

Date

CONSTRUCTION PHASE

Client
Project Name
Contract No.

CONTRACT

This Contract, dated as of [], 20__, is entered into by and between the Dormitory Authority of the State of New York, a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Title 4 of Article 8 of the Public Authorities Law, as amended and having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964 (“DASNY” or the ‘Owner’) and [], whose office is located at _____, (the “CONSTRUCTION MANAGER-BUILD” or the “Construction Manager” or “CM” or “Contractor”).

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:

A. DEFINITIONS

All other definitions are included in the General Conditions and are attached hereto.

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 MCP 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.

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

MAXIMUM CONTRACT PRICE (MCP) 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 MCP contingency and the General Conditions Cost. The MCP will not include the CM’s pre-construction costs.

DESIGN PROFESSIONAL See General Conditions, Article 2.

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**, 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

See General Conditions, Article 7.

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-MCP contingency.
2. For general conditions work contracted for by the CM, including the cost of all contracted labor, materials, and supplies necessary, proper for, or incidental to the performance of said Work, the Not to Exceed amount of _____ and 00/100 Dollars (\$ _____).
3. For reimbursement to the CM for Salary costs for Construction Phase Services the lump sum amount of _____ and 00/100 Dollars (\$ _____). Salary costs includes all technical employees of the CM, other than Principals, assigned to the Project. Actual Direct Salary, as used herein, shall not include allowances for insurances, payroll taxes, or other benefits listed in item A.2., Fringe Benefits.
4. Reimbursement to the CM for Fringe Benefit costs associated with the Construction Phase Services salary costs in item V.A.3 in the lump sum amount _____ of _____ and 00/100 Dollars (\$ _____ .00). Allowable Fringe Benefit items as provided for herein shall be limited to the following specific items:
 1. F.I.C.A.;
 2. Federal Unemployment Insurance;
 3. State Unemployment Insurance;
 4. NYS Workers Compensation;
 5. Life Insurance;
 6. Accidental Death and Dismemberment;
 7. NYS Disability Insurance;
 8. Group Hospitalization;
 9. Pension Plan; and
 10. Group Travel Accident Insurance.
 11. Vacation, holiday and sick leave time in accordance with the CM's approved leave policy.
5. The Fee Percentage of __% shall be applied to the initial value of the Trade Contracts, Bonds, Sub-Guard Insurance, as approved by the OWNER. The Fee Percentage shall not be applied to the CM's Direct Salaries, Fringe Benefits or General Conditions items. Construction Phase Fee in the lump sum (LS) amount of \$ _____ and 00/100 Dollars (\$ _____). The fixed Fee shall be reimbursed in proportion to the percentage of completed and OWNER approved Construction work. The CM will be entitled to the same fee percentage on all trade contract change orders that are approved by the owner. Trade Contracts are allowed mark ups per Article 7 of the General Conditions on all change orders.

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,

CONTRACTOR'S CONTRACT PAYMENT REQUISITION with accompanying payroll, and other appropriate backup. Payroll copy 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.

Payment to the Construction Manager shall only be rendered electronically, unless payment by paper check is authorized in writing by the OWNER. The Construction Manager further acknowledges and agrees that the OWNER may withhold payments, if the Construction Manager has not complied with the OWNER's requirements relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the OWNER.

The Construction Manager and all sub-consultants/sub-contractors are required to submit a completed *E.O. 162 Workforce Utilization Report*. The Construction Manager is responsible for collecting reports from each sub performing work on the contract, ensuring that the subs submit the report as required. All *E.O. 162 Workforce Utilization Reports* are to be submitted within 10 days of the end of each month. The *E.O. 162 Workforce Utilization Report* is posted on DASNY's website at <https://www.dasny.org/forms> and can be found by going to MWSBE – Forms. The completed reports are to be submitted to DASNY's Opportunity Programs Group by emailing the Excel workbook files to EO162Reporting@dasny.org. Hard copies of the reports will not be accepted. 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. Certified payroll records for all employees for which reimbursement is sought shall be supplied to the OWNER upon request and made available to the OWNER for inspection or audit at the OWNER's option at any time during the life of this Contract and for a period of six (6) years after final payment.

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 MCP referenced in Article V.B. If the Final Amount Payable exceeds the MCP, the OWNER shall only be liable to pay an amount equal to the MCP.

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 CM for: 1) failure to invoice for services within 90 days of services being rendered, 2) invoices provided without proper back-up documentation as defined in the Contract.

B. Maximum Contract Price

Pursuant to Appendix "C" of this Contract and the assumptions and clarifications therein, the Maximum Contract 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 (\$0.00).

ARTICLE VI: WITHHOLDING OF PAYMENTS

See General Conditions, Article 8.

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

See General Conditions, Article 15.

ARTICLE X: INSURANCE PROVIDED BY THE OWNER

See General Conditions, Article 15.

ARTICLE XI: INSURANCE PROVIDED BY TRADE CONTRACTORS

See General Conditions, Article 15.

ARTICLE XII: PROTECTION OF RIGHTS, PERSONS, AND PROPERTY

See General Conditions, Article 14.

ARTICLE XIII: HOLD HARMLESS

See General Conditions, Article 14.

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

See General Conditions, Article 17.

ARTICLE XV: APPENDIX "F" GENERAL CONDITIONS FOR CONSTRUCTION

Appendix "F", 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 **OWNER's General Conditions for Construction (February 2026) and General Requirements (ADD DATE)**;
- the **OWNER's "Request for Proposal"**, and all attached documents and appendices, incorporated herein by reference;
- the **CM's Response to the OWNER's Request for Proposal**, and all attached documents and appendices as approved by the OWNER, incorporated herein by reference.
- the title of the drawings, project manual, DOL prevailing wage case number, and the date of the stamp on each document

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. OWNER's General Conditions for Construction (February 2026) and General Requirements (ADD DATE);
3. OWNER's "Request for Proposal"
4. CM's Response to the OWNER's Request for Proposal
5. the title of the drawings, project manual, DOL prevailing wage case number, and the date of the stamp on each document.

Notwithstanding the OWNER's General Conditions for Construction (February 2026) provision in Section 2.07(a), the Construction Phase Contract governs in the instance of a direct conflict in contractual terms.

ARTICLE XIX: TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Substantial Completion Date for the trade work for this portion of this Construction Phase shall be _____, 20____ however, this Contract shall survive and remain in full force and effect until the Work of this Contract is completed.

The CM shall pay to the Owner as liquidated damages the sum of _____ and 00/100 Dollars (\$0.00) for each and every day that the CM fails to achieve Substantial Completion of the Work by _____, 20___. Liquidated damages increase to _____ and 00/100 (0.00) per day for each and every calendar day that the CM fails to achieve Substantial Completion of the Work by _____, 20___.

ARTICLE XX: M/WBE AND SDVOB CONTRACT GOALS

The New York State ESD certified Minority and Women-Owned Business Enterprise (MWBE) and New York State OGS certified Service-Disabled Veteran-Owned Businesses (SDVOB) participation goals established for this project are 18% (MBE), 12% (WBE) and 6% (SDVOB). The goals refer to the utilization of M/WBE & SDVOB sub-contractors, sub-consultants and suppliers on the Pre-construction and Construction Phase contracts associated with this project, which includes both the Pre-construction Phase contract as well as the Construction Phase Contract for this project.

It is DASNY's expectation that the above referenced MWBE/SDVOB goals are met on all associated bid packages. The CM should provide a listing of all bid packages, including scheduled bid dates (7) days prior to any bid opening. A preliminary utilization plan should be submitted for each bid package for review and approval, in order to facilitate and maximize MWBE/SDVOB outreach and utilization on this project.

A final completed Utilization Plan demonstrating the CM's compliance with the established goals on the project will be submitted, reviewed and approved by the Owner with the final execution of the Construction Phase Contract.

SIGNATURES

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

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

By _____

Title: Authorized Officer

Date: _____

**Firm Name
Firm Address
Firm Address**

By _____

Authorized Officer/Signatory

Title _____

Date: _____

NEW YORK STATE ACKNOWLEDGEMENT – DASNY

State of New York

County of _____) ss:

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared:

(NAME)

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

Signature of Notary

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

NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant

State of New York

County of _____) ss:

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared:

(NAME)

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

Signature of Notary

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

APPENDIX "A"

SCOPE OF SERVICES

CONSTRUCTION PHASE SERVICES

The Construction Phase services shall consist of those services required to complete the construction of the Project in accordance with the Contract Documents and to maintain the established Maximum Price (MCP) of the Project.

1. Consultation During Continuing Project Development:

Upon acceptance of the MCP, the Construction Manager Build (CM) shall continue to advise and assist the OWNER and Design Professionals during any continuing Design Activities as described in the Pre-construction Phase Contract.

2. Project Construction Costs:

The CM recognizes that the OWNER will have a limit on the project construction costs. That limit is represented by the MCP. The MCP is inclusive of all trade contracts, a General Conditions allowance, CM Staffing and Fringe Benefit Costs, CM Fees and the CM-MCP contingency, but excludes the OWNER's Construction Contingency and the CM's preconstruction costs.

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

3. Project Schedule

See General Requirements Section 013200

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.

The CM shall have the discretion to evaluate and select subcontractors who are invited to bid on the basis of the subcontractor's prior experience and success on similar projects, technical capacity, achievement of MWBE and SDVOB goals, and past record of compliance with Articles 15-A and 17-B of the New York State Executive Law.

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. Following receipt of bids from the trade contractors, the CM shall meet with each bidder to review scope, cost, schedule, MWBE/SDVOB participation, bid exclusions or qualifications and any other pertinent elements related to the submitted bid. This process may result in changes to bid prices. The CM shall provide a report to the Owner that indicates original bid amounts, any changes to said amounts and a narrative describing the reason(s) for any changes. Upon completion of this bid review process, the CM shall select subcontractors based on

the lowest bid, except that with the Owner's prior approval, subcontractors may be selected on a "best value" basis if the CM demonstrates to the Owner's satisfaction that the subcontractor it proposes to select would be in the best interests of achieving the Project budget, schedule and/or achievement of MWBE/SDVOB goals.

- d. If after a review of all submitted bids, the CM concludes that the selected bidder for any bid package exceeds the CM's budget line item 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, subject to the owner's review and approval of justification submitted by the CM:

(1) Revise all or any part of the Bid Documents for the Project that the OWNER in conjunction with the CM may deem advisable, at no cost to the OWNER, to bring the lowest responsible bid within the CM's budget line for such package; or

(2) 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

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

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

(5) The CM shall perform the Work itself for the amount of the budget line item price if c. (2) 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: this service is included in the foregoing task (2)

If the foregoing tasks (1) and (2) are directed, 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.

- e. 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.

f. 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.

g. Contract Awards

1. The CM shall be responsible for making all sub-contract awards, after following the process outlined in 4.1a, b, c, d, e and f herein. CM shall supply the OWNER with its bid evaluations, descoping analysis, rationale, recommendation for award in advance of executing any 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. Upon owner's approval of the recommendation to award for each subcontract, the CM shall provide copies of the executed subcontracts for each trade package.

2. 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.

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 Design Professionals 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 Design Professional.
- 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, Design Professional, 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 Design Professional. 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 Design Professional and/or the OWNER.
- 6.4 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 Design Professional 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 Design Professional 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.

8. Project Photographs

- 8.1 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 MCP, 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 MCP 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 Design Professional for review. If the Owner and Design Professional 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 Design Professionals. The CM shall advise the OWNER and Design Professionals 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, Design Professional 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 Design Professional will conduct regular inspections of the work in progress. The CM shall track deficiencies submitted by the OWNER and the Design Professionals and coordinate corrective work required.

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

- a. 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 Design Professionals 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 Design Professionals 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 Design Professionals, 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/Design Professionals. 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

11.1 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:

- a. Maintenance of hardware and software.
- b. Generating photographic or other approved identifications.
- c. Assigning identification cards to contractor staff and other site personnel.
- d. Ensuring contractor staff and other site personnel comply with security procedures.

- e. Maintaining security of the system against unauthorized access.
- f. 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 MCP

- 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 (See Article 7 of the OWNER's General Conditions For Construction).
 - 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 MCP.
 - 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 MCP. The CM shall notify the OWNER of such changes before trade bids for the work associated are requested.
 - d. Changes to the MCP 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 ____%, which will be applied to change orders related to Owner initiated program changes, design errors changes and unforeseen site condition 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 in the MCP Contract Price:
- a. 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.
 - b. 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.
 - c. Unknown field condition changes;
 - d. Costs which arise from the negligence of the OWNER, the Client, or the OWNER's members, officers, employees, or representatives.
14. Changes within the MCP
- 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 MCP 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.
- 14.2 The MCP shall include a CM construction contingency (CM-MCP Contingency) in an amount approved by the OWNER, to help reduce the risks assumed by the CM in providing the MCP 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 MCP, 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. Application of the CM MCP Contingency shall not be permitted in any instance involving a design issue that (1) was previously commented on or otherwise denoted by the CM or the OWNER; or (2) reasonably should have been recognized by a prudent CM during the Pre-Construction Phase. The CM-MCP 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-MCP 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-MCP contingency will be borne by the CM.

- 14.3 The CM will notify the OWNER and Design Professional in writing of the CM's intent to apply any part of the CM-MCP 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-MCP 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-MCP 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. Any unused funds will revert back to the OWNER at the end of the project and will be removed from the MCP value.
15. Shop Drawing Review / Processing
- 15.1 The CM will be responsible for logging all shop drawings / submittals prior to submission to the Design Professional 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 Design Professional, 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 Design Professional 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
- 16.1 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 Reports

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

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

17.3 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.

17.4 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 the items listed in 17.6 below and prior to implementation the CM must obtain the OWNER's approval of these formats.

17.5 The monthly report by the CM is to include the items noted below. Please note the owner may request some of the items on a more frequent bi-weekly basis, at the owner's discretion.

- 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 Design Professional'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 Design Professional 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 CONSTRUCTION COSTS

A. CONSTRUCTION PHASE

B. GENERAL CONDITIONS ITEMS COSTS

(1) Field Offices	\$ _____
(2) Utility Connection	_____
(3) Utility Charges	_____
(4) Field Office Furniture & Equipment	_____
(5) Temporary Heat	_____
(6) Reproduction Equipment	_____
(7) Reproduction Supplies	_____
(8) Field Office Supplies	_____
(9) Field Office Telephone	_____
(10) Postage, Messenger, and Printing	_____
(11) Survey	_____
(12) Permits and Fees	_____
(13) Project Cleanup	_____
(14) Rubbish Removal	_____
(15) Safety and Protection	_____
(16) Site Security	_____
(17) Project Sign	_____
(18) Progress Photos	_____
(19) Fencing	_____
(20) Teamster	_____
(21) IBM Computer	_____
(22) Hoisting	_____
(23) Blueprints	_____
(24) Master Mechanic	_____

TOTAL GENERAL CONDITIONS COST \$ _____

CM Staffing Costs

CM Fringe Benefits

CM Management Fee

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, **CONTRACTOR'S CONTRACT PAYMENT REQUISITION** with accompanying certified payroll, 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 Construction Manager and all sub-consultants/sub-contractors are required to submit a completed *E.O. 162 Workforce Utilization Report*. The Construction Manager is responsible for collecting reports from each sub performing work on the contract, ensuring that the subs submit the report as required. All *E.O. 162 Workforce Utilization Reports* are to be submitted within 10 days of the end of each month. The *E.O. 162 Workforce Utilization Report* is posted on DASNY's website at <https://www.dasny.org/forms> and can be found by going to MWSBE – Forms. The completed reports are to be submitted to DASNY's Opportunity Programs Group by emailing the Excel workbook files to EO162Reporting@dasny.org. Hard copies of the reports will not be accepted.

NTE = Not to Exceed

LS = Lump Sum

AE = Actual Expense

APPENDIX “C”

MAXIMUM PRICE – ASSUMPTION AND CLARIFICATIONS

Total MCP

APPENDIX "D"

CM Build Sub-Contractor Pre-qualification checklist

Instructions: This form is to be completed by the Construction Manager in accordance with DASNY CM Build Construction Phase Contract, Appendix A, 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:

- | | <u>Yes</u> | <u>No</u> |
|--|--------------------------|--------------------------|
| 1. NYS DOL Debarment within the past five (5) years | ☐ | ☐ |
| 2. NYS Workers Compensation Board Debarment within the past five (5) years | ☐ | ☐ |
| 3. Found Not Registration with NYS Department of State | ☐ | ☐ |
| 4. Debarment from other Public Agencies within the past five (5) years | ☐ | ☐ |
| 5. Found Not Responsible by a Public Agency within the past five (5) years | ☐ | ☐ |
| 6. Lost Prequalification Status by a Public Agency within the past five (5) years | ☐ | ☐ |
| 7. Upon review was it determined that the Subcontractor is not Financially Stable | ☐ | ☐ |
| 8. OSHA Serious Violations within the past three (3) years | ☐ | ☐ |
| 9. Upon review was it determined that the Subcontractor did not demonstrate experience on contracts of similar size and complexity | ☐ | ☐ |
| 10. 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:

Reviewer Name (print)	Title	Signature	Date
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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: _____

Street Address: _____

City, State, Zip Code: _____

By: _____
(Signature of Officer)

Title: _____

Officer Name: _____
(Print)

Phone Number: _____

Fax Number: _____

E-Mail Address: _____

Taxpayer ID or Social Security Number: _____