



# New York State Public Auction

836 Prospect Place, Brooklyn, New York  
Legal and Reference Documents

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## Auction Date:

October 20, 2011

## Minimum Bid:

\$500,000

## Open House Dates:

11:30 a.m. - 2:00 p.m.  
September 27  
October 12



**NOTICE OF SALE**

**STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES**

**SALE OF REAL PROPERTY**

Pursuant to Section 33 of the Public Lands Law and Findings of the Commissioner of General Services in the Executive Department of the State of New York dated *September 13*, 2011, I shall offer for sale at public auction all the right, title and interest of the People of the State of New York in and to the following improved parcel, at the place and time indicated or at such other place and time to which the sale may be adjourned:

All that certain piece or parcel of land with improvements, located in Borough of Brooklyn, County of Kings, City and State of New York, located at 836 Prospect Place (Crown Heights), consisting of 0.17± acres, improved with a 3200± square foot three story single family residence. Property tax identifier is: Kings County Section 5, Block 1234, Lot 20.

*Place of Auction:* New York State Office Building  
55 Hanson Place, First Floor  
Brooklyn, New York, 11217

*Date and Time of Auction:* Thursday, October 20, 2011 at 11:00 a.m.

*Minimum Bid:* \$500,000.00

*Deposit:* \$50,000.00 in certified check or bank draft only, and made payable to the "Commissioner of General Services", or the bidder.

*Additional Deposit:* A non-refundable amount which, with the initial deposit, constitutes 10% of the successful bid, said amount is payable within ten business days of notification of acceptance of bid.

*Balance Due:* 120 days after notification of acceptance of bid.

*Broker's Commission* A 5% broker commission will be paid by the State of New York to a qualified real estate broker who represents the successful bidder. Bidder and Broker Affidavits must be submitted to the Office of General Services, Legal Services, by close of business Tuesday, October 18, 2011.

Other important terms and conditions are applicable to this sale, including, but not limited to bond defeasance, broker commission and pre-registration, bidder pre-qualification, auction bidding through authorized representative, and forfeiture and default provisions. See Public Lands Law Section 33 as well as 9NYCRR276. To obtain a copy of the Contract of Sale with applicable terms and conditions, together with a copy of a more detailed description of the premises, call (518) 474-2195 or write to: State of New York, Office of General Services, Bureau of Land Management, 26th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242. Web site: [www.ogs.ny.gov](http://www.ogs.ny.gov)

NEW YORK STATE  
OFFICE OF GENERAL SERVICES

Dated: 9/13/11

By: *RoAnn M. Destito*  
RoAnn M. Destito  
Commissioner

## **PROPOSED LEGAL DESCRIPTION**

Hostel #12121  
836 Prospect Place, Brooklyn, NY

All that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Prospect Place (70' wide) distant 300.00 feet easterly from the corner formed by the intersection of the southerly side of Prospect Place (70' wide) with the easterly side of Nostrand Avenue (70' wide), said point being a set stake;  
running thence easterly along the southerly side of Prospect Place, 50.00 feet to lands now or formerly of Zb Prospect Realty, to a set nail;  
running thence southerly and at right angles to the southerly side of Prospect Place and parallel with Nostrand Avenue, along lands now or formerly of Zb Prospect Realty, 140.58 feet to lands now or formerly of Kevin Shepherd, to a set cut;  
running thence westerly and at right angles to the last mentioned course and parallel with Prospect Place, along lands now or formerly of Kevin Shepherd, 20.00 feet, to a set cut;  
running thence southerly and at right angles to the last mentioned course and parallel with Nostrand Avenue, along lands now or formerly of Kevin Shepherd, 9.42 feet to lands now or formerly of Desmond Prince and the Theta Realty Corp., to a set stake;  
running thence westerly and at right angles to the last mentioned course and parallel with Prospect Place, along lands now or formerly of Desmond Prince and the Theta Realty Corp, 30.00 feet to lands now or formerly of Jamela Davis, to a set stake;  
running thence northerly and at right angles to the last mentioned course and parallel with Nostrand Avenue, along lands now or formerly of Jamela Davis, 150.00 feet to the southerly side of Prospect Place, to a set stake at the point or place of beginning.

Containing 7,311.60 square feet or 0.168 acre(s).

Subject to any enforceable easements, restrictions or covenants of record.

Being the same premises appropriated by the People of the State of New York by a map dated July 26, 2007 and entitled, "Map and Description for Acquisition of Real Property, State of New York Office of Mental Retardation and Developmental Disabilities, Brooklyn DDSO, Community Residence, Hostel No. 12121, 836 Prospect Place, Brooklyn, Kings County, New York", Map No. 201, Parcel No. 201, filed in the Kings County Clerk's Office on January 10, 2008.

STATE OF NEW YORK - EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES

-----X  
: **In the Matter of the Public Sale**  
: **of**  
: **BIDDER-PURCHASER**  
**All that Piece or Parcel of Land with Improvements,**  
**known as 836 Prospect Place, Brooklyn,**  
**Kings County, State of New York**  
: **AFFIDAVIT**  
: **AFFIDAVIT**  
-----X

STATE OF NEW YORK )  
: ss.:  
COUNTY OF )

I, \_\_\_\_\_ being duly sworn, depose and say:

That I reside at or have a business located at: \_\_\_\_\_

That it is my intention to be bidder at the auction of the subject property to be held on Thursday, October 20, 2011, at the place known as the New York State Office Building at 55 Hanson Place, First Floor, Brooklyn, New York 11217;

That I have employed \_\_\_\_\_, to act as broker on my behalf in my efforts to purchase the subject property;

That the employment of said broker is evidenced by an employment letter agreement dated \_\_\_\_\_, a copy of which is annexed hereto and made a part hereof.

That knowledge of the public auction of the subject property was brought to my attention by said broker in the following manner: \_\_\_\_\_

That my bid is made without collusion and that no attempt is made to restrict competition in accordance with the provisions of Section 139(d) of the State Finance Law of the State of New York;

That I am not the broker or a stockholder, director, officer, partner, spouse, sibling or child of the broker;

That the broker is not a stockholder, director, officer, partner or spouse of mine;

That the broker and I do not have a common director, stockholder, officer, partner or employee;



**STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES  
BUREAU OF LAND MANAGEMENT, 26<sup>TH</sup> FLOOR  
MAYOR ERASTUS CORNING 2ND TOWER  
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA  
ALBANY, NEW YORK 12242  
(518) 474-2195**

AUTHORIZATION TO BID

I, \_\_\_\_\_ hereby  
(PRINT NAME OF BIDDER - PRINCIPAL)

authorize \_\_\_\_\_  
(AGENT – NAME AND ADDRESS)

\_\_\_\_\_, to bid on my behalf at the following public auction:

**Date:** Thursday, October 20, 2011  
**Time:** 11:00 a.m.  
**Location:** Shirley A. Chisholm State Office Building  
55 Hanson Place, First Floor  
Brooklyn, New York 11217  
**Property to be offered:** 836 Prospect Place, Brooklyn  
Kings County, New York

Limiting Instructions: \_\_\_\_\_  
(IF NONE, SO STATE)

\_\_\_\_\_  
(SIGNATURE OF BIDDER)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(TELEPHONE)

**Statutory Authority: Public Lands Law, Section 33(1). This form must be filed with the Deputy Commissioner of General Services by close of business Tuesday, October 18, 2011.**

STATE OF NEW YORK - EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES

-----X  
: **In the Matter of the Public Sale**  
: **of**  
: **All that Piece or Parcel of Land with Improvements,**  
: **known as 836 Prospect Place, Brooklyn,**  
: **Kings County, State of New York**  
: **BROKER**  
: **AFFIDAVIT**  
: -----X

STATE OF NEW YORK )  
: ) ss.:  
COUNTY OF )

I, \_\_\_\_\_ being duly sworn, depose and say:

That I am a duly licensed real estate broker with offices located at \_\_\_\_\_;

That I have been so licensed for a period of \_\_\_\_\_;

That, in such capacity, I hereby apply for a broker commission in accordance with the provisions of Section 33(1) of the Public Lands Law of the State of New York and pursuant to the Notice of Sale pertaining to said property dated \_\_\_\_\_;

That I have entered into an agreement with \_\_\_\_\_, bidder-purchaser, who has engaged me for the purpose of providing broker services with respect to this public auction;

That the bid of said bidder-purchaser is made without collusion and that no attempt is made to restrict competition in accordance with the provisions of Section 139(d) of the State Finance Law of the State of New York;

That knowledge of this public auction came to me by means of \_\_\_\_\_;

That I imparted my knowledge of this public auction to said \_\_\_\_\_, bidder-purchaser, on \_\_\_\_\_, and in the following manner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

That I have supplied said bidder-purchaser with the following written material concerning this public auction:

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That in providing such information and material to said bidder-purchaser, it has been my intent to induce said bidder-purchaser to purchase the subject property.

That I have not and shall not accept any other commission or fee from any person or source for broker services relating to this auction and sale;

That no part or portion of the commission applied for herein by me shall be paid by me or on my behalf to any other person, including the bidder-purchaser herein;

That I am not the purchaser or a stockholder, director, officer, partner, spouse, sibling or child of the bidder-purchaser;

That the bidder-purchaser and I do not have a common director, stockholder, officer, partner or employee;

That I agree to provide any and all further information relative to the procurement of this sale and/or relative to my legal and factual relationship with the bidder-purchaser as may be requested at any time by the State of New York;

That I understand that failure to provide such information in a timely manner, when requested, may result in forfeiture of a commission otherwise earned;

That I understand that the broker commission, if any, shall be paid subsequent to the closing of title and after a review of my application for said commission has been completed and approved by the State of New York;

That I understand that no broker commission shall be paid in the event a sale is not consummated regardless of fault or reason;

That I understand that, this affidavit must be executed, sworn to and submitted by close of business Tuesday, October 18, 2011.

\_\_\_\_\_  
Signature

Dated: \_\_\_\_\_



# STATE FINANCE LAW

## Notice of Responsible Bidder Inquiry

### Background:

State Finance Law §139-j(6) requires that the Office of General Services (OGS) incorporate a summary of its policy and prohibitions regarding permissible Contacts during a Public Sale of real property. The following summary of such policies and prohibitions also provides notice to the Bidder that OGS is required to assess whether the Bidder is "Responsible" under State law.

Pursuant to State Finance Law §§139-j and 139-k, this Public Sale includes and imposes certain restrictions on communications between OGS and a Bidder during the public sale process. A Bidder is restricted from making contacts to other than designated staff from the earliest notice of intent to solicit offers through final approval of the Sale Agreement by the OGS and, if applicable, Office of the State Comptroller ("restricted period") unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff is identified on the Fact Sheet that is included in the attached informational package. OGS employees are also required to obtain certain information during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection of the Sale Agreement and in the event of two findings within a 4 year period, the Bidder is debarred from obtaining government contracts. Further information about these requirements can be obtained at [www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html](http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html).



NEW YORK STATE - EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES  
AGREEMENT FOR SALE OF SURPLUS REAL PROPERTY

**This is a Real Estate Contract - You may wish to consult an Attorney before signing**

This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2011, between

\_\_\_\_\_, residing or with office located at

\_\_\_\_\_, hereinafter referred to as "the

Purchaser", and the Commissioner of General Services, acting on behalf of the People of the State of New York, hereinafter referred to as "the State", with an office located at the 41st Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242, hereinafter the "Agreement",

The parties hereby agree to the following terms and conditions:

1. Pursuant to Section 33 of the Public Lands Law and Notice of Sale dated September 13, 2011, the State agrees to sell and convey, and the Purchaser agrees to purchase all that property described in the attached Schedule "A" and further identified as follows:

836 Prospect Place, Crown Heights  
0.17 ± acre  
Section 5, Block 1234, Lot 20  
Borough of Brooklyn, County of Kings

2. The Purchaser agrees to pay the full purchase price in the amount of

\_\_\_\_\_ Dollars (\$) \_\_\_\_\_ ) as follows:

- (A) The sum of Fifty Thousand Dollars (\$50,000.00) has been paid to the State by the Purchaser on October 20, 2011 as a deposit, receipt of which is hereby acknowledged and which is to be applied toward the purchase price of the property.
- (B) Additional Deposit May Be Required: A nonrefundable amount, which with the initial deposit constitutes 10% of the successful bid, will be required and payable within ten (10) business days of notification of acceptance of bid.

- (C) The balance of \_\_\_\_\_ Dollars (\$) is to be paid by the Purchaser to the State in the form specified in the Notice of Sale upon delivery by the State of the letters patent to the Purchaser at the time of closing.
3. (A) There are no other contingencies of fact or circumstance, including, but not limited to financing of the purchase price or zoning, upon which closing of title depends. Transfer of title shall take place no later than 120 days after notification of contract approval, time being of the essence with respect to the Purchaser's obligation. The State may, at its discretion, extend the time for closing without the approval of the Purchaser.
- (B) In the event of default on the part of the Purchaser by failure to pay the additional deposit or balance of the purchase price when due, the State may bring an action for specific performance or may retain the deposit as liquidated damages. Subsequent to the approval of this Agreement by all necessary parties, the State may rescind the Agreement upon administrative findings of the Commissioner of General Services setting forth the reason for such rescission. If this Agreement shall be rescinded by the State, the sole and exclusive remedy of the Purchaser shall be the return of the deposit paid to the State which the Purchaser agrees shall constitute full compensation in lieu of any other legal or equitable remedy. The Purchaser hereby waives any other demand, claim, cause of action or remedy.
4. The State shall convey the property by quitclaim letters patent without warranties which shall except and reserve all gold and silver mines. The letters patent shall be subject to the provisions of Section 112 of the State Finance Law and the approval of the Attorney General as to form.
5. The risk of loss or damage by fire or otherwise between the date of execution of this Agreement by the Purchaser and the transfer of title shall be governed by Section 5-1311 of the New York General Obligations Law.
6. The Purchaser may not enter upon the property prior to transfer of title without prior written permission of the State.
7. This Agreement, or any rights arising thereunder, may not be assigned without permission of the State.
8. The Purchaser shall pay for any documentary stamps required to be affixed to the letters patent as well as any fees for recording, conveyance, taxes or revenue charges which may be in force at the time of delivery of the letters patent.
9. The Purchaser may order a title report and/or title insurance at the Purchaser's expense. Any objection to title must be communicated in writing to the Commissioner of General Services at least thirty (30) days prior to the closing. Failure to submit such notice of objection in a timely manner shall preclude the Purchaser from raising such objection at the time of closing.
10. It is expressly agreed that the State makes no warranties that the subject property complies with federal, state or local governmental laws or regulations applicable to the property or its present or prior use. Purchaser has fully examined and inspected the property and takes the property in its existing condition with no warranties of any kind concerning the condition of the property or its present or prior use.

Purchaser is purchasing the same "as is"; and assumes all responsibility for any damage caused by the conditions on the property upon transfer of title.

11. (A) The Purchaser is required to accept the property and any improvements thereon as of the time of closing subject to:
  - (i) Any state of facts an accurate survey or personal inspection may show;
  - (ii) Building restrictions and zoning regulations in force at the time of closing;
  - (iii) Covenants, conditions, easements, restrictions and agreements of record affecting the property;
  - (iv) All violations, if any, existing at the time of closing, of any rules, regulations, or ordinances established by any federal, State or local government, or agency thereof, having jurisdiction over the property;
  - (v) Any and all encroachments.
- (B) It is the Purchaser's responsibility to ascertain what, if any, federal, State, or local statutory or regulatory requirements, restrictions or prohibitions pertain to the property.
12. The parties agree to abide by the provisions of Section 33(1) of the Public Lands Law and 9NYCRR276 with respect to payment of a broker commission, if applicable.
13. The terms and conditions of this Agreement shall constitute the entire agreement made between the parties and cannot be changed orally. Nothing contained in this Agreement is intended to create any rights in any third person not a party of this Agreement. The terms and conditions of this Agreement shall inure to the benefit of and bind the distributees, legal representatives and successors of the parties.
14. If any provision of this Agreement shall be held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.
15. Where the purchase price is less than \$15,000.00, this Agreement shall be binding upon the parties when it has been executed by the Purchaser and the Commissioner of General Services and approved as to form by the Attorney General. If the purchase price is \$15,000.00 or more, this Agreement shall be binding only when approved by the State Comptroller as required by Section 112 of the State Finance Law.
16. The State reserves the right to terminate this Agreement in the event it is found that the certification filed by the Purchaser in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Purchaser in accordance with the written notification terms of this Agreement.
17. All notices or other communications given pursuant to this Agreement by either party to the other shall be given in writing, delivered or mailed to the other party at the address listed above and to the party's agent or attorney at the following addresses:

Notice to the Purchaser:





## SCHEDULE A

All that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Prospect Place (70' wide) distant 300.00 feet easterly from the corner formed by the intersection of the southerly side of Prospect Place (70' wide) with the easterly side of Nostrand Avenue (70' wide), said point being a set stake; running thence easterly along the southerly side of Prospect Place, 50.00 feet to lands now or formerly of Zb Prospect Realty, to a set nail; running thence southerly and at right angles to the southerly side of Prospect Place and parallel with Nostrand Avenue, along lands now or formerly of Zb Prospect Realty, 140.58 feet to lands now or formerly of Kevin Shepherd, to a set cut; running thence westerly and at right angles to the last mentioned course and parallel with Prospect Place, along lands now or formerly of Kevin Shepherd, 20.00 feet, to a set cut; running thence southerly and at right angles to the last mentioned course and parallel with Nostrand Avenue, along lands now or formerly of Kevin Shepherd, 9.42 feet to lands now or formerly of Desmond Prince and the Theta Realty Corp., to a set stake; running thence westerly and at right angles to the last mentioned course and parallel with Prospect Place, along lands now or formerly of Desmond Prince and the Theta Realty Corp, 30.00 feet to lands now or formerly of Jamela Davis, to a set stake; running thence northerly and at right angles to the last mentioned course and parallel with Nostrand Avenue, along lands now or formerly of Jamela Davis, 150.00 feet to the southerly side of Prospect Place, to a set stake at the point or place of beginning.

Containing 7,311.60 square feet or 0.168 acre(s).

Subject to any enforceable easements, restrictions or covenants of record.

Being the same premises appropriated by the People of the State of New York by a map dated July 26, 2007 and entitled, "Map and Description for Acquisition of Real Property, State of New York Office of Mental Retardation and Developmental Disabilities, Brooklyn DDSO, Community Residence, Hostel No. 12121, 836 Prospect Place, Brooklyn, Kings County, New York", Map No. 201, Parcel No. 201, filed in the Kings County Clerk's Office on January 10, 2008.

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or

reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of

this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce

Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely

affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a

contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without

discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to

service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the

New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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