in reports shall contain; activity ID number, activity description, original duration, remaining duration, actual duration, early and late start and finish dates and total float in calendar days.
5. Activity Report: List of all activities sorted by early or actual start date in each phase, area and level following the physical divisions of the Work.
6. Short Term Activity Report: Lists all activities occurring from the update data date in a two month forward and one month back window.
7. Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by early or actual start date. Include activity ID number and float path(s).
8. Total Float Report: Provide a cumulative list of total float from each update period with comments associated to any and all variances.
9. Procurement Report: List all procurement activities sorted in order of the item being procured.
10. Narrative Report: The project scheduler shall provide a narrative with each schedule update which shall include the following information.
11. Introduction: An executive summary of the schedule narrative.
12. Project Description: A brief description of the Project.
13. Discussion of changes and variances by each Contract and specific recommendations.
14. Anticipated award dates, actual award dates, contractors selected and any recommendations for changes to the bid strategy going forward.
15. Base Line Acceptance: Actual and anticipated acceptance dates of the Baseline Schedules for each Contract and any associated issues.
16. Major Milestones Summary.
17. A graphical presentation of Contract milestones progress - columns to include:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
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|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Activity ID  | Activity Description | Current Update Completion Date | Last Update Completion Date  | Baseline Completion Date  | Variance from Prior Update (Days)  | CumulativeVariation from Baseline (Days) |

 |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

1. Issues: Major issues encountered during the current update with recommended solutions and status of prior issues.
2. Summary of Progress/Current Status of Project: Progress since prior update and any issues encountered.
3. Changes to Network Logic: Explanation of any changes to the network logic.
4. Critical Path: Description of current critical path to completion, variance from baseline critical path and variance from the critical path associated with the prior update.
5. Delay Analysis and Responsibility: Discussion of delays that have been experienced since the prior update with recommended solutions and assessment of responsibility for each delay. This section should also include a matrix presenting the delay associated with each schedule update and the cumulative Project delay.
6. Planned Activities: Activities and progress planned for the next update period.
7. Potential Recovery Measures and Associated Cost Impacts: Provide recommendations for recovery of lost time through re-sequencing strategies, crashing or other compression techniques. Associated cost impacts estimates presented on an order of magnitude basis.
8. Material Location Reports: Submit at monthly intervals.
9. Field Condition Reports: Submit at time of discovery of differing conditions.
10. Special Reports: Submit at time of unusual event.
11. Qualification Data: For project scheduler.

**Quality Assurance**

1. Project Scheduler Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within timeframes requested by the Owner. The project scheduler shall have or be able to obtain certification as a Planning and Scheduling Professional (PSP) or have a minimum of five years of demonstrated experience scheduling large capital projects.
2. Prescheduling Conference: The Construction Manager shall conduct conference at the Project site to review methods and procedures related to each Contractor’s Baseline Schedule and the Project schedule, including, but not limited to, the following:
3. Review software limitations and content.
4. Verify availability of qualified personnel needed to develop and update schedule.
5. Discuss coordination, including phasing, work stages, area separations, interim milestones and Beneficial Occupancy.
6. Review delivery dates for Owner-furnished products.
7. Review schedule for work of Owner's separate contracts.
8. Review time required for review of submittals and resubmittals.
9. Review requirements for tests and inspections by independent testing and inspecting agencies.
10. Review time required for completion and startup procedures.
11. Review and finalize list of construction activities to be included in schedule.
12. Review submittal requirements and procedures.
13. Review procedures for updating schedule.

**Cooperation**

1. Coordinate preparation and processing of the Project Schedule and reports with the performance of the Work and with Baseline Schedules of separate Contractors.
2. Coordinate new Contractor’s Baseline Schedules and the Project Schedule updates with separate Contractors when additional Contracts are executed during the entire duration of the Project.
3. Coordinate the Project Schedule with each Contractor’s Submission Schedule, progress reports, and other required schedules and reports.
4. Secure time commitments for performing critical elements of the Work from all parties.
5. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

**Critical Path Method Schedule, General**

1. Bid Milestone Schedule: The Owner shall provide a Bid Milestone Schedule as a template for the Contractor’s Baseline Schedule. Nothing in the Bid Milestone Schedule, Contractor’s Baseline Schedule or Project Schedule shall preclude the Construction Manager or any Contractor from advancing the Work of any Contract.
2. Each Contractor shall include milestones indicated in the Contract Documents in their Baseline Schedule, including, but not limited to, the Notice to Proceed, interim milestones, Substantial Completion, and Contract close-out.
3. Substantial Completion date shall not be changed by submission of a schedule that shows an early completion date, unless approved by the Owner.
4. No time for weather will be apportioned for foreseeable occurrences in a specific regional area. Each Contractor shall be responsible to determine reasonable averages and make allowances in the performance of the Work.
5. Activities: Treat each numbered activity as a consumable resource for each principal element of the Work. Comply with the following:
6. Activity Duration: Define activities so no activity is longer than 15 days, unless specifically allowed by the Owner.
7. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.
8. Submittal Review Time: Include review and resubmittal times indicated in Submittal Procedures in schedule. Coordinate submittal review times in the Project Schedule with dates entered in the Contractor’s Submission Schedule.
9. Startup and Testing Time: Include not less than 15days for startup and testing.
10. Substantial Completion: Indicate completion on the date established for Substantial Completion, and allow time for the Owner’s administrative procedures necessary to execute the Notice of Substantial Completion (NOSC).
11. Incomplete Work items and Contract Closeout: Include not more than 60 days for incomplete Work items and Contract Closeout Requirements for each Contract.
12. Constraints: Include constraints and work restrictions indicated in the Contract Documents, or approved by the Owner prior to use and show how date constraints affect the sequence of the Work.
13. Construction Areas: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities.
14. Upcoming Work Summary: Prepare summary report indicating activities scheduled to occur or commence prior to submittal of next schedule update. Summarize the following issues:
15. Unresolved issues.
16. Unanswered RFIs.
17. Rejected or unreturned submittals.
18. Notations on returned submittals.
19. Recovery Project Schedule: When periodic update indicates the Work of any Contract is 15 or more calendar days behind the current approved Project Schedule, submit a separate recovery Project Schedule indicating means by which the effected Contractor intends to regain compliance with the Project Schedule. Indicate changes to working hours, working days, crew sizes, and equipment required achieving compliance, and dating by which recovery will be accomplished, subject to Owner’s approval.
20. Computer Scheduling Software: Prepare Project Schedules using current version of a program that has been developed specifically to manage CPM schedules and interface with the Owner’s electronic file of the Bid Milestone Schedule.
21. Utilize Primavera P6 or P3 Primavera Project Planner operating system.

PRODUCTS

**Critical Path Method Schedule (CPM Schedule)**

1. Contractor’s Baseline Schedule: Each Contractor shall prepare schedule using a time-scaled PDM network diagram representing the Work of their Contract. Total float time shall be equal to or greater than zero in the Baseline Schedule.
2. Coordinate with each Contractor to submit their Baseline Schedule within 15 days of the date established for the Notice to Proceed. Outline significant construction activities for the first 90 days of construction. Include skeleton diagram for the remainder of the Work based on indicated activities.
3. Coordinate with each Contractor for the Construction Manager to develop network diagram in sufficient time to submit Baseline Schedule so it can be accepted for use no later than30days after date established for the Notice to Proceed.
4. Failure to include any work item required for the performance of the Work shall not excuse the Construction Manager or any Contractor from completing the Work of any Contract within applicable completion dates, regardless of the Owner’s approval of the schedule.
5. Project Schedule: Prepare contemporaneous schedules using a time-scaled PDM network for sequencing the Work and showing the progress of the Work for all Contracts.
6. Establish procedures for monitoring and updating the Project Schedule and for reporting progress. Coordinate procedures with the progress meeting and payment request date.
7. Coordinate the Work occurring concurrently through the integration of other Contractor’s Baseline Schedules into the Project Schedule.
8. Include the current total float status of the Project as the starting point for the integration of each Contractor’s Baseline Schedule into the Project Schedule.
9. Each Contractor’s Baseline Schedule will maintain its original overall duration when integrating into the Project Schedule.
10. Conduct educational workshops to train and inform the Contractor’s key Project personnel, including subcontractors' personnel, in proper methods of providing data and using Project Schedule information.
11. Use "one workday" as the unit of time for individual activities. Indicate nonworking days and holidays incorporated into the schedule in order to correlate with all Contract durations.
12. Project Schedule Preparation: Prepare a list of all activities required to complete the Work of all Contracts. At minimum, each individual specification sections, including General Requirement sections, as indicated in the Project Manual, shall be listed as an activity.
13. Activities ID: Provide a unique identifier to each activity. No activity ID shall be recycled or reused.
14. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
15. Preparation and processing of submittals.
16. Mobilization and demobilization.
17. Purchase of materials.
18. Delivery.
19. Fabrication.
20. Utility interruptions.
21. Installation.
22. Work by Owner that may affect or be affected by the Contractor's activities.
23. Testing and commissioning.
24. Incomplete Work items and Contract closeout.
25. Actual Activity Dates: Once an activity has been assigned an actual date of occurrence, the status of that activity shall not change. Any change to actual dates must be accompanied with supporting data and approved by the Owner. No actual start date shall occur ahead of the data date.
26. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with the Bid Milestone Schedule dates.
27. Processing: Process data to produce output data status on a computer-drawn, PDM network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the Project Schedule within the limitations of each Contract duration.
28. Calculations: The schedule network shall be calculated allowing activities to retain their original logic. Progress override shall not be used when calculating the network status.
29. Logic: Leads and lags will not be used when the creation of an activity will perform the same function. Lag durations contained in the schedule shall not have negative value. Lead and lag durations shall not exceed the durations of the activity they are assigned.
30. There shall be only two open ended activities; (1) Notice to Proceed, with no predecessor logic, and (2) Final Payment, with no successor logic. All intermediate activity logic shall be connected.
31. Out of sequence activities that have progressed before all preceding logic will be allowed only on a case by case basis, as approved by the Owner. The Construction Manager shall propose logic corrections to eliminate all out of sequence progress and correct out of sequence progress that continues for more than two update cycles by logic revisions, as approved by the Owner.
32. Float: The Owner shall reject the schedule and schedule updates for the use of float suppression techniques; such as preferential sequencing, special lead lags logic constraints, zero total or zero free float constraints, extended activity times, or imposing constraint dates other than what is required by each Contract.
33. The use of resource leveling used for the purpose of artificially adjusting activity durations to consume float and influence the critical path is prohibited.
34. A schedule showing work completing in less time than any Contract duration and accepted by the Owner, will be considered to have float.
35. Any float generated during the performance of the Work, due to efficiencies of the Owner, Construction Manager or any Contractor is not for sole use of the party generating the float.
36. Negative float will not be a basis for requesting time extensions or not to be construed as a means of acceleration or schedule extensions.
37. Format: Follow the applicable individual specification sections of the Work for each Contract as the bases for the content of the Project Schedule. Organize the Project Schedule to provide the necessary detail for each area, level, quadrant and section as needed in the performance of the Work of each Contract.
38. Activity Codes: Assign Owner defined activity codes to all activities in the schedule. Owner defined activity code are provided in the schedule template and include multiple values for CSI, Discipline, Phase, Area and Level.
39. Changes in the Work: For each proposed change and concurrent with its submission, prepare a time-impact analysis using a network fragment to demonstrate the effect of the proposed change on the overall Project Schedule.
40. Schedule Updating: Concurrent with making revisions to schedule, prepare tabulated reports showing the following:
41. Identification of activities that have changed, including the reason each adjustment was necessary.
42. Changes in early and late finish dates.
43. Changes in activity durations in workdays.
44. Changes in the critical path.
45. Changes in total float or slack time.
46. Changes in the duration for Substantial Completion.

**Reports**

1. Material Location Reports: At monthly intervals, prepare and submit a comprehensive list of materials delivered to and stored at Project site. List shall be cumulative, showing materials previously reported plus items recently delivered. Include with list a statement of progress on and delivery dates for materials or items of equipment fabricated or stored away from Project site.
2. Field Condition Reports: Immediately on discovery of a difference between field conditions and the Contract Documents, prepare and submit a detailed report. Submit with a Request for Information. Include a detailed description of the differing conditions, together with recommendations for changing the Contract Documents.

**Special Reports**

1. General: Submit special reports directly to Owner within oneday of an occurrence. Distribute copies of report to parties affected by the occurrence.
2. Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, and response by Contractor's personnel, evaluation of results or effects, and similar pertinent information. Advise the Owner in advance when these events are known or predictable.

EXECUTION

**CPM Schedule**

1. Project Scheduler: Engage a consultant or person skilled in construction planning and scheduling to provide planning, scheduling, evaluation, and reporting services using CPM scheduling.
2. In-House Option: The Owner may waive the requirement to retain a consultant if Construction Manager employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
3. Meetings: Project scheduler shall attend all meetings related to the Project progress, alleged delays, and time impact.
4. Project Schedule and Reports Updating: Prior to each scheduled progress meeting, update schedule to reflect actual construction progress and activities. Issue schedule and reports one weekbefore each regularly scheduled progress meeting.
5. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the reports of each such meeting. As a minimum, schedule update submissions shall occur monthly and within 30 days of the schedule Data Date.
6. Include reports with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
7. As the Work progresses, indicate final remaining duration for each activity.
8. Distribution: Submit one electronic copy, in format specified, to the Owner and distribute copies of approved schedule and reports to the Owner, Design Professional, separate contractors, testing and inspecting agencies, and other parties identified by the Owner with a need-to-know schedule responsibility.
9. Post copies in Project meeting rooms and temporary field offices.
10. When revisions are made, distribute updated schedules and reports to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

4. Trade Contracts Prequalification, Bid and Award

4.1 For any of the Work on this Project, the following procedures will be followed by the CM.

a. Formal Advertising - For the purpose of obtaining expressions of interest from responsible bidders, formal advertising entails:

(1) Preparation of a listing of specific bid packages on which competitive pricing will be solicited; and

(2) Publicizing the invitation for expressions of interest in bidding through distribution to prospective bidders, posting in public places, publication in newspapers and construction trade journals, and such other means as may be appropriate, including minority trade organizations, in sufficient time to enable prospective bidders to prepare and submit their expressions of interest and qualifications and submit their bids before the time estimated for receipt of bids.

b. Pre-qualification of Bidders - Bidders will be required to meet specified qualifications before being invited to submit a bid on a separate bid package. The OWNER reserves the right to review and approve the qualification criteria prior to advertising by the CM.

To facilitate the pre-qualification of bidders, each bid package included in the consolidated announcement per paragraphs a. 1. and 2. above shall be described in sufficient detail to inform prospective bidders of the nature and scope of the work and shall contain instructions to interested bidders for submitting qualifications. Prospective bidders must identify the bid packages(s) for work they intend to perform. They must also submit their years of experience in performing said work on contracts of similar size and complexity. **The CM may establish its own pre-qualification process, but such process must include: (1) determining whether any prospective bidder has been subject within the past five years to a debarment by the New York State Department of Labor or by the New York State Workers Compensation Board; (2) determining the status of the bidder’s registration with the New York State Department of State; (3) identifying any serious Occupational Safety and Health Administration (OSHA) violations by the bidder; and (4) requiring each bidder to disclose whether, within the past five years, it has been debarred by, found not responsible by, or lost its prequalification status from, any public agency. (Note: information regarding the first three items is publicly available at no charge through the respective agencies websites.)**

**The Owner will provide a Pre-Qualification Checklist for use by the CM. (See Appendix D) When the CM through its bid process has identified the first and second apparent low bidders for each bid package, the CM shall require those first and second apparent low bidders whose bids exceed $2 million to submit to the OWNER a completed NYS Vendor Responsibility Questionnaire and a completed DASNY Vendor Questionnaire (DVQ), including financial statements. The OWNER reserves the right to require that any apparent first or second low bidder, regardless of the amount of their bid, submit a VRQ and DVQ. The owner will review the VRQs and DVQs. In concert with the CM, the OWNER will also review the history and qualifications of the first and second apparent low bidders, and inform the CM of any bidders it disapproves. The CM shall require each bidder to provide a Non-Collusive Bidding Certification form with their bid. The CM shall also provide same form with each bid package. The Owner will provide said form. (See Appendix E)**

c. If the low bid for any bid package or the aggregate of all packages exceeds the CM’s GMP budget line item price for such package, or if less than three bids are received in response to the invitation to submit a bid on any bid package, one of the following procedures shall be followed:

(1) The CM shall negotiate with the lowest bidders to reduce the price of the bid package to a cost which will not exceed the budget line item price; or

(2) The CM shall reject all bids and issue a revised invitation to bid approved by the OWNER; or

(3) The CM shall award to the low bidder for a price above the budget line item; or

(4) The CM shall perform the Work itself for the amount of the budget line item price if c. (1) cannot be accomplished, and if the OWNER approves of same.

In addition, the CM and the OWNER may agree to the need for negotiation of bid prices where same are within budget line item cost estimate.

Whichever of the foregoing procedures is followed, there shall be no reduction of the scope or quality of the project for any bid package in order to accomplish the Work of the Project.

d. If the low bid for any bid package appears to be too low, and it appears that the bidder would be unable to complete the contract at the price bid, the CM shall so notify the OWNER. The OWNER, in concert with the CM, will review the bid price breakdown, and the history of the bidding contractor, in accordance with Executive Order 170.1, Uniform Guidelines for Responsibility Determinations. Assuming the OWNER agrees with the CM that the bid price is too low, or that the history of the bidding contractor raises serious concerns about the contractor’s ability to perform the Work in a timely and satisfactory manner, and such agreement shall not be unreasonably withheld, the CM will proceed to review the next low bidder, in like manner if necessary.

1. Trade Contractor Bids

The CM shall notify the Owner of the date, time and location for receipt of Trade Contractor bids so that the Owner may attend bid openings. The CM shall record the bids and provide a bid tabulation to the Owner.

f. Contract Awards

The CM shall be responsible for making all sub-contract awards, after following the process outlined in 4.1a, b, c and d herein. CM shall supply the OWNER with its bid evaluations, descoping analysis, rationale, recommendation for award and copies of all executed subcontracts. The OWNER reserves the right to reject an intended award, in any instance where the OWNER’s review of the pre­qualified bidder would result in withdrawal of said pre-qualification.

One or more Principal Trade Contract packages shall be prepared for each of the General Construction, Electrical, Mechanical, Fire Protection, and Plumbing divisions of the work of the Project. The CM may prepare Principal Trade Contract packages for other divisions or subdivisions of the work. Each Principal Trade Contractor may be required by the CM to provide such bonds and insurance as the CM may require in the contract package.

g. The CM shall provide a report that compares the bid results to the trade contract line items from the GMP. If the total of the bid results is less than the total of the trade contract line items from the GMP, the difference is considered “bid savings”. The bid savings will remain in the GMP until substantial completion or until an earlier time mutually agreed upon by the CM and the Owner. Any bid savings remaining at either time indicated above will be retained by the Owner in accordance with Section 2.2 of this Appendix A.

4.2 The CM may at any time prior to the prequalification of bidders, identify and define other Specialty Contract packages which the CM determines may be helpful in the timely, cost-effective construction of the Project.

4.3 The CM shall include the OWNER’s General Conditions and General Requirements in each Trade Contract Bid Package. The General Requirements may be edited as appropriate in order to adapt them to the specific Bid Package.

4.4 All contract documents between the CM and the Trade Contractors shall be made available for review by the OWNER.

4.5 The use of general allowances in subcontracts is prohibited. The use of specific allowances may be permitted. Any specific allowances must be submitted by the CM to the Owner for approval, on a case by case basis.

5. Project Control

5.1 Project Staffing

a. The CM's on-site representatives shall manage the work of the Trade Contractors and coordinate the work with the activities and responsibilities of the OWNER and Project Designers to complete the Project in accordance with the OWNER's objectives of cost, time and quality.

b. The CM shall maintain a competent and adequate full-time staff approved by the OWNER at the Project site to coordinate and provide adequate direction of the work, and to monitor progress of the Trade Contractors on the Project at all times.

c. It is understood that the designated and approved on-site CM representatives will remain on the job and in responsible charge as long as those persons remain employed by the CM, unless the OWNER has reason to agree otherwise during the course of the project and a contract amendment is issued accordingly by the OWNER.

 5.2 On-site Coordination / Management

a. The CM shall establish an on-site organization and lines of authority in order to carry out the overall plans of the Project Team. The CM shall coordinate all on-site activities with those of an ongoing project within the same general site area.

b. The CM shall conduct orientation sessions for its on-site field staff and Trade Contractor's staff, as applicable, as to the Project Procedures developed during the Pre-Construction Phase. OWNER representatives may attend such sessions.

c. The CM will provide for all coordination with the on-site Trade Contractors as well as the necessary on-site services for the construction activities and on-site requirements of the OWNER and Project Designer.

d. The CM shall require all Trade Contractors to submit a Trade Contractor's Daily Report that is to include, but not be limited to, a summary of the construction activities of the day along with manpower and equipment usage including that of their subcontractors and safety incidents. Such documents shall be available for review by the OWNER’s on-site representative. The CM shall provide a cover summary daily report. A copy of the report shall be provided to the OWNER.

e. The CM shall accept delivery and arrange for storage, protection and security for any OWNER purchased materials, systems and equipment that are a part of the Work until such items are turned over to the respective Trade Contractors.

f. The CM shall coordinate with appropriate parties the delivery and installation of OWNER purchased furnishings and equipment.

 5.3 Meetings

a. The CM shall schedule and conduct regular progress meetings as conditions on the Project require but at least weekly, and the CM shall conduct bi-weekly OWNER’s meetings and other meetings as may be directed by the OWNER, at which Trade Contractors, OWNER, Project Designer, other designated representatives and the CM can discuss jointly such matters as progress, scheduling, and construction-related issues.

b. The CM shall take and distribute complete minutes of meetings to all attendees and others as directed by the OWNER within three (3) days of such meetings. Representatives of the OWNER may attend meetings and shall in any case receive all notices and minutes of meetings.

6. Requests for Information (RFI)

6.1 The CM will be responsible for developing and implementing an RFI form for use on the project utilizing Primavera Contract Manager software.

6.2 The CM will be responsible for logging and reviewing all RFIs prior to submission to the OWNER and the Project Designer. The CM is to insure that the RFIs submitted are appropriate and not frivolous.

6.3 The CM shall be responsible for tracking and monitoring all RFIs throughout the Construction Phase in a timely manner until they are processed by the Project Designer and/or the OWNER.

* 1. The CM shall include RFIs as an agenda topic at all OWNER meetings and advise the OWNER immediately of any delays in their process. All responses to the RFIs that have an added cost impact shall also be discussed with the OWNER.

7. Substitution Requests

7.1 The CM will be responsible for logging all substitution requests.

7.2 The CM will be responsible for reviewing all substitution requests to insure that they are complete; and, if not, returning them to the Trade Contractor for proper submission.

7.3 The CM will be responsible to review all substitution or “or equal” requests prior to submission to the Project Designer and the OWNER.

*It is to be noted that the OWNER discourages substitutions and the OWNER’s approval will be granted only upon the most persuasive arguments as to quality, function and financial merit regarding a substitution.*

7.4 The CM shall be responsible for tracking and monitoring all substitution requests throughout the Construction Phase until the Project Designer and/or the OWNER process all substitution requests. The CM shall be responsible to see that all substitution requests are submitted in a timely manner per the General Conditions.

7.5 The CM shall include substitution requests, if any, as an agenda topic at the OWNER's meetings and advise the OWNER immediately of any delays in the substitution request process.

Project Photographs

Project photographs shall be taken as necessary to document the Trade Contractor’s completed work, as required by the construction documents.

9. Cost Control/Change Requests

9.1 The CM shall develop and maintain an effective system of Project cost control. The CM shall refine and update the approved GMP, incorporate OWNER approved changes as they occur, and develop reports and forecasts as needed, or as directed by the OWNER. The CM shall identify variances between actual and estimated costs and advise the OWNER whenever projected cost exceeds allowances or estimates. The CM shall furnish a monthly cost report to the OWNER that documents status of GMP and actual costs.

 9.2 The CM shall review all requests for changes from its Trade Contractors and perform an analysis of the Contract Documents to determine if the request has validity. If the CM determines that the request is valid, the CM shall submit its findings to the Owner and Project Designer for review. If the Owner and Project Designer determine that the change is valid then the Owner will issue a Notice to Proceed to the CM and the CM will be authorized by the Owner to prepare a change order package in accordance with the contract documents. The Owner will place strong emphasis on the involvement of the CM during the design phase when determining if a change has validity. The Owner will make the final determination regarding the validity of any change request.

9.3 The CM shall check and supervise all material deliveries, equipment and labor entering the work site. The CM shall maintain cost accounting records on authorized work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records, and afford the OWNER access to these records and preserve them for a period of six (6) years after final payment. The OWNER reserves the right to audit these records during that period.

10. Quality Control / Inspection

10.1 The CM shall submit to the Owner a quality control/quality assurance (QC/QA) plan that outlines the CMs approach to QC/QA. It shall address the following items at a minimum; Use of approved submittals and shop drawings in the field, pre-installation meetings prior to commencement of major or specialized portions of the work and designated QA/QC staff for the CM. The QC/QA plan shall also include a matrix indicating a comprehensive list of inspections by the CM, the A/E, the Owner’s independent testing firm, the commissioning agent and the DASNY Quality Assurance group. The QC/QA plan shall also include a deficiency log and the CM’s approach to resolving deficiencies.

10.2 The CM shall perform daily quality control inspections on the work of the Trade Contractors to guard the OWNER against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the Project Designers. The CM shall advise the OWNER and Project Designers of any apparent variation and deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations from the intent of the Contract Documents. The CM shall provide daily inspection reports to the Owner no later than the morning of the following business day. If deficient work is discovered by the Owner, Project Designer or the CM, the CM shall direct the pertinent Trade Contractor(s) to correct the work.

10.3 The OWNER reserves the right to independently contract for Quality Assurance inspection and testing. The CM shall coordinate the activities of the OWNER’s independent QA Consultant with those of the trade contractors.

10.4 The OWNER and Project Designer will conduct regular inspections of the work in progress. The CM shall track deficiencies submitted by the OWNER and the Project Designers and coordinate corrective work required.

10.5 In the latter stages of the project the CM shall:

* 1. Perform its own “pre-punchlist” inspections in order to minimize the punchlist items discovered during the joint inspections described below.

b. Inspect the Project jointly with the OWNER and the Project Designers prior to the time the OWNER is to use, occupy, or operate any part or all of the Project, and prepare a list of observed variances and deficiencies in the Work. Distribute the list to the appropriate Trade Contractor(s) for necessary corrective work.

c. Prepare jointly with Project Designers a "Final Punch List" for each Trade Contract. Distribute to the appropriate Contractor(s) for necessary corrective action.

d. At the time of substantial completion, prepare a list of any remaining items of work to be completed or corrected. Distribute to the appropriate Trade Contractor(s) for necessary work. Establish a value for each item of work remaining to be completed or corrected.

e. Make final inspection of the Project with OWNER and Project Designers, using Contract Documents as a base to determine if the Contract requirements have been fulfilled. List any variances between Contract requirements and Work installed. Coordinate items that may appear on independent final lists prepared by the OWNER/Project Designers. Distribute to the appropriate Trade Contractor(s) for necessary corrective action.

f. Follow up on all notices of corrective work to Trade Contractor(s) to assure satisfactory and timely completion of the Work.

g. Coordinate with the OWNER and necessary Trade Contractors to perform all necessary testing and acceptances of building systems prior to final acceptance and turnover of the building. The CM shall gain familiarity with the Owner’s requirements for issuing a Temporary Approval for Occupancy and coordinate and implement requirements with the Trade Contractors in a timely manner.

11. Site Security

The CM shall maintain a site security system. The administration of this system shall be by the CM’s own personnel unless otherwise approved by the OWNER. The CM shall be responsible for the administration of this system, which may include, but not be limited to:

1. Maintenance of hardware and software.
2. Generating photographic or other approved identifications.
3. Assigning identification cards to contractor staff and other site personnel.
4. Ensuring contractor staff and other site personnel comply with security procedures.
5. Maintaining security of the system against unauthorized access.
6. Managing other data entry and generation of reports as requested by the OWNER.

12. Project Safety

12.1 The CM shall develop and implement a site specific project safety program in accordance with the General Conditions For Construction and applicable regulations and provide a copy to the OWNER.

12.2 The CM shall report, to the OWNER, as part of each monthly report, any safety violations and actions taken to protect the safety of persons and property engaged in the work.

12.3 The CM shall coordinate with the Owner’s independent safety inspection program by facilitating inspections and providing information to the independent safety inspectors as requested.

13. Changes in the GMP

13.1 The OWNER may unilaterally, at any time, make changes within the general scope of the work to be performed under the Contract. Said changes shall be by written order, via a notice to proceed and change order.

a. Changes in the scope of work to be performed during the Construction Phase shall be governed by the General Conditions For Construction, as supplemented by the provisions of this Section. Notwithstanding anything in the General Conditions For Construction, the provisions thereof shall apply only to work to be performed in the Construction Phase.

b. The CM shall notify the OWNER in writing with detailed cost supportive data if an apparent change in scope or design will require a change in the GMP.

c. The OWNER will review the CM's analysis and cost data and advise the CM of its findings. The OWNER and CM shall reach agreement on the nature of the subject change, and upon the OWNER's direction either eliminate the circumstances of the change or negotiate a mutually agreed cost change to the GMP. The CM shall notify the OWNER of such changes before trade bids for the work associated are requested.

d. Changes to the GMP will only be made as a result of documented and OWNER-approved decisions with the issuance of a change order approved by the OWNER.

13.2 Change order proposals and documentation shall be submitted in accordance with Article 7 of the OWNER’s General Conditions For Construction as may be supplemented by the CM’s General Conditions. Markups for change orders under Article 7 shall only be paid to Trade Contractors and their subcontractors. The CM will not be entitled to any markup; however the CM shall be paid a fee of 3% on Owner initiated program changes.

13.3 All costs associated with scope reductions shall revert to the OWNER in full.

13.4 In addition to Owner initiated program changes, the following items shall be the responsibility of the OWNER and may constitute an increase to the GMP:

1. costs which arise from design errors for work that is required to be performed by the CM that results from improperly installed work resulting from design defects as shown by the plans and specifications.

1. costs which arise from design omissions for work that is required to be performed by the CM resulting from defects in the design as shown by the plans and specifications that are discovered prior to the CM incurring any costs for the improperly described work.
2. Unknown field condition changes;
3. costs which arise from the negligence of the OWNER, the Client, or the OWNER’s members, officers, employees, or representatives.

14. Changes within the GMP

14.1 It is understood and agreed that refinement and detailing may be accomplished from time to time with respect to the drawings and specifications. No adjustment in the Guaranteed Maximum Price or the scheduled completion date shall be made unless such refinement or detailing results in changes in the scope and/or design of the Project, as determined by the OWNER. Nothing herein shall be construed to preclude the OWNER from ordering minor changes in the Work not involving increases in cost, consistent with the intent of the Contract Documents.

* 1. The GMP shall include a CM construction contingency (CM-GMP Contingency) in an amount approved by the OWNER, to help reduce the risks assumed by the CM in providing the GMP for the Project. The OWNER and the CM acknowledge that the contingency is included to make adjustment for eventualities which have not been taken into precise account in the establishment of the GMP, including but not limited to: (1) contract default by trade contractors; (2) unanticipated market conditions; (3) those circumstances where the actual cost of an item exceeds the amount allocated to such item in the schedule of values, assuming all remedies pursuant to section 4.1 of the Construction Phase contract have been exhausted; (4) corrections in the work provided the CM has exhausted all reasonable means to obtain correction of same from the responsible Trade Contractor; (5) interfacing, coordination or scoping omissions between and from the various work categories and (6) subcontractor claims. Funds available within the GMP resulting from differences between the estimated value of a trade contract and the actual bid value of that contract (bid savings) shall also be available as part of the CM-GMP contingency subject to the same terms.
	2. The CM-GMP Contingency is not allocated to any particular item of the cost of the work, and is established for the CM's use as may be required for increases in costs as noted above. It is understood that the amount of the CM-GMP contingency is the maximum sum available to the CM to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the CM-GMP contingency will be borne by the CM.
	3. The CM will notify the OWNER and Project Designer in writing of the CM's intent to apply any part of the CM-GMP contingency to any item within the Cost of the Work prior to any such application. The CM shall not implement the use of this contingency without the written approval of the OWNER. The CM shall fully document the change on its copy of the construction documents. Documentation to substantiate the use of the CM-GMP contingency as it relates to change order work shall be prepared in accordance with Article 7 of the OWNER’s General Conditions. Allowable mark-ups on change orders for Trade Contractors and their subcontractors shall also be in accordance with Article 7 as may be supplemented by the CM’s own General Conditions. The CM shall not be entitled to receive any markup or fee on these changes. The CM will notify the OWNER in writing of the CM's intent to apply any part of the CM-GMP contingency to any item within the Cost of the Work prior to any such application. The CM shall not implement the use of this contingency through reallocation or other means without the written approval of the OWNER. The CM shall fully document the change on its copy of the construction documents.

15. Shop Drawing Review / Processing

15.1 The CM will be responsible for logging all shop drawings / submittals prior to submission to the Project Designer and/or OWNER. The CM is to insure that shop drawings and submittal packages are submitted in a complete and appropriate manner and, if not, return them to the Trade Contractor for proper submission.

15.2 The CM shall develop and implement a system for review, acceptance or rejection, and processing of all shop drawings / submittals, including noting critical projected lead-times on the CPM schedule. He shall review this system with the OWNER and the Project Designer, and obtain the OWNER's approval prior to implementation.

15.3 The CM shall be responsible for tracking and monitoring all shop drawings / submittals throughout the Construction Phase until all shop drawings / submittals have been approved by the Project Designer and/or the OWNER.

15.4 The CM shall include shop drawings as an agenda item on all OWNER meetings and advise the OWNER immediately of any delays in the shop drawing / submittal process.

16. Project Site Documents

The CM shall devise, implement and maintain at the Project site, on a current basis, a structured document control system which includes and tracks records of all necessary contracts, RFI’s, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Contract or the Work. These documents shall be readily available to the OWNER any time during the performance of this contract.

17. Reports

17.1 General

a. The CM shall keep accurate and detailed written records of project progress during all stages of construction.

b. The CM shall submit the required reports to the OWNER on the status of construction, including updated copies of all logs maintained at the site for change orders, claims, submittals, etc.

17.2 Daily Diary

a. The CM shall maintain a detailed daily diary of all events which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, project progress. The diary shall record weather data, including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities. The diary shall also record all visitors, and include a detailed list of all material deliveries to the site. The diary shall be available to the OWNER at all times and shall be turned over to the OWNER upon completion of the contract.

17.3 Daily Reports

a. The CM shall compile a summary daily report consisting of the following for submittal to the OWNER:

(1) The CM’s Daily Diary.

(2) The Trade Contractors’ daily report describing the construction activities of the day along with manpower and equipment usage, including that of their subcontractors and safety incidents.

17.4 The CM shall provide to the OWNER on a monthly basis (every 30 days beginning 30 days from the issuance of the Notice to Proceed for a Construction Phase), or at the OWNER's request, a written report inclusive of the items noted below.

17.5 Within ten (10) days of issuance of the Construction Phase Notice to Proceed, the CM is to submit to the OWNER the report formats for each of these reports and prior to implementation the CM must obtain the OWNER's approval of these formats.

17.6 The monthly report by the CM is to include the items noted below.

a. Project Status: Overall summary of the project status to date for the Project inclusive of information on the Trade Contractors' Work and the percentage of completion for the Project.

b. Schedule: Revised project schedules with a summary statement as to the status of construction for the Project, and major milestones (achieved and slipped), including a discussion of each slippage and proposed recovery plan.

c. Cost Status: Overall summary of the financial status of the project with the cost control report.

d. Change Order: A summary statement as to the status of change orders for the Project inclusive of potential change orders, approved change order and rejected / voided change orders as well as change orders which require the OWNER's immediate attention.

e. Shop Drawings / Submittal and RFIs: A summary statement as to the status of shop drawings / submittal and RFIs for the Project inclusive of items requiring the OWNER and/or the Project Designer's immediate attention.

f. Quality Control / Inspections: A summary statement as to the status of quality control / inspections for the Project including, but not limited to, number and type of inspections made, overall project quality to date, and recommendations.

g. Current construction and cost issues with proposed solutions for resolution.

h. A copy of monthly photographs highlighting the current progress, as necessary

i. A 30 and 60 day look ahead schedule.

 j. An accident report.

18. Contract Close-Out

18.1 The CM is responsible for compliance with all Contract Close-Out items per the Contract Documents. He shall obtain data from Trade Contractors and maintain a current set of record drawings, specifications and operating manuals.

18.2 With mechanical and electrical equipment, the CM shall obtain the Operating and Maintenance (O&M) manuals at least four (4) months prior to the demonstration for such equipment. These O&M manuals are to be sent to the OWNER's Project Manager who is to forward one (1) set to the OWNER's department responsible for maintaining the facility for review prior to the equipment demonstration. Each O&M is to be reviewed and approved by the OWNER.

18.3 The CM shall work closely with the OWNER as to the procedures and schedule for Contract Close-Out and the contractual obligations therein.

18.4 At the completion of the Project and before final payment, the CM shall deliver all such records to the OWNER along with a complete set of as-built drawings for use by the Project Designer in preparing Record Drawings. Additionally the CM shall:

a. Establish that the following has been received from the Contractor(s) and forwarded expeditiously to the appropriate party:

(1) all necessary guarantees;

(2) as-built drawings;

(3) operating and maintenance manuals;

(4) certificates of compliance, etc.;

(5) all turnover items required by Contract; and

(6) other items required by the Contract.

b. Maintain a log of receipts, turnovers and transmittals.

c. Establish and document that all operating instructions have been given to the OWNER's personnel consistent with Contract requirements. Perform all necessary coordination.

19. Separate Contracts

Without invalidating the relationships with the CM, the OWNER reserves the right to let other contracts in connection with the Project, the work under which shall proceed simultaneously with the execution of the CM's work. The CM shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the CM shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the CM from carrying out his work according to the plans and specifications, the CM shall immediately notify the OWNER upon discovering such conditions.

**APPENDIX "B"**

**SUMMARY OF PAYMENTS**

1. **CONSTRUCTION PHASE**

Payment for services shall be made monthly 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 a completed M/WBE 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.

NTE = Not to Exceed

LS = Lump Sum

AE = Actual Expense

**APPENDIX “C”**

**GUARANTEED MAXIMUM PRICE – ASSSUMPTION AND CLARIFICATIONS**

Total GMP

**Appendix “D”**

**CM at Risk Sub-Contractor Pre-qualification checklist**

Instructions: This form is to be completed by the Construction Manager in accordance with DASNY CM at Risk Construction Phase Contract, Section 4.1 b - Pre-qualification of Bidders. In pre-qualifying the bidder the CM must include: (1) determining whether any prospective bidder has been subject within the past five years to a debarment by the New York State Department of Labor or by the New York State Workers Compensation Board; (2) determining the status of the bidder’s registration with the New York State Department of State; (3) identifying any serious Occupational Safety and Health Administration (OSHA) violations by the bidder; and (4) requiring each bidder to disclose whether, within the past five years, it has been debarred by, found not responsible by, or lost its prequalification status from, any public agency.

For a list of available resources and websites to assist in determine the responsibility and pre-qualifying bidders can be found in the Vendor Responsibility Resource Guide at URL: <http://www.osc.state.ny.us/vendrep/documents/vendrep/resource_guide.pdf>

Project Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Project Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Bid Package: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subcontractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Contact Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mailing Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
|  | Yes | No |
| 1. NYS DOL Debarment within the past five (5) years
 |[ ] [ ]
| 1. NYS Workers Compensation Board Debarment within the past five (5) years
 |[ ] [ ]
| 1. Found Not Registration with NYS Department of State
 |[ ] [ ]
| 1. Debarment from other Public Agencies within the past five (5) years
 |[ ] [ ]
| 1. Found Not Responsible by a Public Agency within the past five (5) years
 |[ ] [ ]
| 1. Lost Prequalification Status by a Public Agency within the past five (5) years
 |[ ] [ ]
| 1. Upon review was it determined that the Subcontractor is not Financially Stable
 |[ ] [ ]
| 1. OSHA Serious Violations within the past three (3) years
 |[ ] [ ]
| 1. Upon review was it determined that the Subcontractor did not demonstrate experience on contracts of similar size and complexity
 |[ ] [ ]
| 1. Was adverse Information identified based on reference check of listed references
 |[ ] [ ]

*\*Documentation of reference checks for listed references conducted as part of the pre-qualification review must be attached to this form.*

Comments: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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|  |  |  |  |  |  |  |
| Reviewer Name (print) |  | Title |  | Signature |  | Date |

**Appendix E**

**Non-Collusive Bidding Certification Form**

**Non-collusive Bidding Certification**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and, in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

1. The prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in the bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Firm’s Legal Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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City, State, Zip Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Officer)

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Officer Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Print)

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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E-Mail Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Taxpayer ID or Social Security Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_