



**Thruway
Authority**

**NEW YORK STATE THRUWAY AUTHORITY
Public Sealed Bid Auction
of Surplus Real Property**

(NOTICE DATED: MAY 8, 2024)

**REAL PROPERTY REFERENCE NO. TB21-2 IS LOCATED:
DIRECTLY ACROSS FROM INTERCHANGE 57 ON NY ROUTE 75 (CAMP ROAD) NEAR MILE POST
436.7 OF THE ERIE SECTION OF THE NEW YORK STATE THRUWAY (I-90) IN THE
TOWN OF HAMBURG • COUNTY OF ERIE • STATE OF NEW YORK**

BIDDING PERIOD:

SEALED BIDS WILL BE ACCEPTED UNTIL 4:00 P.M. ON MAY 30, 2024

BID OPENING:

**SEALED BIDS WILL BE PUBLICLY OPENED ON MAY 31, 2024, AT 10:00 AM IN HEADQUARTERS OF
THE NEW YORK STATE THRUWAY AUTHORITY LOCATED AT 200 SOUTHERN BOULEVARD,
ALBANY, NEW YORK 12209**

SUBMIT SEALED BIDS TO:

**SEALED BID – RPR #TB21-2
ATTN: JOSEPH ROBERTI
NEW YORK STATE THRUWAY AUTHORITY
LEGAL DEPARTMENT/OFFICE OF REAL PROPERTY MANAGEMENT
200 SOUTHERN BOULEVARD
ALBANY, NEW YORK 12209**

**KATHY HOCHUL
GOVERNOR**

**JOANNE M. MAHONEY
CHAIR**

TABLE OF CONTENTS

Real Property to be Auctioned.....	2
Location Map.....	3
Aerial Site Map.....	4
General Information – Conditions of Sale.....	5
Instructions for Sealed Bids.....	9
Sealed Bid Form.....	10
Authorization to Bid Form.....	11
Sample Bid Confirmation	12
Authority Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence.....	13
Sample Agreement for Sale of Real Property.....	16

REAL PROPERTY TO BE AUCTIONED

MINIMUM ACCEPTED BID: \$3,100,000
EARNEST MONEY DEPOSIT: \$310,000 (Certified or Cashier's Check)

IDENTIFICATION

Real Property Reference No. TB21-2, (referred to hereinafter as the "Property") is generally shown on the Aerial Site Map on page 4 of this brochure and is situated in the Town of Hamburg, Erie County.

GENERAL DESCRIPTION

The Property is vacant, irregularly shaped and comprises 15.189± acres. It is moderately level and mostly at road grade with approximately 1,585± feet of frontage along the west side of NY Route 75 (Camp Road). The Property contains utility poles and drainage structures (culverts, RCP drainage pipes, ditches) along its eastern border and Route 75. Authority records show permits for a 3" gas line running along its northwestern and western boundaries and a sewer line along the gas line. The Property will be conveyed subject to a 12,063± square feet permanent easement (PE) to the People of the State of New York under the jurisdiction of the New York State Department of Transportation (referred to hereinafter as "NYSDOT") for drainage near the corner of its northeastern boundary. The New York State Thruway Authority (referred to hereinafter as the "Thruway Authority") is offering the Property for sale "As-Is" with no guarantee that any improvements can be constructed and urges prospective bidders to confirm occupancies, zoning, and other land use requirements with the Town of Hamburg (see contact information below) and any other appropriate entities.

ZONING/LAND USE REQUIREMENTS

For information on zoning and other land use requirements, contact the municipality in which the property is located:

Town of Hamburg
Planning Department
6100 South Park Avenue
Hamburg, NY 14075
Phone: (716) 649-6111, Ext. 2260

LOCATION

Directly across from Interchange 57 on the west side of New York Route 75 (Camp Road) near mile post 436.7 of the Erie Section of the Governor Thomas E. Dewey Thruway (a portion of U.S. Interstate Route 90, referred to hereinafter as the "Thruway") in the Town of Hamburg, County of Erie, and State of New York.

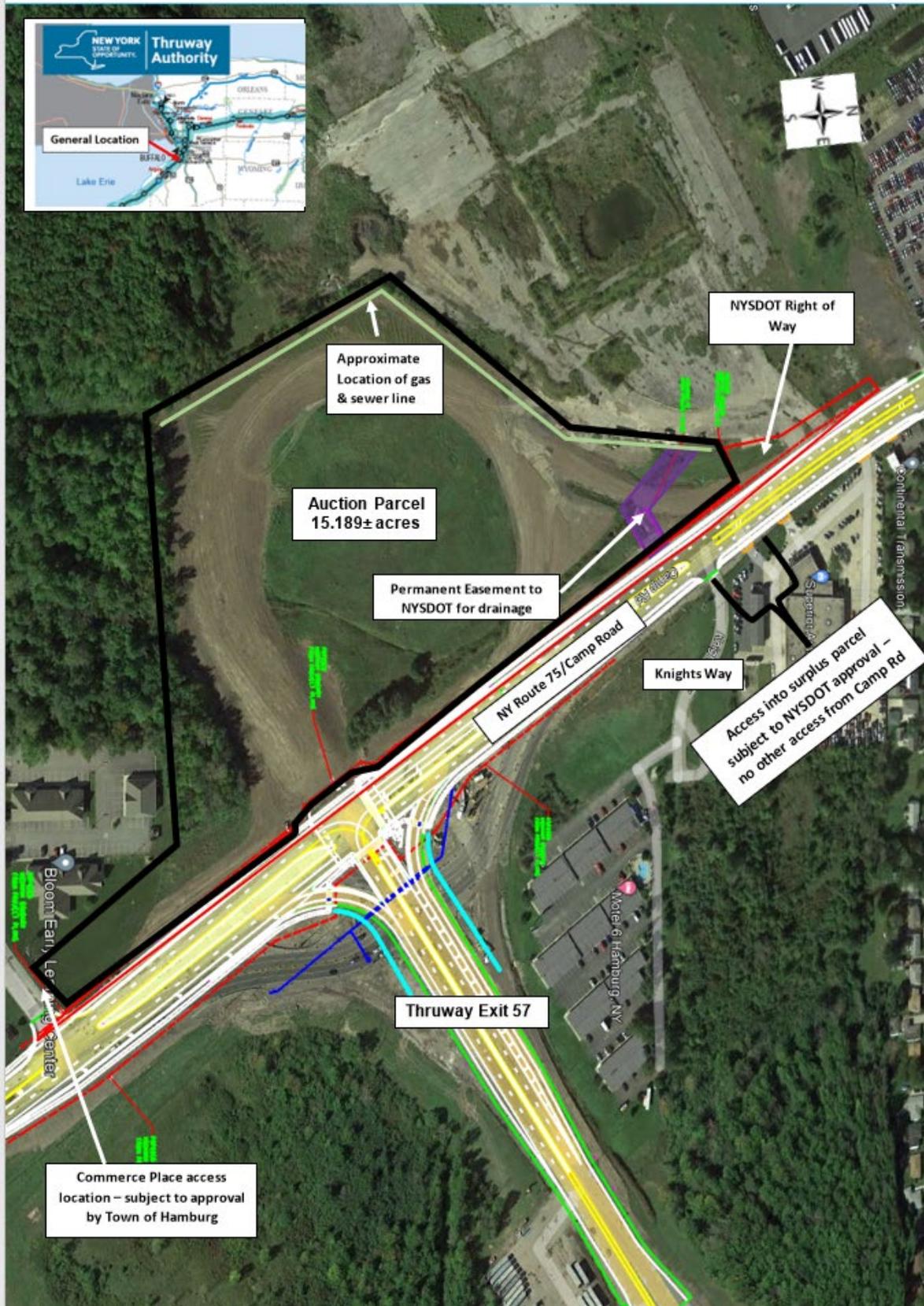
ACCESS

The Property may be accessed via NY Route 75 (Camp Road) beginning at Knights Way extending north to the northeast corner of the Property, subject to final approval by NYSDOT. There is no other access to the parcel from Route 75. The Property may also be accessed via Commerce Place subject to the approval of the Town of Hamburg. There is no access to the Property from the Thruway or across from the Thruway.

TITLE

To be conveyed AS-IS by quitclaim deed with no guarantees of any interests including, but not limited to, insurable title, approvals, or access. The property is being conveyed subject to building restrictions and zoning regulations in force at the time of closing and all violations, if any, of any rules, regulations, or ordinances of any federal, state, or local government having jurisdiction of the property.

AERIAL SITE MAP



GENERAL INFORMATION – CONDITIONS OF SALE

1. INTRODUCTION

The Thruway Authority is a public corporation organized and existing pursuant to article 2, title 9 of the New York Public Authorities Law for the purpose of financing, maintaining, and operating the Thruway, part of the Eisenhower Interstate Highway System. The powers of the Thruway Authority are vested in, and exercised by, a board comprising seven members, each of whom is appointed by the Governor with the advice and consent of the state Senate. The Thruway is a 570-mile, superhighway system that spans New York State from the Pennsylvania state line at Ripley; to and through the cities of Buffalo, Albany, and New York; and is the longest such system in the United States. Various Thruway sections make direct connections with the Connecticut and Massachusetts Turnpikes, the New Jersey Garden State Parkway, and other major expressways that lead to New England, Canada, the Midwest, and the South.

By way of this public, sealed-bid auction (referred to hereinafter as the “Auction”) that is described herein and of which notice was issued on May 8, 2024, the Thruway Authority is making available for sale the Property generally described on page 2 pursuant to 354, subsection 4 of the New York Public Authorities Law.

To the fullest extent permitted by law, the Thruway Authority reserves the right to reject any and all bids up until the time of Closing and to re-advertise for new bids. The basis for such rejection includes, but is not limited to, a finding by the Thruway Authority that any of the certifications made by the bidder in accordance with provisions of New York State Finance Law §§ 139-j and 139-k were intentionally false or intentionally incomplete, the bid is incomplete or non-responsive, or that the bidder is non-responsible. Upon rejection of any bid, the Thruway Authority may also, at its discretion, accept other bids in descending order. If the Thruway Authority exercises its right to reject a bid, the acknowledged highest bidder shall be entitled only to the return of the Deposit that was delivered to the Thruway Authority and the Thruway Authority shall have no further obligations or liabilities. Notwithstanding the foregoing, to the fullest extent permitted by the law, the Thruway Authority reserves the right to retain the Deposit in the event the bid is rejected for cause.

2. LIMITED PERMISSIBLE CONTACT

This Auction is subject to, and shall be conducted in accordance with, the Authority Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence (referred to hereinafter as the “Guidelines”; see pages 13 through 15 hereof). All questions concerning the Auction must be initially directed to only the following Thruway Authority representatives:

Joseph Roberti, Real Estate Specialist 2
New York State Thruway Authority
(518) 436-2840
joseph.roberti@thruway.ny.gov

Bidders and prospective bidders may not initiate contact with any other Thruway Authority representative, officer, employee, contractor, or agent or any other State entity relative to this Auction, except as provided in the Guidelines.

3. STANDARD TERMS AND CONDITIONS OF SALE

The Standard Terms and Conditions of Sale are printed on the following pages and contain complete information of the auction's terms. **We urge you to read them carefully.**

4. MINIMUM BID

The amount of the minimum bid for the Property is: **THREE MILLION ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$3,100,000.00)**. A valid bid must equal or exceed the minimum acceptable bid. Bids that do not meet the minimum acceptable bid will be rejected.

5. SUBMISSION OF BIDS

Please refer to the instructions for submitting sealed bids located on page 9 of this brochure. All bids must use the form on page 10, be submitted in ink (not pencil) and placed in a sealed envelope with a **certified or cashier's check** for the earnest money deposit in the amount of **THREE HUNDRED TEN THOUSAND DOLLARS (\$310,000.00)** made payable to the New York State Thruway Authority. Bids received without a check for the earnest money deposit will **NOT** be considered for sale and will be rejected. Sealed bids will be accepted by the Thruway Authority only during the bidding period as indicated on the first page of this brochure. **Bids received after 4:00 PM on the last day of the bidding period will NOT be opened and will be deemed rejected.**

The legal name provided on the Sealed Bid Form will appear as the Purchaser's name on the Agreement for Sale and as the **grantee named on the deed**. The legal name must match that name associated with the Federal tax identification number to be provided by the winning bidder at the time of the signing of the Agreement for Sale. The Agreement of Sale may not be assigned without written permission of the Thruway Authority.

6. BIDDING BY AGENTS

A prospective bidder may bid by and through another individual (referred to hereinafter as the "Agent"), provided that the Agent submits a completed Authorization to Bid form, which can be found on page 11 of this brochure. Acceptability of all proof of authority or authorization shall be in the sole discretion and judgment of the Thruway Authority.

7. NON-COLLUSIVE BIDDING

It is illegal for people to agree, either before, during, or after bidding, to hold down the price(s) at auctions by not bidding against one another. The Bid Confirmation Form includes therein a "Non-Collusive Bidding" affirmation to which a registrant/bidder is to attest under the penalty of perjury. Violators will have their bids rejected and be prosecuted to the fullest extent of the law.

8. PAYMENT OF APPRAISAL/SURVEY MAPPING

At the closing, the successful bidder will be responsible for payment of costs related to appraising the Property in the amount of \$19,240.00, and survey/mapping and traffic study costs in the amount of \$14,550.00. Such costs shall be in addition to the purchase price of the Property. No third-party costs borne by the bidder/purchaser shall be paid by the Thruway Authority in conjunction with the Auction or sale of the Property.

9. BROKER COMMISSION

No broker commission shall be paid by the Thruway Authority in conjunction with the Auction.

10. PROHIBITION ON AUCTION PARTICIPATION BY THRUWAY AUTHORITY EMPLOYEES

Pursuant to sections 73 and 74 of the New York Public Officers Law, all employees of the Thruway Authority, and their spouses and relatives, are prohibited from participating in the Auction. The term “relative” shall mean any person living in the same household as the employee or any person who is a direct descendant of the employee’s grandparents or the spouse of such descendent.

11. ENTRY

Prospective bidders may not enter upon the Property without the prior written permission of the Thruway Authority. The successful bidder also may not enter upon the Property prior to the Closing without the prior written permission of the Thruway Authority.

12. THRUWAY AUTHORITY RIGHTS REGARDING SOLICITATION PROCESS

The Thruway Authority reserves the right to waive technicalities, irregularities, and omissions to the fullest extent permitted by law.

13. OPENING OF BIDS

Bidders may, but are not required to, be present for the bid opening. The opening of bids shall commence at 10:00 AM on May 31, 2024, at the Thruway Authority Headquarters located at 200 Southern Boulevard, Albany, NY 12209. Attendees must comply with Thruway Authority health and safety guidelines.

All valid bids accompanied by an acceptable earnest money deposit check will be: (a) opened and read aloud and (b) recorded on a bid list accordingly (referred to hereinafter as the “Bid List”). The Thruway Authority’s representative will then acknowledge the highest bidder.

If there is a tie for the highest bid, the Thruway Authority will review the employer identification number or social security number (whichever may be applicable) of each high bidder, as stated on the Sealed-Bid Form. The Thruway Authority will then break the tie by deeming the high bidder with the lowest employer identification number or social security number to be the highest bidder and will so note it on the Bid List. Each bidder affirms that the employer identification number or social security number (whichever may be applicable) as stated on the Sealed-Bid Form is correct; the Authority may reject the bid of any bidder with an incorrect employer identification number or social security number (whichever may be applicable) as stated on the Sealed-Bid Form.

14. POST-AUCTION

The successful bidder will be notified and is required to complete a BID CONFIRMATION form (see sample on page 12) binding them to the Terms and Conditions of Sale as outlined in this brochure. Checks for the earnest money deposit will be returned to unsuccessful bidders.

After the BID CONFIRMATION is officially accepted by the Thruway Authority, a certified or cashier’s check for the balance of the deposit (if any) is due within 10 days of notification that the bid has been

accepted. Upon receipt of the deposit balance, if any, an Agreement for Sale of Real Property substantially similar to the sample Agreement for Sale contained herein, will be sent to the successful bidder for execution. The remaining purchase price will be due and payable on the date of closing and shall be paid by certified or cashier's check. **CASH WILL NOT BE ACCEPTED.** The State, through the Thruway Authority, will then convey said property by Quitclaim deed AS-IS with no guarantees of any interests including, but not limited to, insurable title, approvals or access in form as prepared by the New York State Office of the Attorney General. Said sale is contingent upon approval by the New York State Office of the Attorney General and the Comptroller. **TIME SHALL BE OF THE ESSENCE.**

15. BROCHURE INFORMATION

The information in this brochure is made available for the convenience of prospective bidders. The Thruway Authority reserves the right to update the information prior to the bidding.

16. PROPERTY AVAILABILITY

Any of the property being offered may be withdrawn from the offering by the Thruway Authority on or before the date of the auction.

17. GOOD STANDING

All prospective bidders must be in good standing with any, and all current and prior agreements and obligations with the Thruway Authority.

INSTRUCTIONS FOR SEALED BIDS

1. Bids must be submitted on the **SEALED BID FORM** (in ink) found on page 10 of this brochure. All information on the form must be completed.
2. All bids must be accompanied by a certified or cashier's check for the amount of the earnest money deposit. Bids submitted without a certified or cashier's check for the earnest money deposit will **NOT** be considered for the sale.
3. If you are submitting a bid on behalf of another person, please include an **AUTHORIZATION TO BID** with your sealed bid. This form can be found on page 11 of this brochure.
4. Bids, along with the earnest money deposit, must be submitted in a sealed envelope and delivered to:
SEALED BID – RPR # TB21-2
ATTN: JOSEPH ROBERTI
NEW YORK STATE THRUWAY AUTHORITY
LEGAL DEPARTMENT/OFFICE OF REAL PROPERTY MANAGEMENT
200 SOUTHERN BOULEVARD
ALBANY, NEW YORK 12209
5. Delivery of sealed bids can be made in person, by U.S. Mail, or by private delivery/courier service (i.e. UPS, FedEx).
6. All sealed bids must be received by the New York State Thruway Authority, Legal Dept./Office of Real Property Management, 200 Southern Boulevard, Albany, NY 12209 by 4:00 PM on May 30, 2024. Bids received after 4:00 PM on May 30, 2024, will **NOT** be opened and will be considered rejected.
7. It is the bidder's responsibility to ensure that their bid is received by the New York State Thruway Authority, Legal Department/Office of Real Property Management before the 4:00 PM deadline on May 30, 2024. A mail post mark or a delivery to the building does not guarantee receipt.
8. Bidders may request a written receipt upon delivery to the New York State Thruway Authority, Legal Department/Office of Real Property Management.
9. The Thruway Authority will not be responsible for lost, delayed, or misdirected bids.
10. Public opening of the sealed bids will take place on May 31, 2024, at 10:00 AM at the New York State Thruway Authority Headquarters, Legal Department/Office of Real Property Management located at 200 Southern Boulevard, Albany, NY 12209.
11. Bidders may, but are not required to, be present at the bid opening.
12. The successful bidder will be notified and required to complete a **BID CONFIRMATION** as shown on page 12.
13. Checks for the earnest money deposit will be returned to unsuccessful bidders.
14. For questions concerning the sealed bid process, please call (518) 471-4240.

NEW YORK STATE THRUWAY AUTHORITY
SEALED BID FORM (to be completed in ink – not pencil)

AUCTION OF REAL PROPERTY REFERENCE NO. TB21-2

BID DEADLINE: May 30, 2024 AT 4:00PM

BID OPENING: May 31, 2024 AT 10:00AM

MINIMUM ACCEPTED BID: \$3,100,000

EARNEST MONEY DEPOSIT: \$310,000 (Certified or Cashier's Check)

SEALED BID – RPR # TB21-2

ATTN: JOSEPH ROBERTI

NEW YORK STATE THRUWAY AUTHORITY

LEGAL DEPARTMENT/OFFICE OF REAL PROPERTY MANAGEMENT

200 SOUTHERN BOULEVARD

ALBANY, NEW YORK 12209

For the property identified as Real Property Reference #TB21-2 in the auction brochure, which is located directly across Interchange 57 on the west side of NY Route 75 (Camp Road) near mile post 436.7 of the New York State Thruway (Interstate 90) in the Town of Hamburg, Erie County, I hereby submit the following bid in the amount of \$ _____ or

_____ dollars.
(amount in words)

Enclosed is a certified or cashier's check in the amount of \$310,000 for the earnest money deposit.

Date: _____

Bidder: _____
Full Legal Name (person(s), corporation, LLC, or partnership (this will appear on the deed))

By: _____
Name and Title (if applicable)

Address: _____

EIN or SSN: _____

Telephone: _____

Email: _____

The successful bidder will be notified in writing if a bid is approved. Checks will be returned to unsuccessful bidders.

**AUTHORIZATION TO BID
ON SURPLUS PROPERTY OFFERED FOR SALE BY THE
NEW YORK STATE THRUWAY AUTHORITY/OFFICE OF REAL PROPERTY MANAGEMENT**

I, _____ hereby authorize
(print name of bidder-principal)

_____ to bid on my behalf
(print name of bidder in attendance)

at public auction for the following properties:

Identify below the parcel(s) on which bidding is authorized: Real Property Reference # TB21-2, Town of Hamburg, Erie County.
Limiting instructions (if none, so state):

Signature of bidder-principal

Date

Company (if applicable):

Address: _____

City, State, Zip: _____

Telephone: _____

Email: _____

**NEW YORK STATE THRUWAY AUTHORITY
BID CONFIRMATION**

Auction Date _____

Real Property Reference No. _____

Thruway Section/Subdivision _____

Town/County _____

Map(s)/Parcel(s) _____

(I)(We) hereby acknowledge that (I)(we) have purchased by public auction the premises described as Real Property Reference No. _____ in the Surplus Property Auction Brochure for the sum of \$ _____ dollars.

(I)(We) hereby agree to comply with the Terms and Conditions of Sale as included in the Surplus Property Auction Brochure, having paid to the New York State Thruway Authority the sum of \$ _____ dollars as a deposit toward the purchase price. (I)(We) further agree to forfeit said deposit to the seller should (I)(we) fail to comply with the Terms and Conditions of Sale as defined in the Surplus Property Auction Brochure. Title to be conveyed AS-IS by quitclaim deed with no guarantees of any interests, including but not limited to, insurable title, approvals or access.

Bidder's Name (please print legibly): _____

Street Address: _____

Town/City: _____ State: _____ Zip: _____

Telephone: _____ Email: _____

- | | |
|---|----------|
| 1. Total Amount of Bid | \$ _____ |
| 2. Less Earnest Money Deposit (if applicable)* | \$ _____ |
| 3. Less Remaining Down Payment*
(due within 10 days of bid acceptance) | \$ _____ |
| 4. Balance of Bid Due at Closing ** | \$ _____ |
| 5. Appraisal, survey and map costs | \$ _____ |
| 6. Total Due at Closing | \$ _____ |

* Items 2 and 3 must equal 10% of the Total Bid (or Sale Price)

**Item 4 must equal 90% of the Total Bid (or Sale Price)

By signing the Bid Confirmation, each bidder and each person signing on behalf of any bidder certifies, under penalty of perjury, that to the best of their knowledge and belief:

- A. The bid price has been made independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such bid with any other bidder or with any competitor.
- B. No attempt has been made to induce any other person, partnership, or corporation to bid or not to bid for the purpose of restricting competition.

Signature: _____

Date: _____

STATE OF NEW YORK
COUNTY OF _____

Notary Public

New York State Thruway Authority

Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence

Chapter 1 of the Laws of 2005, as amended (referred to as the “Lobbying Law”), enacted major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements and procurement contracts. The Lobbying Law created two new sections in the State Finance Law: Section 139-j addresses restrictions on “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of offerers¹ during the procurement process. In this regard, a procurement contract means a contract or agreement (including an amendment, extension, renewal or change order to an existing contract where such amendment, extension, renewal or change order is not authorized and payable under the terms of the contract) involving an estimated annual expenditure in excess of \$15,000 for a commodity, service, technology, public work or construction; purchase, sale, lease or acquisition of real property; or revenue contract.

In conformity with the Lobbying Law, during the restricted period² for an Authority procurement, an offerer may only make permissible “contacts” regarding such procurement, which means that the offerer shall contact only the Authority designated contact person(s) for that procurement. In this regard, “contact” means any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity’s conduct or decision regarding the Authority procurement. Exceptions to this rule include:

- submission of a written proposal in response to a Request for Proposals (RFP), Invitation for Bids (IFB) or any other solicitation method;
- submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all offerers;
- participation in a pre-proposal or pre-bid demonstration, conference or other exchange of information open to all bidders scheduled as part of an RFP, IFB or other solicitation process;
- written complaints that the Authority designated contact for a procurement fails to respond in a timely manner to authorized offerer contacts;

¹ An individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity, which contacts the Authority about a procurement during the restricted period whether or not the caller has a financial interest in the outcome of the procurement. A governmental agency or its employees that communicates with the Authority regarding a procurement in the exercise of its oversight duties shall not be considered an offerer.

² The period of time commencing with the earliest written notice, advertisement or solicitation of a Request for Proposals (RFP), Invitation for Bids (IFB), or solicitation of proposals, or any other method for soliciting responses from offerers intending to result in a procurement contract with the Authority and ending with the final contract award and approval by the Authority, and, where applicable, the State Comptroller.

- negotiation of procurement contract terms with the Authority following tentative award;
- contacts between designated Authority staff and an offerer to request the review of a procurement contract award;
- communications with the Authority regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney or State Comptroller;
- communications between Authority staff and offerers that solely address the determination of vendor responsibility;
- communications relating to the Authority's procurement made pursuant to State Finance Law Section 162(1) undertaken by (i) the non-profit-making agencies appointed pursuant to Section 162(6)(e) by the Commissioner of the Office of Children and Family Services, the Commission for the Blind or the Commissioner of Education, and (ii) the qualified charitable non-profit-making agencies for the blind, and qualified charitable non-profit-making agencies for other severely disabled persons as identified in Section 162(2); provided, however, that any communications which attempt to influence the issuance or terms of the specifications that serve as the basis or bid documents, RFPs, IFBs, solicitations of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with the Authority shall not be exempt;
- complaints by a Minority and Women-owned Business Enterprise (MWBE) entity to the MWBE statewide advocate concerning the Authority's failure to comply with the requirements of Executive Law Section 315; and
- communications between the MWBE statewide advocate and the Authority in furtherance of the MWBE statewide advocate pursuant to Executive Law Section 312-a.

An offerer shall not, under any circumstance, attempt to influence an Authority procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of state agencies, public authorities and public benefit corporations, members of the New York State Legislature and Legislative employees.

An offerer who contacts the Authority designated contact person for a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and whether the person/organization making the contact is the offerer or is retained, employed or designated by or on behalf of the offerer to appear before or contact the Authority about the procurement.

An offerer that submits a proposal, bid or other response to an Authority RFP, IFB or other solicitation method must: certify that it understands and agrees to comply with these Guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence; and disclose whether any governmental entity has, within the prior four (4) years, found the offerer non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. Further, all Authority procurement contracts will contain: a certification by the offerer that all information provided to the Authority with respect to the Lobbying Law is complete, true and accurate; and a provision authorizing the Authority to terminate the contract in the event such certification is found to be intentionally false or incomplete.

The Authority will investigate all allegations of violations of the Authority Guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. A finding that an offerer has knowingly and willfully committed such a violation may result in a determination that the offerer and its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders, are non-responsible and therefore ineligible for award of the procurement contract, unless the Authority finds that the award of the procurement contract to the offerer is necessary to protect public property or public health or safety, and that the offerer is the only source capable of supplying the required article of procurement within the necessary timeframe, provided, that the Authority shall include in the procurement record a statement describing the basis for such a finding. A second determination of non-responsibility for such a violation within four (4) years of the first such determination shall render the offerer and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Authority will notify the New York State Office of General Services of any determinations of non-responsibility or debarments due to violations of the Lobbying Law.

These Guidelines and related forms are available on the Authority's website, under [Doing Business: Purchasing Services](#) - Law, Policies and Procedures. Copies of Sections 73 and 74 of the Public Officer's Law are also available on the New York State Commission on Ethics and Lobbying in Government website, www.ethics.ny.gov, under Laws – Ethics Laws and Regulations. If you require further guidance on the Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at <https://ogs.ny.gov/acpl>, where the Lobbying Law and the Guidelines on Procurement Lobbying (Frequently Asked Questions) adopted by the Council are posted.

**NEW YORK STATE THRUWAY AUTHORITY
AGREEMENT FOR SALE OF REAL PROPERTY**

(This is a contract. You may wish to consult with an attorney before signing.)

This Agreement, made this _____ day of _____, 20____ by and between the NEW YORK STATE THRUWAY AUTHORITY (referred to hereinafter as the "Authority"), a public corporation organized and existing pursuant to title 9, article 2 of the New York Public Authorities Law, as amended, whose principal office (referred to hereinafter as the "Administrative Headquarters") is located at 200 Southern Boulevard in the city and county of Albany, state of New York (mailing address: P.O. Box 189 • Albany, New York 12201-0189); THE PEOPLE OF THE STATE OF NEW YORK (referred to hereinafter as the "State") ACTING BY AND THROUGH THE AUTHORITY; and _____ (referred to hereinafter as the "Purchaser"), located at _____.

WITNESSETH

WHEREAS, the State owns certain real property (referred to hereinafter as the "Property"), known as:

Real Property Reference No. _____
; and

WHEREAS, the Property is under the present jurisdiction of the Authority; and

WHEREAS, the Purchaser desires to purchase the Property and submitted a bid to purchase the same dated _____ which was opened on _____; and

WHEREAS, the Authority, pursuant to section 354, subsection 4 of the New York Public Authorities Law, has the power to dispose of the Property; and

WHEREAS, the Authority Board, pursuant to Resolution no. _____ adopted at meeting no. _____ held on _____, declared the Property not necessary for the Authority's corporate purposes and authorized the Executive Director of the Authority, or his designee, to execute this Agreement on behalf of the Authority and of the State;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained herein, the receipt and sufficiency of which the parties hereto acknowledge, the Authority, the State, and the Purchaser hereby agree as follows:

1. CONVEYANCE AND ACCEPTANCE.

The Authority and the State agree to sell and convey, and the Purchaser agrees to purchase, the Property, subject to the terms and conditions set forth in this Agreement.

2. EXECUTION OF AGREEMENT AND EFFECTIVE DATE.

This Agreement shall become binding upon the parties hereto on the date that it has been fully executed by the Purchaser, the Authority, and the State; and approved by the New York State Attorney General (referred to

hereinafter as the "Attorney General"), and the New York State Comptroller (referred to hereinafter as the "Effective Date").

3. INSTRUMENT OF CONVEYANCE.

The State shall convey the Property by quitclaim deed (referred to hereinafter as the "Deed"). The Deed: (a) shall be generally consistent with Maps _____ and other terms and conditions as set forth in Section 22 of this Agreement; (b) shall state the grantee's name and address as being the same as those of the Purchaser, as stated in the preamble hereof; (c) shall be prepared by the Attorney General; and (d) must be approved by the Attorney General as to form, manner of execution, and legal sufficiency.

4. CONSIDERATION.

- (a) The Purchaser agrees to pay the sum of _____ (\$ _____), as the full purchase price (referred to hereinafter as the "Consideration") for the Property.
- (b) The Purchaser agrees to pay an earnest-money deposit (referred to hereinafter as the "Deposit"), a sum equal to ten percent (10%) of the Consideration, as provided in subparagraphs (c) and (d) of this paragraph.
- (c) The sum of _____ (\$ _____), in the form of a bank or certified check made payable to the *New York State Thruway Authority*, is hereby accepted by the Authority simultaneously with the Purchaser's execution of this Agreement as the Deposit with the understanding that it will be applied as a credit toward the Consideration or, in addition to the monies described in paragraph 7(a), if applicable, serve as liquidated damages in the event of a default.
- (d) The remaining sum of _____ (\$ _____), in the form of a bank or certified check made payable to the *New York State Thruway Authority*, shall be paid by the Purchaser to the Authority upon delivery of the Deed to the Purchaser at the time of the transfer of title (referred to hereinafter as the "Closing").

5. EXPENSES.

- (a) The Purchaser is responsible for payment of the Authority's costs to appraise the Property and for payment of the costs to survey and map the Property in a manner and format acceptable to the Authority. Such payment is in addition to the Consideration. Unless such costs have been previously paid by the Purchaser, the Purchaser shall pay to the Authority, at the Closing, in the form of a bank or certified check made payable to the *New York State Thruway Authority* in the amount of _____ (\$ _____). If previously paid, the Purchaser shall, upon request by the Authority, furnish proof of payment, acceptable to the Authority, at the Closing.

6. CLOSING.

- (a) The Closing shall take place within sixty (60) days of the Effective Date (referred to hereinafter as the "Closing Date"). The Closing shall take place at Administrative Headquarters, unless the Authority and the Purchaser mutually agree upon an alternate location or procedure for the Closing, including by mail. TIME SHALL BE OF THE ESSENCE as to the performance by the Purchaser of each and every one of its obligations under the Agreement. The Closing is expressly not contingent upon any fact or

circumstance not expressly stated herein, including, but not limited to, the Purchaser obtaining financing of the Consideration and/or incidental costs.

- (b) If the Purchaser shall default or wrongfully fail to close on the Closing Date, the Authority and the State shall have, at their option, the right to: (i) bring an action for specific performance or other equitable relief, in which case the Purchaser shall be liable for all costs incurred by the Authority and the State incidental to such action; (ii) consider the Agreement breached and retain the Deposit as liquidated damages, in which case the Authority and the State shall not have any further rights hereunder against the Purchaser, and the Purchaser shall not have any further rights against the Authority or the State; or (iii) consider the Agreement breached and bring an action against Purchaser for actual damages, including but not limited to, all costs incurred by the Authority and the State incidental to such action, in which event the Authority may retain the Deposit provided that the Deposit paid to and retained by the Authority shall serve as an offset to any actual damages recovered.

7. EXTENDED CLOSING.

- (a) The Authority may, at its discretion, defer the Closing to another date (referred to hereinafter as the "Extended Closing Date") without requiring approval by the Purchaser. Upon request by the Purchaser, the Authority may, at its discretion, grant an Extended Closing Date. If granted, the Authority may require from the Purchaser interest on the monies described in paragraph 4(d) at a rate of nine percent (9%) per annum from the Closing Date through the Extended Closing Date, and/or an additional deposit. TIME SHALL BE OF THE ESSENCE as to the performance by the Purchaser of each and every one of its obligations under the Agreement.
- (b) If an Extended Closing Date is invoked by the Authority, and the Purchaser defaults or wrongfully fails to take title on such Extended Closing Date, the Authority and the State shall have, at their option, the right to: (i) bring an action for specific performance or other equitable relief, in which case the Purchaser shall be liable for all costs incurred by the Authority and the State incidental to such action; (ii) consider the Agreement breached and retain the Deposit, and any additional deposit and/or interest paid to procure the Extended Closing Date as liquidated damages, in which case the Authority and the State shall not have any further rights hereunder against the Purchaser, and the Purchaser shall not have any further rights against the Authority or the State; or (iii) consider the Agreement breached and bring an action against Purchaser for actual damages, including but not limited to, all costs incurred by the Authority and the State incidental to such action, in which event the Authority may retain the Deposit provided that the Deposit paid to and retained by the Authority shall serve as an offset to any actual damages recovered.

8. CASUALTY RISK.

The risk of loss or damage by fire or otherwise between the Effective Date of this Agreement and the Closing Date or Extended Closing Date, whichever is applicable, shall be governed by §5-1311 of the New York General Obligations Law, as amended.

9. AS-IS TRANSACTION.

- (a) The State shall convey the Property "AS-IS" as to title and physical condition, including, but not limited to, environmental condition, as of the Closing Date or Extended Closing Date, whichever is applicable. No representation is made by the State or the Authority as to past, present, or future permitted use, occupancy, zoning, title, or physical condition of the Property, including, but not limited to, environmental condition.

- (b) It is expressly agreed that the Authority and the State make no representations or warranties that the Property complies with federal, state, or local governmental laws or regulations applicable to the Property, or to its prior, present or future use. The Purchaser expressly acknowledges that the Property may be currently shown as Thruway corridor on local tax maps, and that Purchaser shall be responsible for effectuating any change(s) that may be desired, including, but not limited to, taking all actions that may be necessary to comply with applicable local ordinances and/or codes. The Purchaser further acknowledges that the Authority shall have no responsibility for effectuating any such change(s) and/or taking any such action(s).
- (c) The Purchaser understands that, as an AS-IS transaction, the Property may be burdened by the following, the existence of any of which shall not be just cause for failing to complete this transaction:
- (i) covenants, conditions, easements, restrictions, reservations, and/or agreements affecting the Property;
 - (ii) any state of facts that an inspection and/or an accurate survey of the Property may show and/or disclose;
 - (iii) laws and governmental regulations that affect the use and occupancy of the Property;
 - (iv) the rights of tenants and persons in possession, if any;
 - (v) any and all encroachments; and
 - (vi) rights and/or easements of transportation corporations, governmental entities, and/or other entities to maintain poles, wires, lines, cables, conduits, pipes, boxes and other fixtures and facilities in, over, under, and/or upon the Property.

The foregoing list is intended to be merely illustrative of what may burden the Property and shall not be interpreted to be comprehensive.

10. LIABILITY IF UNABLE TO CONVEY TITLE.

In the event that the State is unable to convey title to the Property to the Purchaser, the State's and the Authority's liability shall be solely limited to the return of the Deposit, and any additional deposit and/or interest paid to procure the Extended Closing Date, and this transaction shall be considered cancelled.

11. RECORDATION OF DEED.

The Purchaser covenants that, within five (5) days of the delivery of the Deed by the Authority, it shall record the Deed in the county clerk's office for the county in which the Property is located. Such recordation of the Deed shall be preceded by the recordation of any power(s) of attorney that may be relevant to the execution thereof. The Purchaser further covenants that it shall forward to the Authority, via certified mail, one (1) certified copy of the recorded power of attorney and one (1) certified copy of the recorded Deed within five (5) days of its receipt thereof. These covenants shall survive delivery of the Deed.

12. PERMISSION TO ENTER REQUIRED.

The Purchaser may not enter upon the Property prior to the Closing without the prior written permission of the Authority.

13. PAYMENT OF FEES.

The Purchaser shall pay all charges, fees, and/or taxes associated with the Closing, including, but not limited to: (a) recording the Deed and obtaining a certified copy of the same relative to the provisions of paragraph 11 hereof; (b) filing the Real Estate Transfer Tax Return and Credit Line Mortgage Certificate; and (c) filing the New York State Department of Taxation and Finance Real Property Transfer Report.

14. BROKERAGE COMMISSIONS.

Neither the State nor the Authority shall be liable for payment of any brokerage commissions.

15. SELF-CONTAINED AGREEMENT.

The terms and conditions of this Agreement 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 party that is not a party hereto.

16. PARTIES BOUND BY AGREEMENT.

This Agreement shall inure to the benefit of, and bind, the distributees, legal representatives, and successors of the parties hereto.

17. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall remain binding and in full force and effect.

18. NO ASSIGNMENT OF AGREEMENT.

This Agreement shall not be assigned without the written permission of the State and the Authority.

19. STANDARD CONTRACT CLAUSES.

The Purchaser agree to comply with, and to be bound by, Appendix A, the Standard Clauses For New York State Thruway Authority Contracts which is attached hereto and made a part of this Agreement.

20. TERMINATION.

The State and the Authority reserve the right to terminate this Agreement if it is found that any of the certifications filed by the Purchaser in accordance with New York State Finance Law §§ 139-j and 139-k were intentionally false or intentionally incomplete.

21. NON-COLLUSIVE BIDDING CERTIFICATION.

The Purchaser affirms, under the penalty of perjury, that the Consideration was bid independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to the Consideration, with any other bidder or with any other party. The Purchaser further affirms that no attempt was made to induce any other party to bid or not to bid for the purpose of restricting competition.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

(name of Purchaser)

BY: _____
(name of signatory)

(title of signatory)

(signature)

STATE OF NEW YORK

} SS:

COUNTY OF _____

On the _____ day of _____ in the year 202__, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC – STATE OF NEW YORK

NEW YORK STATE THRUWAY AUTHORITY

BY: _____
EXECUTIVE DIRECTOR

APPROVED AS TO FORM
GENERAL COUNSEL

(signature)

(signature)

Date: _____

THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND THROUGH THE NEW YORK STATE THRUWAY AUTHORITY

BY: _____
EXECUTIVE DIRECTOR

(signature)

Date: _____

APPROVED AS TO FORM AND MANNER OF EXECUTION:

NEW YORK STATE ATTORNEY GENERAL

BY: _____ Date: _____
(Name of signatory)

(signature)

APPROVED:

NEW YORK STATE COMPTROLLER

BY: _____ DATE: _____
(Name of signatory)

(signature)

Contract Number:

NYSTA Sales Agreement 5-8-23

APPENDIX A**Standard Clauses For New York State Thruway Authority Contracts**

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("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 and its agents, successors and assigns, other than the Thruway Authority ("Authority"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-ASSIGNMENT CLAUSE. This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void.

2. COMPTROLLER APPROVAL. Where required by law, this contract may require approval of the State Comptroller and shall not be valid until it has been approved by the State Comptroller and filed in its office.

3. WORKERS' COMPENSATION AND DISABILITY BENEFITS. 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 State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

4. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the State 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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with State Labor Law §220-a, 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 State Labor Law §230, then, in accordance with §239 thereof, the 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. The Contractor is subject to fines of \$30 per person per day for any violation of State Labor Law §§220-a or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

5. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the 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 State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the 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 State Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the New York State Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with subdivision 3-a of §220 of the New York State Labor Law shall be a condition precedent to payment by the Authority of any Authority approved sums due and owing for work done on the project.

6. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on the Contractor's behalf.

7. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this 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. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the 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 Authority within five (5) business days of such conviction, determination or disposition of appeal.

8. **SET-OFF RIGHTS.** The Authority shall have rights of set-off. These rights shall include, but not be limited to, the Authority'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 by the Contractor to the Authority with regard to this contract, or any other contract with the Authority, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority and third parties in connection therewith.

9. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Authority will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 ("Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority official, in writing, that said records should not be disclosed; (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 Authority's right to discovery in any pending or future litigation.

10. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** 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 the

Authority 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.

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 State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority 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 State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

11. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority 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 Authority; or (ii) a written agreement in excess of \$100,000 whereby the Authority 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 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this contract 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, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Authority 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. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority, 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.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of this 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.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such 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 Authority will consider compliance by a Contractor or its subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The Authority 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 Authority may waive the applicability of §312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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 thereto.

12. 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.

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

14. LATE PAYMENT. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

15. 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.

16. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the Authority's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Authority, in writing, of each and every change of address to which service of process can be made. Service by the Authority to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (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 Authority.

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 State Finance Law §165. Any such use must meet with the approval of the Authority; 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 Authority.

18. 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 State Finance Law §165), and shall permit independent monitoring of compliance with such principles.

19. 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 Street – 7th Floor
Albany, NY 12245
Phone: (518) 292-5220
Fax: (518) 292-5884
<http://www.esd.ny.gov>

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

NYS Department of Economic Development Minority and Women's Business Development Division
30 South Pearl Street – 2nd Floor
Albany, NY 12245
Phone: (518) 292-5250
Fax: (518) 292-5803
<http://www.esd.ny.gov>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies 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 Authority;

(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 NYS 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 Authority upon request; and

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

20. 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 (Chapters 684 and 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

21. NON-PUBLIC PERSONAL INFORMATION. The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §899-aa; State Technology Law §208). In addition to any relief or damages that may be imposed pursuant to the provisions of this Act, the Contractor shall be liable for the costs imposed upon the Authority which are associated with breach of the Act if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

22. IRAN DIVESTMENT ACT. In accordance with State Public Authorities Law §2879-c, if this is a contract for work or services performed or to be performed, or goods sold or to be sold, the Contractor subscribes and affirms, under penalty of perjury, that by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of §165-a of the State Finance Law, entitled "Entities Determined to be Non-Responsive Bidders/Officers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-bidders/officers-pursuant-ny-iran-divestment-act-2012>.

For the purposes of this clause, the term "person" shall be as defined in subdivision (1)(e) of §165-a of the State Finance Law.

Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this contract, it must provide the same certification at the time the contract is renewed or extended. Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Authority.

During the term of the contract, should the Authority receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the Authority will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Authority shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

23. OBSERVANCE OF LAWS. The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

24. NO WAIVER OF PROVISIONS. The Authority's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

25. ENTIRE AGREEMENT. This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

26. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

27. 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 § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the Authority, 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 Authority determines that such action is in the best interest of the Authority.

28. CONTRACT INVOLVING STEEL PRODUCTS. Contracts involving steel products are subject to Public Authorities Law § 2603-a, and steel products to be provided or incorporated by Contractor must be produced or made in whole or substantial part in the United States as set forth therein.