

**NOTICE TO PROCEED**

**WHEREAS**, on October 15, 2013 Fort Schuyler Management Corporation ("FSMC"), in conjunction with the State University of New York College of Nanoscale Science and Engineering ("CNSE"), issued a Request for Proposals ("RFP") for a Strategic Research, Technology Outreach, Business Development, Manufacturing, and Education and Training Partnership with a Qualified Local Developer in the Greater Buffalo Area; and

**WHEREAS**, LP Ciminelli, Inc. ("LP Ciminelli"), a New York corporation having an office located at 2421 Main Street, Buffalo, New York, submitted a proposal ("Proposal") in response to the RFP; and

**WHEREAS**, CNSE, with its industry collaborators, including SORAA, Inc. ("SORAA") and Silevo, Inc. ("SILEVO"), is establishing the Buffalo High-Tech Manufacturing Innovation Hub in order to establish a state-of-the-art campus to house high-tech and advanced manufacturing companies; and

**WHEREAS**, FSMC intends to contract to purchase approximately 88 acres located in the City of Buffalo for the development of the Buffalo High-Tech Manufacturing Innovation Hub; and

**WHEREAS**, FSMC conducted a competitive bidding process under the RFP, and, as a result of such process, FSMC entered into a Memorandum of Understanding ("MOU"), effective March 13, 2014, with LP Ciminelli for LP Ciminelli to develop, design and construct the first two facilities of the Buffalo High-Tech Manufacturing Innovation Hub, with one facility ("SORAA Facility"), consisting of about 212,000 gross square feet of manufacturing space and 20,000 square feet of office and amenity space, to house CNSE's collaboration with SORAA and with the second facility ("SILEVO Facility"), consisting of about 40,000 gross square feet of manufacturing space and 10,000 gross square feet of office and amenity space, to house CNSE's collaboration with SILEVO (with the development, design and construction of the SORAA Facility, the SILEVO Facility, and related infrastructure being referred to in this NTP as the "Project"); and

**WHEREAS**, in accordance with the MOU, FSMC intends to negotiate and enter into an Owner Design-Builder Agreement - Guaranteed Maximum Price ("Contract") with LP Ciminelli using such form and otherwise on terms and conditions mutually acceptable to FSMC and LP Ciminelli, pertaining to the design and construction of the Project; and

**WHEREAS**, FSMC and LP Ciminelli anticipate that the guaranteed maximum price under the Contract for the core and shell of the Project will be [REDACTED], consisting of (a) estimated maximum total cost of work for the core and shell of the Project, which is anticipated not to exceed [REDACTED] and (b) estimated maximum LP Ciminelli design and construction management fees of [REDACTED] of the cost of the work and to be as outlined in the proposal received by FSMC on December 10, 2013 in response to the RFP ("Proposal"), which such Proposal is incorporated herein by reference; and

**WHEREAS**, in advance of negotiating and entering into the Contract, FSMC desires for LP Ciminelli to begin various activities, documentation, design, site preparation, and planning for the Project, with a not to exceed expenditure of [REDACTED].

**NOW THEREFORE**, in consideration of the mutual promises contained in this Notice to Proceed ("NTP"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by FSMC and LP Ciminelli (with FSMC and LP Ciminelli sometimes referred to in this NTP individually as a "Party and collectively as the "Parties"), the Parties agree as follows:

1. LP Ciminelli is hereby directed to and will proceed with efforts to satisfactorily address the scoping, planning and design necessary to advance the initial pre-construction stage of the Project, as set forth in the scope of work attached to this NTP as **Exhibit A** ("Work") and in accordance with the schedule of completion attached to this NTP as **Exhibit B**. As part of the Work, LP Ciminelli shall advance designs to the [REDACTED] design complete milestone set forth in **Exhibit A** and shall provide FSMC with an anticipated guaranteed maximum price for the Project. FSMC and LP Ciminelli shall work together during the design phase of the Work to ensure that the anticipated guaranteed maximum price is achieved.
2. For completion of the Work and for reimbursement of all expenses incurred in connection with the scope of work attached as **Exhibit A**, LP Ciminelli shall be entitled to payments in accordance with the project scoping budget attached to this NTP as **Exhibit C** ("Budget"), with such payments totaling an amount not to exceed [REDACTED]. Expenses not set forth in the Budget shall be reimbursed by FSMC only if such expenses are approved in writing by FSMC prior to such expenditures being incurred.
3. LP Ciminelli shall perform the Work in accordance the terms of this NTP.
4. In connection with any portion of the Work to be subcontracted, LP Ciminelli shall: (a) cause any sub-contract Work in excess of \$10,000 to be awarded by competitive process in accordance with **Exhibit D**; (b) subject to FSMC's approval, issue bid proposal documents to subcontractors for such sub-contract Work; and (c) not enter into any subcontracts for such sub-contract Work unless such subcontracts are assignable to FSMC. FSMC agrees to pay LP Ciminelli its invoices net 30 days during the time period covered by this NTP, and, in turn, LP Ciminelli agrees to pay its subcontractor invoices net 30 days during the period covered by this NTP.
5. LP Ciminelli may make application for progress payments monthly for Work performed under this NTP in accordance with the cash flow schedule attached to this NTP as **Exhibit E** by submitting to FSMC, after the end of any month in which such Work is performed, a notarized application in such form and in accordance with such payment procedures as established by FSMC, provided, however, that the total of all amounts expended and committed in performance of the Work under this NTP shall not exceed [REDACTED] including the amounts of signed subcontracts.
6. This NTP may be terminated by FSMC, upon ten (10) days' written notice to LP Ciminelli, in the event (a) the Parties are not able to reach agreement on a mutually acceptable Contract, (b) a breach of the terms of this NTP and ten (10) days' written notice reasonably describing the breach and failure to cure, or (c) insolvency, receivership of assets, or any bankruptcy filing of LP Ciminelli. This NTP shall also automatically terminate upon the Parties' signing of a Contract, with such Contract governing all rights and responsibilities of the Parties. In the event of termination by FSMC as a result of a breach by LP Ciminelli (following applicable

notice and cure periods), LP Ciminelli acknowledges and agrees that it shall not have any claim against FSMC except for reimbursement of any expenses incurred and amounts payable under this NTP prior to termination and that it shall execute such documents as may be required to assign to FSMC each and every subcontract entered into by LP Ciminelli pursuant to this NTP. In the event of termination by FSMC as a result of a breach by LP Ciminelli (following applicable notice and cure periods), FSMC shall be entitled to set-off any amounts owed to LP Ciminelli by the amount of damages resulting from such breach.

7. A dispute between the Parties relating to this NTP that is not resolved within three (3) business days of the dispute shall be subject to the following additional terms:

(a) Issuance of Stop Work Order ("SWO")

(i) FSMC may issue a stop work order ("SWO") after such dispute goes unresolved for three (3) business days. FSMC will use best efforts to provide (or cause to provide) immediate notice to LP Ciminelli in person, by fax or by email and followed with certified, return receipt requested or overnight mail. The SWO must be sent by certified mail, return receipt requested or overnight mail to be effective and will have an effective date of one (1) day after the date overnight mail is sent or three (3) days after the date certified mail is sent. As of the effective date of the SWO, all Work under this NTP will stop.

(ii) LP Ciminelli will provide immediate notice of a SWO to subcontractors to stop Work accordingly and, as of the effective date of the SWO, no further subcontractor expenses shall be invoiced until recommencement is agreed upon as set forth below.

(b) Within ten (10) business days of effective date of a SWO, LP Ciminelli will provide FSMC with a statement of all expenses incurred from the last invoice date through the date of the SWO. This amount plus all invoiced amounts will be submitted for payment approval. No further payments will be due until the SWO is lifted.

(c) LP Ciminelli may not recommence Work after issuance of a SWO unless and until FSMC agrees to lift the SWO.

(d) If a SWO is issued and LP Ciminelli is in violation of terms of this NTP, then any additional charges incurred as a result of the SWO and recommencement of Work will be borne by LP Ciminelli.

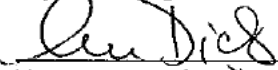
8. Provided FSMC shall have paid all amounts due and owing to LP Ciminelli pursuant to this NTP, FSMC shall own all designs, plans and other information generated by LP Ciminelli and/or in conjunction with any of its subcontractors, as a result of the Work performed under this NTP. In the event of a termination of this NTP, all designs, plans and other information produced prior to the time of such termination shall be solely owned by FSMC and such designs, plans and other information will be delivered to FSMC by LP Ciminelli within a reasonable time after termination.

9. This NTP shall be subject to terms and conditions set forth in the exhibits attached to this NTP. Without limiting the generality of the foregoing, LP Ciminelli shall take out and maintain, without interruption throughout the term of this NTP, and shall cause its

subcontractors to take out and maintain, such general liability and property damage insurance as will protect LP Ciminelli and FSMC from claims for personal injury and/or property damage which may arise from operations under this NTP, whether such operations be by LP Ciminelli, any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be written for not less than the limits of liability specified in Exhibit F attached hereto, or required by law, whichever coverage is greater. LP Ciminelli and its subcontractors shall obtain such payment and performance bonds as set forth in Exhibit F.


10. The signing of this NTP by the Parties authorizes LP Ciminelli to commence performance of the Work in accordance with the terms of this NTP.
11. The MOU, as modified by this NTP, constitutes the entire agreement between FSMC and LP Ciminelli with respect to the matters set forth therein and herein.

Fort Schuyler Management Corporation

By:   
Name: Alicia Dicks  
Title: President

Date: May 1, 2014

LP Ciminelli, Inc.

By:   
Name: JOHN CIMINELLI  
Title: S. VICE PRESIDENT

Date: MAY 1 2014

## **EXHIBIT A**

### **PRELIMINARY DESIGN/DEVELOPMENT**

1. Provide preliminary site plans surveys and plot maps.
2. Coordinate with owner to create building schematic designs.
3. Coordinate site due diligence design alternatives.
4. Provide civil engineering for site due diligence.
5. Investigate utility and infrastructure needs and availability.
6. Coordinate owner SEQRA process.
7. Provide marketing and site/building concept drawings.
8. Review owner information related to existing conditions on site.

### **SITE/CIVIL**

1. Complete subsurface investigation work.
2. Issue Geotechnical Report
3. Survey and topo existing conditions
4. Provide site grading plan.
5. Provide site preparation and clearing design and specifications.
6. Complete site design to 25%
7. Make applications to all required utility companies and departments.

### **ARCHITECTURAL/STRUCTURAL**

1. Evaluate structural framing and system alternatives.
2. Evaluate foundation systems.
3. Evaluate exterior materials for all buildings.
4. Complete foundation design 100%.
5. Complete structural design to 65% for building "B"
6. Complete structural design to 50% for building "A"
7. Complete structural design to 40% for spine building
8. Complete architectural design to 30% all buildings

### **PRECONSTRUCTION**

1. Verify existing budget.
2. Create master activity schedule.
3. Create Newforma document management files and access controls.
4. Review design for constructability and schedule.
5. Create preliminary construction schedule.
6. Identify subcontractors and suppliers for design assist partnering.
7. Create preliminary construction budget.
8. Create site access and control scope documents.

### **ENTITLEMENTS.**

1. Manage SEQRA consultants.
2. Manage public outreach process.
3. Coordinate all utility providers supply of site.

### **ENVIRONMENTAL**

1. Review NYSDEC soil management plan.

2. Create site activity protocol for soil disturbance.
3. Coordinate all NESDEC site access and review.

#### SITE SURVEY

1. Establish all property lines and stake out same.
2. Stake out all building locations
3. Stake out all road and site improvements.
4. Stake out all soil boring locations.
5. Document all uncovered underground obstructions.

#### GEOTECHNICAL STUDY AND SUBSURFACE DRILLING

1. Complete drilling for subsurface investigation.
2. Provide underground rock profile.
3. Provide sizes information and report.
4. Provide Geotechnical engineers report.
5. Test pits and exploratory excavation.

## **EXHIBIT B**

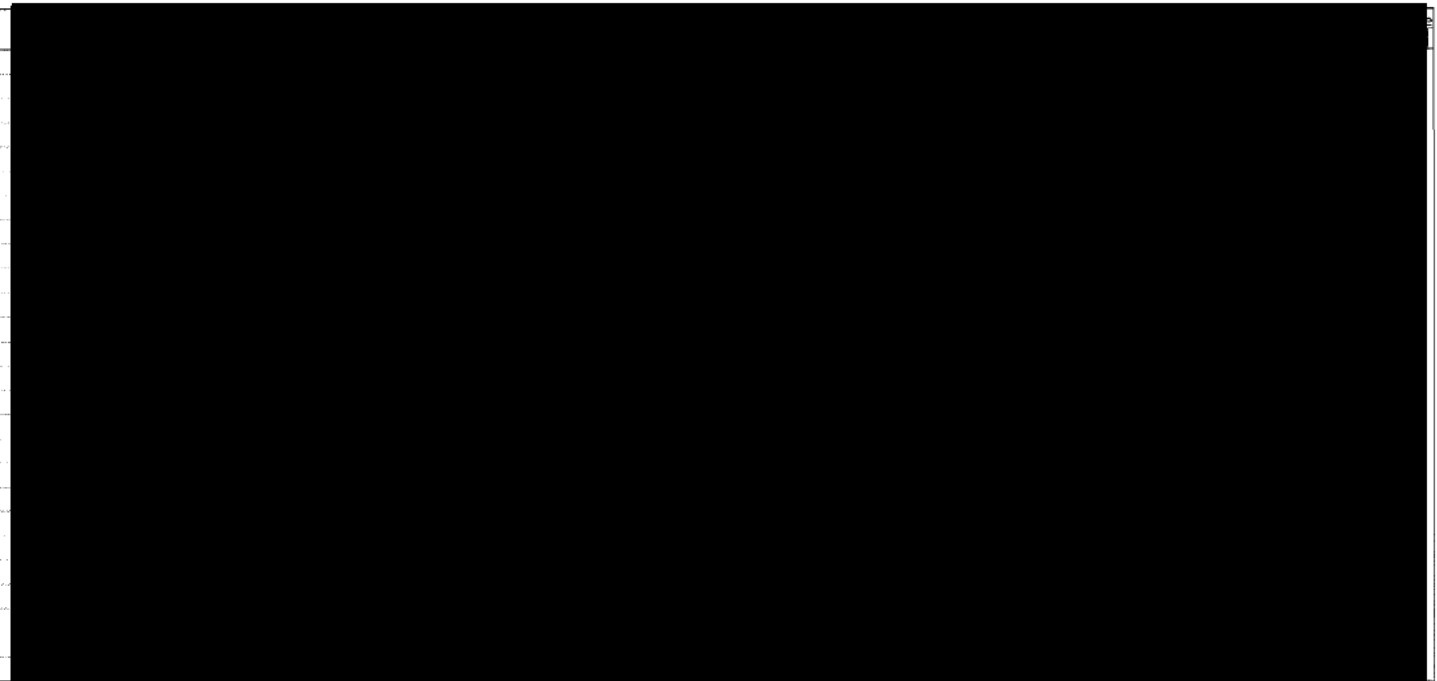




1. *Journal of the American Medical Association*, 2000; 283: 2689-2694.

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ID	Task Mode	Task Name
107		Roof
108		Slab on Grade, U/G Utilities
109		Mechanical Rough-in
110		Metal Wall Panels
111		Curtain Wall
112		Temp winter (wall) protection infill's
113		Interior wall partitions
114		Temp Heat (Babfar Heaters)
115		Tool Ready
116		Tool Fit out
117		Set AHU's
118		Set Switchgear/Transformers
119		Set Emergency Generators
120		Lights
121		Ceilings
122		MEP Finishes
123		Flooring
124		Casework
125		Signage
126		Elevators
127		FF&E
128		Commissioning, Testing, Balancing
129		Site Lighting
130		Curbs
131		Sidewalks
132		Paving



Project: Riverbend MAS DRV 04-2  
Date: Wed 4/30/14

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline
Split		External Tasks		Inactive Summary		Manual Summary		Progress
Milestone		External Milestone		Manual Task		Start-only		Finish-only
Summary		Inactive Task		Duration-only		Finish-only		Finish-only

Page 3

## EXHIBIT C

# CREW Budget Variance Report

Last Date Updated: 4/24/2014

Print Date: 4/24/2014

WBS Element Description	Baseline EBAC Amount
140053.90.00.10.001005A Project Executive - FLC2 / JAM / JAC	
140053.90.00.10.001015A Project Manager - Vawter	
140053.90.00.10.001035A Project Administrator - Mascho	
140053.90.00.10.001040A Administrative Assistant - Pelowski	
140053.90.00.10.001080A Environmental Safety Manager - Zientek	
140053.90.00.10.001090A Director of Preconstruction - Cimino	
140053.90.00.10.001095A Preconstruction Manager - Francis	
140053.90.00.10.001100A Chief Estimator - West	
140053.90.00.10.001105A Arch/Struct Estimator - Casuccio	
140053.90.00.10.001105B Arch/Struct Estimator - Chmiel	
140053.90.00.10.001110A Mechanical Estimator - Wagner	
140053.90.00.10.001115A Electrical Estimator - Coryer	
140053.90.00.10.001120A Plumbing Estimator - Rajski	
140053.90.00.10.001999A Preconstruction Services - Golebiewski	
140053.90.00.20.002020A Misc. Home Office Expenses	
140053.90.00.20.002025A Misc. Project Expenses	
140053.90.00.30.003015A Mileage / tolls / parking	
140053.90.00.40.004005A Drawing/Spec Reproduction	
140053.90.00.40.004010A Postage/Express Mail	
140053.90.00.40.004015A Home Office Copier Charges	
140053.90.00.50.005015A Legal Services	
140053.90.00.50.600000A Professional Services - CREC	
General Conditions	
140053.90.01.01.013223A Survey & Layout - Foit-Albert Associates	
140053.90.01.01.014523A Testing & Inspect. - Empire Geo Services	
General Requirements	
140053.80.00.00.014523A Clough Harbour & Associates	
140053.80.00.00.600000A EYP Architecture & Engineering	
Professional Services	
140053.01.02.01.020000A C100 - LPCCC (Exploratory Excavation)	
Subcontracts	
	3,000,000.00

## **EXHIBIT D**

7/6/2014



## Introduction

The "best value" sourcing process (BVSP) is a strategic procurement initiative aimed at achieving an expedited schedule at lower costs. The process enables the construction manager to improve schedule performance by shortening the procurement phase for a select group of subcontractors. The construction manager and subcontractor form a partnership during the design phase, which allows the subcontractor to influence design decisions, resulting in value engineering alternatives that greatly reduce project costs. The BVSP is a new concept that is being implemented more frequently on innovative projects with aggressive time constraints. Although the BVSP does not guarantee the lowest price for the desired services, it creates the best value for the project by engaging highly qualified vendors to reduce project costs through value engineering, lower mark-up rates, and leveraged buying.

## Traditional Procurement Process

Traditionally, subcontractors are procured through a competitive bidding process in which prequalified vendors respond to a bid package distributed by the construction manager for specified construction services. The traditional bidding process requires vendors to invest time and resources to analyze bid documents and submit responsible bids with competitive pricing and schedule estimates. Bids are then reviewed and tabulated in a bid summary matrix by the construction manager to determine the most qualified vendor at the lowest price. After the bid analysis is completed, the construction manager attaches the bid summary matrix to a letter to the Owner recommending a vendor for award. If the Owner approves the selection, the construction manager executes a subcontract agreement with the vendor to perform the scope of work in the bid package. Depending on the size of the bid package, the traditional subcontractor procurement process takes 6 to 8 weeks to complete.

## "Best Value" Sourcing Process

To meet the aggressive schedule constraints set forth on the ZEN project, the "best value" sourcing process was introduced to strategically partner with select subcontractors to compress the duration of the traditional subcontractor procurement process and significantly impact the cost of the project. Vendors with a proven performance record and established relationship with the construction manager are considered prequalified for the BVSP. Work packages are selected for the BVSP based on project requirements and schedule constraints. Typically, the early work packages, such as sitework and structural steel, are selected to influence the design and expedite the initial phases of the project.

Vendors selected to participate in the "best value" sourcing process avoid substantial time and cost commitments required in a competitive environment. As such, the vendor is required to agree to specified mark-up structures, validate actual costs and estimates, and achieve 10% cost savings through value engineering alternatives. The "best value" sourcing process is most effective if it is implemented early in the design process. Vendors can influence design decisions at minimal cost and offer alternative means and methods to accomplish the same objectives at a lower cost. The following table summarizes the primary advantages and disadvantages of the traditional and "best value" procurement processes:

**Table 1 – Traditional vs. “Best Value”**

Procurement Process	Advantages	Disadvantages
Traditional	<ul style="list-style-type: none"> <li>• Promotes fair and open competition</li> <li>• Results in selections that represent market value for the desired service</li> <li>• Transparent process that mitigates favoritism and corruption</li> </ul>	<ul style="list-style-type: none"> <li>• Participation is a substantial investment for vendors</li> <li>• Open communication between the owner and potential vendors is not permitted</li> <li>• Vendors inflate bids to account for risk</li> <li>• Vendors may use cheaper labor and/or materials to submit a lower bid, increasing the probability of poor workmanship and quality</li> <li>• Lengthy procurement process</li> </ul>
“Best Value”	<ul style="list-style-type: none"> <li>• Ease of doing business</li> <li>• No bidding costs</li> <li>• Engages established vendors with proven performance record</li> <li>• Engages vendors with existing knowledge of site conditions and operating protocols</li> <li>• Vendors agree to achieve 10% cost reduction from their initial bid</li> <li>• Shorter procurement process, resulting in an accelerated schedule at no additional cost</li> <li>• Actual costs are validated through “open book” cost reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Non-competitive sourcing process</li> <li>• Does not guarantee lowest price (market value) for desired services</li> <li>• Does not promote fair and open competition</li> </ul>

The “best value” sourcing process is not included in any formal document or operating guidelines. However, the ZEN project team has followed an informal process for the procurement of three subcontracts, which, as part of our review, we have documented based on discussions with the construction manager. Thus, the processes that follow are considered to be “as-intended,” and directly reflect the information provided by the construction manager.

#### 1. Identify Need

The design-build project team identifies a need to employ the “best value” sourcing process in order to meet the project objectives (e.g. schedule). The owner authorizes the construction manager to explore options for using the “best value” sourcing process to accelerate the procurement phase.

#### 2. Identify and Select Work Packages

The construction manager analyzes the design documents and identifies work packages that may

significantly reduce the cost and schedule of the project. Typically, early work packages, such as earthwork and structural steel, are selected for the BVSP. The process is most effective if it is implemented early in the design process, so vendors can influence design decisions at minimal cost.

### **3. Develop Preliminary Schedules**

The construction manager prepares two milestone summary reports to demonstrate the impact of the "best value" sourcing process on the project schedule. The first schedule reflects key milestone dates assuming the subcontracts were awarded using a traditional procurement process. The second schedule illustrates the schedule compression that can be achieved if the proposed work packages are procured using the "best value" sourcing process.

### **4. Perform Competitive Evaluation**

The construction manager completes a competitive evaluation matrix to document the vendor's qualifications and performance on previous projects of similar size and scope. The matrix evaluates the vendor's financial stability, resource capabilities, knowledge of site conditions and existing infrastructure, and previous work performance on similar projects.

### **5. FRMC Approval**

The construction manager attaches the preliminary schedules and competitive evaluation to a letter to FRMC. The letter formally recommends awarding the subcontract to the proposed vendor using the "best value" sourcing process. FRMC reviews the letter and attachments and provides signatory approval, which formally authorizes the construction manager to procure the vendor using the BVSP.

### **6. Vendor Notification**

The construction manager notifies the selected vendor(s) to introduce the opportunity and outline the principles, benefits, and criteria of the "best value" sourcing process.

### **7. Bid Package Issuance**

The construction manager issues a bid package to the vendor outlining the scope of work and requirements of the "best value" sourcing agreement. The scope of work is typically based on 50% complete design drawings and specifications. As the design evolves, the vendor submits revised estimates that are eventually incorporated into the executed subcontract agreement. The bid package also delineates vendor performance expectations consistent with the "best value" sourcing process, including:

- 10% cost reduction from bid at 50% design complete
- Value engineering expertise
- "Open book" cost reporting
- Discounted mark-up

### **8. Vendor Bid**



The vendor responds to the bid package with a formal bid submission identifying the assumptions used to develop schedule and cost estimates. The vendor's response also acknowledges its acceptance of the "best value" sourcing requirements and performance expectations.

#### **9. Executed Subcontract Agreement**

The construction manager formalizes its agreement with the vendor through an executed subcontract. The subcontract reflects the schedule duration and contract value based on the latest design documents. Typically, subcontract agreements are memorialized based on 90% design complete drawings and specifications. In addition to contract value and schedule duration, the subcontract includes the performance requirements and criteria of the "best value" sourcing agreement.

#### **10. Value Engineering Proposal**

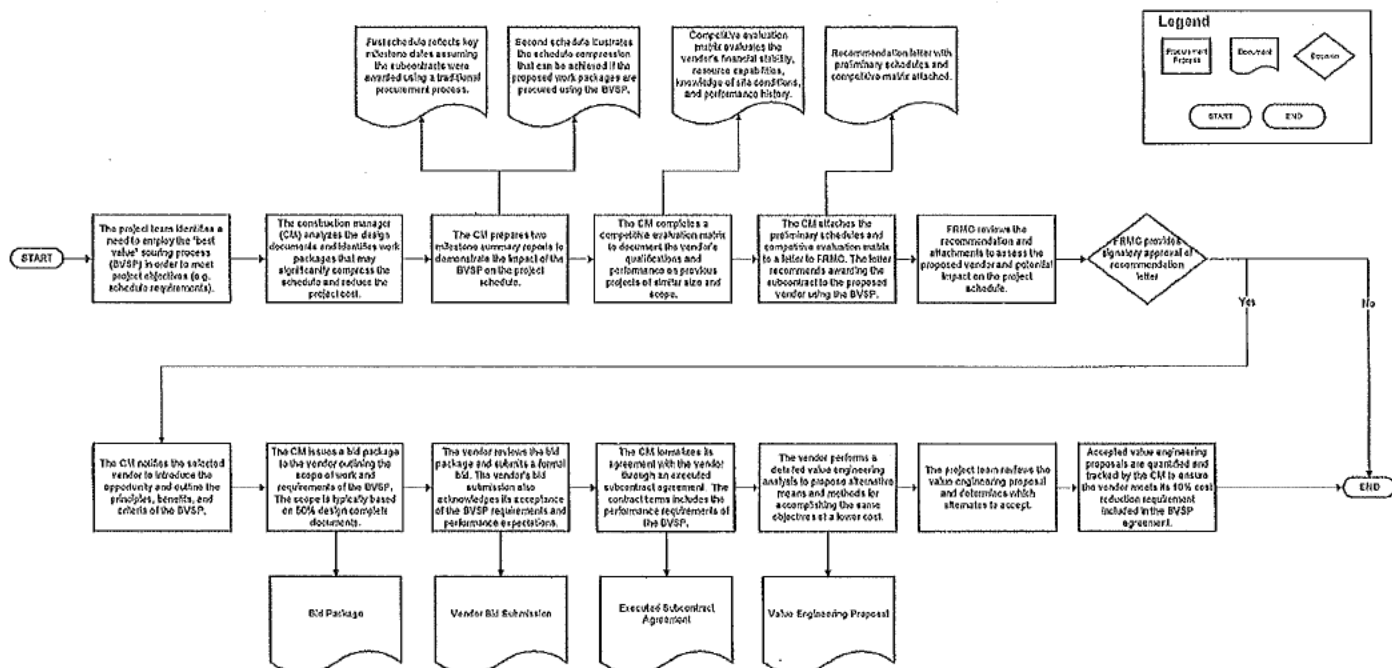
As identified in the bid package and subcontract agreement, the construction manager requires the vendor to provide a detailed value engineering analysis on its scope of work. The vendor uses experience and industry knowledge to develop alternate means and methods to achieve the project objectives at a lower cost. The value engineering proposal is presented to the project team for further review. Accepted alternative design proposals are quantified and tracked against the 10% cost reduction requirement. Initiating the "best value" sourcing process early in the design phase allows vendors to influence critical design decisions at minimal costs to the project. As the design is further refined and finalized, it is more expensive to make changes.



cutting through complexity™

PRELIMINARY DRAFT - FOR DISCUSSION PURPOSES ONLY

## "BEST VALUE" SOURCING PROCESS



## **EXHIBIT E**

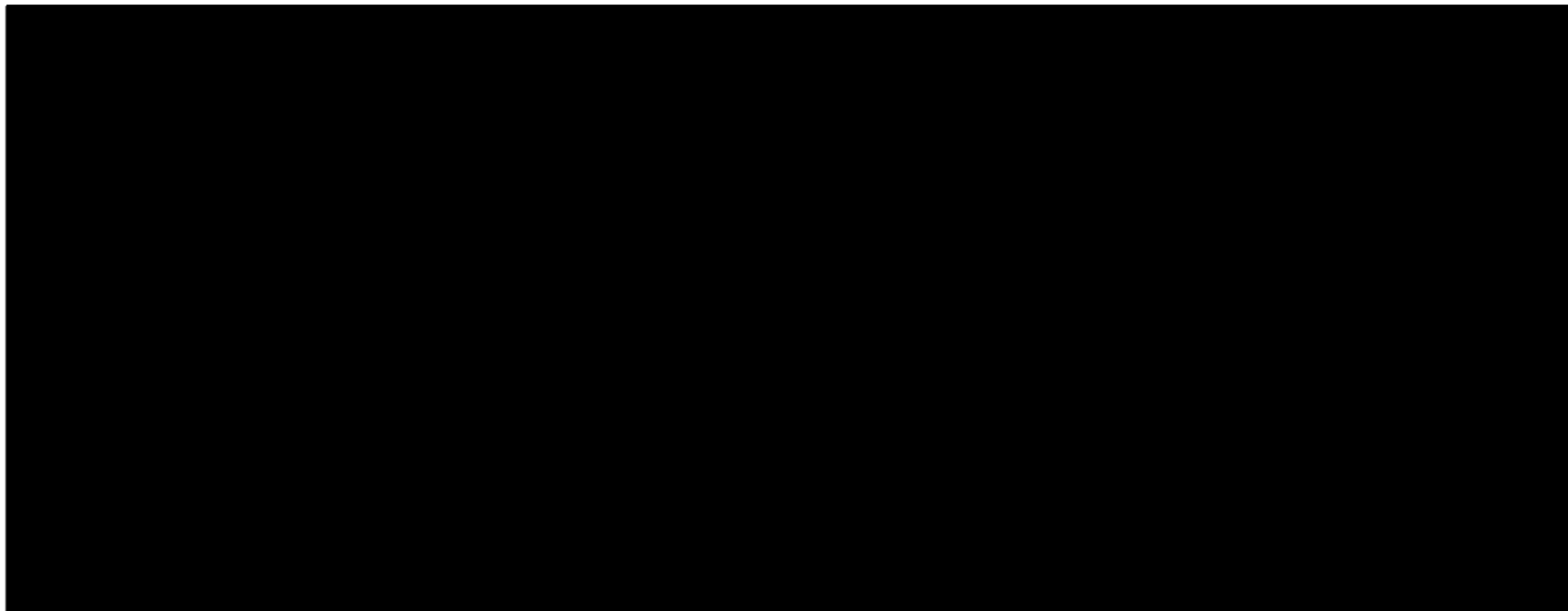
# College of Nanoscale Science & Engineering - CNSE

RiverBend

Buffalo High-Tech Manufacturing Innovation Hub

## 90 Day Cash Flow

	Totals
C100 - Exploratory Excavation	\$ 140,000
	\$ 40,000
EYP Architecture & Engineering	\$ 2,350,000
General Conditions	\$ 310,000
General Requirements	\$ 160,000
	\$ 3,000,000



## EXHIBIT F

### TERMS AND CONDITIONS

1. Indemnification. LP Ciminelli shall indemnify, save, hold harmless and defend FSMC, The Research Foundation for the State University of New York, the College of Nanoscale Science and Engineering, State University of New York, State of New York, and their respective officers, directors, managers, shareholders, members, employees, agents, and assigns (each individually an "Indemnatee") from and against any and all claims, direct damages, demands, actions, judgments, lawsuits, proceedings, assessments, liabilities, losses, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses), whether or not subject to litigation, incurred by any Indemnatee in connection with, by reason of, or arising out of (a) the material breach of or the untruthfulness or inaccuracy of any representation of LP Ciminelli that is contained in LP Ciminelli's response to RFP or in this NTP, (b) LP Ciminelli's or its employees', agents', and contractors' negligent acts or omissions in connection with activities undertaken pursuant to this NTP, (c) any negligent act or omission involving fraud of LP Ciminelli or its employees, agents or contractors in connection with the performance of responsibilities under this NTP, or (d) any negligent act, omission or violation of statutory duty or regulation by LP Ciminelli or any of its employees, contractors or agents in connection with activities undertaken pursuant to this NTP.
2. No Agency. The signing, delivery and performance of this NTP shall not be construed as creating any agency relationship, partnership, joint venture or similar association among the Parties. Each Party shall be responsible for their own project administration, insurance, employees, taxes and other similar matters. Neither Party shall have the right to bind the other Party to third parties.
3. Confidentiality. Either FSMC or LP Ciminelli (with respect to information disclosed by it, the "Disclosing Party") may disclose Confidential Information (as defined below) to the other (with respect to such information, the "Receiving Party") orally or in writing or by other media or by transfer of materials. When disclosed in writing or by such other media or materials, Confidential Information shall be expressly identified in writing as Disclosing Party's Confidential Information. When disclosed orally, Disclosing Party shall identify the information as confidential at the time of such disclosure, with subsequent written confirmation to Receiving Party within thirty (30) days of such disclosure indicating the date and type of information disclosed. In addition, by example and not in any way limiting, all information pertaining to the design and construction of the Project and the property on which the Project will be constructed shall be deemed to constitute Confidential Information. Receiving Party shall clearly label any of Disclosing Party's Confidential Information reduced to writing by Receiving Party as "XYZ CONFIDENTIAL INFORMATION" where XYZ is replaced with the name of Disclosing Party. For purposes hereof, the term "Confidential Information" shall mean all information that is maintained in confidence by a Party ("Owning Party") and is disclosed to or obtained by another Party in connection with and during the term of this NTP, including, but not limited to, information that relates to such Owning Party's announcement of this relationship shall be mutually coordinated and agreed upon by the

Parties, and (b) a summary of pertinent Sections of this NTP that are reasonably necessary for disclosing and/or licensing under this NTP; provided, that such disclosure is under a written agreement containing restrictions of confidentiality at least as stringent as those contained in this NTP.

4. No Assignment. LP Ciminelli may not assign this NTP, nor any rights afforded hereunder, without the prior written consent of FSMC, which such consent may be withheld in its sole discretion.
5. Governing Law; No Jury Trial. This NTP shall be construed, governed, interpreted, and applied in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof. Any legal action or proceeding brought in respect of this NTP may be brought only in a United States Federal District Court located in the State of New York or in any state court of the State of New York. Each Party hereby consents to the exclusive jurisdiction and venue of such courts. The Parties expressly waive any right to a jury trial for any legal action or proceeding brought under this NTP and the Parties agree that any legal action or proceeding under this NTP shall be tried by a judge without a jury.
6. Statutory Compliance. LP Ciminelli acknowledges and agrees that the Work (including, without limitation, any construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration or improvement in connection with activities undertaken pursuant to this NTP), or contracts or subcontracts for such Work, shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and in such manner as to cause a minimum of interference with the transaction of business at the Project site. In addition, LP Ciminelli acknowledges and agrees that it shall undertake all Work shall, and/or shall cause to be undertaken by any contractors or subcontractors, in compliance with Article 15-A of the New York Executive Law pertaining to Equal Employment Opportunities for Minorities and Women and Article 8 of the New York Labor Law pertaining to Wage and Hours. LP Ciminelli agrees to indemnify FSMC and hold FSMC harmless against any loss, liability or damage resulting from such Work or from any violation of any state or federal laws including the New York state laws set forth in this Section 6 in connection with activities undertaken pursuant to this NTP.
7. Entire Agreement. The Parties acknowledge that this NTP integrates all prior understandings and representations of the Parties, and sets forth the entire agreement and understanding of the Parties, on the subject matter hereof, and shall not be subject to any change or modification except by a written instrument signed by both Parties. Neither this NTP nor any of the terms hereof may be changed, waived, or discharged except by an instrument in writing signed by both Parties.
8. Validity. The provisions of this NTP are separable, and in the event that any provisions of this NTP are determined to be invalid or unenforceable under any controlling body of

law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

9. Notices. All communications, notices and disclosures required or permitted by this NTP shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered or one day after being deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, by hand delivery, by overnight courier service with signed receipt or by facsimile transmission (with written confirmation of receipt thereof), and addressed as follows, unless and until either party notifies the other party of a change of address:

In the case of LP Ciminelli:

Frank L. Ciminelli, II  
Senior Vice President  
LP Ciminelli, Inc.  
2421 Main Street  
Buffalo, New York 14214

In the case of FSMC:

Alicia Dicks, President  
SUNYIT  
100 Seymour Road  
Utica, New York 13502

10. Insurance. LP Ciminelli shall maintain at a minimum the following insurance coverage:

- A) Commercial General Liability ("CGL") with limits of insurance of not less than [REDACTED] each Occurrence and [REDACTED] Annual Aggregate. CGL coverage shall be written on ISO Occurrence form CG 00 01 10 93 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

FSMC, The Research Foundation for the State University of New York ("FOUNDATION"), the State University of New York ("SUNY"), including the College of Nanoscale Science and Engineering ("CNSE"), and the State of New York ("STATE") shall each be named as Additional Insureds on the CGL policy using ISO Additional Insured endorsement CG 20 10 (11/85) or CG 20 10 (10/93) and CG 20 37 (10/01), or CG 20 33 (10/01) and CG 20 37 (10/01), or an endorsement providing equivalent coverage to the Additional Insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. This insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds.

LP Ciminelli shall maintain CGL coverage for itself and all Additional Insureds for the duration of the Project and shall maintain Completed Operations coverage for itself and each Additional Insured for at least 3 years after completion of the Work.

- B) Business Automobile Liability ("AL") with limits of insurance of not less than [REDACTED] each accident. AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. FSMC, FOUNDATION, SUNY, CNSE and STATE shall each be named as Additional Insureds on the AL policy. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. The AL coverage for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds.
- C) Workers Compensation ("WC") & Employers Liability ("EL") with limits of insurance of not less than required by New York State law. This policy shall include an All States endorsement.
- D) Commercial Umbrella Liability ("UL") with limits of insurance of not less than a limit of [REDACTED] per project aggregate. UL coverage must include as Additional Insureds all entities that are Additional Insureds on the CGL and the AL. The UL insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds other than the CGL and WC/EL coverage maintained by LP Ciminelli and its subcontractors.
- E) Professional Liability – Architects and Engineers Professional Liability ("AEL") in the amount of [REDACTED] shall be maintained by the Project architects and engineers.
- F) LP Ciminelli shall supply FSMC with evidence of Contractor's Pollution Liability Insurance Coverage ("CPL") in the form of a certificate of insurance. A minimum coverage limit of [REDACTED] for CPL should be maintained for the duration of this NTP.
- G) LP Ciminelli and its subcontractors waive all rights against FSMC, FOUNDATION, SUNY, CNSE and STATE and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, AL, WC & CPL or UL insurance maintained per the requirements stated above.
- H) Certificate of Insurance acceptable to FSMC must be provided prior to commencement of the Work. A copy of the General Liability Additional Insured endorsement shall be attached to the Certificate of Insurance.
- I) No insurance policy required above shall be cancelled, modified allowed to expire, or reduced in coverage without at least 30 days prior written notice to FSMC.



- J) LP Ciminelli shall cause its subcontractors to maintain CGL, AL, WC & UL insurance per the requirements stated above except that the amount of such coverage shall be [REDACTED] aggregate in the case of the CGL coverage, [REDACTED] in the case of the AL coverage and [REDACTED] in the case of the UL coverage.

11. Payment and Performance Bonds:

- A) Except as provided otherwise herein, LP Ciminelli shall provide labor and material payment and performance bonds only if mutually agreed to and approved by FSMC. LP Ciminelli will require all subcontractors to be bonded, except:

- Work at or below [REDACTED].
- Ancillary work unrelated to the building structure or building systems.
- Contracts solely related to materials or long lead time equipment.

If a bond is provided then Section 11.C) applies.

- B) FSMC and project lender(s), if any, will be named co-obligee on all such bonds. LP Ciminelli shall provide copies of such bonds to FSMC and shall file all such bonds required to be filed pursuant to GOL section 5-322.3, with proof of filing, all given to FSMC at the earlier of the following: i) within fifteen (15) days of the signing of the agreement with the contractor or materialman; ii) not later than fifteen (15) days before said contractor is scheduled to commence work; or iii) when the first order for materials or equipment is placed with the contractor or materialman. In the event that this NTP is terminated before final completion of the Work, at FSMC's election, LP Ciminelli will assign to FSMC contracts of LP Ciminelli with contractors and materialmen, and will assign to FSMC all rights under payment and performance bonds as FSMC shall designate. LP Ciminelli shall also provide and pay for a labor and materials payment bond and a performance bond in the amount of 100% of the sum of the line items of the Work to be performed by LP Ciminelli's own forces. The cost of the Work shall not include, directly or indirectly, the cost of any payment or performance bond provided by contractors or materialmen whose contracts with LP Ciminelli to provide work, labor, materials, equipment or services are in an amount less than [REDACTED]
- C) All bonds shall be in a form satisfactory to FSMC from a surety company authorized to do business in New York State and satisfactory to FSMC with a minimum "A-" rating. LP Ciminelli shall defend and indemnify FSMC from any claim, loss, judgment, damage or liability arising pursuant to New York General Obligations Law section 5-322.3 by reason of LP Ciminelli's failure to file said bonds as provided for herein, together with FSMC's actual attorneys' fees.
- D) Notwithstanding the foregoing, LP Ciminelli shall have the right to use a subcontractor default insurance (SDI) program to cover the risk associated with

subcontractor default in lieu of payment and performance bonds and all subcontractor Work and material purchased over a value of [REDACTED] will be covered by the SDI program. LP Ciminelli will supply FSMC with a financial interest endorsement in satisfaction of the co-obligee requirements set forth in subparagraph (B) above. To the extent that the Project is financed by FSMC, LP Ciminelli's ability to use SDI shall be subject to the consent of FSMC's mortgage lender.

12. LP Ciminelli shall develop and submit to FSMC a plan for mentoring minority and women owned business enterprises ("WMBE") in the community surrounding the Project, for recruiting minority and women employees, and for satisfying at least [REDACTED] WMBE participation in the Project including the current New York State regional goals for minority owned business enterprise and women owned business enterprise percentages.