

questions asked by a Proposers does not mean or imply, nor should it be deemed to mean or imply, any meaning, construction, or implication with respect to the terms.

The Port Authority/PATH makes no representations, warranties or guarantees that the information contained herein is accurate, complete or timely or that such information accurately represents the conditions that would be encountered during the performance of the Contract. The furnishing of such information by the Port Authority/PATH shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Proposer, by submitting its Proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority/PATH liable or responsible therefor in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority/PATH, its Commissioners, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Bidder required by this Proposal or Contract and the Proposer agrees that it shall not hold the Port Authority/PATH liable or responsible therefor in any manner whatsoever.

The Questions and Answers numbering sequence will be continued sequentially in any forthcoming Addenda that may be issued.

<i>Question #1</i>	Can the Lessee include minimum annual rate increases to match the required annual rent increases?
<i>Answer #1</i>	Please refer to Exhibit B, Item 1(b)(2): To the extent Respondents wish to modify language, they may propose changes to the Lease as part of their responses to the RFP; however, it should be noted that the financial value of the lease is one of the evaluation criteria.
<i>Question #2</i>	Please clarify if percentage rent is to be paid before or after parking sales taxes?
<i>Answer #2</i>	Please refer to Exhibit B, Item 1(c)(1): It is Port Authority practice to exclude from gross receipts any taxes paid directly to a taxing authority.
<i>Question #3</i>	The amortization term affects the risk profile for deployed capital. Can the lessee include a fixed schedule?
<i>Answer #3</i>	The Port Authority will consider such a schedule depending on the scope and timeline of capital improvements in the Respondent's proposal.
<i>Question #4</i>	Will power be able to be drawn from the garage's main electrical service panel to the new lane parking equipment?
<i>Answer #4</i>	Yes, power will be able to be drawn from the garage's main electrical service panel.

Question #5	Lease Exhibit B Item 4: There is new lighting throughout the garage, please identify which lighting would need to be replaced.
Answer #5	Lighting on the roof level has not been replaced with modern LED fixtures and is expected to be replaced by the Lessee as part of the Initial Work. At the discretion of the Facility Manager, additional lighting upgrades may be required as part of the Initial Work (refer to Exhibit B, Item 4 of the Lease).
Question #6	Will the lighting upgrades be considered capital that would be reimbursed through rent credits?
Answer #6	Please refer to Attachment B of the RFP. As long as such lighting upgrades are included in the Respondent's cost proposal for the Initial Work (as defined in the RFP and Lease), it is anticipated that the cost will be offset by a rent credit. However, the cost of ongoing management, operations and maintenance shall be the responsibility of the Lessee.
Question #7	Lease Section 30 and Exhibit B Items 7 and 8: What is the formula to determine the amount of security required for the Lessee?
Answer #7	It is typical to require at least six (6) month's rent. The Port Authority makes a determination of risk based on the financial strength of the Respondent and the obligations under the Lease.
Question #8	Lease Section 8 (j): It is assumed that the Port Authority will be providing the Lessee with a tax exempt certificate for the capital purchases outlined in this proposal. If for any reason the purchases are not determined to be tax exempt, will the Lessee be reimbursed for the taxes payable?
Answer #8	Respondents may assume that they will be reimbursed for all costs related to the capital improvements described in the RFP and Lease.
Question #9	Lease Attachment B: 3 and Exhibit (SR): The use of heavy equipment would not be permitted on the roof for snow removal operations. Please identify an area below to dump snow for removal as this will affect the cost assumptions? Please clarify that any time there is more than 4 inches of snow expected that a third party vendor must be used for snow plow operations.
Answer #9	A full-sized pickup truck with snow plow attachment is permitted to access the roof (as noted in Exhibit SR). Snow may be dumped along the perimeter of the roof. In the event of 4+ inches of snow, a professional snow/ice removal contractor must be hired and paid by the Lessee; however, the Port Authority will consider an arrangement by which Lessee may demonstrate to the satisfaction of the Facility Manager that it is capable of handling such an event and obtains prior written approval of Facility Manager to self-perform such services.

Question #10	RFP Page 35 Section 2 and Lease Section 76 (b): The funding of reasonable aesthetic improvements and other investments to the facility are limited to normal wear and tear and maintenance consistent with a facility of this type. Additional items not meeting the criteria can be performed and deducted from rent as incurred. Can this be assumed in the expense forecast/cash flow model to be submitted as part of the proposal?
Answer #10	Respondents are asked to include a proposal for the scope and cost of Initial Work, which is anticipated to be reimbursed as a credit against rent. Some elements of the Initial Work may be performed upfront and others may be performed over the course of the term of the Lease based on mutual agreement between the Port Authority and the Lessee. Reimbursement for such work may be assumed in the Respondent’s cash flow forecast. However, the cost of typical ongoing management, maintenance and repair is the responsibility of the Lessee.
Question #11	Lease Section 11; can you please provide clarification on the below items included in the lease? <ul style="list-style-type: none"> • 2. Why is liquor liability on of the requirements for general liability insurance? Can you please clarify. • 3. Joint loss payee (not just “loss payee”) can you please clarify. • 3. Is non “certified” when requiring copy of policies or COIs acceptable? • (A) renewal COI shall be delivered to PATH prior to the expiration date of... • (B). was this section meant to be “Lessee, in its own name as insured...” not assured? • Lessee using umbrella to meet their insurance limit requirements for B. 1), 2) & 3). (b) on page 15 –pending board review. (c) Lessee does not release certified copies of any policies to clients because they are all blanket policies covering every one of Lessee’s clients. They contain confidential information about every client. Lessee can only provide redacted, shortened versions provided by Lessee’s insurance broker. Is this acceptable?
Answer #11	See Section I.1 above, revised Lease Section 11 attached.

This communication should be initialed by you and annexed to your Proposal upon submission.

In case any Proposer fails to conform to these instructions, its Proposal will nevertheless be construed as though this communication had been so physically annexed and initialed.

THE PORT AUTHORITY OF NY & NJ

SELENE ORTEGA, MANAGER
COMMODITIES AND SERVICES DIVISION
PROCUREMENT DEPARTMENT

PROPOSER'S FIRM NAME: _____

INITIALED: _____

DATE: _____

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO
LESLEY BROWN, WHO CAN BE REACHED AT (212) 435 -4648 OR AT
LBROWN@PANYNJ.GOV.

DATE: OCTOBER 25, 2016

SECTION 11. INDEMNITY AND INSURANCE

A. (1) The Lessee shall indemnify and hold harmless the Port Authority and its related entities (including but not limited to PATH), Port Authority Commissioners, PATH Directors, Port Authority and PATH officers, agents and employees from and against all claims and demands of third persons including, but not limited to, those for death, for personal injuries, or for property damages, arising out of the use or occupancy of the Premises by the Lessee or by others with its consent, or out of any of the acts or omissions of the Lessee, its officers, members (in their capacity as members of, and if Lessee is, a limited liability entity), managers (in their capacity as managers of, and if Lessee is, a limited liability entity), partners (in their capacity as partners of, and if Lessee is, a partnership), employees, agents, representatives, contractors, customers, guests, invitees and other persons doing business with it where such acts or omissions are on the Premises, or arising out of any acts or omissions of the Lessee, its officers, members (as aforesaid), managers (as aforesaid), partners (as aforesaid), employees, agents and representatives where such acts or omissions are elsewhere at the Terminal, or out of any default or breach of the Lessee in performance or observance of any term or provision of this Agreement, except for claims arising solely out of the willful misconduct or sole negligence of PATH. Upon the request of PATH, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of PATH, the immunity of PATH, the Port Authority, its Commissioners, Directors, officers, agents or employees, the governmental nature of PATH or the Port Authority, or the provision of any statutes respecting suits against PATH or the Port Authority.

(2) In addition to the obligations set forth in the above subdivision, the Lessee in its own name as named insured shall maintain and pay the premiums on a policy or policies of commercial general liability insurance, including, but not limited to premises-operations, products and completed operations, services and/or operations, with contractual liability language covering the obligations assumed by the Lessee under this agreement which shall cover its operations hereunder and shall be effective throughout the letting, at stated below and referenced Item 2 of Exhibit B.

(3) The Port Authority and its related entities (including but not limited to PATH) shall be named as additional insureds (except for worker's compensation insurance) in any policy of liability insurance required by this Section, unless PATH shall, at any time during the letting, direct otherwise in writing, in which case the Lessee shall not cause PATH to be so named. As to any insurance required by the provisions of this or any other Section of this Agreement to be secured by or at the direction of the Lessee, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof or binders shall be delivered to PATH upon execution of this Agreement or, in the case of insurance required under the provisions of the Section hereof entitled "*Construction by the Lessee*", prior to the commencement of the work. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid

provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days written advance notice thereof to PATH. A renewal policy shall be delivered to PATH at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting. If at any time any of the policies shall be or become unsatisfactory to PATH as to form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to PATH, the Lessee shall promptly obtain a new and satisfactory policy replacement.

B. The Lessee, in its own name as named insured, shall maintain and pay the premiums on policies of insurance for coverages as hereinafter described, which shall cover its operations hereunder and shall be effective throughout the letting under this Agreement and shall afford coverage in not less than the amounts set forth below:

- 1) Commercial general liability insurance for such coverage as may reasonably be stipulated from time to time by PATH covering the Lessee's operations hereunder shall initially be in a combined single limit of not less than \$10,000,000.00 for liability for bodily injury, for wrongful death, and for property damage arising from any one occurrence; and
- 2) Commercial Automobile liability insurance covering owned, non-owned, and hired automobiles for such coverage as may reasonably be stipulated from time to time by PATH covering the Lessee's operations hereunder which shall be effective throughout the letting under this Agreement and shall initially be in a combined single limit of not less than \$5,000,000.00.
- 3) Garage Keepers liability insurance (Direct) for such coverage as may reasonably be stipulated from time to time by PATH covering the Lessee's operations hereunder which shall be effective throughout the letting under this Agreement and shall initially be in a combined single limit of not less than \$5,000,000.00.
 - (a) Fire and explosion.
 - (b) Theft of the entire automobile
 - (c) Rust and vandalism.
 - (d) Collision.
- 4) Blanket crime policy covering loss of money inside or outside the premises by reason of larceny, theft, or burglary including but not limited to employee dishonesty of not less than \$200,000 per occurrence.
- 5) The Lessee shall take out and maintain a Cyber Insurance Policy in limits of not less than \$ 5,000,000.00 to cover first party remediation and third party liability. Such coverage shall include but not limited to cyber-crime, cyber extortion, information asset, privacy and computer security.
 - (a) The Port Authority and its related entities (including but not limited to PATH) shall be named as an additional insured in the policies as set forth in paragraph (c) of this

Section. The policy of commercial general liability and automobile liability and garage keepers liability insurance shall contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by PATH or against PATH by the Lessee, but such endorsement shall not limit, vary, change, or affect the protections afforded PATH as an additional insured.

- (b) Such policy or policies shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining the prior express permission of the Counsel of PATH, raise any defense involving in any way the jurisdiction of the tribunal over the person of PATH, the immunity of PATH, its Directors, officers, agents, or employees, the governmental nature of PATH, or the provisions of any statute respecting suits against governmental nature of PATH, or the provisions of any statute respecting suits against PATH. This clause shall also be included on the certificate of insurance. Such policies shall not exclude or except from their coverage damages arising out of injury to, or destruction of, property occupied or used by or rented to the Lessee, and shall include products liability and premises operations coverage and a contractual liability endorsement covering the obligations assumed by the Lessee under this Section of the Agreement.
- (c) As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies (excluding confidential insurance information not related to this agreement) or a certificate or certificates evidencing the existence thereof (including all required endorsements or binders shall be delivered to PATH within twenty (20) days after the commencement date of the letting hereunder.) In the event any binder is delivered, it shall be replaced within thirty (30) days after request of PATH made at any time during the term of the letting under this Agreement the Lessee shall deliver a certified copy of the policy to PATH. Each such copy or certificate shall contain a valid provision or endorsement that: (1) the policy may not be canceled, terminated, changed or modified, without giving ten (10) days written advance notice thereof to PATH, and (2) the Lessee shall be solely responsible for the payment of premiums therefore notwithstanding that PATH is named as an additional insured.

A renewal policy or certificate of insurance shall be delivered to PATH at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of the expiration of the letting. Insurance binders are acceptable to meet the deliverance, if at least 15 days prior to expiration but a certificate of insurance shall be delivered to PATH prior to the expiration date. If at any time any of the policies shall be or become unsatisfactory to PATH as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to PATH, the Lessee shall promptly obtain a new and satisfactory policy in replacement notwithstanding anything contained in this Section, it is specifically understood and agreed that PATH shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the limits set forth in this Section and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to PATH.