

**New York State Thruway Authority
RFP #18C15**

Design, Construction, Financing, Operation and
Maintenance of 27 Service Areas on the New York State Thruway

March 28, 2019

ADDENDUM NO. 8

Notice is hereby given that the following Addendum No. 8 shall be made part of RFP #18C15 issued by the Authority on October 15, 2018 as amended by Addendum No. 1 dated November 8, 2018, Addendum No. 2 dated December 21, 2018, Addendum No. 3 dated December 27, 2018, Addendum No. 4 dated January 25, 2019, Addendum No. 5 dated January 29, 2019, Addendum No. 6 dated February 25, 2019 and Addendum No. 7 dated February 27, 2019 (the "RFP").

Each Proposer shall acknowledge receipt of this Addendum No. 8 in the cover letter submitted as part of their Proposal.

Addendum No. 8 consists of the following changes to the RFP:

NOTE: Material to be deleted is in ~~strikethrough~~, material to be added is underlined.

Change No. 1 - Appendix A of the RFP is hereby revised as set forth in the revised Appendix A attached hereto.

Change No. 2 - Appendix B of the RFP is hereby revised as set forth in the revised Appendix B attached hereto.

Change No. 3 - Section 3.1 of the RFP, "Content of Proposal" is hereby changed to read:

Section 3.1 – Content of Proposal

3.1.1 - Proposal Content

The following is a list of the information that each Proposer must provide in its Proposal. The Authority reserves the right to, in its sole discretion, disqualify a Proposal that does not include all of the information required below.

To expedite the review of submissions, the Authority requests that the technical Proposal be submitted in a binder marked "Technical Proposal" with the material separated by tabs numbered/lettered to match the specific information requested below; provided, however, that

the Fee Proposal shall be submitted in a separate envelope marked "Fee Proposal" and the capital investment and renewal and replacement plan in a separate envelope marked "Capital Proposal". Additional information, if any, should be submitted in a separate binder.

Proposals shall be prepared on standard 8 and 1/2" x 11" letter size paper. Drawings included with the Proposal should be no larger than 11" x 17". No information beyond that specifically requested is required, and Proposers should keep their submissions to the shortest length consistent with making a complete presentation, not to exceed 75 pages. Such page limit shall apply to all information that must be submitted except: the resumes required by paragraph 3.1.2 F, Statement of Qualifications, the Capital Proposal, the Fee Proposal, and those materials required by paragraphs 3.1.4 (Documentation for Demonstration of Financial Capacity), 3.1.5 (Documentation Regarding Legal Capacity) and 3.1.6 (Other Required Materials) of this Section.

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. Except as expressly provided in the Lease Agreement in connection with the Contractor’s financing, 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. Unless otherwise provided by resolution of the Authority Board, if this contract involves the expenditure of funds in excess of \$50,000, or if, by this contract, the Authority agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, this contract shall not be valid, effective or binding upon the Authority until it has been approved by the State Comptroller and filed in his 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. Furthermore, in accordance with State Labor Law §220-e, 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 \$50 per person per day for any violation of State Labor Law §§220-e 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.

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.

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.

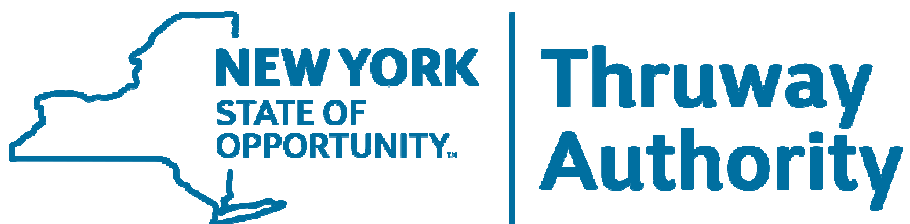
23. OBSERVANCE OF LAWS. The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

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.

APPENDIX B

KEY TERMS AND CONDITIONS



**SUMMARY OF KEY TERMS IN THE LEASE AGREEMENT FOR THE DESIGN,
CONSTRUCTION, FINANCING, OPERATION AND MAINTENANCE OF 27
SERVICE AREAS ON THE NEW YORK STATE THRUWAY**

This summary of key terms is intended to provide Proposers to RFP 18C15 (“RFP”) with a general description of certain terms and conditions that will be included in the proposed Lease Agreement for the design, construction, financing, operation and maintenance of 27 service areas on the New York State Thruway entered into between the New York State Thruway Authority (“Authority”) and the successful Proposer (“Operator”). The Authority will consider Proposers’ comments and requested clarifications or amendments to this summary of key terms that are received in accordance with the RFP, and the Authority may, in its discretion, amend this summary of key terms by issuance of an addendum to the RFP setting forth all appropriate revisions or clarifications. The final form of terms and conditions, as issued by the Authority, will be the common basis for all Proposals and Proposers are required to base their Proposal on the terms and conditions of the final summary of key terms. Prospective Proposer teams are advised that the proposed form of the Lease Agreement, which will be based on the final summary of key terms, is anticipated to be provided by the Authority following receipt of Proposals and that the terms and conditions listed herein are subject to further development by the Authority. Capitalized terms that are used but not defined herein have the meaning specified in the RFP.

SECTION 1 – LEASE AGREEMENT OVERVIEW

Nature of Lease Agreement

The Lease Agreement will be triple net to the Authority and will set forth the construction, operational, maintenance, financing and other obligations of the Operator with respect to the food and non-fuel retail service areas (as further described below, the “Service Areas”) at the twenty-seven (27) food and fuel facilities (“Food/Fuel Facilities”) along the New York State Thruway. The Authority will have no obligations, responsibilities or liabilities of any type or nature whatsoever with respect to the Service Areas except as expressly provided for in the Lease Agreement. It is the Authority’s intention that all obligations, responsibilities and liabilities in respect of the Service Areas and any conditions, circumstances or occurrences on or about the Service Areas not expressly allocated to the Authority under the Lease Agreement shall be the Operator’s responsibility.

Operator Obligations and Scope of Services

The obligations and scope of services to be provided by the Operator under the proposed Lease Agreement are generally described in Article II of the RFP and are further described herein. All such services (“Contract Services”) will be defined in detail in the Lease Agreement. The Operator shall be solely responsible for the cost and expense of performing its obligations under the Lease Agreement.

Term of Agreement

The Lease Agreement will become effective for purposes of the Transition Period (defined in Section 3 below) on the Effective Date (defined below); however, the Operator’s right of possession shall commence on January 1, 2020 (at 12:01 AM) for the Group 1 Service Areas described below and on January 1, 2023 (at 12:01 AM) for the Group 2 Service Areas described below as applicable (the “Term”). The Term shall expire for all Service Areas on December 31, 2052 (at 11:59 PM).

The January 1, 2020 commencement of the Term with regard to the Group 1 Service Areas will constitute the “Group 1 Commencement Date” and the January 1, 2023 commencement of the Term with regard to the Group 2 Service Areas will constitute the “Group 2 Commencement Date” (and collectively, will constitute the “Commencement Dates”). Each calendar year (commencing January 1st and ending December 31st) during the Term will constitute a “Lease Year”.

The “Effective Date” means the date on which all of the following have occurred: (1) the Lease Agreement has been executed and delivered by the parties; (2) ~~to the extent all security for performance instruments required, a guaranty agreement has as of the Effective Date pursuant to Section 11 below have~~ all security for performance instruments required, a guaranty agreement has as of the Effective Date pursuant to Section 11 below have been provided to the Authority ~~as further described in Section 11 below~~; (3) the Lease Agreement has been reviewed and approved by the State Attorney General and the State Comptroller; and (4) the Operator has demonstrated to the Authority that it has secured sufficient financing for its obligations under the Lease Agreement, including by providing to the Authority financing documents that are acceptable to the Authority.

The Authority will provide the Successful Proposer with the flexibility to enter into the Lease Agreement prior to securing all required financing (i.e., achieving “financial close”). In such event, the Effective Date will be established upon satisfaction of clauses (1) and (3), above, and the Operator will be required to satisfy clauses (2) and (4) within a reasonable period following the Effective Date, while proceeding with its Transition Period responsibilities. In any event, financial close, including satisfaction of both clauses (2) and (4), above, must be achieved prior to the Group 1 Commencement Date.

Compliance with Applicable Law and Regulations

The Operator will perform all Contract Services in compliance with all Applicable Law and the applicable policies of the Authority. “Applicable Law” means: (1) any federal, State of New York (sometimes referred to herein as “State”) or local law, statute, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any governmental body having appropriate jurisdiction; and (3) any governmental approval; ~~and (4) the applicable policies of the Authority.~~

In the event that the Operator or any subcontractor fails at any time to comply with Applicable Law, the Operator will be required to: (1) immediately correct such failure and resume compliance with Applicable Law; (2) pay any resulting fines, assessments, levies, impositions, penalties, damages or other charges; (3) indemnify, defend and hold harmless the Authority in accordance with the terms of the Lease Agreement; (4) make all changes in performing the Contract Services that are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any governmental body in order to remedy a failure of the Operator to comply with Applicable Law.

Service Areas

The Lease Agreement will demise a portion of each of the Food/Fuel Facilities along the New York State Thruway known as:

Group 1 Service Areas:

1. Ardsley (MP 6, I-87 North);
2. Chittenango (MP 266, I-90 W);
3. Clarence (MP 412, I-90 W);
4. Clifton Springs (MP 337, I-90 E);
5. Indian Castle (MP 210, I-90 E);
6. Iroquois (MP 210, I-90 W);
7. Junius Ponds (MP 324, I-90 W);
8. New Baltimore (MP 127, I-87 N/S);
9. Oneida (MP 244, I-90 E);
10. Pattersonville (MP 168, I-90 W);
11. Pembroke (MP 397, I-90 E);
12. Plattekill (MP 65, I-87 N);
13. Scottsville (MP 366, I-90 E);
14. Seneca (MP 350, I-90 W);
15. Sloatsburg (MP 33, I-87 N); and
16. Ulster (MP 96, I-87 S).

Group 2 Service Areas:

1. Angola (MP 447, I-90 E/W);
2. DeWitt (MP 280, I-90 E);
3. Guilderland (MP 153, I-90 E);
4. Malden (MP 103, I-87 N);
5. Modena (MP 66, I-87 S);
6. Mohawk (MP 172, I-90 E);
7. Ontario (MP 376, I-90 W);
8. Port Byron (MP 310, I-90 E);
9. Ramapo (MP 33, I-87 S);
10. Schuyler (MP 227, I-90 W); and
11. Warners (MP 292, I-90 W).

The portion of each of the Food/Fuel Facilities demised under the Lease Agreement is referred to individually and collectively, as the context requires, as the Service Areas. The Operator will be provided access to the Service Areas by means of a non-exclusive right to use portions of the existing Food/Fuel Facilities in common with others, including the travelling public, and operators and customers of fuel service facilities located at the Food/Fuel Facilities.

Each of the Service Areas consists of the land, buildings, structures, improvements, fixtures, facilities, equipment, utilities, sewers, drains, roadways, walkways, parking areas, signs, lights and other site improvements shown for it in the area for which the Operator is responsible in the Responsibility Maps included in Exhibit 6 of the RFP; provided that the Authority also reserves the

right to modify any Service Area by adding additional land and improvements. Each of the Service Areas will also include any additions, alterations and modifications of site improvements required or authorized by the Authority pursuant to the Lease Agreement.

Condition of the Service Areas

The Service Areas will be delivered to the Operator in “as is” condition and the Authority will make no representation, guarantees or warranties whatsoever as to title and physical condition of the Service Areas or otherwise. The Operator further acknowledges and agrees that its responsibilities under the Lease Agreement include conducting such additional geotechnical exploratory work and site investigations as may be necessary or appropriate for design and construction of the Initial Improvements.

No Ownership Interest

Except for the leasehold interest conveyed by the Lease Agreement, the Operator will not have any ownership interest in the Service Areas. In addition, all Initial Improvements (described in Section 4 below) shall become the property of the Authority upon incorporation into the Service Areas. Improvements not required by the Lease Agreement, but requested by the Operator and authorized by the Authority, shall also become the property of the Authority on incorporation into the Service Areas. The Operator shall not grant any property rights that are inconsistent with the Operator’s leasehold interest or the terms and conditions of the Lease Agreement.

Fueling Services

Fueling services located at each of the Food/Fuel Facilities will be operated pursuant to a separate contract or contracts of the Authority and will not be the responsibility of the Operator under the Lease Agreement. The area at the Food/Fuel Facilities for which any fuel services contractor will be responsible is shown in the Responsibility Maps included in Exhibit 6 of the RFP.

Assignments and Change in Control

Neither the Lease Agreement nor any Operator interest therein may be assigned or otherwise transferred, in whole or in part, directly or indirectly without the Authority’s prior written consent; provided, however, that leasehold mortgages to Institutional Lenders will be permitted as described below in Section 2 (Leasehold Mortgages). In the event any assignment or transfer would result in any consideration to the Operator or to any affiliate of the Operator, the Authority may, as a condition of granting its consent, elect to participate in such consideration in an amount to be determined by the Authority.

No direct or indirect change in the ownership or control of any legal, beneficial, or equitable interest in any or all of the shares, units, or equity in the Operator, including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests, or the control over the right to appoint or remove directors, a general partner, a managing member, or other managers, (any of the foregoing, a “Change in Control”) shall be permitted to occur except:

(1) In connection with the exercise of rights of the Institutional Lenders under the approved financing documents in accordance with the leasehold mortgage provisions described in Section 2 below;

(2) Arising from any bona fide open market transaction in any shares or other securities effected on a recognized public stock exchange;

(3) Arising from a transfer of interests between managed funds that are under common ownership or control or between the general partner, manager or the parent company of such general partner or manager and any managed funds under common ownership or control with such general partner or manager (or parent company of such general partner or manager); or

(4) With the prior written consent of the Authority, which: (a) prior to the date that is one year following the completion of all Initial Improvements, may be given or withheld in the Authority's discretion and (b) after such date, may not be unreasonably withheld or delayed and shall be given unless:

(i) The Authority reasonably determines that the proposed Change in Control could have a material and adverse effect on the Authority, the Service Areas or the ability of the Operator to meet its obligations under the Lease Agreement; or

(ii) The proposed Change in Control would violate Applicable Law or result in a "Prohibited Person" (to be defined in the Lease Agreement) becoming an affiliate of the Operator.

Sublease

Prior to execution of the Lease Agreement, the Operator and the Authority will establish a subleasing program for the Service Areas, which will include mechanisms for its modification over time. The Operator will be required to submit to the Authority, in advance, each proposed sublease of any portion of the Service Areas, along with evidence that they conform to the applicable subleasing program. Subleases that do not conform to the ~~leasing~~subleasing program will be subject to the prior written approval of the Authority. Subleases shall not extend beyond the Term of the Lease Agreement

Labor

The Operator shall maintain order at all times among the Operator's employees and its subcontractors and their employees. The Operator will have exclusive responsibility for labor disputes arising in connection with the performance of the Contract Services under the Lease Agreement.

All construction, alteration and related work ("Construction Work") shall be considered public work and subject to the requirements of Articles 8 and 9 of the State Labor Law. For Construction Work, all on-site workers shall be paid at least prevailing wages according to the schedule found at: <http://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=881439>.

The Operator and/or subcontractors shall ensure that workers are paid the appropriate wages and supplemental (fringe) benefits. The Operator and/or subcontractors shall obtain periodic wage rate schedule updates from the State Department of Labor (NYSDOL). Wage rate amendments and supplements are available on the NYSDOL website at: www.labor.ny.gov. All changes or clarification of labor classification(s) and applicability of prevailing wage rates shall be obtained in writing from the Office of the Director, NYSDOL Bureau of Public Work. The Operator is solely responsible for the cost of changes in wage rate schedules and supplements (fringes) over the Term of the Lease Agreement.

Key Personnel

The Operator shall utilize "Key Personnel" identified in the Proposal to perform the roles and

responsibilities identified therein. Key Personnel may not be substituted without the Authority's prior written consent.

Authority Representatives

The Operator shall fully cooperate with all Authority representatives designated by the Authority.

Safety and Security

The Operator shall maintain the safety of the Service Areas at a level consistent with all federal, State and local safety and health codes, rules and regulations. The Operator shall assume responsibility for preparing a "Safety and Security Plan" for each Service Area, which plans must be approved by the Authority, and implementing and monitoring all safety precautions and programs related to the performance of the Contract Services to ensure the safety of all employees and other persons present on or about the Service Areas. The Operator shall obtain the Authority's initial approval during the Transition Period (defined below) prior to the Commencement Dates. The Authority's approval of a Safety and Security Plan or any modifications will be for the Authority's sole benefit and will not transfer any liability to the Authority or relieve the Operator of responsibility for its contents and adequacy.

Operational Plans

The Contract Services shall be performed substantially in compliance with "Operational Plans" for each Service Area, which plans shall be prepared by Operator and approved by the Authority. The Operational Plans must address all of the specific information required by the RFP and shall address operating responsibilities both prior to and after completion of the Initial Improvements. The Operator shall obtain the Authority's initial approval during the Transition Period (defined below) prior to the Commencement Dates. The Operator shall keep the Operational Plans current in accordance with the Lease Agreement, including the preparation of supplements and revisions which are required due to the design, construction and installation of all Initial Improvements and other improvements authorized by the Authority. The Authority's approval of an Operational Plan or any modifications will be for the Authority's sole benefit and will not transfer any liability to the Authority or relieve the Operator of responsibility for its contents and adequacy.

Quality Management Plan

The Contract Services shall be performed substantially in compliance with a "Quality Management Plan," which shall be prepared by Operator and approved by the Authority. The Quality Management Plan shall address all activities related to the design, construction, operation and maintenance of the Service Areas, including but not limited to, required reconstruction, redevelopment and other substantial improvements, and required operation, maintenance, repair, food and customer services. The Quality Management Plan shall describe the processes and procedures that the Operator will employ to ensure compliance with the performance standards specified in the Lease Agreement utilizing the highest industry standards of quality control and assurance. The Quality Management Plan shall identify Operator monitoring activities and schedules, and define related corrective actions for compliance with the performance standards specified in the Lease Agreement. The initial draft Quality Management Plan shall be submitted Authority for review and comment at a minimum of sixty (60) days prior to the Group 1 Commencement Date. The Operator shall obtain the Authority's initial approval during the Transition Period (defined below) prior to the Group 1 Commencement Date. The Operator shall keep the Quality Management Plan current in accordance with the Lease Agreement, including the preparation of supplements and revisions that are required due to the design, construction and installation of all Initial Improvements and other improvements authorized by the

Authority. The Authority's approval of the Quality Management Plan or any modifications will be for the Authority's sole benefit and will not transfer any liability to the Authority or relieve the Operator of responsibility for its contents and adequacy.

Project Management Plans

The Contract Services shall be performed substantially in compliance with "Project Management Plans" for each Service Area, which plans shall be prepared by Operator and approved by the Authority. Each Project Management Plan shall set forth a schedule for when the Operator will reconstruct, renovate and substantially improve each of the Service Areas and describe the scope of work, anticipated work schedule and potential impact on service and access to each Service Area. For each Service Area, at least three (3) months prior to the commencement of any reconstruction, renovation or other substantial improvements, the Operator shall submit a draft Service Area-specific Project Management Plan to the Authority for review and comment. Each Project Management Plan shall include a development schedule identifying the scope of work, major milestones, intended date of work commencement and completion, required third-party approvals, anticipated impacts on operations, access and revenue, and potential inconveniences to users and shall include an impacts mitigation plan and stakeholder communications plan that shall be appended to the Project Management Plan. The Operator shall obtain the Authority's approval prior to the commencement of any construction work at each Service Area. The Authority's approval of the Project Management Plan will be for the Authority's sole benefit and will not transfer any liability to the Authority or relieve the Operator of responsibility for its contents and adequacy.

Authority Review of Operational Plans, the Quality Management Plan and Project Management Plans

The Authority agrees that it shall not unreasonably withhold its approval of the Operational Plans, the Quality Management Plan or the Project Management Plans. Without limitation, it shall be reasonable for the Authority to withhold its approval of any of the foregoing plans if the rights of the Authority would be diminished, or its obligations or liabilities, augmented. The Authority shall use all reasonable efforts to approve or disapprove the Operational Plans, the Quality Management Plan and the Project Management Plans within thirty (30) days of receipt of same. Following any disapproval, the Operator and the Authority agree to cooperate with each other to address and resolve the Authority's concerns as soon as reasonably possible.

Environmental Compliance

The Operator shall comply with all applicable environmental laws, rules and regulations and shall comprehensively integrate environmental compliance into all design, construction and operational activities. Specific environmental requirements with which the Operator will be required to comply under the Lease Agreement are set forth in the "Environmental Information" Appendix to the RFP. Information pertaining to the State Environmental Quality Review Act Draft Full Environmental Assessment Form is included as an Appendix to the RFP.

Hazardous/Regulated Substances

Revised Provisions to Follow.

SECTION 2 – FINANCING OF INITIAL IMPROVEMENTS

Leasehold Mortgages

The Lease Agreement will contain typical terms and conditions permitting leasehold mortgages to “Institutional Lenders” for the purpose of financing the required improvements, including mortgagee protective provisions, such as the right to notice of Operator defaults under the Lease Agreement and the opportunity to cure, the right to a new lease under certain circumstances of early termination, and limitations on the ability of the Authority and the Operator to amend specific provisions of the Lease Agreement. There will, however, be limitations on transfers in connection with, and following any, foreclosure, including requirements that the transferee meet certain operating and financial qualifications and that neither it nor any of its members be a “Prohibited Person” as defined in the Lease Agreement.

Private Financing

The Operator shall be solely responsible for obtaining and repaying all financing necessary for the Initial Improvements, and any other improvements authorized by the Authority during the Term, at its own cost and risk and without recourse to the Authority.

All debt or other obligations issued or incurred by the Operator in connection with the Lease Agreement shall be issued or incurred only in the name of the Operator. The Authority shall have no obligations to pay debt service on any such debt or other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Operator. In no event will any interest of the Authority, the State or any other governmental entity, agency or authority be pledged or encumbered as security for the Operator’s debt.

The amortization term of any debt financing or re-financing undertaken by the Operator shall not exceed the Term, unless otherwise agreed to by the Authority in its discretion.

Refinancing

The Operator will have the right, with the Authority’s prior written consent, to refinance the debt incurred for the Initial Improvements. The Authority will share in not less than fifty percent (50%) of any net refinancing gains (as determined by the Authority [and the Operator using the Operator’s base case financial model and market precedent provisions that will be set forth in the Lease Agreement](#)) except to the extent the refinancing is specifically identified as part of the Operator’s proposed plan of financing.

SECTION 3 – TRANSITION PERIOD

Transition to Operator Responsibility for Service Areas

The Lease Agreement will identify a period (“Transition Period”) prior to each of the Commencement Dates. The primary purpose of each Transition Period is to enable the parties to provide for a smooth and orderly transition of management of the Service Areas from the current operators to the Operator. The Operator may perform further investigations of the Service Areas during the Transition Period in accordance with any requirements and restrictions set forth in the Lease Agreement. Each Transition Period will be of a limited duration during which the Operator will work through the diligent performance of its Transition Period responsibilities.

Operator Transition Period Responsibilities

The Operator shall satisfy the following Transition Period responsibilities:

- (1) The Operator shall carry out all of its responsibilities under a “Transition Plan” that will be

developed by the Operator, and be subject to the Authority's approval, to ensure the orderly transfer of management responsibility for the Service Areas from the current operators to the Operator and shall provide all management, technical, administrative, labor relations and other personnel necessary in connection therewith;

(2) The Operator shall prepare, finalize and provide to the Authority the Safety and Security Plans, the Operational Plans, the Quality Management Plan and the Renewal and Replacement Plans (defined below) required pursuant to the Lease Agreement for the performance of the Contract Services; ~~and~~

(3) To the extent applicable pursuant to Section 1 (Project Management Plans) above, the Operator shall prepare, finalize and provide to the Authority the Project Management Plans required pursuant to the Lease Agreement for the performance of the Contract Services; and

~~(34)~~ The Operator shall submit complete applications and take all other steps which are necessary under Applicable Law to obtain all governmental approvals required to be obtained by the Operator to commence the performance of the Contract Services.

The Authority's approval of any plan relating to, or aspect of, the Transition Period will be for the Authority's sole benefit and will not transfer any liability to the Authority or relieve the Operator of responsibility for its contents and adequacy.

Access to Service Areas during Transition Period

The execution of the Lease Agreement shall be deemed to constitute the granting to the Operator of a right of access to the Service Areas during the Transition Period for the purposes of (1) carrying out its responsibilities pursuant to the Transition Plan, and (2) performing all necessary on-site investigations of the Service Areas in accordance with any requirements and restrictions set forth in the Lease Agreement. Such right of access shall be subject to the Authority's prior approval and shall be subject to the rights of the current operators of the Service Areas under the existing operating agreements. The Operator shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the Authority pursuant to the terms of the Lease Agreement.

SECTION 4 – CONSTRUCTION OF INITIAL IMPROVEMENTS

Required Improvements

The Lease Agreement will specify improvements that the Operator will be required to make to the Service Areas ("Initial Improvements") which will represent the negotiated agreement of the parties based upon the improvements to the Service Areas included in the Proposal submitted by the Operator in response to the RFP. The Operator shall have sole liability and responsibility for the design, construction and performance of such Initial Improvements. The design, construction and performance of the Initial Improvements must be done in a manner that meets the design and performance standards set forth in the Lease Agreement. Specific design and architectural requirements with which the Operator will be required to comply under the Lease Agreement are set forth in an Exhibit to the RFP. The Operator shall be solely responsible for meeting all conditions precedent to the opening of the Initial Improvements as set forth in the Lease Agreement and for any defects in the design or construction, or in the existing Service Areas, discovered during or after completion of the Initial Improvements.

Alterations and Other Improvements

The Operator shall not construct or alter any improvements at the Service Areas, other than implementing the Initial Improvements without first obtaining the prior written approval of the Authority. On obtaining approval of the Authority, the Operator shall complete construction with due diligence in accordance with the requirements of the Lease Agreement.

Construction Permits

The Operator shall obtain all necessary permits for construction work from the Authority or other applicable governmental body prior to commencement of construction at the Operator's sole expense. The Authority shall cooperate with and, upon the reasonable request of the Operator, provide reasonable assistance to the Operator in obtaining such permits; provided that such cooperation and assistance shall be limited to providing personnel resources to the extent reasonably available in the context of performance of their normal duties and shall not entail any overtime or third-party cost or expense to the Authority. The "Environmental Information" (Appendix E to the RFP) identifies certain permits that may be required.

Plans, Specifications and As-Builts

Before commencement of any construction, the Operator shall submit to the Authority for its review and approval detailed plans and specifications prepared by a duly qualified and registered architect or professional engineer licensed in the State of New York, signed and sealed, with a level of detail acceptable to the Authority. Approval by the Authority of any plans and specifications for the Initial Improvements, including any change to such plans and specifications required by the Authority, or any other alterations or improvements at the Service Areas, shall not constitute an assumption by the Authority of any liability for the design, engineering or structural integrity of the buildings or improvements proposed to be erected by the Operator. Following completion of construction of any improvements the Operator shall submit to the Authority drawings and complete files in an electronic and paper form acceptable to the Authority for the "as built" plans and specifications. If the Authority requires a material change to the approved plans and specifications for the Initial Improvements and such change is not necessary for compliance with Applicable Law, and was not due to the negligence or willful acts of the Operator, the Authority shall negotiate with the Operator an amount to be paid for such work based on the actual, verifiable and reasonable costs of such work. Changes in the approved plans and specifications that are specifically contemplated by the Lease Agreement shall not be considered material. The Operator shall furnish the Authority with copies of all paid invoices and such other data as the Authority may reasonably request to support the costs of the work.

Construction Commencement

Construction of the Initial Improvements for each Service Area shall commence ~~on the date(s) specified in the Lease Agreement, following satisfaction of any~~ upon notice to the Authority from the Operator (and confirmation by the Authority) that any and all specified pre-conditions for construction of the Initial Improvements at a given Service Area set forth in the Lease Agreement have been satisfied. Except as expressly provided below, no delay by the Operator in satisfying any such pre-conditions shall serve to adjust any Scheduled Opening Date (defined below). The period of construction of Initial Improvements at any Service Area will constitute the "Redevelopment Period" for such Service Area. The Redevelopment Period for each Service Area will end on the "Opening Date" which is the date on which the Initial Improvements are completed in accordance with the Lease Agreement and the Authority has determined that the Service Area ~~is fully~~ may be open to the travelling public and has issued a temporary certificate of occupancy. Such determination will be made only if construction has been substantially completed and only minor punch list items not

affecting operation, safety or welfare of the travelling public remain to be completed. The Operator shall minimize the disruption of Food/Fuel Facilities services by staggering the construction schedule so that Initial Improvements are not concurrently being constructed at adjacent Service Areas in the same direction.

Delay Liquidated Damages

The Lease Agreement will include a “Scheduled Opening Date” for each Service Area by which the Opening Date for such Service Area will be required to have occurred. The Authority shall have the right to assess liquidated damages in an amount equal to the quotient derived by dividing (a) the Minimum Annual Guaranteed Rent (defined in Section 10 below) by (b) 365, for each day of unexcused delay in achieving the Opening Date beyond the date that is 30 days following the Scheduled Opening Date for each Service Area. The Operator will be excused from liquidated damages to the extent that the delay in the Opening Date for a Service Area is due to: (i) Authority Fault (defined below), (ii) Force Majeure (defined in Section 13 below) or (iii) a delay in issuance of a governmental approval beyond the “Assumed Approval Issuance Date” set forth in the schedule for the Initial Improvements that has been accepted by the Authority but only to the extent that the Operator has: complied with the requirements of the Lease Agreement; has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the governmental body in order to obtain the governmental approval; and has in all respects used its best efforts to obtain the governmental approval.

“Authority Fault” means a breach by the Authority of any of its obligations under the Lease beyond Agreement beyond any applicable cure periods, a breach of any representation or warranty by the Authority under the Lease Agreement, willful misconduct of an Authority Indemnitee (defined in Section 16 below), or a negligent act or omission of an Authority Indemnitee.

Construction Practice

The Operator shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Initial Improvements. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Initial Improvements shall be new, of recent manufacture, and of good quality.

Environmental Compliance

~~The Operator shall comply with all applicable environmental laws, rules and regulations and shall comprehensively integrate environmental compliance into all design, construction and operational activities. Specific environmental requirements with which the Operator will be required to comply under the Lease Agreement are set forth in the “Environmental Information” Appendix to the RFP. Information pertaining to the State Environmental Quality Review Act Draft Full Environmental Assessment Form is included as an Appendix to the RFP.~~

Hazardous/Regulated Substances

~~The Operator shall bear full responsibility for, and bear all costs resulting from, the generating, handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (1) any hazardous or regulated substance under Applicable Law (“Regulated Site Condition”) present at, on, in or under, or migrating or emanating to or from a Service Area, including~~

~~but not limited to Regulated Site Conditions resulting from materials that were brought or caused to be brought onto the Service Area by any act or omission of the Operator or any of its subcontractors, except as specified below; (2) the creation or exacerbation of any Regulated Site Condition due to fault of the Operator or the negligence, recklessness or willful misconduct of the Operator or any of its subcontractors; and (3) any other matter specified as an Operator responsibility in the "Environmental Information" Appendix to the RFP. The Operator shall assume all such risks and shall indemnify, defend and hold harmless the Authority and the State pursuant to the terms of the Lease Agreement. Except as specified in the "Environmental Information" Appendix to the RFP, the Authority will be responsible for unknown Regulated Site Conditions that exist prior to the commencement of the Term.~~

Design and Construction Oversight

The Authority shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Initial Improvements to the extent necessary or advisable to comply with applicable government requirements and to verify the Operator's compliance with the Lease Agreement. The Operator at all times will coordinate and cooperate, and require its subcontractors to coordinate and cooperate, with the Authority and its agents/employees. The Authority may, ~~with or without cause~~ acting reasonably, by written notice, order the Operator to suspend, delay or interrupt all or any part of the construction work for such period of time as the Authority may reasonably determine to be appropriate. Without limitation, it shall be reasonable for the Authority to suspend, delay or interrupt all of any part of the construction work if the methods or conditions are such that unsatisfactory construction work might result, including, without limitation, if construction is progressed in the absence of detailed plans and specifications that have been reviewed and approved by the Authority; if improper material or procedures are being used; if the Operator fails to comply with any Lease Agreement requirement or with any provision of the plans and specifications approved by the Authority; if the Operator fails to comply with Applicable Law; or if the conditions of the construction work are considered to be sufficiently deficient by the Authority as to affect the safety of the public or the persons employed for said construction work. If the performance of all or any portion of the construction work is suspended or delayed by the Authority under circumstances that are determined not to be reasonable in accordance with the above and the resulting delay results in unanticipated costs to the Operator, the Authority shall negotiate an amount to be paid to the Operator for its actual, verifiable and reasonable costs attributable to the suspension, and for which the Operator bore no responsibility. The Operator shall furnish the Authority with copies of all paid invoices and such other data as the Authority may reasonably request to support such costs.

Continuous Operations and Access to Fueling Services

The Operator shall continue to perform all operations and maintenance responsibilities specified in the Lease Agreement throughout the Term of the Lease Agreement, including during the Redevelopment Period with regard to Initial Improvements and during the construction of any other improvements authorized by the Authority. Any closure of a Service Area to accommodate construction of the Initial Improvements or any other improvements authorized by the Authority will be subject to the Authority's prior approval, which shall not be unreasonably withheld.

The Operator shall ensure that continuous access is provided for the travelling public to the separately-contracted fueling services located at the Food/Fuel Facilities throughout the entire Term, including during the construction of the Initial Improvements or any other improvements authorized by the Authority.

SECTION 5 – OPERATION AND MANAGEMENT OF SERVICE AREAS

24/7 Operations

The Operator shall operate the Service Areas for the benefit of the traveling public every day of the year beginning on each of the applicable Commencement Dates, subject only to permissible closures approved by the Authority as specified above in respect of the Redevelopment Period. The Operator shall provide twenty-four hour a day operation of: (a) each Service Area at the prescribed level of service set forth in the Lease Agreement (e.g.: “Level 2B”); (b) the applicable food and retail services at each Service Area as specified in the Lease Agreement (during the hours specified therein); (c) restrooms, common areas, lobbies, dining areas and automatic vending machines; and (d) Automated Teller Machines (ATMs).

Operations Manager

The Operator shall appoint a New York-based full-time manager of the Service Areas (the “Operations Manager”) whose sole employment responsibility shall be managing the Operator’s performance of the Contract Services. The Operations Manager shall be trained, experienced and proficient in the management and operation of service areas located on major highways comparable to the Service Areas and shall have all required certifications under Applicable Law, as applicable. The Authority shall have the right to approve the hiring of any proposed candidate for Operations Manager during the Term, which right of approval shall not be exercised unreasonably. The initial Operations Manager shall not be replaced, unless otherwise approved by the Authority in its discretion, for a period of three years from commencement of the Term absent death, disability, retirement, resignation or cessation of employment with the Operator. The Operator shall replace the Operations Manager at the request of the Authority, after notice and a reasonable opportunity for corrective action, in the event the Authority reasonably determines, ~~in its discretion~~, that an unworkable relationship has developed between the Operations Manager and the Authority.

Staffing Generally

The Operator shall staff the Service Areas during the Term in accordance with the Lease Agreement. The Operator shall discipline or replace, as appropriate, any employee of the Operator or any subcontractor engaging in unlawful, unruly or objectionable conduct. The Operator shall notify the Authority of any material change in staffing levels and positions from time to time and shall not make any such material change if the new staffing level would adversely affect the ability of the Operator to provide the Contract Services in accordance with the Lease Agreement. The Operator shall replace any Operator or subcontractor employee at the request of the Authority, after notice and a reasonable opportunity for corrective action, in the event the Authority reasonably determines, ~~in its discretion~~, that such employee does not have the requisite skills for the tasks assigned or has engaged in unlawful, unruly or objectionable conduct.

Common Area Maintenance Staffing

The Operator shall provide Common Area Maintenance (“**CAM**”) staff at every Service Area whose sole responsibility is to maintain the cleanliness, appearance, amenities and conveniences in all customer areas including, but not limited to, restrooms, lobbies, dining areas, concept front counter areas, gift shops, vending areas, vestibules, landscaping, patios, sidewalks, curbs, car parking areas, truck parking areas, playgrounds, picnic areas, and pet areas, if applicable to the site.

The Operator shall have, at a minimum, three (3) CAM staff working at each Service Area, except “Level 1” Service Areas or equivalent design (as described in Exhibit 5 of the RFP), 7 days per week between the hours of 6:00 AM and 10:00 PM, and two (2) CAM Staff working between the hours of 10:00 PM and 6:00 AM, unless a Service Area is closed for construction. For “Level 1” Service Areas or equivalent, a minimum of one (1) CAM staff shall be staffed 24 hours per day, 7 days per week, 365 days a year, unless a Service Area is closed for construction. On holidays and the busier travel days that surround them [each to be specified in the Lease Agreement](#), the Operator shall have a minimum of one (1) additional CAM person staffed at each Service Area. Those days include, but are not limited to: Memorial Day, Independence Day, Labor Day, Columbus Day and Thanksgiving Day.

Flags and Flagpoles

The Operator shall provide and maintain flag poles and flags at each Service Area. Each Service Area is required to have a U.S. flag, New York State flag, POW-MIA flag, applicable poles and required lighting for the flags. Flags must never be worn, torn, tattered or faded. Flags must be raised and lowered in accordance with proclamations by the Governor or as directed by the Authority.

Reservation of Authority Rights

The Authority shall have the right (at no cost to the Authority) to require the Operator to provide space at the Service Areas, at locations determined by the Authority in consultation with the Operator, to accommodate programs that promote the State and provide for the safety and well-being of motorists and their passengers at the Service Areas. These programs currently include:

- (1) Taste NY Farm Markets (Seasonal – Outside of Restaurant Building);
- (2) High-Speed Electric Vehicle (EV) Charging Stations;
- (3) Video monitors, traffic cameras and other technology operated and maintained by the Authority to provide public safety and other agency-related information; and
- (4) Authority-hosted public events.

The Authority reserves the right to use, or to allow any third party to use, through contract, permit or otherwise, portions of the Service Areas, to provide the services listed above or any similar services, and the Authority reserves the right to retain all revenues from such use. The Operator shall cooperate with the Authority, and any party designated by the Authority, to accommodate any such use by the Authority or party designated by the Authority. The Authority also reserves the right to direct the Operator to provide the services listed above or any similar services; [provided that, in such event, an equitable adjustment will be made to the terms of the Lease Agreement to account for the cost of providing such services and to recognize any revenues associated therewith.](#)

The Operator shall also provide space at the Service Areas (at no cost to the Authority) for Authority back office functions, including staff areas, storage and wiring cabinets, including but not limited to the Thruway Statewide Operations Center which shall remain at the Pattersonville Service Area during the Term, unless the Authority determines otherwise.

Sale of Taste NY Food and Drink Products

The Operator shall implement a Taste NY food and drink program at each of the Service Areas. Such program shall consist of goods and products from State vendors and shall be provided in a

fashion to showcase the special offering of State vendors. The Operator shall submit to the Authority for its review and approval: (1) plans for the Taste NY program at each Service Area; (2) lists of proposed goods, products and prices; and (3) proposed hours of operation. Any change to the Authority approved plans, prices or hours of operation shall be subject to Authority approval.

The Operator shall enter into a Trademark License Agreement with the NYS Department of Agriculture and Markets authorizing the Operator's use of the Taste NY mark. The Operator shall comply at all times with the Taste NY Retail Guidelines and Taste NY Brand Guide as such may be amended from time to time.

All Taste NY revenues shall be included in the determination of Gross Sales as described in Section 10 below.

Food and Beverage Prices

All food and beverage prices (including automatic vending prices) shall be based on survey averages of off-road operations within the proximity of each Service Area and are subject to Authority approval. Initial food and beverage prices shall be based on surveys of the locations that will be listed in the Lease Agreement. With respect to each Service Area, if the Authority determines that prices at a specific survey restaurant are not comparable to the prices at other restaurants for the correlative survey group, the Authority in its reasonable discretion may require a replacement of such survey restaurant. Prices for all food and beverage items shall be set no higher than 10% above the survey average for such item. All surveys shall be carried out by the Operator and must be accompanied by supporting information acceptable to the Authority. Surveys shall be conducted at least twice every Lease Year and not more than four times per Lease Year. The Authority reserves the right to conduct its own surveys during the Term and to require downward price adjustments if average prices obtained by such survey are more than 10% lower than those in effect: at the Service Areas.

Prices of Non-Food and Beverage Items

Prices of all non-food and beverage items must be commercially reasonable and approved by the Authority. Reasonableness of prices shall be judged primarily by comparison with those currently charged for comparable goods or services sold or furnished in proximity to the Service Area. If such goods or services are not sold or furnished in proximity to the Service Area, reasonableness will be judged based on prices of goods or services sold or furnished in conditions deemed in the Authority's reasonable judgment to be similar.

Future Revenue Opportunities

Unless expressly provided for in the Lease Agreement, any non-retail revenue opportunities that become available to the Operator during the Term shall be subject to the Authority's written approval, which will specify the Authority's share of the revenues generated from such future non-retail revenue opportunity.

Coin Operated Games, Amusement and Toy Vending

Coin operated games, amusements and toy vending machines are not allowed without the prior written approval of the Authority. If allowed, they must be located in a designated room away from common areas. The number of and placement of machines are subject to Authority approval.

Other Prohibited Uses

The Operator shall not use or allow the Service Areas or any part thereof to be used, occupied or operated in any manner or for any purpose that would constitute a prohibited use, or void, or make voidable, any insurance then in force with respect to the Service Areas.

Prohibited uses will be defined in the Lease Agreement and will generally include uses that are not appropriate for the general public; uses that are not related to the services being requested under the RFP; uses that emit or result in strong, unusual or offensive odors, fumes, dust or vapors; uses that are a public or private nuisance; uses that emit noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; and uses that create hazardous conditions.

SECTION 6 – OPERATOR MAINTENANCE, REPAIR AND REPLACEMENT OBLIGATIONS

Ordinary Maintenance

The Operator shall perform all normal and ordinary maintenance of the machinery, equipment, structures, improvements and all other property constituting the Service Areas, shall keep the Service Areas in good working order, condition and repair, in a neat and orderly condition and in accordance with the Lease Agreement, and shall maintain the aesthetic quality of the Service Areas as improved by the Initial Improvements. The Operator shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the Service Areas and shall conduct predictive, preventive and corrective maintenance of the Service Areas required by the Lease Agreement.

During the Transition Period the Operator shall develop a “Renewal and Replacement Plan” for each Service Area that is acceptable to the Authority. The Operator shall obtain the Authority’s initial approval during the Transition Period (defined below) prior to the Commencement Dates. The Renewal and Replacement Plan must address the performance of all maintenance, repair and replacement obligations of the Operator and also include the specific information required by the RFP. Throughout the Term the Operator shall keep maintenance logs and shall otherwise comply with the Renewal and Replacement Plan for each Service Area. The Renewal and Replacement Plan shall be updated annually as provided for in the Lease Agreement. The Authority’s approval of a Renewal and Replacement Plan or any modifications will be for the Authority’s sole benefit and will not transfer any liability to the Authority or relieve the Operator of responsibility for its contents and adequacy.

Maintenance and Repair of the Grounds of the Service Areas

The Operator, in accordance with the Lease Agreement, shall keep the grounds of the Service Areas in a neat and orderly condition. In the area for which the Operator is responsible in the Responsibility Maps included in Exhibit 6 of the RFP, the Operator shall: (i) maintain and repair all non-traffic signage, fencing within the perimeter fencing and access gates provided by the Authority and other security systems at within the Service Areas, shall; (ii) provide landscape maintenance (including the replacement of all dead or dying plants), shall weeding and a thorough spring and fall cleanup); and (iii) service and maintain any on-site irrigation systems and shall remove snow and ice as required. Notwithstanding anything to the contrary contained in the RFP, including Exhibit 6, the Operator shall be responsible for removal of snow and ice from: the Service Area building; the sidewalks (including emergency exits from buildings); curbs; around the exterior trash receptacles; snow blocked storm water catch basins; the employee parking lot access to the Service Area; and the exterior buildings within the Service Area, such as the compactor and storage buildings. The Operator shall not be responsible for snow and ice removal as it pertains to any other portion of the Service Areas. The Authority will be responsible for certain maintenance responsibilities excluded from the Operator’s

scope, as described in Section 9 below.

Pest Control

The Operator shall ensure that all areas, inside and outside of buildings at the Service Areas are kept free from ants, flies, rodents, roaches, bees, birds or other pests, insects or vermin and so that the Service Areas are consistently maintained in safe, clean, neat and attractive conditions.

Trash and Debris Removal

The Operator shall be responsible for the removal and proper disposal of trash and debris at the Service Areas and shall maintain, repair and replace trash receptacles in sufficient numbers to serve the customer traffic levels at each Service Area.

Major Maintenance, Repairs and Replacements

The Operator shall and in addition to its obligation to perform ordinary maintenance, also perform all major maintenance, repairs and replacement of the machinery, equipment, structures, improvements, fixtures, all utilities, except for wastewater treatment plants as provided in Section 9, and all other property constituting the Service Areas during the Term required under the Lease Agreement, including all maintenance, repair and replacement which may be characterized as "major" or "capital" in nature. All such maintenance, repair and replacement shall be performed in accordance with the terms and conditions of the Lease Agreement. The Authority's approval for any such maintenance, repair or replacement shall not be required unless capital improvements are required, in which event the Authority shall have the approval rights set forth below. The foregoing obligations of the Operator are intended, in conjunction with the Handback Requirements described in Section 8 below, to assure that the Service Areas are fully, properly and regularly maintained, repaired and replaced in order to preserve their long-term reliability, durability and efficiency, and that in any event the Service Areas are returned to the Authority at the end of the Term in a condition that does not require the Authority to undertake a significant overhaul or immediate replacements in order to continue to provide reasonably priced and efficient services to the travelling public.

Renewal and Replacement Reserve Account

The Operator will annually fund a "Renewal and Replacement Reserve Account" by depositing a minimum amount of one percent (1%) of the total Capital Investment the Operator expended for the Initial Improvements during the Redevelopment Period per Service Area at the commencement of each Lease Year following the completion of the Redevelopment Period for each Service Area; provided, however, that in no event shall the amount deposited annually by the Operator per Service Area be less than 1% of the capital expenditure the Operator proposed for such Service Area. The Renewal and Replacement Reserve Account shall be used for renewal and replacement of the Service Areas to pay for capital improvements that cost more than \$2,500 and have a minimum useful life of three (3) years (such amounts expended by the Operator to meet this obligation being "Reinvestment Capital Expenditures"). Capital improvements to the Service Areas that cost more than \$15,000 shall require prior written approval from the Authority's Director of Maintenance and Operations. All items toward which Reinvestment Capital Expenditures are applied shall be deemed to be the property of the Authority.

Funds in the Renewal and Replacement Reserve Account that are not expended in any Lease Year after the Redevelopment Period shall remain in the Renewal and Replacement Reserve Account to be used in future Lease Years and can, ~~at the Authority's discretion~~ based on the approved Renewal and Replacement Plan, be rolled forward for subsequent periods. The Authority reserves the right to

require the Operator to remit the unspent funds in the Renewal and Replacement Reserve Account to the Authority for use pursuant to its self-help rights under the Lease Agreement in the event the Authority determines, acting reasonably, that the Operator has failed to comply with its renewal and replacement obligations under the Lease Agreement. Any remaining funds in the Renewal and Replacement Reserve Account that have not been expended ~~upon the expiration or termination of the Lease Agreement shall be remitted to the Authority. All items toward which Reinvestment Capital Expenditures are applied shall be deemed to be the property of~~ at the time of funding of the Handback Reserve under Section 8 hereof shall be paid to the Authority towards satisfaction of the Handback Reserve and deposited into the Handback Reserve Account in accordance with such Section; except that the Operator may retain for its own account any such remaining funds in the Renewal and Replacement Reserve Account to the extent they exceed the required amount of the Handback Reserve. The Operator shall no longer be required to fund the Renewal and Replacement Reserve Account following its payment of an amount (including any remaining funds in the Renewal and Replacement Reserve Account) equal to the Handback Reserve to the Authority ~~;~~ in accordance with Section 8 hereof.

SECTION 7 – KEY PERFORMANCE INDICATORS ~~PERFORMANCE STANDARDS~~ AND NON-COMPLIANCE

Key Performance Indicators and Performance Standards

The Lease Agreement will specify ~~performance standards and other “Key~~ certain “Performance IndicatorsStandards” with which the Operator will be required to comply during the Term. The initial ~~Key~~ Performance IndicatorsStandards that will be included in the Lease Agreement are being developed by the Authority and will be provided to Proposers during the Proposal preparation period. The Operator and the Authority will jointly review the ~~Key~~ Performance IndicatorsStandards periodically during the Term to evaluate and, to the extent required in the Authority's discretion, modify the ~~Key~~ Performance IndicatorsStandards to ensure that they continue to support the overall quality of service objectives of the Lease Agreement.

Noncompliance Events

The Operator shall operate and maintain the Service Areas in accordance with the ~~standards established by the Key~~ Performance IndicatorsStandards and the Authority shall regularly inspect the Service Areas to evaluate compliance by the Operator. Failures of compliance with the ~~Key~~ Performance IndicatorsStandards will require the Operator to implement remedial action and may result in the occurrence of “Noncompliance Events” which will be specified in the Lease Agreement imposition of liquidated damages by the Authority. The Lease Agreement will ~~also~~ detail the inspection, notice and reporting requirements related to the ~~Key~~ Performance IndicatorsStandards.

Noncompliance Points

~~The Authority may assess “Noncompliance Points” in respect of a Noncompliance Event, which will trigger Authority rights to liquidated damages and to additional oversight and management by the Authority (at Operator expense) if the underlying performance issues are not cured by the Operator within the applicable cure period to be set forth in the Lease Agreement. Uncured or persistent Noncompliance Events will provide the Authority the right to terminate the Lease Agreement for Operator default.~~

SECTION 8 – HANDBACK REQUIREMENTS

Required Condition at End of Term

On the expiration of the Term, each of the Service Areas shall be in a condition which is consistent with the Operator having performed its maintenance, repair and replacement obligations in accordance with the requirements set forth in the Lease Agreement. The Lease Agreement will also include remaining useful life and similar requirements for specified components of the Service Areas at the expiration of the Term, which will be negotiated with the Successful Proposer based on its Proposal. The foregoing requirements will constitute the “Handback Requirements”.

Handback Survey

Not later than five years prior to the expiration of the Term, ~~the Authority~~ a qualified professional engineer or other appropriate and independent professional or firm that is mutually acceptable to the parties (“Independent Technical Advisor”) will conduct an inspection (“First Handback Inspection”) and survey of each of the Service Areas (“Handback Survey”). The Handback Survey will include a description of the additional work (“Handback Work”) necessary to meet the Handback Requirements and a cost estimate for the Handback Work. If the Handback Survey indicates that any element of the Service Areas, on the expiration of the Term, will not be in a condition consistent with the Handback Requirements the Operator shall provide the Authority and the Independent Technical Advisor with the Operator’s plan to perform the Handback Work (“Handback Work Plan”), including the method and schedule for performing the Handback Work without adversely impacting Service Area operations. The Handback Work Plan will be subject to review and approval by the Independent Technical Advisor.

Not later than 30 months prior to the expiration of the Term, the Independent Technical Advisor shall conduct a second inspection (“Second Handback Inspection”) and update the Handback Survey. If the updated Handback Survey indicates that any element of the Service Areas, on the expiration of the Term, will not be in a condition consistent with the Handback Requirements, the Operator shall provide the Authority and the Independent Technical Advisor with a revised Handback Work Plan. The revised Handback Work Plan will be subject to review and approval by the Independent Technical Advisor.

All costs of the Independent Technical Advisor shall be borne equally by the Authority and the Operator.

Handback Reserve

The ~~Authority~~ Independent Technical Advisor shall, based on the Handback Survey prepared pursuant to the First Handback Inspection and in consultation with the Authority and the Operator, determine the amount (“Handback Reserve”) it reasonably believes necessary to complete the Handback Work. The Operator will be required to pay an amount equal to the Handback Reserve to the Authority and the Authority will deposit such amount in an interest-bearing bank account (“Handback Reserve Account”). The Handback Reserve shall be fully funded by the Operator on or before the date which is 1,460 days prior to the expiration of the Term. At such time, any remaining funds in the Renewal and Replacement Reserve Account shall be remitted to the Authority for deposit into the Handback Reserve Account in accordance with and subject to Section 6 hereof.

The Independent Technical Advisor shall, based on the Handback Survey as updated pursuant to the Second Handback Inspection, and in consultation with the Authority and the Operator, determine any increase to the then-existing amount of the Handback Reserve it reasonably believes necessary to complete the Handback Work. The Operator shall pay an amount equal to such increase to the

Handback Reserve to the Authority on or before the date which is 730 days prior to the expiration of the Term and the Authority will deposit such amount in the Handback Reserve Account. There shall not be any reduction in the Handback Reserve if the Independent Technical Advisor determines following the Second Handback Inspection that the then-existing amount of the Handback Reserve exceeds the amount it reasonably believes necessary to complete the Handback Work

The Operator shall have the right, upon the submittal of certified requisitions to the Authority with full supporting receipts or other evidence of payment, to withdraw from the Handback Reserve Account amounts necessary to reimburse itself for amounts actually expended in the performance of the Handback Work.

Performance of the Handback Work and Further Inspection

The Operator shall implement the Handback Work Plan and take all other steps necessary to assure compliance with the Handback Requirements at its sole cost and expense, notwithstanding the fact that the actual cost of compliance may be higher than the Handback Reserve or other agreed upon security. Prior to the expiration of the Term, the Authority Independent Technical Advisor shall conduct a further inspection and survey of the condition of each of the Service Areas and the progress of the Handback Work.

Final Authority Condition Assessment

On, or promptly after, the expiration of the Term, the Authority Independent Technical Advisor, will either: (1) issue to the Authority and the Operator a handback certificate confirming compliance with the Handback Requirements and after issuance of such certificate, the Authority will return any remaining amount in the Handback Reserve Account to the Operator; or (2) notify the Authority and the Operator of its decision not to issue the handback certificate, setting out each respect in which the Handback Work was not properly performed or the Service Areas do not comply with the Handback Requirements and stating the Authority Independent Technical Advisor's estimate of the cost it reasonably believes is necessary to complete all work required for the Service Areas to comply with the Handback Requirements. The Operator may, within a specified time period, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Operator's proposals in respect of such matters; except that, no such proposals may be made for additional Handback Work subsequent to the expiration of the Term.

Final Compliance

If the Service Areas do not, at the expiration of the Term, comply in all respects with the Handback Requirements, the Operator shall pay to the Authority an amount equal to the cost of completing any outstanding Handback Work based on the Authority Independent Technical Advisor's cost estimate, net any amount remaining in the Handback Reserve Account, which shall be for the account of the Authority; provided that to the extent all Handback Work has been completed such that the Independent Technical Advisor has issued the handback certificate and there are amounts remaining in the Handback Reserve Account, such amounts shall be returned to the Operator.

SECTION 9 – AUTHORITY OBLIGATIONS

Authority Obligations during the Term

The Authority will be responsible for the following:

- (1) Providing Wi-Fi service and access points at all Service Areas (the Authority may, at its

option, extend Wi-Fi to the truck parking areas at the Service Areas);

(2) Providing and maintaining a minimum of three (3) motherboard signs for each restaurant portion of the Service Area and one (1) motherboard sign for other services provided by the tenants of the Operator and the Authority at all Service Area locations;

(3) Continually maintain, operate and upgrade wastewater treatment plants, and the pipes within the fence line of such plants, as necessary to meet State Department of Environmental Conservation permit requirements, but only to the extent the Authority continues to operate any such wastewater treatment plant at a Service Area;

(4) Performing snow removal and de-icing of all roadways and parking lots, including entrance and exit roadways to and from each Service Area ~~in the area for which the Authority is responsible, as set forth in the Responsibility Maps included in Exhibit 6 of the RFP; and, but not of the sidewalks or the buildings;~~

(5) Maintaining certain utility infrastructure that serves portions of the Food/Fuel Facilities beyond the Service Areas. The Authority will reserve such rights of access to the Service Areas as may be necessary from time to time to perform its obligations and to otherwise administer, and exercise its rights under, the Lease Agreement; and

(6) Maintaining Service Area perimeter fencing, access gates and locking systems for access gates and building door key cores.

SECTION 10 – RENT, UTILITIES AND OTHER EXPENSES

Operator Payment Obligations

The Operator's payment obligations to the Authority for the lease of the Service Areas will consist of Initial Rent (defined below) and Operational Rent (defined below), each of which will be payable in monthly installments on an absolutely net basis to the Authority without abatements, offsets or other deductions or counterclaims of any kind except as otherwise expressly set forth in the Lease Agreement. Any other amounts due to the Authority under the Lease Agreement will be "Additional Rent". The Initial Rent, the Operational Rent and any Additional Rent are collectively referred to as "Rent".

Initial Rent

For each Service Area, the Operator will pay the Authority a minimum guaranteed rent ("Initial Rent") on a monthly basis from the commencement of the Term (January 1, 2020 for the Group 1 Service Areas and January 1, 2023 for the Group 2 Service Areas) until the beginning of the Redevelopment Period for such Service Area. The Initial Rent will be suspended to the extent a Service Area is permitted to be closed (and no sales occur) during the Redevelopment Period for such Service Area.

Operational Rent

Commencing on the Opening Date of each Service Area, the Operator will pay the Authority the "Operational Rent" on a monthly basis in an amount equal to a percentage of the Gross Sales (defined below) at the Service Area specified in the Lease Agreement but subject to annual reconciliation to assure that the Authority receives no less than the "Minimum Annual Guaranteed Rent" specified in the Lease Agreement.

For purposes of calculating the Operational Rent, "Gross Sales" shall be amounts generated from the sale of all items and the provision of all services at all of the Service Areas, including, but not limited to, foods, beverages, commodities, merchandise, articles and services, rental of equipment, prepaid product commissions, fees or charges payable by truckers for use of trucker facilities, income derived from ATMs, money order fees and the amounts generated from sales and provision of services of any nature whatsoever at the Service Areas, whether sold for consumption or use on or off the premises, without deduction for cost of merchandise or rentals of any kind whatsoever. Without limiting the foregoing, Gross Sales shall also include income from sales of cigarettes sold in packs and cigarettes sold in cartons above the applicable State minimum price. Gross Sales, however, shall not include amounts generated from retail sales taxes, merchandise deposits (except upon ultimate sale of the merchandise), sale price of returned merchandise, sales of lottery tickets, sales of E-Z Pass Tags, sales of cigarette cartons sold at the applicable State minimum price and amounts generated from food, beverage and other self-serve vending machines operated by the New York State Commission for the Blind (the "Commission") Business Enterprise Program ("BEP"). In the event the Commission determines at any time during the Term that it will not provide for operation of some or all of the proposed food, beverage and other self-serve vending machines through the BEP, the Operator shall be responsible for the proposed food, beverage and other self-serve vending machines that are not provided through the BEP, and amounts generated from such food, beverage and other self-serve vending machines shall be included in Gross Sales.

The Minimum Annual Guaranteed Rent will be appropriately pro-rated to account for any partial Lease Year during which the Operator's Operational Rent payment obligations are applicable.

Escalation of Operational Rent

The Minimum Annual Guaranteed Rent component of the Operational Rent will escalate every five years and remain in effect until the subsequent escalation based on the percentages and amounts in the Operator's Proposal, as agreed to by the Authority and specified in the Lease Agreement. Escalation for the Group 1 Service Areas will occur during Lease Years 2025, 2030, 2035, 2040, 2045 and 2050. Escalation for the Group 2 Service Areas will occur during Lease Years 2028, 2033, 2038, 2043 and 2048.

Payment Terms and Reports

The Operator shall submit payment to the Authority monthly for the Rent, no later than the fifteenth day of each month, which payments will cover the previous month's operations. Concurrently with the Rent payment due on the fifteenth day of each month, the Operator shall submit to the Authority (including the Authority's CFO and any other Authority designee) a completed monthly rental statement in form and substance acceptable to the Authority setting forth the actual Gross Sales at each Service Area during the previous month as well as the Initial Rent (as applicable), the Operational Rent and any Additional Rent due for such month, certified by the CFO of the Operator or other officer of the Operator duly authorized to certify such statements.

Authority Audit Right

Supplementing Paragraph 9 (Records) of Appendix A (Standard Clauses), attached hereto (and which will be incorporated as an appendix to the Lease Agreement), the Operator shall keep separate books and records with respect to Gross Sales and operations for each Service Area. At any time, the Authority and its representatives, upon reasonable notice, shall have the right to audit, examine, review and copy such books and records for the purposes of determining the Operator's

compliance with the Lease Agreement. If any examination or audit discloses that the Operator has underpaid the Authority by any amount, then the Operator shall pay all of the reasonable costs and expenses incurred by the Authority in connection with such examination or audit, together with such unpaid Rent with accrued interest thereon at the Overdue Rate (defined below) from the date that such Rent was due.

Interest for Late Payment

All amounts due under the Lease Agreement, whether as Rent, damages, credits, revenue, charges or reimbursements, that are not paid by the Operator when due shall bear interest at the rate of interest which is the Overdue Rate (defined below), on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed. The "Overdue Rate" will be ~~one~~nine percent (~~4~~9%) ~~of the outstanding Rent for every day that payment is late~~per annum or as subsequently amended by New York CPLR § 5004.

Annual Reconciliations

Within 30 days after the end of each Lease Year, the Operator shall provide to the Authority (including the Authority CFO and other Authority designated representatives) an annual settlement statement ("Annual Settlement Statement") in form and substance acceptable to the Authority setting forth the actual Initial Rent (as applicable) and Operational Rent payable with respect to such Lease Year and a reconciliation of such amounts with the amounts actually paid by the Operator with respect to such Lease Year. The Annual Settlement Statement shall be prepared in accordance with GAAP and certified by the CFO of the Operator or other officer of the Operator duly authorized to certify such statements. All certified Annual Settlement Statements shall be accompanied by calculations showing the determination of the amounts due and the amounts paid in reasonable detail and such other documentation necessary to verify such calculations as the Authority may reasonably request. If the Annual Settlement Statement indicates that the amount of Rent actually paid by the Operator for such Lease Year is less than the amount of Rent actually due for such Lease Year, the Operator shall pay the Authority the amount of such difference concurrently with the delivery of the certified Annual Settlement Statement to the Authority. If the Annual Settlement Statement indicates that the amount of Rent actually paid by the Operator for such Lease Year is greater than the amount of Rent actually due for such Lease Year, the Authority shall credit to the Rent next due the amount of such difference following the Authority's review and agreement that an overpayment was in fact made by the Operator.

Utilities

The Operator shall be responsible for the cost of heat, water, electricity and all other utilities related to the Service Areas. When the Authority is providing water and wastewater services, the Operator shall be charged an amount based upon the usage rates charged to similar customers by the service company or the municipality that would otherwise have provided such utility service. The Operator shall also be responsible for providing the means for a temporary water supply acceptable to the Authority at each Service Area.

Taxes and Assessments

The Operator shall be responsible for payment of any and all taxes, assessments, or levies that may be imposed on, or that are related to, its property, operations, business or its occupancy under the Lease Agreement.

Tolls

The Operator, its subcontractors and their respective employees shall be responsible for any tolls it incurs on the New York State Thruway.

SECTION 11 – SECURITY FOR OPERATOR PERFORMANCE

Performance Bond

The Operator shall provide a performance bond covering the faithful performance of the Operator under the Lease Agreement (“Performance Bond”). The Performance Bond shall cover all obligations of the Operator, including, but not limited to, rental obligations, under the Lease Agreement.

The penal sum of the Performance Bond shall be as follows:

- Lease Year 1 through 3 – Five million four hundred thousand dollars (\$5,400,000) plus the Minimum Annual Guaranteed Rent for the prior Lease Year
- Each Subsequent Lease Year – The average annual maintenance and operation costs for all completed Service Areas, calculated from Lease Year 3 through and including the Lease Year preceding the calculation date, but no less than five million four hundred thousand dollars (\$5,400,000) plus the Minimum Annual Guaranteed Rent for the prior Lease Year

Construction Payment and Performance Bonds

The Operator shall provide a payment bond guaranteeing the payment of all labor, materials and supplies on each specific “Capital Project” which is defined to include the Initial Improvements, and subsequent improvements authorized by the Authority, including replacements (“Payment Bond”). The penal sum of the Payment Bond shall be in the amount equal to the capital cost of the specific Capital Project and shall remain in place through acceptance of the Capital Project by the Authority.

The Operator shall provide a performance bond covering the faithful performance of the Operator’s obligations under the Lease Agreement during construction of Capital Projects (“Construction Performance Bond”). The penal sum of the Construction Performance Bond shall be in an amount equal to the capital cost of each specific Capital Project and shall remain in place through acceptance of the Capital Project by the Authority.

General Bond Requirements

The Performance Bond, the Payment Bond and the Construction Performance Bond (collectively, the “Bonds”) shall be written by sureties ([each a “Surety”](#)) that are: (1) licensed to provide surety bonds in the State; (2) listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies”; and (3) otherwise acceptable to the Authority. The Operator shall pay the premiums for the Bonds, with the Authority listed as the obligee. The Authority will accept co-obligee status on the Bonds only where appropriate, as determined in the Authority’s ~~discretion~~ [\(acting reasonably\)](#), based on the contracting structure of the Successful Proposer.

The Bonds shall be dated no later than the date of execution of the Lease Agreement; or, ~~in the commencement of work, whichever is sooner~~ [event of a bifurcated commercial and financial close, as permitted under Section 1, above, the date of financial close](#). Notwithstanding the foregoing, Bonds required for specific construction projects that commence after the Term begins shall only be

required from the commencement of each specific construction project through acceptance of the project by the Authority.

The Bonds shall be delivered to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189. No work shall commence until the Authority has accepted the Bonds.

Executed original Power of Attorney, Surety and Corporate Acknowledgement forms, and the Surety's most recent financial statement shall accompany the Bonds.

The Operator shall provide a copy of these Authority Surety Bond Requirements to its insurance producer(s) and insurance carrier(s).

The Bonds shall be in forms acceptable to the Authority.

Letter of Credit

In lieu of providing a Performance Bond, the Operator may provide security for the faithful performance of the Operator under the Lease Agreement through an irrevocable direct pay letter of credit issued by a United States bank whose long-term debt is rated "A" or better by Moody's Investors Service, Inc., Standard & Poor's Ratings Services or Fitch, Inc. and which maintains a banking office in the State (the "Letter of Credit"). The Letter of Credit (i) shall be in the stated amount equal to the required penal sum of the Performance Bond, (ii) shall be for a term of one year, (iii) shall be continuously renewed, extended or replaced so that it remains in effect until 180 days after the expiration or termination of the Lease Agreement, and (iv) shall be issued in a form acceptable to the Authority. The Authority shall have the unconditional right to immediately draw upon the Letter of Credit for the full stated amount thereof in the event that: (a) a notice of non-renewal is received, (b) any required renewal, extension or replacement of the Letter of Credit is not made earlier than the date which is 30 days prior to its expiration date, (c) the long-term debt rating of the issuer of the Letter of Credit falls below the required minimum rating and a replacement Letter of Credit is not provided from an issuer that meets such minimum rating requirements within 30 days, and (d) certain bankruptcy and insolvency circumstances occur related to the Operator or a guarantor that will be set forth in the Lease Agreement.

Guarantor

The Authority reserves the right to require a guarantor that will unconditionally guaranty the obligations of ~~the Operator or~~ any key subcontractor under the Lease Agreement. A guarantor may be required in the event that the Operator ~~is a special purpose entity or if the Operator~~ included a guarantor or parent company in its Proposal to demonstrate the financial qualifications of a key subcontractor. Any guarantor shall be acceptable to the Authority and shall enter into and provide the Authority with a guaranty agreement in form and substance acceptable to the Authority as a pre-condition to the occurrence of the Effective Date (or financial close if separate pursuant to Section 1 above) of the Lease Agreement.

SECTION 12 – INSURANCE

Insurance Conditions

The Operator must procure on or prior to the Group 1 Commencement Date with regard to the Group 1 Services Areas and on or prior to the Group 2 Commencement Date with regard

[to the Group 2 Service Areas](#), and maintain throughout the Term, insurance of the kinds and in the amounts specified herein, covering all services and operations under the Lease Agreement, whether performed by the Operator or its subcontractors, in accordance with the following conditions:

- A. All insurance required by the Lease Agreement shall be obtained at the sole cost and expense of the Operator.
- B. All insurance required by the Lease Agreement shall be maintained with insurance carriers licensed to do business in the State, and acceptable to the Authority, with an A.M. Best rating of "A-" or better. The Authority may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documentation are accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit. Notwithstanding the foregoing, nothing herein shall be construed to require the Authority to accept insurance placed with a non-authorized carrier under any circumstances.
- C. All insurance required by the Lease Agreement shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.
- D. The Operator shall furnish the Authority with Certificate(s) of Insurance on ACORD Form 25, accompanied by the Authority Supplemental Insurance Certificate (Exhibit 2 – TA-W51343 (11/2017)), for each insurance carrier involved. Such Certificate(s) shall be executed by a duly authorized representative of the insurance carrier, certifying such authorization and showing compliance with the Authority's insurance requirements set forth herein. The Operator shall furnish the Authority with a copy of each Endorsement required herein. For work to be performed within the State, proof of Workers' Compensation and Disability Benefits Insurance shall be indicated on the appropriate Workers' Compensation Board forms as listed in in paragraph F under "Required Insurance Coverages" below.
- E. All policies, by specific Endorsement, shall provide for written notice to the Authority no less than thirty (30) days prior to the cancellation, nonrenewal, or material alteration of any insurance policies referred to therein. Any such notice shall be sent by e-mail to: Insurancecompliance@thruway.ny.gov, attention Insurance Compliance Supervisor. Only in the event that such written notice cannot be delivered via e-mail, notice shall be sent to: New York State Thruway Authority, Office of Investments and Asset Management, P.O. Box 189, Albany, New York 12201-0189.
- F. If insurance policies utilized for Authority projects contain Deductibles or Self-Insured Retentions (SIRs), they must be declared as such with applicable levels on the Certificate(s) of Insurance and the Authority Supplemental Insurance Certificate. Insurance policies with Deductibles in excess of \$50,000 will require review and approval by the Authority. Additional security or other requirements may be imposed at the sole discretion of the Authority.

- G. Insurance policies with Self-Insured Retentions (SIRs) must receive prior approval by the Authority. All applications for SIR approval must be submitted to the Authority's Office of Investments and Asset Management, indicate whether the program is administered by a third party, and contain a complete description of the program. SIR programs in excess of \$50,000 must be administered by a third-party administrator and must also meet additional security requirements. The Authority, at its sole discretion, reserves the right to require the Operator to provide additional collateral, or to reject the use of an SIR by the Operator. The Operator will be solely responsible for all claims, expenses, and loss payments within the retention limit.
- H. The Operator shall provide certified copies of all declarations, pages, or of the insurance policies themselves upon request by the Authority, and within twenty (20) days of such request.
- I. Failure of the Authority to demand such certificates, policies, endorsements, or other evidence of full compliance with the Authority's insurance requirements, or failure of the Authority to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Operator's obligation to maintain such insurance.
- J. Failure to maintain the required insurance, and failure to provide proof of such coverage to the Authority at its request, may, in the Authority's sole discretion, result in termination of the Lease Agreement.
- K. At least two weeks prior to the expiration of any policy required by the Lease Agreement, evidence of renewal or replacement policies of insurance with terms at least as favorable to the Authority as the required minimum amounts set forth under "Required Insurance Coverages" below must be furnished to the Authority by e-mail to: Insurancecompliance@thruway.ny.gov, attention Insurance Compliance Supervisor. Only in the event that such certificates cannot be delivered via e-mail, notice shall be sent to: New York State Thruway Authority, Office of Investments and Asset Management, Insurance Compliance Section, P.O. Box 189, Albany, New York 12201-0189.
- L. By requiring insurance, the Authority does not represent that certain coverages and limits will necessarily be adequate to protect the Operator, and such coverages and limits shall not be deemed a limitation on the Operator's liability under the indemnities granted to the Authority under any provision of the Lease Agreement.
- M. The Operator and its subcontractors shall waive all rights against the State, the Authority, and their respective agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by the CGL policy, the Business Auto Policy, and the Umbrella Policy, as required.
- N. The Operator shall provide a copy of the Authority's Insurance Requirements to its

insurance producer(s) and insurance carrier(s).

- O. The Operator shall require that any approved subcontractors carry insurance with the same limits and provisions set forth herein.

The Authority reserves the right to increase the limits of insurance coverage required by the Lease Agreement.

Required Insurance Coverages

The specific types and amounts of insurance that the Operator must provide pursuant to the Lease Agreement are as follows:

General Contract Insurance Requirements:

- A. Commercial General Liability Insurance – The Operator shall maintain through a combination of Commercial General Liability (CGL) and Commercial Umbrella Liability insurance (See paragraph B below), with no less than the following limits and coverages:

<u>Agreement value:</u>	<u>Occurrence</u>	<u>General Aggregate</u>
Under \$10 million	\$1,2,000,000	\$2,000,000
\$10 million - \$25 million	\$5,000,000	\$5,000,000
\$25 million - \$50 million	\$10,000,000	\$10,000,000
Over \$50 million	\$25,000,000	\$25,000,000

- Products/Completed Operations Aggregate: (Equal to General Aggregate)
- Personal/Advertising Injury Liability: \$1,000,000
- Fire Damage Legal Liability: \$100,000
- Medical Expense: \$5,000

CGL Insurance shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability. The Authority shall be listed as a Primary and Non Contributory Additional Insured on the General, Auto, Umbrella and Pollution liability policies.

Where contract work will be performed by unregistered off-road equipment, the Operator shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, using ISO form CG 04 33 10 01 or its equivalent.

Explosion, Collapse and Underground Hazards coverage (XCU) is required for contracts calling for the performance of excavating, underground work, and/or blasting equipment. If the activity involves construction or demolition within 50 feet of railroad stations, yards, or tracks, the CGL policy must be endorsed to delete the exclusion of coverage for work done within 50 feet of railroad property.

The General Aggregate shall apply separately to the subject matter (Project) of the Lease Agreement, and the Operator shall provide an appropriate Project Endorsement.

- B. Commercial Umbrella Liability Insurance – When the limits of the CGL and Business Auto Liability policies procured are insufficient to meet the limits specified, the Operator shall procure and maintain Commercial Umbrella Insurance (Umbrella)

and/or Excess Liability policies with limits in excess of the primary; provided, however that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall be issued on a “follow form” basis of the primary policies.

The Authority and the State shall be included as Additional Insureds, using ISO Additional Insured Endorsements CG 20 10 04 13 and CG20 37 04 13 or an equivalent, under the CGL and Umbrella policies, as required.

C. Business Auto Liability Insurance – The Operator shall maintain Business Automobile Liability coverage, with no less than a \$1,000,000 Combined Single Limit, which shall cover liability arising out of the Operator’s use of any motor vehicle, whether owned, leased, hired, or non-owned.

If the Lease Agreement involves the removal of hazardous waste or environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (CA 9948) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

D. Professional Liability or Errors and Omissions Insurance – The Operator shall require its architects and engineers to maintain Professional Liability or Errors and Omissions Insurance with no less than the following limits:

Agreement value:

Less than \$25 Million	\$2,000,000
\$25 million or greater	\$5,000,000

(Applicable to professional services requiring the signature, stamp, or certification of a licensed professional, including, without limitation, erection plans, demolition plans, containment plans, coffer dams, and/or temporary sheeting.) The professional and any professional sub-consultant retained by the professional to work on the Lease Agreement shall procure and maintain during and for a period of three (3) years after completion of this Lease Agreement, Professional Liability Insurance in the required amount issued to and covering damage for liability imposed on the Professional by the Lease Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Lease Agreement. The professional liability insurance may be issued on a claims-made policy form, in which case the professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

If applicable, the professional shall provide coverage of the professional’s negligent act, error or omission in rendering or failing to render professional services required by the Lease Agreement arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. Such insurance shall apply to professional acts or omissions arising out of the scope of services covered by the Lease Agreement. This insurance will be required during the construction periods.

E. All Risk Physical Damage – The Operator shall maintain coverage that shall include, but not be limited to, earthquake and flood, and shall be for one hundred percent

(100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Service Areas. It shall include an endorsement waiving rights of subrogation against the Authority. The Operator shall name the Authority as the loss payee on such policy. A lender or collateral agent permitted under the Lease Agreement may be named as an additional loss payee.

F. Workers' Compensation & NYS Disability Benefits Insurance – The Lease Agreement shall be void and of no force and effect unless the Operator shall provide and maintain coverage during the life of the Lease Agreement for the benefit of such employees as are required to be covered by the Workers' Compensation/Disability Benefits Law. The Operator must provide proof of exemption, certified by the Workers' Compensation Board, to obtain a waiver from the requirements of this provision.

Evidence of Workers' Compensation coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

1. C-105.2 – Certificate of Workers' Compensation Insurance;
2. U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund;
3. GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance; or
4. CE-200 – Certificate of Attestation of Exemption.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

1. DB-120.1 – Certificate of Insurance Coverage under the NYS Disability Benefits Law;
2. DB-155 – Certificate of Disability Self Insurance; or
3. CE-200 – Certificate of Attestation of Exemption

Insurance – Construction Phase:

A. Owners/Contractors Protective Liability Insurance – The Operator shall obtain a separate Owners/Contractors Protective Liability (OCP) Policy for projects not related to street, road, highway, and/or bridge work – Form CG 00 09 12 07, Owners and Contractors Protective Liability Coverage form – Coverage for Operations of the Designated Contractor.

The policy written on a project basis for the benefit of the Authority, its officers, agents, and employees, and the People of the State, with respect to all operations under the Lease Agreement by the Operator or its subcontractors, including in such coverage any omissions and supervisory acts of the Authority, its officers, agents, and employees.

The Authority shall be the named insured in the OCP Policy, which shall be promptly furnished to the Authority.

OCP policy limits shall be no less than:

\$1,000,000 per occurrence/\$5,000,000 aggregate.

B. Builders' Risk Insurance – For all construction projects involving buildings, the Operator shall provide a Builders' Risk Insurance policy covering all risks including damage due to floods, in completed value form. Such policy shall cover the total value of the work performed, as well as the value of any equipment, supplies, and/or material for

the project that may be in storage (on or off the site) or in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tool of their agents and employees, staging towers and forms, and property of the Authority held in their care, custody and/or control. Such policy shall name as insureds the Authority and the Operator. The Builders' Risk policy shall contain endorsements that provide for the following:

- The Operator and the Authority shall be named as loss payee for the work in order of precedence as their interest may appear (and a lender or collateral agent permitted under the Lease Agreement may be named as an additional loss payee);
- In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the Insurance Company; and
- In the event that the insurance policy has been issued by a mutual insurance company, the following language shall be included: "the Authority is not liable for any premium or assessment under this policy of insurance. The First Named Insured is solely liable therefore."

C. Environmental Liability Insurance – The Operator shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the construction phase of the contract, and for two years after completion hereof, pollution legal liability insurance with limits of not less than ten million dollars (\$10,000,000), providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Agency arising from the Operator's work. The State and the Authority shall be named as additional insureds and coverage shall be primary.

This requirement applies to mold as well, if excluded in the Commercial General Liability policy.

D. Railroad Protective Liability Insurance – In the event that any work under the Lease Agreement is to be performed on or within 50 ft. of railroad property or railroad right-of-way, the Operator shall provide and maintain a Railroad Protective Liability (RRP) Policy in the amounts required by the respective railroad.

- The policy must name the Railroad as the Named Insured. No Additional Insureds will be listed on the policy (see requirements for the deletion of the 50' Railroad Exclusion on the Commercial General Liability policy).
- Evidence of Railroad Protective Liability Insurance must be provided on the ACORD 25 insurance certificate form, a detailed Binder pending issuance of the policy, or on an ISO-RIMA or equivalent form approved by the Railroad and meet any other requirements as specified by the Railroad and/or the Authority.

Definition of "physical damage to property" must be amended to mean direct and accidental loss of or damage to *"all property of any Named Insured and all property in any Named Insured's care, custody*

or control”.

Casualty

The Operator will be obligated to promptly restore to its original condition any Service Area or portion thereof damaged or destroyed in connection with fire or any other casualty, except as otherwise expressly agreed by the Authority. The Operator’s restoration obligation shall not be limited or affected by the availability or sufficiency of insurance proceeds. Any insurance proceeds in connection with a fire or other casualty shall be deposited with a financial institution approved by the Authority and disbursed for the sole purpose of effecting such restoration. In the event of a casualty affecting portions of a Food/Fuel Facility beyond the applicable Service Area, the Operator will cooperate and coordinate with the Authority in carrying out the Operator’s restoration.

Application of Insurance Proceeds

All insurance proceeds received for physical property damage to a Service Area under any insurance policies required under the Lease Agreement, other than any business interruption insurance maintained as part of such insurance policies, shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Service Areas in respect of which such proceeds were received.

In any case where a lender or collateral agent is named as an additional loss payee on any insurance policy, the lender or collateral agent’s interest in any proceeds from the policy shall be subject to the Authority’s interest and the terms of the Lease Agreement, which shall include the right of the Authority to require that all insurance proceeds be paid to a depository pending distribution for application in accordance with the Lease Agreement.

SECTION 13 – FORCE MAJEURE

Force Majeure

Neither party will be liable to the other for any failure, delay or interruption of any of the terms, covenants or conditions of the Lease Agreement to the extent that such failure, delay or interruption is due to Force Majeure. “Force Majeure” means the occurrence of:

- (1) Unusually severe and abnormal climatic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the affected Food/Fuel Facility), landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning and other acts of God;
- (2) Certified acts of terrorism as defined by the Terrorism Risk Insurance Act (TRIA) occurring during any period in which TRIA or a substantially identical federal law is not in effect;
- (3) Terrorism arising from nuclear, biological or chemical materials, or any act which would

constitute a certified act of terrorism as defined by the TRIA occurring during any period in which TRIA or a substantially identical federal law is not in effect;

(4) War, civil war, armed conflict, riot, insurrection, civil commotion or disturbance (including armed violence and hostage taking), sabotage and related causes;

(5) Nuclear explosion or nuclear, radioactive, chemical or biological contamination;

(6) Epidemics, pandemics or quarantine, or health alerts issued by a governmental body relating thereto;

(7) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of a Food/Fuel Facility; or

(8) The failure of any appropriate governmental body or private utility having operational jurisdiction in the area in which a Food/Fuel Facility is located to provide and maintain utilities to the Food/Fuel Facility which are required for the performance of the Contract Services,

the response to which, in accordance with the Lease Agreement, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent that such event or circumstance arises from or is contributed to, directly or indirectly, by any Operator fault, and provided that the party uses commercially reasonable efforts to mitigate the impact of the Force Majeure event.

Termination on Account of Force Majeure

The Authority shall have the right on account of certain circumstances of Force Majeure as will be specified in the Lease Agreement to terminate the Lease Agreement as it applies to the affected Service Area. If such termination is not due to the negligence or willful acts of the Operator or its agents, and the Operator was not otherwise in default under the Lease Agreement, the Minimum Annual Guaranteed Rent shall thereafter be reduced by the amount of the Minimum Annual Guaranteed Rent attributable to the terminated Service Area, which amount will be appropriately pro-rated to account for any partial Lease Year during which the termination occurs.

SECTION 14 – AUTHORITY SELF-HELP RIGHTS

Authority Self-Help Rights

In addition to its other rights and remedies, the Authority shall have self-help rights in the event of a default consistent with the Authority's obligation to assure that appropriate services are available to persons traveling on the New York State Thruway. Such rights, and their interaction with mortgagee protection provisions, will be set forth in more detail in the Lease Agreement.

[If the Authority believes that a condition relating to the Initial Improvements or the Operator's performance or non-performance under the Lease Agreement poses an immediate and imminent danger to public health or safety, the Authority may, without notice and without awaiting lapse of any otherwise applicable cure period, rectify the condition at the Operator's cost and expense, and so long as the Authority undertakes such action in good faith, such action shall not expose the Authority to any liability to the Operator and shall not entitle the Operator to any other remedy under the Lease](#)

Agreement, it being acknowledged that the Authority has a paramount public interest in providing and maintaining safe public use of and access to the Service Areas. The Authority shall be deemed to have acted in good faith regarding the existence of such danger in the absence of clear and convincing evidence that the danger did not exist. Any costs incurred by the Authority that are the responsibility of the Operator pursuant to this Section shall constitute Additional Rent.

SECTION 15 – EVENTS OF DEFAULT AND AUTHORITY REMEDIES

Events of Default

The occurrence of one or more of the following events shall constitute an “Event of Default” under the Lease Agreement:

(1) A default in the timely payment of Rent and such failure shall continue for ten (10) days after notice to the Operator from the Authority;

(2) The Operator fails to timely commence construction of the Initial Improvements or any other improvements authorized by the Authority at a Service Area unless otherwise excused by the Authority;

(3) The Operator fails to diligently and continuously prosecute the Initial Improvements or any other improvements authorized by the Authority with sufficient resources (e.g., supervision, workers, equipment, and material) to assure the prompt completion of the Initial Improvements or the other authorized improvements;

(4) The Operator performs the Initial Improvements or any other improvements authorized by the Authority unsuitably or neglects or refuses to remove the material constituting the improperly performed Initial Improvements or other authorized improvements or to redo the Initial Improvements or other authorized improvements as may be rejected as unacceptable and unsuitable;

(5) The Operator discontinues the prosecution of the Initial Improvements or any other improvements authorized by the Authority;

(6) The Operator fails to resume work on the Initial Improvements or any other improvements authorized by the Authority that has been discontinued within a reasonable time after notice to do so;

(7) Any representation or warranty made by the Operator in its Proposal or in the Lease Agreement or any certificate, schedule, instrument or other document delivered by the Operator pursuant to the Lease Agreement or the RFP shall have been false or materially misleading when made, including any failure to disclose an organizational conflict of interest as required by the RFP;

(8) The Operator is party to fraud against the Authority or any other Collective Indemnitee;

(29) Except as otherwise provided in ~~subparagraph~~subparagraphs (31)–below, (10) and 12 of this Section, default shall be made in the performance or observance of any covenant, condition or agreement on the part of the Operator to be performed or observed under the Lease Agreement, and such default shall continue for a period of thirty (30) days after written notice specifying such default shall have been given to the Operator; provided, however, that (a) the Operator has commenced to cure within such initial thirty (30) day period and is continuing to proceed to cure such default with due diligence, and (b) if such default is susceptible to cure but cannot, with due diligence, be remedied by the Operator within thirty (30) days, the period of time to cure the default shall be

extended for such period as may be reasonably necessary to cure the same with all due diligence, provided further, however, that in no event shall such cure period be extended by more than ninety (90) days;

~~(310) Uncured or persistent Noncompliance Events;~~[Reserved – to be updated based on finalization of Performance Standards];

~~(411) An~~A Change in Control occurs or an assignment or other transfer of the Lease Agreement or any interest of the Operator in the Lease Agreement, including by operation of law, in each case, in violation of the terms of the Lease Agreement;

~~(512)~~ A failure to timely provide evidence that all required insurance is in full force and effect and such default remains unremedied for a period of five (5) days following written notice from the Authority to the Operator, provided, however, and notwithstanding the foregoing cure period for providing evidence of insurance, a lapse in any required insurance coverage shall constitute an immediate Event of Default;

~~(613)~~ Any interest in the Lease Agreement shall be held, directly or indirectly, by any Prohibited Person (as defined in the Lease Agreement) and such interest shall not have been divested within forty-five (45) days after written notice from the Authority to Operator;

~~(714)~~ The insolvency of the Operator, a key contractor or a guarantor, as determined under applicable bankruptcy law;

~~(815)~~ The filing by the Operator, a key contractor or a guarantor or a petition of voluntary bankruptcy under applicable bankruptcy law, the consenting of the Operator, a key contractor or a guarantor to the filing of any bankruptcy or reorganization petition against the Operator, a key contractor or a guarantor of a petition to reorganize the Operator, a key contractor or the guarantor pursuant to applicable bankruptcy law; ~~or~~

~~(916)~~ The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee for the Operator, a key contractor or a guarantor or of a major part of the property of the Operator, a key contractor or a guarantor, or the filing against the Operator, a key contractor or a guarantor of a petition to reorganize the Operator, a key contractor or a guarantor pursuant to applicable bankruptcy law, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, except that with regard to this subparagraph and paragraphs ~~(7), (814)~~ and ~~(915)~~ above of this Section, in respect of any key contractor or guarantor, the Operator will have a reasonable period to cure the Event of Default in which to provide a replacement key contractor or guarantor that is acceptable to the Authority; ~~Or~~

(17) Any party revokes or attempts to revoke its obligations under any guaranty or any statement of joint and several liability, or otherwise takes the position that obligations are no longer in full force and effect or are unenforceable.

Remedies Upon an Event of Default

If an Event of Default shall have occurred and be continuing then the Authority may, at its option, exercise any or all of the following remedies:

(1) Subject to the rights of any leasehold mortgagee under the Lease Agreement, ~~the Authority may~~ give to Operator and to each leasehold mortgagee a notice of election to terminate the Lease; ~~;~~

(2) ~~The Authority may, without~~Without terminating the Lease Agreement, reenter and possess the Service Areas, in whole or in part, and exercise such self-help rights as the Authority may have under the Lease Agreement, at law or in equity, including completion of the Initial Improvements or any other improvements authorized by the Authority at the Operator's sole cost and expense. In exercising its right to complete the Initial Improvements or any other authorized improvements the Authority may make such modifications as it determines to be appropriate. No such reentry or possession shall constitute an eviction and the Operator waives any claim it may have based upon the Authority's reentry or possession. The Operator shall cooperate with the Authority in effecting such reentry and exercising its self-help rights; ~~or~~ or

(3) With respect to any occurrences involving impaired creditworthiness of the Operator, key contractors and/or guarantors, including those identified in subparagraphs (14), (15) and (16) of Section 15 (Events of Default) above, the Authority may require the Operator to provide additional performance security satisfactory to the Authority in its sole discretion.

Rights of Authority Upon Termination

Upon any termination of the Lease Agreement, the Operator shall quit and peacefully surrender the Service Areas to the Authority, and the Authority, upon or at any time after any such termination, shall have the right, without further notice, to enter upon and re-enter the Service Areas and possess and repossess itself thereof, by force, summary proceedings, ejection or otherwise, and may dispossess the Operator and remove the Operator and all other persons and property from the Service Areas and may have, hold and enjoy the Service Areas and the right to receive all rental and other income of and from the same.

If the Lease Agreement is terminated by reason of the occurrence of any Event of Default:

(1) The Rent shall become immediately due and be paid by the Operator up to the time of such termination, together with such direct and reasonable expenses as the Authority may incur for legal expenses, attorneys' fees and disbursements, brokerage commissions, and alteration costs and other costs of putting the Service Areas in good order, and for preparing the same for re-letting;

(2) The Authority may re-let the Service Areas or any part or parts thereof, either in the name of the Authority or otherwise (but shall have no obligation to do so), for a term or terms, which may, at the Authority's option be less than or exceed the period which would otherwise have constituted the balance of the Term of the Lease Agreement and may grant concessions or free rent;

(3) The Authority shall have no obligation to account to the Operator if the Authority shall re-let the Service Areas; and

(4) The Operator or the legal representatives of the Operator shall also pay the Authority, as liquidated damages for the failure of the Operator to observe and perform the Operator's covenants, amounts equal to the Rent which would have been payable by the Operator had the Lease Agreement not been terminated or had the Authority not re-entered the Service Areas, such payments to be made upon the due dates specified in the Lease Agreement following termination or re-entry and continuing until the date on which the Lease Agreement would have expired had the Lease Agreement not been terminated by the Authority; provided, however, that if the Authority re-lets the Service Areas, the Authority shall credit the Operator, up to the amount due from the Operator, with the net rent received by the Authority for such re-letting after deducting from the first installments of such rent received (without duplication of any damages and charges provided for

above) the expenses incurred or paid by the Authority in terminating the Lease Agreement or in re-entering the Leased Facilities and in securing possession thereof, as well as the reasonable expenses of re-letting, including reasonable legal expenses, attorneys' fees and disbursement, brokerage commissions, alteration costs and other expenses incurred for keeping the Leased Facilities in good order or for preparing the same for re-letting. Any suit brought to collect the amount of the aforesaid damages for any month or months shall not prejudice in any way the rights of the Authority to collect the damages for any subsequent month or months by a similar proceeding. The Authority will not be required to postpone suit until the date when the Term of the Lease Agreement would have expired if it had not been so terminated under or pursuant to the terms of the Lease Agreement or under any provision of law; and

(5) The Authority may elect, as an alternative to the damages and charges provided for in paragraph (4) above, and in lieu of all other such damages thereafter accruing, to have the Operator pay the liquidated damages provided for below, which election may be made by notice given to the Operator at any time after the termination of the Lease Agreement for default, and whether or not the Authority shall have collected any other damages. Upon such notice, the Operator shall promptly pay to the Authority, as liquidated damages, in addition to any damages collected or due from the Operator from any period prior to such notice, such a sum as at the time of such notice represents the amount of the excess, if any, of (i) the discounted present value, at a discount rate that will be specified in the Lease Agreement, of the Rent and other charges which would have been payable by the Operator under the Lease Agreement for the remainder of the Term if the Operator had fulfilled all of its obligations thereunder, over and above (ii) the discounted present value, at a discount rate that will be specified in the Lease Agreement, of rent and other charges that would be received by the Authority if the Service Areas were re-let at the time of such notice for the remainder of the Term at the fair rental value thereof at the time of such notice.

SECTION 16 – INDEMNIFICATION

Operator Indemnification Obligations

To the fullest extent permitted by law, the Operator shall indemnify, defend and hold harmless the Authority and the State, and each of their respective elected officials, members, appointed officers, directors, commissioners, employees, representatives, agents and contractors ("Authority Indemnitees" and "State Indemnitees," respectively, and, collectively "Collective Indemnitees"), from and against (and pay the full amount of) any and all Loss-and-Expense (defined below) that any Collective Indemnitee may sustain in connection with any claim made by one or more third parties (including claims for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any Collective Indemnitee, arising by reason of (or alleged to result from or in connection with) any:

- (1) Breach by the Operator of any of its obligations under the Lease Agreement;
- (2) Breach of any representation or warranty made by the Operator under the Lease Agreement;
- (3) Any act or omission of the Operator or any director, officer, employee, contractor, subcontractor, agent, subtenant, licensee or permittee of the Operator or of any of their respective directors, officers, employees, contractors, subcontractors, agents, subtenants, licensees or permittees, whether or not any such act or omission constitutes negligence, willful misconduct or any other type of tortious conduct;
- (4) Any act or omission of any other person on or about the Service Areas, including, but not limited to, members of the public, truckers or any other persons whether or not such act or omission constitutes negligence, willful misconduct or any other type of tortious conduct;
- (5) ~~Negligent~~Any act or omission of the Operator or any director, officer, employee, contractor,

subcontractor, agent, subtenant, licensee or permittee of the Operator or of any of their respective directors, officers, employees, contractors, subcontractors, agents, subtenants, licensees or permittees, whether or not any such act or omission constitutes negligence, willful misconduct or any other type of tortious conduct; ~~Any act or omission of any other person on or about the Service Areas, including, but not limited to, members of the public, truckers or any other persons, whether or not such act or omission constitutes negligence, willful misconduct or any other type of tortious conduct.~~

- (5) Non-compliance by the Operator or any director, officer, employee, subcontractor or agent of the Operator with any governmental approval or Applicable Law (including, without limitation, any environmental approvals or regulatory requirements);
- (6) Labor disputes among employees of the Operator or its subcontractors;
- (7) Subcontractor claims;
- (8) Intellectual Property claims arising out of any act or omission of the Operator or of any of its subcontractors or of any party performing Contract Services in connection with the Lease Agreement;
- (9) Claims of harassment arising from the conduct of the Operator or any director, officer, employee, subcontractor or agent of the Operator;
- (10) ~~The~~Subject to Section 1 (Hazardous/Regulated Substances) above, the presence on, under or about the Service Areas, and migration to or from the Service Areas of any hazardous waste, substance or other regulated materials; or
- (11) Any other act, event, condition or circumstance existing or occurring on or about the Service Areas or relating to the Lease Agreement, the Service Areas, their condition or operation or the Operator or its affiliates.

The Operator shall not, however, be required to reimburse or indemnify any Collective Indemnitee for any Loss-and-Expense to the extent resulting from the willful misconduct or the negligence of any Collective Indemnitee or any other matter expressly excluded under the Lease Agreement. The Operator's indemnity obligations shall not be limited by any coverage exclusions or other provisions in any policy of required insurance or other insurance maintained by the Operator which is intended to respond to such events. Notwithstanding the foregoing, the Collective Indemnitees' right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the Collective Indemnitees.

Loss-and-Expense

"Loss-and-Expense" means and is limited to any and all actual losses, liabilities, forfeitures, obligations, damages, fines, penalties, judgments, deposits, taxes, charges, costs or expenses, including all Fees and Costs (defined below), except as explicitly excluded or limited under any provision of the Lease Agreement, relating to third party claims for which the Operator is obligated to indemnify the Collective Indemnitees pursuant to the Lease Agreement.

Fees and Costs

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any legal proceeding.

SECTION 17 – MISCELLANEOUS PROVISIONS

Cooperation

The Operator acknowledges that it will be using the Food/Fuel Facilities in common with the fuel service operators and other parties and will reasonably cooperate with such parties to assure the proper function of the Food/Fuel Facilities operations and a seamless appearance in such operations to persons utilizing the Food/Fuel Facilities.

Consents and Approvals

Whenever any consent, approval, acceptance or determination by the Authority is required under the Lease Agreement, such consent, approval, acceptance or determination ~~may be~~ shall not be unreasonably withheld, conditioned, granted or made by the Authority in its sole and absolute discretion or delayed, except where ~~expressly provided otherwise in~~ the Authority has the right to act in its “discretion” by the express terms of the Lease Agreement. When the Authority has “discretion,” it means that the Authority has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of the Lease Agreement.

Independent Contractor

The Operator is and shall be, in all respects, an independent contractor in performing services pursuant to the Lease Agreement. In accordance with its status as an independent contractor, the Operator shall covenant and agree that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority, and that neither the Operator nor its agents and employees shall make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

Personnel, Equipment and Supplies

The Operator shall provide all resources, personnel, equipment and supplies necessary to perform services pursuant to the Lease Agreement. If in order to provide such services the Operator must make an external connection to the Authority's data communications infrastructure and/or access Authority information systems, the Operator shall in all respects comply with all Authority policies, procedures, and requirements regarding such connections and information systems access, including, but not limited to, Appendix D (Network Connection Requirements), attached hereto, and undertake whatever actions are necessary in the discretion of the Authority to ensure such compliance. The Operator shall be responsible for all costs associated with ensuring that its own network security measures comply with all Authority policies, procedures, and requirements regarding external connections.

Ethics

During the Term, the Operator shall not engage any person who is, or has been at any time, in the employ of the Authority or the State to perform services under the Lease Agreement in violation of: the provisions of the Public Officers Law (“POL”); the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics (“JCOPE Regulations”); and any other laws applicable to the service of current or former Authority or State employees (“Other Laws,” and, together with POL and JCOPE Regulations, collectively, the “Ethics Provisions”). The Operator certifies that all of its employees who are former employees of the Authority or the State and who are assigned to perform services under the Lease Agreement shall be

assigned in accordance with all Ethics Provisions. Further, during the Term, no person who is employed by the Operator and who is disqualified from providing services under the Lease Agreement pursuant to any Ethics Provisions may share in any net revenues the Operator derives from the Lease Agreement.

The Operator shall identify and provide the Authority with notice of those Operator employees who are former employees of the Authority or the State and who will be assigned to perform services under the Lease Agreement. The Authority may, request that the Operator provide it with whatever information the Authority deems appropriate about each such person's engagement, work cooperatively with the Authority to solicit advice from the Joint Commission on Public Ethics, and, if deemed appropriate by the Authority, instruct any such person to seek the opinion of the Joint Commission on Public Ethics. The Authority shall have the right to cancel or terminate the Lease Agreement at any time if any work performed under the Lease Agreement is in conflict with any Ethics Provisions.

Confidentiality and Non-Disclosure

"Confidential Information" means any information not generally known to the public, or that the Authority claims is confidential, whether oral, written, or electronic, that the Authority discloses, directly or indirectly, through any means of communication, to the Operator. Confidential Information includes, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information and data; business and security processes and procedures; personnel and organizational data; financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Authority deems confidential.

Confidential Information does not include information which, at the time of the Authority's disclosure to the Operator: (1) is already in the public domain or becomes publicly known through no act of the Operator; ~~or~~ (2) is already known by the Operator free of any confidentiality obligations; or (3) is independently developed by the Operator without reference to Confidential Information.

If the Operator wants to disclose Confidential Information, it shall notify the Authority and specify the Confidential Information it wants to disclose. The Operator may only disclose such Confidential Information if the Authority approves such disclosure in writing, subject to such other terms and conditions as the Authority may require. Such approval, if given, shall only apply to the particular request and the specific Confidential Information for which it is given.

If the Operator is required to disclose or make available, directly or indirectly, Confidential Information pursuant to statute, court or administrative order, subpoena, contractual obligation, or otherwise by law, the Operator shall: (1) notify the Authority that it has received such legal demand as soon as practicable, but in all events prior to any disclosure, to the extent legally permissible; (2) permit the Authority to take the steps it deems necessary and appropriate to protect the Confidential Information from disclosure; (3) cooperate to the fullest extent possible under the law with the Authority's efforts to protect the Confidential Information from disclosure; and (4) disclose only such Confidential Information, and only such portions thereof, as is required to satisfy the legal demand, and limit any such disclosure of Confidential Information to the fullest extent permissible under the law.

The Operator may use Confidential Information solely for the purposes of providing services to the Authority pursuant to the Lease Agreement. The Operator may make copies of Confidential Information but only to the extent necessary for the disclosures and uses permitted by the Lease Agreement. The Operator will make commercially reasonable efforts to ensure that any copy of

Confidential Information that is made is marked to show that it is or contains Confidential Information. The Operator may share Confidential Information with third parties: (i) that are required for the Operator's provision of services to the Authority pursuant to the Lease Agreement (e.g., [potential sources of private financing](#), consultants and subcontractors); and (ii) that agree in writing to be bound by the confidentiality provisions of the Lease Agreement; however, the Operator may share only that Confidential Information that is necessary to the third party's contribution to the Operator's provision of services to the Authority pursuant to the Lease Agreement ~~and the Operator must first obtain the Authority's prior written consent.~~

The Authority's disclosure of Confidential Information to the Operator shall not convey to the Operator any right, title, or interest in or to such Confidential Information, and the Lease Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Authority shall retain all right, title, and interest in and to all such Confidential Information at all times.

The Operator shall hold Confidential Information confidential to the maximum extent permitted by law. The Operator shall safeguard Confidential Information with at least the same level of care and security that the Operator uses to maintain and protect from disclosure its own confidential information, using all reasonable and necessary security measures, devices, and procedures that the Operator uses to maintain its own confidential information, but in all events with not less than reasonable care.

The Operator shall take reasonable steps to prevent unauthorized access to, use of, or disclosure of Confidential Information, including without limitation, by protecting its passwords and other log-in information. The Operator shall notify the Authority immediately of any known or suspected misuse or misappropriation of Confidential Information and shall use its best efforts to stop said misuse or misappropriation.

Upon written request of the Authority, or upon expiration or termination of the Lease Agreement, the Operator shall return all Confidential Information to the Authority, or certify in writing that it has been destroyed and no copies exist; [provided that the Operator may retain \(i\) Confidential Information that is retained in magnetic or electronic back-up storage archives in accordance with customary records retention procedures, and \(ii\) Confidential Information that must be retained under Applicable Law, regulation or professional code of conduct, including, as required by court or tribunal of competent jurisdiction, stock exchange regulation or governmental order, decree or rule, provided, in each case, that any such Confidential Information shall remain subject to the confidentiality obligations of the Lease Agreement for as long as it is retained.](#)

The Operator agrees that breach of the preceding requirements would cause the Authority irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Authority will be entitled to injunctive relief against such breach or threatened breach, without proving actual damages or posting a bond or other security.

Without limiting the foregoing, the obligations and assurances involving Confidential Information pursuant to the Lease Agreement shall survive termination or expiration of the Lease Agreement.

Trademark License Rights

As a service to Thruway travelers and the general public, the Authority distributes helpful and relevant information through Authority websites and online platforms, mobile apps, social media, and through other means or technological formats by promoting, advertising, and identifying the businesses, services, and options available at the Food/Fuel Facilities and Tourist Information

Centers. The Authority has an interest in widely disseminating this information in ways that are approachable, effective, and readily identifiable to the public.

As part of these efforts, the Authority may require the right to use and display certain pre-approved logos, branding elements, or service or trademarks (the “Marks”) related to the food or fuel services or concepts in a manner, media, and form to be pre-approved by the Operator or licensor of said rights. The Operator will be required to procure or grant all licenses necessary to assure the Authority that it has been granted the necessary rights to use and display the Marks for these purposes. The Operator should expect a formal license agreement will be required for the granting of said rights as part of, or in connection with, any Lease Agreement between the Operator and the Authority. Such license agreement may also require the granting of said rights to permit the display of the Marks on signs along the Thruway (both outside and inside of Service Areas) advertising upcoming services available at the Service Areas.

New York State Finance Law §§ 139-j and 139-k Certification

By execution of the Lease Agreement, the Operator will certify that all information the Operator has provided to the Authority with respect to New York State Finance Law §§ 139-j and 139-k is complete, true and accurate. If the Authority finds that the certification made by the Operator in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete, the Authority may terminate the Lease Agreement for default immediately without opportunity to cure.

Iran Divestment Act- Section 2879-c of the Public Authorities Law

As used below, “person” has the meaning set forth in paragraph (e) of subdivision 1 of Section 165-a of the State Finance Law. As used below “Contract” means the Lease Agreement.

The Operator will provide the following certification:

By signing the Lease Agreement, 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 Section 165-a of the State Finance Law.

New York State Finance Law § 139-1

By submission of a proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that the Proposer has and has implemented a written policy addressing sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the State Labor Law.

New York State Human Rights Law, Article 15 of the Executive Law

The New York State Human Rights Law, Article 15 of the State Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The State Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job

or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The State Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the State Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Operator will certify, by signing the Lease Agreement, that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the State Human Rights Law.

Executive Order No. 177 and the aforementioned certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution; Article 1, Section 3 of the State Constitution; and Section 296(11) of the State Human Rights Law.

General Responsibility Provisions

The Operator shall at all times during the Term remain responsible. The Operator agrees if requested by the Executive Director of the Authority, or his or her designee, to present evidence of its/his/her continuing legal authority to do business in the State and integrity, experience, ability, prior performance, and organizational and financial capacity.

SECTION 18 – TERMINATION FOR CONVENIENCE

Authority Right

The Authority may, in its discretion and for its convenience, terminate the Lease Agreement at any time on or before the expiration of the Term (a “Termination for Convenience”). In the event of any Termination for Convenience, the Authority shall pay the Operator the Convenience Termination Amount (defined below). The right of the Authority to terminate the Lease Agreement for its convenience and in its discretion will constitute an essential part of the overall consideration for the Lease Agreement, and, without limiting any right of the Operator in respect of its entitlement to the Convenience Termination Amount, the Operator waives and covenants not to assert any right it may have under Applicable Law to claim that the Authority owes the Operator any duty of good faith or fair dealing in the exercise of such right.

Convenience Termination Amount

In the event the Lease Agreement is terminated upon a Termination for Convenience, the Authority will pay to the Operator a “Convenience Termination Amount” equal to the aggregate, without

duplication, of each of the following:

- (1) The aggregate of all amounts then due and payable as of the termination date by the Operator for Eligible Project Debt, to be defined in the Lease Agreement; plus
- (2) A reasonable amount as of the termination date equal to the Operator's Eligible Return and Profit, to be defined in the Lease Agreement; plus
- (3) Any accrued but unpaid amounts owing and payable by the Authority to the Operator under the Lease Agreement; plus
- (4) All reasonable costs of the Operator associated with: (A) the demobilization of the construction work for any pending Initial Improvements as a result of the termination of the Lease Agreement, ~~which amount~~ and (B) the demobilization of the Operator's other work under the Lease Agreement (including payment of not more than one month's salary to employees of the Operator, provided any such payments must be reasonable and in accord with standard industry practice) as a result of the termination of the Lease Agreements. The amounts set forth in (A) and (B) shall not include any overhead or profit of the Operator; plus
- (5) Certain reasonable amounts payable by the Operator to a subcontractor under the terms of a subcontract as a direct result of the termination of the Lease Agreement, which amount shall not include any overhead or profit of the Operator, to be defined in the Lease Agreement;

less, the aggregate, without duplication, of each of the following:

- (6) All liquidated damages payable by the Operator pursuant to the Lease Agreement that have accrued but are unpaid amounts owing and payable by the Operator to the Authority under the Lease Agreement; plus
- (7) Rent and any other amounts due and owing to the Authority from the Operator pursuant to the Lease Agreement.

Termination Date and Convenience Termination Amount Disputes

The effective date of any Termination for Convenience shall be the date specified in the Authority's written notice of termination which shall be no less than 30 days after the date on which such termination notice is given to the Operator. It shall not be a condition to the termination of the Lease Agreement that the Authority shall have paid the Convenience Termination Amount; provided, that, the Operator's right to payment of the Convenience Termination Amount shall survive termination of the Lease Agreement.

SECTION 19 – DISPUTE RESOLUTION PROCEDURES

Informal Negotiations

Representatives of the Authority and the Operator with day-to-day involvement in the administration of the Lease Agreement and the performance of the Contract Services shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning the Lease Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper

management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Lease Agreement. At the Authority's request, the Operator shall involve senior representatives of any of its subcontractors in such negotiations. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted and such party may request non-binding mediation or request an Authority Contract Representative's Final Decision (defined below) in accordance with this Section.

Authority Contract Representative's Final Decision

If a dispute has not been resolved through direct, informal negotiations as provided above in this Section, then, upon the written request of the Operator, the Authority Contract Representative (who will be an individual or individuals appointed to act as the representative of the Authority under the Lease Agreement) or his or her designee (other than any personnel assigned to the administration of the Lease Agreement) shall review the dispute and issue his or her determination of the dispute (the "Authority Contract Representative's Final Decision"). The Authority Contract Representative's Final Decision shall be issued in writing within 90 days following the date of the request for review. If the Operator disagrees with the Authority Contract Representative's Final Decision, or if the Authority Contract Representative fails to issue an Authority Contract Representative's Final Decision within such 90-day period, then the Operator shall have the right to initiate legal proceedings concerning the dispute, subject to Section 15 of Appendix A. If the Operator fails to initiate legal proceedings concerning the dispute within 60 days following the earlier to occur of the issuance of the Authority Contract Representative's Final Decision or the expiration of the 90-day period specified above in this subsection, then the Operator shall:

- (1) Be deemed to have accepted the Authority Contract Representative's Final Decision;
- (2) Shall have waived its rights to any further relief for the matters covered by such Authority Contract Representative's Final Decision; and
- (3) Shall have waived its rights to initiate legal proceedings and in accordance with the Lease Agreement for the matters in dispute between the parties.

Rights to Request and Decline Non-Binding Mediation

Subject to the informal negotiation requirements of this Section set forth above, either party may request non-binding mediation of any dispute arising under the Lease Agreement, whether technical or otherwise. Non-binding mediation is voluntary and will not be a condition precedent to initiating the institution of legal proceedings by either party. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this subsection shall apply. The costs of such non-binding mediation shall be divided equally between the Authority and the Operator.

The mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

Mediation is intended to assist the parties in resolving disputes over the correct interpretation of the Lease Agreement. No mediator shall be empowered to render a binding decision.

Relation to Judicial Legal Proceedings

Except as provided above in this Section with respect to the Authority Contract Representative's Final Decision, nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Section to commence judicial legal proceedings upon a breach of the Lease Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.

Continuance of Performance During Dispute

Unless otherwise directed in writing by the Authority, at all times during the course of any dispute resolution procedure or legal proceeding, the Operator shall continue with the performance of the Contract Services in a diligent manner and in accordance with the applicable provisions of the Lease Agreement as interpreted by the Authority. The Operator shall continue to satisfy its payment obligations to the Authority during the pendency of any such dispute, subject to the terms and conditions of the Lease Agreement. Records of the Contract Services performed during such time shall be kept in accordance with the applicable provisions of the Lease Agreement.

