

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

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

December 21, 2018

**ADDENDUM NO. 2**

Notice is hereby given that the following Addendum No. 2 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 (the "RFP").

Each Proposer shall acknowledge receipt of this Addendum No. 2 in the cover letter submitted as part of their Proposal.

Addendum No. 2 consists of the following change to the RFP:

Appendix B of the RFP, is hereby revised to add the following new Section 18, "Termination for Convenience." Material to be added is underscored.

**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 the demobilization of the construction work for any pending Initial Improvements as a result of the termination of the Lease Agreement, which amount 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.