

**New York State Thruway Authority
RFP #18C15
Design, Construction, Financing, Operation
and Maintenance of 27 Service Areas
on the New York State Thruway**

**Authority Responses to Written Questions
March 28, 2019**

On October 15, 2018, the New York State Thruway Authority (“Authority”) issued a Request for Proposals #18C15 for Design, Construction, Financing, Operation and Maintenance of 27 Service Areas on the New York State Thruway, which was 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 (“RFP”). Pursuant to the RFP, all prospective Proposers were given an opportunity to submit written questions concerning this RFP to the Authority by April 11, 2019. Potential Proposers were also given an opportunity to address additional questions at the Pre-Proposal Conference held on November 13, 2018.

The Authority received the following questions between the dates of January 29, 2019 and February 26, 2019, and submits the following responses in accordance with Section 1.2 of the RFP.

Q1: I’m wondering if we are able to propose a mystery shopping program for measuring the customer experience as a stand-alone service in this case, or if we need to contact the other ‘proposers’ to include us in their responses to the RFP?

A1: Please refer to RFP Section 2.2.1 for the scope of required services and Section 3.1 for Content of the Proposals. Proposers must provide all required information noted in the RFP and must be prepared to provide all required services in order to be considered responsive.

Q2: We would like to joint venture with any interested design team as we are capable to construct, finance, operation and maintenance. Can you advise us if anyone is interested please.

A2: It is not possible for the Authority to do this. However, the Authority issued the list of attendees at the Pre-Proposal Conference on November 20, 2018 and the list of parties who responded to the Request for Expressions of Interest on December 21, 2018. Both are available on the Authority’s Service Area RFP webpage at: <https://www.thruway.ny.gov/external/service-area-rfp/index.html>.

Q3: Are land surveys available for each of the sites?

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- A3: Land surveys for each of the Service Areas are not available.**
- Q4: Are building plans available for each of the sites? If so, are they in CAD format?
- A4: A set of as-built drawings for each of the 27 Service Areas can be found on the Authority's Service Area RFP webpage at: <https://www.thruway.ny.gov/external/service-area-rfp/index.html>. They are not in CAD format.**
- Q5: Are there environmental site assessments and/or HBMI reports available for each of the sites?
- A5: Please see the reports of asbestos and PCB inspection posted on the Authority's Service Area RFP webpage at: <https://www.thruway.ny.gov/external/service-area-rfp/index.html>. The reports of asbestos and PCB Inspection were issued for previous upgrade projects undertaken at specific Service Areas, in accordance with all applicable regulations. These reports are the only reports currently available for the 27 Service Areas.**
- Q6: What should potential future operators assume will happen with all of the equipment and improvements for each plaza at commencement of the contract? Said another way, if we are the successful bidder and takeover 16 plazas on January 1, 2020, do we obtain all of the equipment and improvements from the current operator? Will there be any monetary consideration for this equipment and improvements?
- A6: Ownership of the improvements and equipment at the Service Areas is governed by the Authority's agreements with its current operators. Improvements and fixtures are owned by the Authority and will be part of the Service Areas that are made available to the new Operator under the Lease Agreement. No monetary consideration in addition to the financial consideration required by the Legal Appendices will be required for this property that is part of the Service Areas. Items that were purchased by the current operators not affixed to the premises are their personal property, subject to certain contractual exceptions, and will be removed at the expiration of the current agreements. Items classified as Reinvestment Capital Expenditures under the current agreements are not the personal property of the operators. Branded fixtures of the operators or any of their approved subcontractors are not classified as Reinvestment Capital Expenditures and are the personal property of the current operators.**

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Examples of the personal property of the current operators are: cash registers, computer equipment, security cameras and DVR's, removable storage shelving, small kitchen equipment, including utensils, containers, employee uniforms, moveable tables, cabinets, snow blowers, floor machines, pressure washers, cleaning supplies, small, moveable refrigerators/freezers, and trademarked company equipment.

Q7: What is the expectation for bathrooms, food service and retail during the construction period at each of the plazas? Are we expected to provide alternative facilities during construction? If so, please elaborate.

A7: Please see RFP Appendix B, Section 4, "Continuous Operations and Access to Fueling Services" for a description of the Operator's operation and maintenance responsibilities during the Redevelopment Period and RFP Appendix B, Section 4, "Construction Commencement" for Operator's obligation to 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.

Q8: Are resumes for the key personnel and management team included in the page limitation?

A8: No, resumes are not included in the 75 page limit. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

Q9: Please confirm gross sales numbers are pure sales values, i.e. exclude food and beverage taxes, etc.

A9: Please see RFP Appendix B, Section 10, "Operational Rent" for the definition of "Gross Sales," which excludes retail sales tax.

Q10: Key Performance Indicators: There is a reference that initial KPIs will be provided by the Authority. When will this be made available?

A10: The Authority is preparing Performance Standards that will be included in an Addendum to the RFP, which is expected to be issued on or before April 3, 2019.

Q11: Can you advise what the annual cost to the Authority was for snow removal associated with the lease areas for the past 5 years

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A11: Authority employees and equipment used to perform snow plowing operations at the Service Areas also perform those duties in various locations across the Thruway system. Accordingly, it is not possible to obtain accurate information that would be fully representative of true costs associated with snow plowing operations of the Service Areas. The Authority will be performing deicing and snow removal from all roadways and parking lots in the leased space at the Service Areas, including entrance and exit roadways to and from each Service Area. Please see Addendum No. 8 being issued concurrently with these Authority Responses for revised Appendix B, Section 6, "Maintenance and Repair of the Grounds of the Service Area."

Q12: Can you confirm that all sales figures issues are exclusive of sales tax?

A12: Please see Answer A9.

Q13: Is there a way to obtain each of the plaza counts for 2018.

A13: The Authority does not have complete data for 2018. In March of 2018, the Authority installed a new people counter system at the Service Areas. Due to issues with the software installation, data was not collected for certain months at the Service Areas. Prior to 2018, people counter information was collected manually and put into spreadsheets. However, due to several factors, there were gaps in the information collected.

Q14: We have a people counter at all of our plazas and they are read daily. Do you know where to get that info?

A14: Please see Answer A13.

Q15: If changes to the facilities leave additional space not used for concessions, what is the Authority's plan for that space/those spaces?

A15: Please see RFP Exhibit 6, Service Area Responsibility Maps, for the Operator's leased space. The Operator must decide how additional space not used for concessions will be utilized. Authority approval will be required prior to implementation.

Q16: Would the Authority kindly release the daily data for each of the 27 plazas that it records daily? This will aide in developing the proportionate business concept for each location and tailoring it to the guests needs which fulfills the scope of the Authority's project.

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A16: Please see Answer A13.

Q17: Please define the square footage for the current F&B spaces in each location.

**A17: The revenue generating square footage for the food and beverage spaces in each Service Area are not available. The total square footage of the Service Areas can be found in the files on the Authority's Service Area RFP webpage at:
<https://www.thruway.ny.gov/external/service-area-rfp/index.html>.**

Q18: May confidential financial material be emailed directly to the members of the review committee in lieu of printed copies?

A18: This may not be done. As set forth in RFP Section 3.1, Content of Proposal, financial material must be submitted in separate envelopes; however, it can be marked confidential.

Q19: Please confirm the required CAM Staffing outlined in Section 5 of the Draft Lease Agreement applies to both (i) prior to the commencement of the Initial Improvements and (ii) following the completion of the Initial Improvements.

A19: The CAM staffing required by Appendix B, Section 5 applies both before the Initial Improvements have been constructed and after they have been completed. It does not apply during construction.

Q20: In lieu of the NYSTA providing historical utility costs for the Sites and with a view to ensuring fairness in the NYSTA's procurement process, please consider requiring proponents to exclude from their bid all utility costs prior to the commencement of a Site's Initial Improvements for the purpose of NYSTA's evaluation of RFP responses.

A20: Such a change will not be made. The Operator will be responsible for all utility costs from the Effective Date of the Lease Agreement.

Q21: Please provide historical facility management costs for the existing Service Areas.

A21: The Authority does not have these costs as management of the Service Areas is the responsibility of the current operators.

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Q22: Please provide information (including associated costs) on the existing scope of snow removal services being undertaken across the Service Areas. Information on the existing equipment, cost of services, and span of responsibility will support a more realistic proposal from all bidders.

A22: Please see Answer A11.

Q23: Please confirm whether or not the NYSTA may be agreeable to providing snow removal services to the Operator both (i) prior to the commencement of the Initial Improvements and (ii) following the completion of the Initial Improvements. In addition and in each case where the NYSTA may be agreeable to provide such service, please provide bidders with guidance on associated pricing information so that bidders may consider the same when developing their proposals.

A23: Please see Answer A11.

Q24: Please provide guidance to all bidders to ensure fairness in the procurement process related to the pricing of facility management and lifecycle works, noting that the Draft Lease Agreement excludes relevant details regarding: (i) Key Performance Indicators and performance standards; (ii) the proposed regime related to Non-Compliance Events; and (iii) Handback Requirements.

A24: Please see Answer A10. Please also refer to RFP Appendix F, Design Codes and Manuals, and Appendix G, Architectural Codes and Standards, for more information relative to building and life cycle requirements. Detailed Handback Requirements will be negotiated with the Successful Proposer based on the expectation that the Operator will have performed all of its maintenance services in accordance with the Lease Agreement.

Q25: 2.1 Background

“Fuel services on the Thruway are excluded from the scope of the Contract Services requested by this RFP. Fuel services on the Thruway will be provided under separate contracts of the Authority in the sole discretion of the Authority; at the existing fuel service locations adjacent to the current Service Areas, or otherwise.”

Appendix B, Section 4. Hazardous/Regulated Substances

“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”

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Appendix to the RFP, the Authority will be responsible for unknown Regulated Site Conditions that exist prior to the commencement of the Term.”

With respect to fuel operations where the Authority has a direct contract with these parties, can the Authority please confirm if there will be any relief for the Operator as a result of damages caused by or arising out of contaminants manifesting from fuel operators?

A25: Please see RFP Appendix B, Section 1, “Hazardous/Regulated Substances,” in Addendum No. 8 being issued concurrently with these Authority Responses. Also, the Authority is not aware of any prohibition pertaining to the Operator seeking damages from fuel operators.

Q26: Appendix B – Section 1, Page 1 - Nature of Lease Agreement

Given that the real property is required by law to be held in the name of the State of New York, please confirm that it is expected that the Project will be exempt from all property taxes (including on any improvements, special ad valorem levies and special assessments) pursuant to Section 404 of the NY Real Property Tax Law.

A26: The Authority’s exemption from taxation is set forth in, and governed by, Public Authorities Law Section 371. This exemption has been in place since the New York State Thruway Authority was established, and has not been altered. Further, 1953 Opn. Atty. Gen.203 and 1954 Opn. Att. Gen. 233 have found that State-owned lands used for restaurants on the Thruway are exempt from assessments for local improvements.

Q27: Appendix B - Section 3, Page 7 - Transition Period

What is the Authority’s general expectations with respect to the breadth and scope of the Transition Plan?

How does the Authority envision the Transition Period working and the Transition Plan being implemented in regards to the existing concessionaires?

A27: Please refer to RFP Appendix B, Section 3, Transition Period. The Authority anticipates a smooth transition with as limited a disruption to its customers as possible. Per RFP Section 2.2.1.D, Required Services, Transition Plan, the Proposer must submit a plan that is acceptable to the Authority.

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Q28: Appendix B - Section 4, Page 9 - Construction Commencement

Please confirm that the retainage requirement in NY State Finance Law Section 139(f) (1) does not apply to any construction contract entered into by Operator.

A28: The Lease Agreement is for a public work, and the Authority is subject to the requirements of NY State Finance Law Section 139-f. To the extent that the Lease Agreement does not contemplate payment by the Authority for the Initial Improvements, or otherwise, retainage requirements will not apply. However, it is not possible to account for every scenario that may arise, and Proposers should consult their legal advisors on this issue.

Q29: Within Section 3.1.2 – Technical Proposal – F. Statement of Qualifications, questions 4 & 5 seem to be requiring the same information. Are we correct to assume that by supplying the Client list with appropriate contact information as outlined in #4, we are also answering the requirement in #5?

A29: If the references furnished by a Proposer in response to question 5 are the same as some of the individuals responsible at the client organization for the supervision of the Proposer’s services identified by a Proposer as part of the client list furnished in response to question 4, that is acceptable; however, Proposers should respond to questions 4 and 5 separately.

Q30: Appendix B - Section 12, Page 24-31

Proposed Change

“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.

Reason for Proposed Change

Will the Authority please confirm if property insurance will be required with respect to the 11 Group 2 Service Areas operated by McDonalds until December 31, 2022?

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A30: McDonald's is required to maintain such insurance pursuant to the current operating agreement until December 31, 2022. The Operator will be required to provide such insurance on and after the Group 2 Commencement Date.

Q31: Appendix B - Section 12, Page 24-31

Proposed Change

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.

Reason for Proposed Change

Please confirm this policy is not required to cover the environmental hazards of fuel-related contaminants which are handled by an Authority contractor.

A31: The policy is being required to cover the responsibilities borne by the Operator and its contractors under the Lease Agreement. It is not being required to cover the Authority or its contractors. Please see Addendum No. 8 being issued with these Authority Responses for the latest version of Appendix B, Section 4, "Hazardous/Regulated Substances."

*******End of Questions*******

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EXCEPTIONS

KEY:

E = Exception

R = Response

E1: Appendix B

Safety and Security, Operational Plan, Quality Management Plan, Project Management Plan: A delay in review of these plans by NY Thruway can impact the Operator's redevelopment schedule, and ultimately revenue. For each of these plans, please include (1) an obligation that "such approval, shall not be unreasonably withheld" and (2) specific time periods for review and approval.

R1: RFP Appendix B, Section 1, has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E2: Appendix B

Project Management Plan: A delay in approval of construction commencement on each service plaza by NY Thruway can impact the Operator's redevelopment schedule, and ultimately revenue. Please include an obligation that "such approval, shall not be unreasonably withheld." Please confirm that a clear conditions precedents to construction commencement that can be relied on by both parties will be included in the lease agreement.

R2: RFP Appendix B, Section 1, and Section 4, "Delay Liquidated Damages," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses. Clear conditions precedent to construction commencement that can be relied on by both parties will also be included in the Lease Agreement.

E3: Appendix B

Refinancing: Please eliminate this provision. The initial debt and any refinancings are the obligation of the Operator, and therefore, it is inappropriate for this to be shared with NY Thruway. As an alternate, please limit any refinancing gain sharing to only amounts that exceed the

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assumptions in the Operators base case. Either of the above noted approaches are much more in line with precedents.

R3: RFP Exhibit B, Section 2, “Refinancing,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E4: Appendix B

Construction Permits: Please include an obligation of NY Thruway to reasonable assist in facilitation of 3rd party permits, and to assist in permit applications where the NY Thruway is the permitting authority

R4: RFP Exhibit B, Section 2, “Construction Permits,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E5: Appendix B

Plans, Specifications and As-Builts: In order to finance the project, there needs to be standards around changes requested by NY Thruway. Please include a provision that any changes to the plans requested by the NY Thruway, that are not changes required to comply with law or the lease agreement technical specification, will constitute a change order, for which NY Thruway will compensate the Operator.

R5: RFP Appendix B, Section 4, “Plans, Specifications and As-Builts,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E6: Appendix B

Hazardous Regulated Substances: Please clarify that NY Thruway will be the ‘generator’ and ‘arranger’ of any pre-existing environmental conditions and cultural resources – this is essential for the financing of the project.

R6: Please see RFP Appendix B, Section 1, “Hazardous/Regulated Substances,” in Addendum No. 8 being issued concurrently with these Authority Responses.

E7: Appendix B

Design & Construction Oversight: The right for the Authority to suspend construction, without cause, is not financeable, as this will have an impact

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to revenue necessary for servicing debt financing. Please adjust this such that any suspension, without cause, will result in compensation due to the Operator from the Authority. For suspension due to cause, please specify what would constitute cause, i.e. violation of applicable law or the material requirements of the lease agreement, after expiration of the applicable cure period.

R7: RFP Exhibit B, Section 4, “Design and Construction Oversight,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E8: Appendix B

Common Area Maintenance Staffing: Please eliminate the minimum staffing requirement at each plaza – bidders should have flexibility to optimize the staffing across the portfolio of assets to minimum performance standards.

R8: This change will not be made.

E9: Appendix B

Reservation of Authority Rights: Please delete the requirement to require Operator to provide the services (1) – (4); as opposed to making space available. There is a cost associated with this that cannot be budgeted at this time, and should be compensated by NY Thruway.

R9: RFP Exhibit B, Section 4, “Reservation of Authority Rights,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E10: Appendix B

The Handback Reserve is duplicative of the Renewal and Replacement Reserve Account. Please provide that the funds in the Renewal Account will be transferred to the Handback Reserve at the beginning of the Handback Period.

R10: The Authority has clarified the relationship between the Handback Reserve Account under RFP Appendix B, Section 8, “Handback Reserve,” and the Renewal and Replacement Reserve Account under RFP Appendix B, Section 6, “Renewal and Replacement Reserve Account.” Please see Addendum No. 8 being issued concurrently with these Authority Responses.

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E11: Appendix B

Given the capital investment by the Operator, please provide for a mutually acceptable proposal to extend the lease term, for up to 10 years.

R11: This change will not be made.

E12: Appendix B

Please provide an explicit clause that the project will remain exempt from property taxes, and the Authority will indemnify the Operator for any incurrence of property taxes

R12: This change will not be made. However, please note that the Authority's exemption from taxation set forth in Public Authorities Law Section 371. has been in place since the New York State Thruway Authority was established, and has not been altered. Further, 1953 Opn. Atty. Gen.203 and 1954 Opn. Att. Gen. 233 have found that State-owned lands used for restaurants on the Thruway are exempt from assessments for local improvements.

E13: Appendix A – Section 1.1, Page 1

Proposed Change

Non-Assignment Clause

Please revise the non-assignment clause to expressly allow the Contractor to grant a security interest in the Contractor's right, title and interest in and to the contract to a collateral agent in connection with the financing of the improvements.

Reason for Proposed Change

Appendix B, Section 2, expressly contemplates that the Operator will finance the Initial Improvements and may grant a leasehold mortgage to leasehold mortgagees.

R13: RFP Appendix A, Section 1, "Non-Assignment Clause," and RFP Appendix B, Section 1, "Assignments," have been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

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E14: Appendix A – Section 14, Page 3

Proposed Change

Late Payment

Delete section in its entirety.

Reason for Proposed Change

Conflicts with Appendix B, Section 10 (Interest for Late Payment).

R14: This change will not be made. Please note: RFP Appendix A, Section 14, “Late Payment,” relates to late payments by the Authority, and RFP Appendix B, Section 10, “Interest for Late Payment,” relates to late payments by the Operator.

E15: Appendix A – Section 15, Page 3

Proposed Change

No Arbitration

If a dispute arises under the Lease Agreement, it is the intention of the parties to make a good faith effort to resolve any such dispute (a “Dispute”) according to the procedures set forth in this Section. Upon written notice from either party of a Dispute, which notice shall provide a reasonable description of such Disputed item, specifying the estimated amount thereof in Dispute, if applicable, and setting forth, in reasonable detail, the basis for such Dispute, each of the Operator and the Authority shall immediately designate one of its executives or representatives (other than the Authority’s Authorized Representative and Operator’s Authorized Representative) and empower that executive with any necessary authority to resolve the Dispute. The designated executives shall promptly begin discussions in an effort to agree upon a resolution of the Dispute. If the executives do not agree upon a resolution of the Dispute within fifteen (15) Business Days of the referral to them (the “Deadlock”), either party may elect to abandon negotiations. If a Dispute cannot be resolved pursuant to the procedures outlined in this paragraph, the parties agree to proceed with such Dispute pursuant to the below procedures.

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If the designated executives are unable to reach an agreement regarding the Dispute within the time specified above, either the Operator or the Authority may make written request within fifteen (15) Business Days to submit the Deadlock to non-binding mediation (the "Mediation"). The Mediation shall be conducted before a single mediator to be agreed upon by the Operator and the Authority. If the Operator and the Authority cannot agree on the mediator, each of the Operator and the Authority shall select a mediator and such mediators shall together unanimously select a neutral mediator who will conduct the mediation. Each of the Operator and the Authority shall bear the fees and expenses of its mediator, and the fees and expenses of the final mediator shall be borne one half by the Authority and one-half by the Operator. The decision of the mediator shall be nonbinding on the Operator and the Authority.

Notwithstanding any other provision of this Lease Agreement and without resort to the remedy prescribed above, any party may institute an action or proceeding in a court of competent jurisdiction of the State of New York with respect to any matter arising under or relating to the Lease Agreement

Reason for Proposed Change

Rather than a requirement that all disputes must be heard in a court of competent of jurisdiction we would suggest a dispute resolution that begins with executive negotiations and is following by non-binding mediation. Such a process is more appropriate for long-term relationships like the one represented by a lease and concession agreement.

R15: Section 15 of RFP Appendix A will not be changed. However, the Authority will include an alternative dispute resolution mechanism in the Lease Agreement. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E16: Appendix B – Section 1, Page 2

Proposed Change

Term of Agreement

Please revise the definition of Effective Date to allow for a split commercial and financial close whereby the Lease Agreement will be entered into and effective on the date that it is signed, but the Operator is required to commence performing the Contract Services on a "commencement date", which is the date on which financial close has been achieved. The

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effective date and the commencement date could in fact be the same day, but the Lease Agreement should allow for them to be different days.

Reason for Proposed Change

The Lease Agreement should provide some flexibility to allow for a split commercial and financial close

R16: The Authority has included flexibility in the Lease Agreement to allow for financial close to follow commercial close. Please see RFP Appendix B Section 1, “Term of Agreement,” in Addendum No. 8 being issued concurrently with these Authority Responses.

E17: Appendix B – Section 1, Page 2

Proposed Change

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 (“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.~~

Reason for Proposed Change

The defined term “Applicable Law” should not include “the applicable policies of the Authority” as they can be unilaterally changed by one party to the Lease Agreement.

R17: RFP Appendix B, Section 1, “Compliance with Applicable Law and Regulations,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E18: Appendix B – Section 1, Page 3

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Condition of the Service Areas

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The Service Areas will be delivered to the Operator in “as is” condition and except with respect to any existing Latent Defect or Differing Site Condition the Authority will make no representation or warranties whatsoever as to ~~title and~~ physical condition of the Service Areas ~~or otherwise~~.

The Authority shall be responsible for costs associated with Latent Defects with respect to existing Service Areas and Differing Site Conditions

Latent Defect means a latent defect that was not identified by the Authority prior to the proposal date or could not have reasonably been discovered by Operator acting in accordance with the Lease Agreement.

Differing Site Condition means (a) subsurface or latent physical conditions that are encountered at a Service Area site and differ materially from the conditions indicated in the Lease Agreement and related technical documents or (b) unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of work provided for in the Lease Agreement; provided in all cases that the Operator did not have actual or constructive knowledge of such conditions as of the proposal date.

Reason for Proposed Change

The Authority would typically provide a representation that it has good, valid, marketable, and sufficient title to the Services Areas in Lease Agreements of this type.

The Authority should also be responsible for any Latent Defect with respect to the Services Areas or Differing Site Condition.

The Authority should retain risks related to geotechnical conditions being different from what was disclosed to the Operator prior to its proposal.

R18: This change will not be made.

E19: Appendix B – Section 1, Page 4

Proposed Change

Assignments

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Please revise the restrictions on assignments to expressly allow the Operator to grant a security interest in the Operator's right, title and interest in and to the contract to a collateral agent in connection with the financing of the improvements.

Reason for Proposed Change

Appendix B, Section 2, expressly contemplates that the Operator will finance the Initial Improvements and may grant a leasehold mortgage to leasehold mortgagees.

Additionally, consistent with market practice, the Operator expects to see a reasonable restriction on a change of control of the Operator with usual and customary carve outs from the limitation. The Operator believes that such a restriction is a material term in the Lease Agreement and should be set forth in the Term Sheet. Please add a market limitation on change of control with usual and customary carve outs.

R19: RFP Appendix B, Section 1, "Assignments and Change in Control," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E20: Appendix B – Section 1, Page 4

Proposed Change

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 program will be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld, conditioned or delayed). Subleases shall not extend beyond the Term of the Lease Agreement

Reason for Proposed Change

In order to give the Operator the ability to manage the Service Areas (including subleasing) without unreasonable oversight is key to the effective and efficient management of the Service Areas and the performance of the Contract Services over the long term.

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R20: This change will not be made.

E21: Appendix B – Section 2, Page 7

Proposed Change

Leasehold Mortgages

There will however be limitations on transfers in connection with, and following, any foreclosure, including requirements that the transferee meet certain specified ~~operating and~~ financial qualifications and that neither it nor any of its members be a “Prohibited Person”.

Reason for Proposed Change

Lenders may not have specific operating experience and financial qualifications should be sufficient to allow the transferee to contract with a qualified operator.

R21: This change will not be made.

E22: Appendix B – Section 2, Page 7

Proposed Change

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)~~ except to the extent the refinancing is specifically ~~identified~~ contemplated as part of the Operator’s proposed plan of financing.

Reason for Proposed Change

The Authority should not determine the amount of a refinancing gain in its sole discretion. It should be a factual determination. Additionally, gains resulting from a refinancing that is contemplated at closing of the initial financing should not be shared as this is not typical in a revenue risk arrangement given that the Authority will not take on additional risk as a result.

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R22: RFP Exhibit B, Section 2, “Refinancing,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E23: Appendix B-Section 4, Page 9

Proposed Change

Construction Commencement

Construction of the Initial Improvements shall commence ~~on the date(s) specified in the Lease Agreement,~~ upon notice to the Authority from the Operator following satisfaction of any specified pre-conditions set forth in the Lease Agreement. 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 Service Area is ~~fully~~ open to the travelling public. 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.

Reason for Proposed Change

Construction should not be tied to specific dates set forth in the Lease Agreement, but should occur once specified pre-conditions are satisfied.

There should be some ability to open the Service Area before all Initial Improvements are completed. For example, landscaping should not be required to be 100% complete before the Service Area can be opened.

Once a temporary certificate of occupancy and other applicable permits or licenses are obtained, Operator should be permitted to open a Service Area.

R23: RFP Exhibit B, Section 4, “Construction Commencement,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E24: Appendix B - Section 4, Pages 9-10

Proposed Change

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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~~60 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 the result of a risk borne by the Authority under the Lease Agreement, is due to a breach by the Authority of its obligations under the Lease Agreement or under applicable law, or is the result of a delay in the timely issuance of a governmental approval or permit that is not caused by an act or omission of the Operator.

Reason for Proposed Change

A 30-day grace period before delay liquidated damages begin to accrue is too short for this type of project.

Additionally, the Operator should be excused from liquidated damages to the extent that the delay in the Opening Date for a Service Area is the result of a risk borne by the Authority under the Lease Agreement, is due to a breach by the Authority of its obligations under the Lease Agreement or under applicable law, or is the result of a delay in the timely issuance of a governmental approval or permit that is not caused by an act or omission of the Operator.

R24: RFP Exhibit B, Section 4, “Delay Liquidated Damages,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E25: Appendix B - Section 4, Pages 10

Proposed Change

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

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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 in the “Environmental Information” Appendix to the RFP;~~ (2) the creation or exacerbation of any Regulated Site Condition due to fault of the Operator or the gross 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 or are caused by any act or omission of any person other than the Operator or its subcontractors.

Reason for Proposed Change

The Operator cannot be responsible for pre-existing Regulated Site Conditions. Additionally, given that fuel services are excluded from the scope and will be provided by a third party, the Authority should look to such provider for contamination caused by the fuel services. The Operator can mitigate such conditions, but should not ultimately be responsible for them.

R25: Please see RFP Appendix B, Section 1, “Hazardous/Regulated Substances,” in Addendum No. 8 being issued concurrently with these Authority Responses.

E26: Appendix B - Section 4, Pages 10

Proposed Change

Generator and Arranger Status

As between the Operator and the Authority:

(a) the Operator shall be deemed the sole generator under 40 C.F.R. Part 262 and the arranger under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) with respect to any Regulated Site Conditions for which the Operator is

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responsible under clauses (1) and (2) under the heading “Hazardous/Regulated Substances” in Section 4.

(b) the Operator shall not be deemed the generator under 40 C.F.R. Part 262 or the arranger under Section 107(a) of CERCLA with respect to pre-existing Regulated Site Conditions and Regulated Site Conditions caused by any person other than the Operator or its subcontractors.

Reason for Proposed Change

Please add the proposed section to the Term Sheet.

In accordance with surety requirements and corporate guidelines, the Operator cannot accept generator status for pre-existing Regulated Site Conditions and Regulated Site Conditions caused by any person other than the Operator or its subcontractors. The Operator is able to accept generator status with respect to any Regulated Site Conditions covered in clauses (1) and (2) under the heading “Hazardous/Regulated Substances” in Section 4.

R26: Please see RFP Appendix B, Section 1, “Hazardous/Regulated Substances,” in Addendum No. 8 being issued concurrently with these Authority Responses.

E27: Appendix B - Section 4, Page 10

Proposed Change

Environmental Compliance and Hazardous/Regulated Substances

The provisions relating to Environmental Compliance and Hazardous/Regulated Substances should be in their own section and applicable during the entire term of the agreement.

Reason for Proposed Change

These provisions are equally applicable during both the design and construction period and the operations and maintenance period.

R27: It is the intent that the provisions of RFP Exhibit B, Section 1, “Environmental Compliance” and “Hazardous/Regulated Substances” shall be in effect throughout the Term of the Lease Agreement, i.e., including both the design and construction period, and the operations and maintenance period.

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E28: Appendix B - Section 4, Pages 10-11

Proposed Change

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; provided that such actions do not interfere with the design and construction of the Initial Improvements, including any incremental costs or delay to the construction schedule, and are subject to all of the Operator's applicable health and safety standards. 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, 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, which shall constitute an excused delay. Whenever the Authority or its representatives are present at any Service Area, including while conducting oversight, they will abide by the Operator's reasonable, nondiscriminatory safety policies and practices and will take appropriate measures to avoid unreasonable interference with normal construction activity or normal operation or maintenance activity.

Reason for Proposed Change

The Authority should not have a unilateral right to suspend construction in its discretion as the Operator will be faced with incremental costs as a consequence of the Authority requiring that all capital costs be privately financed.

R28: RFP Exhibit B, Section 4, "Design and Construction Oversight," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

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E29: Appendix B - Section 5, Page 11

Proposed Change

Operations Manager

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 is incapable of performing his or her duties under the Lease Agreement and the Authority.

Reason for Proposed Change

There should be an objective standard in replacing the Operations Manager.

R29: RFP Exhibit B, Section 5, “Operations Manager,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E30: Appendix B - Section 5, Page 12

Proposed Change

Common Area Maintenance Staffing

On holidays and busier travel days that surround them that are specified in the Lease Agreement, the Operator shall have a minimum of one (1) additional CAM person staffed at each Service Area.

Reason for Change

All days where incremental staff are required should be specified in the Lease Agreement.

R30: RFP Exhibit B, Section 5, “Common Area Maintenance Staffing,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

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E31: Appendix B - Section 5, Page 13

Proposed Change

Reservation of Authority Rights

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.~~

Reason for Proposed Change

It is not appropriate for Authority to require the Operator to provide additional services at zero cost to the Operator and retain all revenue with respect thereto

R31: RFP Exhibit B, Section 4, “Reservation of Authority Rights,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E32: Appendix B - Section 5, Page 14

Proposed Change

Food and Beverage Prices

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.

Reason for Proposed Change

There should be a similar threshold set for lowering prices compared to the amount above the average of the surveys that the Operator is permitted to use.

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R32: RFP Exhibit B, Section 5, “Food and Beverage Prices,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E33: Appendix B - Section 5, Page 14

Proposed Change

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.~~

Reason for Proposed Change

The Authority’s share of the additional revenue will be included in the Operational Rent because the additional revenue will be included in Gross Revenue.

R33: This change will not be made.

E34: Appendix B - Section 6, Pages 16-17

Proposed Change

Renewal and Replacement Reserve Account

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’ discretion~~ based on the Renewal and Replacement Plan, be rolled forward for the subsequent Lease Year periods and any excess after such roll forward shall be returned to the Operator. ~~The Authority reserves the right to require the Operator to remit the unspent funds in the Renewal and Replacement Reserve Account to the Authority.~~ Any remaining funds in the Renewal and Replacement Reserve Account that have not been expended pursuant to the Renewal and Replacement Plan 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

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be the property of the Authority. In lieu of funding the Renewal and Replacement Reserve Account, the Operator may provide an irrevocable direct pay letter of credit issued by a United State bank whose long-term debt is rate “A2” or better by Moody’s Investors Service, Inc. or “A” or better by S&P Global Ratings Inc. or Fitch, Inc., and which maintains a banking office in the State.

Reason for Proposed Change

Funds in the Renewal and Replacement Reserve Account that are not used in a prior year should be rolled forward to the subsequent year rather than potentially being trapped in the Renewal and Replacement Reserve Account if the Authority doesn’t exercise its discretion. Any excess after the roll forward should be returned to the Operator.

Unspent funds that are not required to be expended pursuant to the Renewal and Replacement Plan (e.g., because of unanticipated cost savings and/or better than expected preventive maintenance program) should be returned to the Operator. Only funds that have not been spent pursuant to the Renewal and Replacement Plan that the Authority will need to spend following the termination of the Lease Agreement should be remitted the Authority.

A letter of credit provides additional flexibility to the Operator while not impairing the Authority’s security.

R34: This change will not be made. The Authority, however, has made other revisions to RFP Exhibit B, Section 6, “Renewal and Replacement Reserve Account.” Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E35: Appendix B - Section 8, Page 18

Proposed Change

Handback Survey

Not later than five years prior to the expiration of the Term, ~~the Authority~~ an independent technical advisor will conduct an 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

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Authority and [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 [Authority-independent technical advisor](#).

Reason for Proposed Change

The Handback Survey and Handback Reserve should be subject to a third party technical expert determination and not an assessment by the Authority

R35: RFP Appendix B, Section 8, "Handback Requirements," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E36: Appendix B - Section 8, Page 18

Reason for Change

Handback Reserve

The [Authority-independent technical advisor](#) shall, based on the Handback Survey and in consultation with [the Authority and](#) the Operator, determine the amount ("Handback Reserve") it reasonably believes necessary to complete the Handback Work

Reason for Proposed Change

The Handback Survey and Handback Reserve should be subject to a third party technical expert determination and not an assessment by the Authority.

R36: RFP, Appendix B, Section 8, "Handback Requirements," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E37: Appendix B - Section 8, Pages 19

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's cost estimate, net any amount

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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 and there are amounts remaining in the Handback Reserve Account, such amounts shall be returned to the Operator.

Reason for Proposed Change

To the extent all Handback Requirements have been completed and there is money remaining in the Handback Reserve Account it should be returned to the Operator.

R37: RFP Appendix B, Section 8, “Final Compliance,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E38: Appendix B - Section 10, Pages 19-20

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.

Reason for Proposed Change

For example, offsets should be permitted in respect of Annual Reconciliation, where applicable.

R38: RFP Appendix B, Section 10, “Operator Payment Obligations,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E39: Appendix B - Section 10, Pages 21

Proposed Change

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

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on the ~~last 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.

Reason for Proposed Change

Security packages for a private financing will provide for a monthly draw based on a certificate demonstrating the prior months Rent payment. Therefore it will be impractical to make payments on the 15th of each month.

R39: This change will not be made.

E40: Appendix B - Section 10, Pages 21

Proposed Change

Interest for Late Payment

All amounts due under the Lease Agreement, whether as Rent, damages, credits, revenue, charges or reimbursements, that are not paid 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. The "Overdue Rate" will be ~~one percent (1%) of the outstanding Rent for every day that payment is late~~ two percent (2%) above the Prime Rate, but in no event more than the maximum rate permitted by applicable.

"Prime Rate" means the prime rate as published from time to time by the board of governors of the Federal Reserve System in statistical release H.15 or any publication that may supersede it.

Reason for Proposed Change

A 365% per annum interest rate is unusually high and would seem to violate New York State usury laws.

R40: RFP Appendix B, Section 10, "Interest for Late Payment," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

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E41: Appendix B - Section 11, Page 22-23

Proposed Change

Security for Operator Performance

Please replace the existing Section 11 with the following:

Security for Operator Performance.

In the event the Operator obtains performance security (in the form of a performance bond, letter of credit or guarantee) from any subcontractor or is required to provide such performance security by any [Leasehold Mortgagee], the Operator shall cause the Authority to be named at issuance of such payment and performance security as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to the Authority within 5 days after issuance.”

Reason for Proposed Change

Given the revenue risk nature of the Project, the performance security should be determined by the needs of the Operator and its lenders. The Authority is protected by the covenants and agreements contained in the Lease Agreement and the default regime included therein. Furthermore, the Operator may subcontract portions of Contract Services to subcontractors who may not have bonding capabilities. The Operator will likely not have bonding capabilities and requiring performance security unnecessarily restricts the Operator’s ability to implement the most competitive solution.

R41: This change will not be made.

E42: Appendix B - Section 11, Page 24

Proposed Change

Guarantor

Delete the provisions relating to a guarantee.

Reason for Proposed Change

The Authority should satisfy itself that the Operator’s financing plan, contracting strategy, contractors, expertise, the Performance Bond (or Letter of Credit) and the Construction Performance Bond provide the

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Authority sufficient protection and assurances that the Operator will meet its obligations under the Lease Agreement without a guarantee.

Furthermore, equity investors in infrastructure projects that are project financed use special purpose vehicles to make investments in a number of different projects and will not put their entire investment platforms at risk for a single transaction by providing a parent company guaranty. Requiring that an entity (such as a parent) provide a guarantee of the Operator's obligations under the Lease Agreement turns a limited recourse project into a project with full recourse to equity investors.

R42: RFP Appendix B, Section 11, "Guarantor" has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E43: Appendix B - Section 12, Page 24-31

Proposed Change

"E. All Risk Physical Damage – The Operator shall maintain coverage...The Operator shall name the Authority as the loss payee on such policy."

B: Builders' Risk Insurance... "The Operator and the Authority shall be named as loss payee for the work in order of precedence as their interest may appear;"

Reason for Proposed Change

As the project will be privately financed, project lenders will want access to insurance proceeds. Can Authority confirm that this will be permissible on the property and course of construction insurance policies?

R43: RFP, Appendix B, Section 12, "Insurance" has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E44: Appendix B - Sections 15, Page 32

Events of Default

(1) A default in the timely payment of Rent and such failure shall continue for ten (30) days after notice to the Operator from the Authority;

(3) ~~Uncured or persistent~~The occurrence of a Noncompliance Events for a period of ninety (90) days and such Noncompliance Event

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remains un-remedied for a period of thirty (30) days following written notice thereof from the Authority;

(5) 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 15 days following written notice from the Authority;

(6) 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)~~ ninety (90) days after written notice to Operator;

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

(8) 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

(9) 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~~ 180 days after such issuance or filing, ~~except that,~~ with ~~With~~ regard to paragraphs (7), (8) and (9) above, in respect of any key contractor or guarantor, the Operator will have 180 days—a reasonable period to cure the Event of Default ~~in which to provide by providing~~ a replacement key contractor or guarantor that is acceptable to the Authority.

Reason for Proposed Change

We would expect to cure periods closer to what we have seen in the market. Especially if there is no termination compensation following an Event of Default.

R44: RFP Appendix B, Section 15, “Events of Default,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

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E45: Appendix B - Section 16, Pages 35-36

Proposed Change

Indemnification

Delete Item (4)

Delete Item (5)

(8) Intellectual Property claims arising out of any act or omission of the Operator;

Delete Item (10)

Delete Item (11)

Reason for Proposed Change

The Operator should not be responsible for third parties at the Service Area that are not under its control or that the Operator is not responsible.

Item (5) is duplicative of Items (3) and (4).

Operator should not be responsible for Intellectual Property claims generally.

Item (10) should be covered by the Hazardous Materials provisions. Operator cannot be responsible for Hazardous Materials it does not bring to the Services Areas, especially because the Authority will contract with a third party for fuel services.

Operator should not be required to provide a broad indemnity for anything that occurs at the Service Areas.

R45: RFP Appendix B, Section 16, “Indemnification,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E46: Appendix B - Section 17, Page 37

Proposed Change

Consents and Approvals

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Whenever any consent, approval, acceptance or determination by the Authority is required under the Lease Agreement, such consent, approval, acceptance or determination shall not be unreasonably, withheld, condition or delayed, ~~may be withheld, condition, granted or made by the Authority in its sole and absolute discretion~~ except where expressly provided otherwise in the Lease Agreement.

Reason for Change

There are several instances throughout the Lease Term Sheet where a reasonableness standard should be applied to Authority consent rights. We expect the baseline to be that the Authority will act reasonably in providing any consent, approval, acceptance or determination.

R46: RFP, Appendix B Section 17, “”Consents and Approvals,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E47: Appendix B - Section 17, Page 38

Proposed Change

Confidentiality

“Confidential Information” means any information not generally known to the public, or that the is identified by the Authority as claims is confidential at the time of disclosure, 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 or becomes known by the Operator free of any confidentiality obligations, or (3) is independently developed by Operator without reference to Confidential Information.

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Reason for Proposed Change

The definition of Confidential Information is very broad and makes it difficult for the Operator to determine what information it is required to protect.

R47: RFP Appendix B, Section 17, “Confidentiality and Non-Disclosure,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E48: Appendix B - Section 17, Pages 38-39

Proposed Change

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 (to the extent legally permissible), ~~but in all events prior to any disclosure~~; (2) permit the Authority to take the steps it reasonably deems necessary and appropriate to protect the Confidential Information from disclosure; (3) reasonably cooperate to the fullest extent possible under the law, at the Authority’s sole cost and expense, 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~~.

Reason for Proposed Change

The Operator can cooperate and assist the Authority in preventing disclosure of the Confidential Information that is required by law, but the Operator must be allowed to comply with all applicable laws.

R48: RFP Appendix B, Section 17, “Confidentiality and Non-Disclosure,” has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

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E49: Appendix B - Section 17, Page 39

Proposed Change

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.~~

Reason for Proposed Change

Disclosure of Confidential Information to potential sources of financing should be expressly included.

Agreement should not be required in writing. For example, legal counsel does not typically sign confidentiality obligations due to their professional and ethical obligations.

R49: RFP Appendix B, Section 17, "Confidentiality and Non-Disclosure," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E50: Appendix B - Section 17, Page 39

Confidentiality and Non-Disclosure

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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 to the extent included in any internal notes and materials, including investment committee or board notes and minutes, that are used for or in connection with the Operator's corporate decision making process; (ii) Confidential Information that is retained in magnetic or electronic back-up storage archives in accordance with customary records retention procedures; and (iii) 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 so retained.

Reason for Proposed Change

The Operator will need to keep copies of Confidential Information to the extent required by its corporate governance obligations, it is retained in customary backup storage archives or it is required by law. However, any such information retained will remain subject to the Operator's confidentiality obligations under the Lease Agreement.

R50: RFP Appendix B, Section 17, "Confidentiality and Non-Disclosure," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E51: Appendix B - Section 17, Pages 39-40

Proposed Change

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 preapproved logos,

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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 use reasonable efforts 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.

Reason for Proposed Change

The Operator cannot require third parties to grant licenses.

R51: This change will not be made.

E52: Appendix B - Section 18, Addendum No. 2

Proposed Change

(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 and (B) the demobilization of the Operator's other work under the Lease Agreement (including any severance payments to employees of the Operator that have been or will be reasonably incurred by Operator) as a result of the termination of the Lease Agreement, which amounts shall not include any overhead or profit of the Operator.

Reason for Proposed Change

The Operator will incur additional demobilization costs, in particular any severance payments to its employees (e.g. the Operations Manager).

R52: RFP Appendix B, Section 18, "Convenience Termination Amount," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E53: Please revise the "Assignment" portion of the Lease Agreement as follows:

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A "Restricted Assignment" shall arise if:

1. Prior to the first anniversary of the completion of the Initial Improvements, without the prior written consent of the Authority, any Operator ceases to own (directly or indirectly) the same percentage of Operator Interest that it owned (directly or indirectly) at the date of the Lease Agreement, other than as a result of an additional equity investment;
2. any change in Operator Interest occurs which involves the transfer of any shares or membership interests to a Prohibited Person; or
3. any change in Operator Interest occurs which would be reasonably likely to have a material adverse effect on Operator's ability to perform its obligations under Lease Agreement, taking into account the financial strength and integrity of the transferee, compared to that of the transferor.

Any Restricted Assignment will constitute an Operator Default. Operator shall provide the Authority with at least twenty (20) Business Days' prior written notice of any Assignments.

R53: RFP Appendix B, Section 1, "Assignments and Change in Control," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E54: Please revise the "Delay Liquidated Damages" portion of the Lease Agreement as follows:

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 delay, that is not an Excused Delay, in achieving the Opening Date beyond the date that is 30 days following the Scheduled Opening Date for each Service Area.

The following events shall qualify as an Excused Delay and shall be eligible for an extension of the Opening Date:

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1. Delayed approval by the Authority of plans, specifications, required to be submitted to the Authority;
2. Delay in obtaining government approvals beyond customary time periods for obtaining such government approvals;
3. Authority's delay in performance of any scope of work that the Authority is responsible for and which impacts the Operator's ability to perform the Operator's scope of work;
4. Delay as a result of any Regulated Site Condition not actually known by the Operator on the Effective Date

R54: RFP Appendix B, Section 4, "Delay Liquidated Damages," has been changed. Please see Addendum No. 8 being issued concurrently with these Authority Responses.

E55: Please revise SECTION 16 - INDEMNIFICATION of the Lease Agreement as follows:

Operator Indemnification Obligations

To the fullest extent permitted by law, the Operator shall indemnify, defend and hold harmless the Authority, and each of its respective elected officials, members, appointed officers, directors, commissioners, employees, representatives, agents and contractors ("Authority 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,

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subtenants, licensees or permittees, whether or not any 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;
- (9) Claims of harassment arising from the conduct of the Operator or any director, officer, employee, subcontractor or agent of the Operator;

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.

R55: RFP Appendix B, Section 16, "Indemnification," has been changed. Please see Addendum No. 8 being issued with these Authority Responses.

*******End of Exceptions*******