

**REQUEST FOR PROPOSALS:**

**Operation and Maintenance of Travel  
Plazas at Three (3) West Virginia  
Turnpike Sites and One (1) Snack Bar**

**PROJECT WEBSITE: [www.WVTravelPlazas.com](http://www.WVTravelPlazas.com)**

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**Bluestone Travel Plaza – MP 18 Northbound in Mercer County**  
**Beckley Travel Plaza - MP 45 NB & SB in Raleigh County**  
**Morton Travel Plaza – MP 72 Northbound in Kanawha County**  
**Rest Area 69 Snack Bar – MP 69 Southbound in Kanawha County**

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**Proposals Due: Friday, November 12, 2021, at  
2:00 PM EST**



**WEST VIRGINIA PARKWAYS AUTHORITY**  
3310 Piedmont Road  
Charleston, WV 25306

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## ARTICLE I – Background and Administrative Matters

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### Section 1.1 – Introduction



The West Virginia Parkways Authority (“WVPA” or “Authority”) has embarked on a journey to design and build the first post-pandemic toll road travel plazas in the country.

Under its statutory responsibility to operate the West Virginia Turnpike, the WVPA will finance and deliver new facilities to the successful Proposer that reflect well upon West Virginia, its leaders, and its citizens. The design and construction of the building shells and the surrounding sites will embrace the bright future of the State, the wild and wonderful spirit of the terrain, and the role of the Travel Plazas as goodwill ambassadors and the public face of the Turnpike. These new facilities will project a sense of safety and security, be engaging, and surprise and delight (wow) visitors.

As it finalizes its design and construction schedule, the Authority is seeking Proposals from experienced and qualified Operators to serve as the Master Tenant to lease and maintain the premises of these three (3) new Travel Plazas as further described and shown in **Appendix B Preliminary Site Plans** and **Appendix C Floor Plans and Renderings** of this Request for Proposals (“RFP”) and operate the Snack Bar at Rest Area 69 Southbound.

The WVPA is seeking innovative proposals that will produce the highest revenue, continuously improve the food & beverage and retail offerings, and provide an inviting location for travelers. Interested parties may submit their proposals for the three Travel Plazas (the “Proposals”). Proposals must be for all four properties in the portfolio.

Through this RFP, the Authority is seeking Proposals for a Master Tenant to undertake improvements at the Travel Plazas and to operate or sublet the authorized services. Proposals should focus on the interior design and Travel Plaza operations that offer a variety of food & beverage choices, expanded retail, and inviting public dining areas and restrooms for use by the traveling public.

Travel Plaza patrons include truck drivers, leisure travelers, commuters, and “road warriors” (e.g., district managers, delivery drivers, sales personnel). The Authority has recently conducted an extensive Customer Satisfaction Survey of Travel Plaza users (a summary of the results is provided in **Appendix D 2021 Customer Survey Results**).

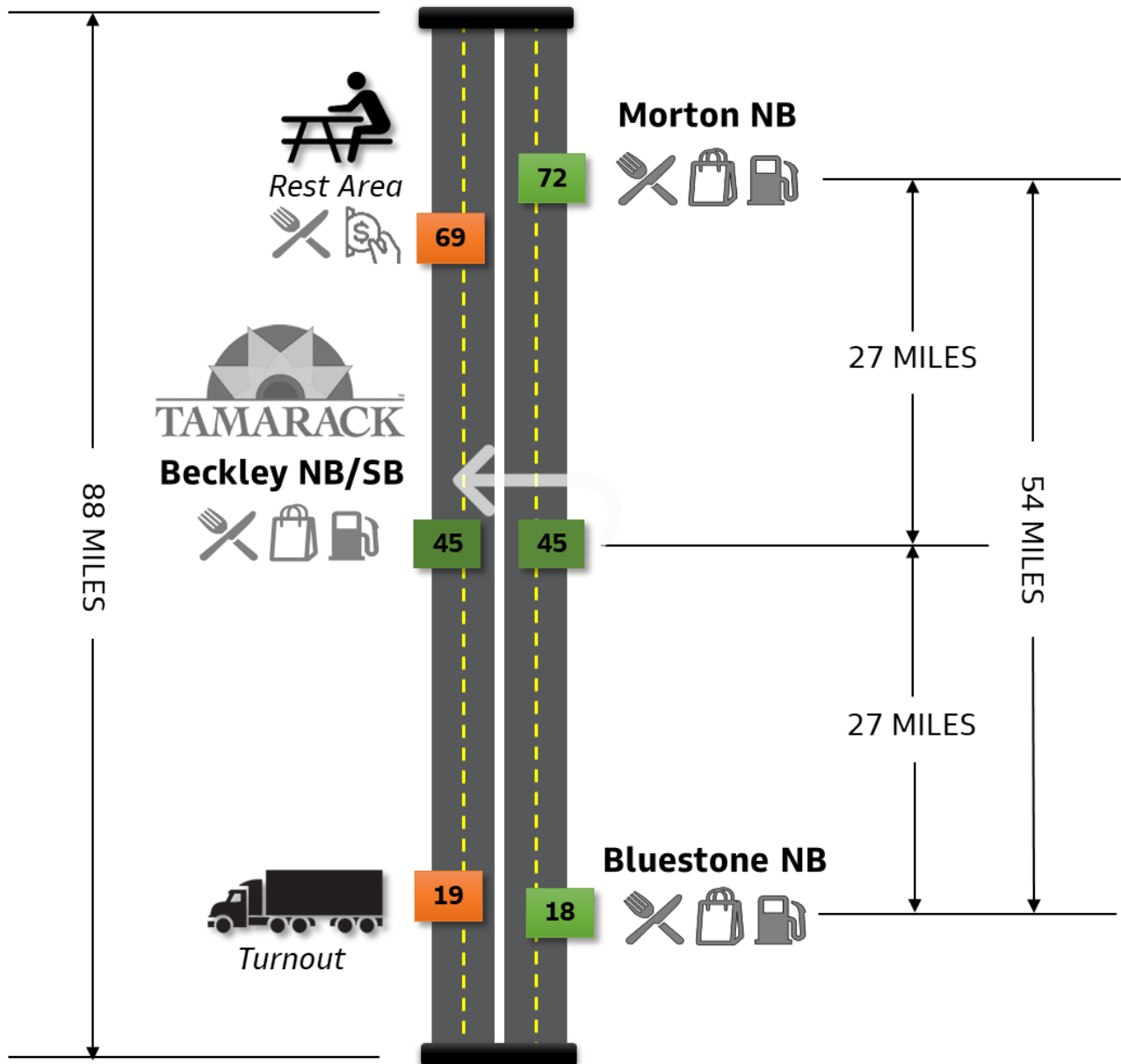
The WVPA is looking to the private sector for a true partner and has strived not to place limitations on Proposers’ ingenuity to extract the highest revenue from these facilities. To provide the Proposers with the flexibility to suggest appropriate and realistic types of services, this RFP is not overly prescriptive with respect to specific services, food offerings, equipment, design, payment and service options, delivery, or any other uses being proposed.

WVPA reserves the right to begin negotiations pursuant to this RFP with the selected Proposer or Proposers, to amend any of the lease terms described in this RFP during said negotiations, and/or to reject all Proposals.

WVPA makes no representation or warranty as to the accuracy and/or completeness of any of the information provided in this RFP. Proposer should carefully review the terms, conditions, and reservations set forth in this document.

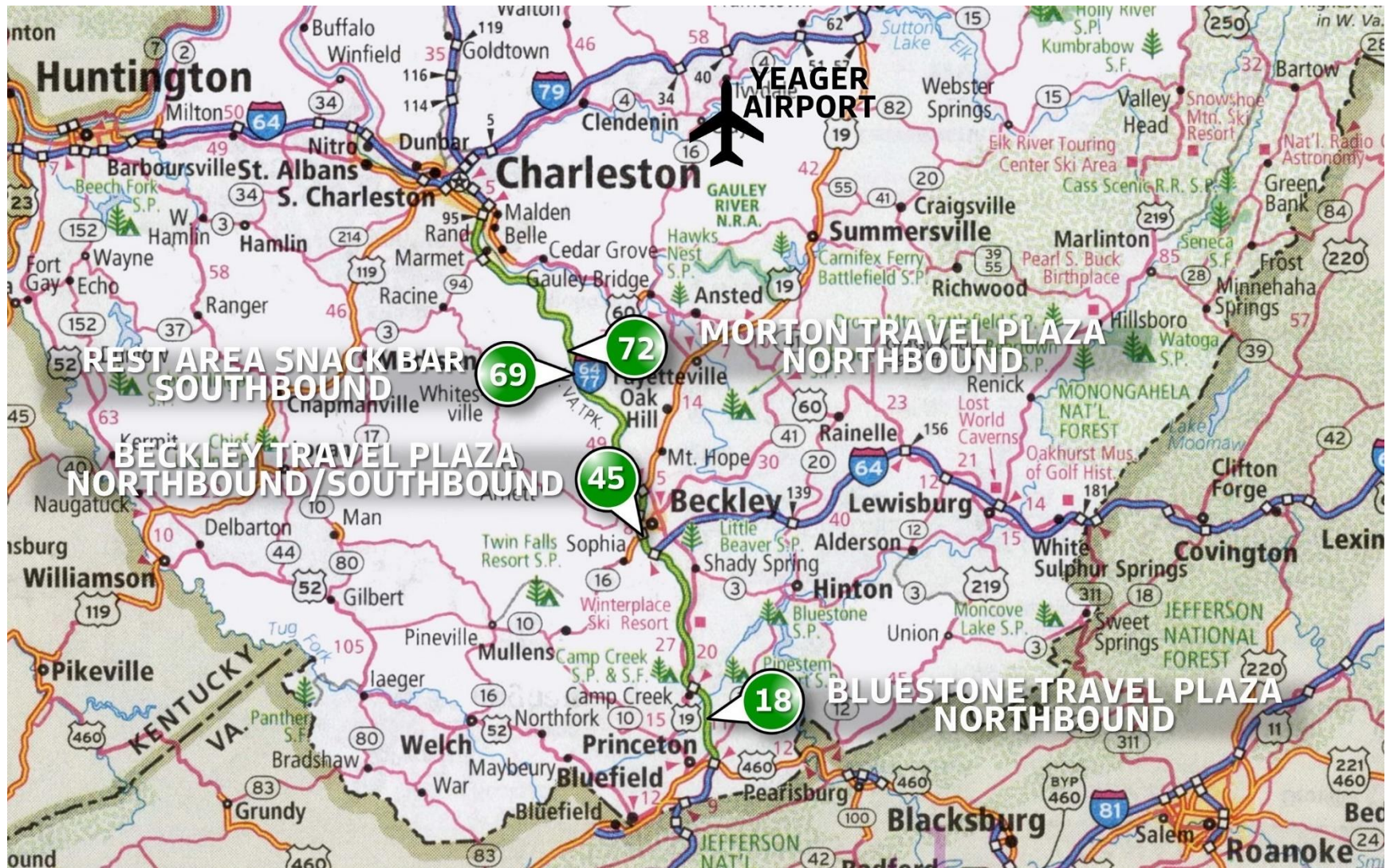
## Section 1.2 – Locations

### 1.2.1 Schematic





### 1.2.2 Area Map





### 1.2.3 Aerials

#### Morton Travel Plaza | Milepost 72 Northbound (1 of 4)





**Beckley Travel Plaza | Milepost 45 Northbound & Southbound (2 of 4)**





**Bluestone Travel Plaza | Milepost 18 Northbound (3 of 4)**





**Rest Area 69 Snack Bar | Milepost 69 Southbound (4 of 4)**





### Section 1.3 – Glossary of Terms

ADA	Americans with Disabilities Act of 1990, Public Law 101-336, and all amendments thereto.
Authority	West Virginia Parkways Authority
Automatic Vending	Vending of any items or services including, but not limited to, food, beverage, games, and entertainment from automatic machines; however, automatic teller machines are excluded from Automatic Vending.
Best and Final Offer	“Best and Final Offer” in terms of this solicitation is a Proposer’s response to the WVPA’s request to Proposers to submit their last and most attractive financial offer.
Breakpoint	The point at which percentage rent is paid in addition to the Base Rent. If the breakpoint is never met, the Base Rent is only obligated to pay the Base Rent.
Commencement Date	For the purposes of this solicitation, the “Commencement Date” is the date when the Demised Premises are occupied by the Master Tenant, all required business licenses have been obtained, and a Certificate of Occupancy has been issued by a local Code Official. The Commencement Date is the commencement of the term and when the Master Tenant’s first month of rent is officially due.
Demised Premises	“Demised Premises” may sometimes be used herein to describe the spaces leased to the Master Tenant or to the concepts/subtenants occupying spaces in each Travel Plaza.
EV Stations	Electric vehicle fast charging stations, including but not limited to, DC fast charging-based systems and AC charging based systems.
Foodservice	For the purposes of this solicitation, Foodservice refers to made-to-order food and drink and specifically includes self-service coffee bars and beverage fountains, or bottled beverages, pre-packaged sandwiches, snacks, or any other ‘grab & go’ items.
Fuel Services	<p>Currently, Exxon-branded gas and diesel are provided by PM Terminals, Inc., the incumbent fuel services provider. Their Gasoline Operator Agreement and Lease with the WVPA expires on January 2, 2028.</p> <p>Prior to the expiration of the fuel lease, the WVPA will issue a separate Fueling RFP for a term of ten (10 years) with an expiry date of January 2, 2038. The solicitation will be open to qualified respondents including the to-be-determined Master Tenant of the Travel Plazas.</p> <p>A copy of the current agreement is provided in <b>Appendix E</b>.</p>

Gross Revenue	The total amount of revenue generated at the Travel Plazas and Snack Bar, including, but not limited to, all cash and in-kind revenue, income, percentage rent, receipts, benefits received by or on behalf of Proposer, any service charges received or charged by Proposer, their agents, or employees of Proposer, but specifically excluding employee meals and applicable taxes.
Improvements and Betterments	"Improvements and betterments" (also referred to as Tenant Improvements or "TI") are defined as fixtures, alterations, additions, or installations made a permanent part of a building by the Master Tenant, which may not legally be removed.
Maintenance Manual	A document created by the selected Master Tenant that describes housekeeping duties, the preventative maintenance plan, and the work schedules that will be utilized to ensure that the Travel Plazas are properly preserved.
Master Tenant	Master Tenant is the party with a direct lease with the WVPA with the option to sub-lease all or a portion of the main buildings to other occupants.
Minimum Annual Guaranteed ("MAG") Rent	Guaranteed annual base rent ("Base Rent") payable at the beginning of each month in twelve (12) equal installments.
Oral Interview	<p>"Oral Interview" is a request from the WVPA to meet face-to-face or via videoconferencing with the Proposer's Team to seek clarifications and pose additional questions. Any costs associated with oral presentations/interviews shall be borne entirely by the Proposer.</p> <p>Alternatively, the WVPA may submit its inquiries in writing with a request that a written response be provided within three (3) business days.</p>
Percentage Rent	In addition to the Base Rent payable under the Lease Agreement, the selected Master Tenant will pay overage rent when the gross sales exceed the "Natural Breakpoint". Percentage Rent will be accounted for annually and paid within 10 days after the end of each of calendar year.
Personal Property	Property that is not permanently affixed to land. Examples would include the Master Tenant's equipment, shelving, furniture, trade dress, signage, and POS stations.
Proposal	The complete response of the Proposer to this Request for Proposals including, but not limited to, any statement of qualifications, technical proposal, financial offer, and acceptance (or written nonconcurrence) with Article V – Lease Terms and Conditions.

Proposer Parties	Proposer, its officers, agents, contractors, subcontractors, subtenants, assigns, employees, invitees, licensees, and franchisees.
Real Property	Real property is the land, everything permanently attached to it, and all the interests, benefits, and rights inherent in the ownership of real estate. In the context of this solicitation, this would include roof and structure, HVAC, plumbing including the restrooms, electrical distribution, and other building subsystems.
Retail	Refers to any merchandise sold at the Travel Plaza except Foodservice items as previously defined in this section.
RFP	WVPA's Request for Proposals dated Tuesday, August 24, 2021.
Snack Bar	In addition to the Travel Plazas, the successful Proposer will be required to operate or sublease a limited menu "Snack Bar" at southbound Rest Area at Milepost 69. Hours of Operation shall be from 7 AM to 7 PM, seven days a week. A complete description of the Snack Bar operations including past sales is provided in <b>Appendix G</b> .
Soft and Hard Costs	Soft costs are non-construction expenditures including, but not limited to taxes, legal fees, third party costs, permit fees, interest payments, and finance charges. Hard costs are construction expenditures including, but not limited to, grading, excavation, building materials, equipment upgrades, replacements, and labor.
Subtenant	Any tenant or licensee of the selected Proposer including any existing subtenants assigned to and assumed by the selected Proposer from WVPA.
Term	The initial Term of any lease and operating agreement with the selected Master Tenant shall be the Commencement Date of each Travel Plaza through January 1, 2028, <u>plus</u> ten (10) additional calendar years ("CY") with a final expiry date for December 31, 2037, at 11:59 PM EST, for all locations.
Travel Plaza	One of three commercialized rest areas along the West Virginia Turnpike.
Turnpike	In the context of this RFP, "Turnpike" refers a four-lane toll highway, 88 miles in length, between Princeton and Charleston, West Virginia. Interstate 77 is carried by the entire length of the Turnpike. Interstate 64 is carried from Charleston to south of the City of Beckley.
WVPA	West Virginia Parkways Authority

## Section 1.4 – Key Dates

EVENT	DATE	LOCATION	
RFP Issued	Tuesday, August 24, 2021		
Project Website Release	Tuesday, August 24, 2021	www.WVTravelPlazas.com	
Mandatory Pre-Proposal Conference	Wednesday, September 15, 2021, at 9:00 AM EDT	Tamarack Conference Center 1 Tamarack Place Beckley, West Virginia 25801	
Travel Plaza Site Visits	Wednesday, September 15, 2021	Bluestone	11:30 AM – 12:30 PM EDT
		Beckley	1:00 PM – 2:00 PM EDT
		Morton	2:30 PM – 3:30 PM EDT
		Snack Bar at Rest Area 69	3:45 PM – 4:30 PM EDT
Deadline for Written Questions	Monday, October 25, 2021, prior to 12:00 PM EDT	Refer to <i>Section 1.7 – Written Questions &amp; Responses</i>	
Final Addendum Issued with Responses to Written Questions	No later than Friday, October 29, 2021, prior to 12:00 PM EDT		
Proposal Due Date	Friday, November 12, 2021, prior to 2:00 PM EST	Refer to <i>Section 3.1 – Submission of the Proposal</i>	
Anticipated Selection of Master Tenant	To Be Determined		
Anticipated Transition	To Be Determined		
Expiry Date of Master Tenant Agreement	December 31, 2037		

## Section 1.5 – Project Contact

For this project, WVPA has engaged an outside consultant, Andrew J. Warcaba & Associates, Inc., to manage the RFP process. The contact information is as follows:

Andy Warcaba, RFP Process Manager  
Phone: 630-476-0142  
Email: andy@warcaba.com

All questions and inquiries concerning this RFP must be in writing and submitted electronically to the RFP Process Manager at the above email address. Acknowledgement of receipt will be provided within one business day and written responses shared with all interested parties.

## **Section 1.6 – Mandatory Pre-Proposal Conference**

All Proposers must attend the Pre-Proposal Conference at the time and place provided in Section 1.4. As a courtesy to the meeting's Sponsor, Pre-Proposal Conference attendees should pre-register with the RFP Process Manager identified in Section 1.5 at least three (3) business days prior.

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**Note:** While the WVPA strongly prefers in-person attendance, the Authority acknowledges that corporate travel policies are in flux due to the pandemic. To promote wide participation, potential Proposers may attend virtually. Details on how to join the video conference on September 15 will be provided to pre-registered attendees.

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## **Section 1.7 – Written Questions & Responses**

All written questions and requests for clarification must be submitted in writing in accordance with Section 1.5 on or before Monday, October 23, 2021, prior to 12:00 PM EDT. Proposers may only rely on the official written responses which will be distributed as addendums to the RFP. Questions submitted after October 23 will not receive an answer.

## **Section 1.8 – RFP Errors or Omissions**

If a Proposer believes there is any ambiguity, conflict, discrepancy, omission or any other error in this RFP, Proposer should immediately notify the RFP Process Manager as identified in Section 1.5, state in detail what the issue or issues are, and request clarification of or modification to this RFP. Proposer must provide any such request for clarification to the Process Manager at least ten (10) days prior to the final filing date for submission of proposals. Modifications and/or clarifications of this RFP, when appropriate, will be made by addenda and distributed to all parties who have been furnished with this RFP.

## **Section 1.9 – Confidentiality**

Public announcements, statements to the media, interviews and/or news releases regarding this RFP, any terms and conditions of the RFP, the Proposal, any subsequent award and/or any agreements are strictly prohibited and must not be made by any Proposers or any of Proposers' agents or consultants without the prior written approval of the West Virginia Parkways Authority.

## **ARTICLE II – Services Required**

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### **Section 2.1 - Travel Plazas and Rest Area Snack Bar**

To meet the public's needs, the Authority favors a Master Tenant that can provide nationally or regionally recognized food & beverage, retail offerings, and vending at the Travel Plazas and Snack Bar. All subleases, if any, will require the prior written consent by WVPA which will be granted at its sole discretion. Proposers and/or their Subtenants are required to provide services and facilities in accordance with the Americans with Disabilities Act ("ADA").

A Proposer is required to provide a twenty-four (24) hour operation of at least one (1) foodservice concept that offers hot and cold food and beverage items. Additional food service concepts are required, but the hours for these food service concepts may be limited. Proposer is also required to provide twenty-four (24) hour operation of restrooms, lobbies, dining areas and vending machines at the Travel Plazas. The hours of operation of all food service concepts must be clearly posted.

In addition, the Master Tenant is expected to staff and operate a Snack Bar which is an existing demised space located as described in **Appendix G**. The Master Tenant will assume Snack Bar operations to coincide with the opening of the first redeveloped Travel Plaza. For this location, the Authority is responsible for all janitorial services including cleaning the public restrooms.

The Travel Plazas shall be maintained to a first-class operational standard for cleanliness, functionality, and safety in compliance with all laws, codes, ordinances, regulations, and terms of the final Agreement throughout the length of the Lease.

### **Section 2.2 - West Virginia Parkway Authority's Responsibilities**

The WVPA will be responsible for the design, construction, and financing a "white box space" (also called a "warm shell") ready for tenant finishes and equipment. The Authority's scope of work would include the site plan, the massing (the general shape, form, and size) of the buildings, and the visual integrity of the project with the successful Proposer responsible for the construction of and customizing the interior of their demised premises.

The West Virginia Turnpike Authority would deliver to the successful Proposer a complete and finished structural system for the building, a finished roof of WVPA's design, and a rear wall of any material chosen by the WVPA. The Authority would also be responsible for a meter blank and disconnect in the Travel Plaza's electrical room; the plumbing fixtures for required restrooms, janitor's sinks, and drinking fountains; required air handlers for the RTU, main truck lines, ductwork, distribution grilles, and diffusers, and the required sprinkler systems in compliance with the fire code.

For planning purposes only and subject to change without prior notice, the Authority intends to deliver three (3) "warm shells" to the designated Master Tenant over four (4) years. In turn, the Master Tenant shall have up to six (6) weeks from the turnover date of each Travel Plaza to complete their interior build-out of the demised premises.

The preliminary redevelopment schedule is as follows:

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## **Section 2.3 - Proposer's Responsibilities**

The Master Tenant (sometimes also referred to as the Lessee/Operator) will construct and customize the interior of each of their demised premises in the Travel Plazas to their business needs and would be responsible for the following:

- Interior walls finishing, painting or wallpaper (apart from restrooms),
- Floor finishes (coordinated with the WVPA),
- Plumbing fixtures except drinking fountains and restroom fixtures,
- Upgraded electrical fixtures,
- Security systems,
- Telephone, cable, and data wiring,
- Modifications to the HVAC system layout (e.g., auxiliary units for commercial kitchens),
- All interior and exterior signage (all exterior signage beyond the demised premises is the responsibility of WVPA) and trade dress, and
- All necessary equipment, appliances, shelving, furniture, and supplies.

## **Section 2.4 - Operational Requirements for the Travel Plazas**

Proposals must include a complete operational and maintenance plan to address the following items for each Travel Plaza:

### **1. Management Requirements**

Proposer will be required to provide a General Manager who is an employee of Proposer and who resides within two (2) hours of the applicable Travel Plaza locations. The GM's sole responsibility will be the oversight and management of the Travel Plazas and to act as the primary contact for WVPA stakeholders. It is expected that General Manager will be authorized to speak and act on behalf of the selected Proposer and shall possess the ability to make on-site operational decisions.

### **2. Employee Uniforms and Conduct**

Proposer and its Subtenants, where applicable, will be responsible for providing their employees with distinctive, clean, and similar uniforms that will always create a neat and professional public image. All employees shall wear visible name tags while at the Travel Plazas. All employees must be courteous, professional, and neat in appearance always. Management employees shall be knowledgeable about the Travel Plazas and their operations. Proposer will be responsible for supervising all employees and not tolerating any employees at the Travel Plazas who use improper language or act in a loud, boisterous, or otherwise improper manner. Proposer shall be responsible for taking prompt and appropriate action regarding complaints about employee misconduct.



### **3. Other Leases, Licenses, and Permits**

WVPA reserves the right to execute leases, licenses and/or issue permits for other noncompeting services including, but not limited to, Tourist Information Centers, WV Made craft and gift stores, solar, fiber optics, cabling, or telephone services at the Travel Plazas and will retain the rights to all revenues from any such services or uses.

### **4. Travel Plaza Assets/Branding/Sponsorship/Marketing**

The West Virginia Parkways Authority reserves the right to develop a branding/sponsorship/marketing program for the Travel Plazas and to create and market such a program. WVPA reserves the right to identify and retain all rights for branding/sponsorship/marketing opportunities in relationship to the Travel Plazas.

## **Section 2.5 - Maintenance Overview for the Travel Plazas**

Prior to commencement of the Lease, Proposer will be required to provide WVPA with a Maintenance Manual acceptable to WVPA that describes the preventative maintenance plan and the maintenance schedules that will be utilized to ensure that the Travel Plazas are properly maintained. The Maintenance Manual shall specify the type and amount of equipment in each facility, including, but not limited to, all HVAC equipment, compressors, motors, fire extinguishers, fire suppression and fire alarm systems, security systems, signage, and other major mechanical, electrical, or electronic equipment requiring periodic maintenance or operational checks.

The Maintenance Manual shall also state the projected service life of such equipment, tenant improvements, and fixtures in addition to the provisions for scheduled repairs and/or replacement of the equipment. Any change to the Maintenance Manual, staffing, and maintenance schedules after the commencement of the Lease term must be approved by WVPA prior to implementation. Maintenance of all equipment shall be in accordance with the equipment manufacturer's recommendations, if applicable.

Proposer shall be required to keep records of maintenance performed and all required inspection reports on such equipment and to make such documents available to WVPA on a timely basis as required and/or upon request. Proposer shall also be required to provide a twenty-four (24) hour emergency contacts list.

## **Section 2.6 - Performance Evaluation for the Travel Plazas**

WVPA will perform inspections, at its sole discretion, of the Travel Plazas and related operations to ensure compliance with the Lease terms. Inspections may monitor Proposer's performance in all areas including, but not limited to, the following: safety, cash control, curb appeal, maintenance of building, litter control, employee appearance, customer service, equipment condition, and adherence to all applicable WVPA policies. Timely action to correct any deficiencies noted will be required of the Proposer. WVPA reserves the right to recover administrative costs and any related costs, including, but not limited to attorney's fees, for any infractions or violations in addition to any governmental fines or other related charges.

## **Section 2.7 - Services Requested**

WVPA encourages innovative Proposals for any other services that may improve the experience for the public. Proposers should carefully consider a variety of services, including, but not limited to, additional services for truck drivers, commuters, business travelers, motor coach travelers, recreational vehicle users, pet and service animal owners, children, and vacationers.

## **Section 2.8 - Commercial Driver Amenities**

Consideration should be given to providing services for commercial truck drivers. Concepts to be considered include: a designated lounge area with couches, tables, recreation facilities and televisions; separate restroom facilities with personal lockers and showers; coin operated washer/dryers; and commercial check services.

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## **ARTICLE III – Proposal Requirements**

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The following is the information that each Proposer must provide in their Proposals. WVPA reserves the right, in its sole discretion, to disqualify a Proposal that does not include all the information required herein. Each Proposal must address all the applicable submission requirements called for in this RFP and must be in the format specified in this RFP. Each Proposal shall contain a Table of Contents and an Executive Summary (a brief description of the proposed services and improvements).

To expedite the review of submissions, WVPA requests that the Proposal be submitted in a binder with the material separated by tabs labeled to match the specific information requested below. No information beyond that being specifically requested in this RFP is required, and Proposers should keep their submissions to the shortest length consistent with making a complete presentation; however, Proposals should not exceed fifty (50) pages in length excluding responses to **Exhibit 1 Proposer Qualification Questionnaire** and **Exhibit 2 Financial Proposal Forms**.

### **Section 3.1 - Submission of the Proposal**

Proposer must submit ten (10) hard copies plus one (1) flash drive or DVD disk with a PDF copy of its Technical Proposal and, in a separate envelope, the hardcopy of the completed Financial Offer Excel worksheet provided as part of this RFP and a flash drive or DVD disk with the completed Excel spreadsheet. The Proposal shall include all the requirements set forth in this RFP.

Proposals must be submitted to the following address on or before the Proposal Due Date in Section 1.4:

Margaret Vickers, Director of Purchasing  
**West Virginia Parkways Authority**  
3310 Piedmont Road  
Charleston, WV 25306

Attn: **Travel Plazas RFP Submission**

The West Virginia Parkways Authority will not accept any Proposal received after the Proposal Due Date. Proposer may withdraw or modify a Proposal at any time prior to the Proposal Due Date by sending written notification to the RFP Contact in accordance with Section 1.5. Proposer may thereafter re-submit a previously withdrawn Proposal if done so by the Proposal due date.

WVPA is not liable for any costs incurred by Proposer attending a Pre-Proposal Conference or Site Visits and/or the preparation of a Proposal. By submitting a Proposal, Proposer accepts that it will not make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the services requested in this RFP or because of any lack of information contained in this RFP.

All Proposals submitted in response to this RFP will become the property of WVPA. Proposals must be delivered in person, by courier, or by USPS with a written receipt. WVPA will not accept Proposals by any other means than those means stated herein.

**Note:** Prior to contract award, the apparent successful Proposer must be properly registered with the West Virginia Purchasing Division ([www.wvoasis.gov](http://www.wvoasis.gov)), WV Secretary of State, WV State Tax Department, as applicable, and any other entities as necessary. Each of these entities has different fees that may be applicable to their respective registration requirements.

### **Section 3.2 - Cover Letter**

A cover letter must be included in the Proposal and must be signed by the individual or individuals authorized to bind Proposer contractually. The cover letter must indicate for each signatory that the signer is authorized to bind Proposer and must state the title or position the signer holds in Proposer's organization. The cover letter will include the following:

1. Proposer's name, type of business entity or nature of organization (e.g., corporation, partnership, etc.), location of main office - address, telephone/fax numbers and e-mail address and the name, business address, telephone/fax numbers and e-mail address (if applicable) of the person within the organization who will be WVPA's primary contact concerning the Proposal.
2. A statement that the Proposal is an irrevocable offer for at least one hundred eighty (180) days from the date when Proposals are due.
3. A statement that Proposer is ready, willing, and able to provide the services proposed in the Proposal in a timely manner upon reasonable notice.
4. The identity of the key management and supervisory personnel who will be assigned to provide the Proposer's proposed services.
5. A statement that if selected, Proposer's proposed services to WVPA will not create any conflict of interest for the parties. If Proposer believes that a conflict of interest may arise, the nature of the conflict should be described in detail.
6. A statement confirming that the Proposer agrees that prior to the start of negotiation of any Agreement with the WVPA, the Proposer will provide a good faith deposit of \$50,000 (FIFTY THOUSAND DOLLARS) in the form of a certified check or Bid Bond for each Travel Plaza awarded.

The deposit is at risk if, during ground lease negotiations, the successful Proposer substantially changes the terms of their Financial Offer; substantially changes the proposed redevelopment program or schedule; fails to respond to the WVPA's requests for additional information or clarifications in a timely manner; fails to provide proof of financing, insurance, or bonding; or previously failed to disclose substantive background information (e.g. major civil litigation in regard to prior projects, bankruptcies, criminal convictions, or any other matter that would reflect poorly on the State of West Virginia).

In any of these instances, the WVPA's staff time in addressing these unanticipated issues may be deducted from the good faith deposit at WVPA's discretion.

### Section 3.3 – Technical Proposal

**NOTE:** It is critically important that the design submittals be of sufficient professional quality for the Authority to fully understand your approach. Rough hand sketches, lack of proper scaling, or otherwise poor execution of these materials will negatively impact the WVPA's evaluation of your Proposal. **ENGAGING LICENSED DESIGN PROFESSIONALS IS STRONGLY ENCOURAGED.**

In the Technical Proposal, Proposer will submit the following:

1. Based on WVPA's design documents provided in Appendices B and C (AutoCAD files of the site and floor plans are available for download from the project website), the Proposer must provide a scaled Floor Plan for each of the three Travel Plazas along with detailed written documentation that summarizes the uses, concepts, design basis, amenities, and square footage for each use and location within the facility.
2. Drive-thru service is required for the Beckley Travel Plaza (the only location where drive-thru is permitted). Indicate the layout of the lanes on WVPA's site plan. Any drive-thru must meet the following criteria:
  - Provide for 8 to 10 car queuing storage from the order window,
  - Operate in a counterclockwise direction,
  - Provide for a separate, parallel lane adjacent to the drive-thru lane to allow vehicles to exit the drive-thru or pass stalled vehicles,
  - Clearly identify minimum clearances with overhangs or signage, and
  - Ensure that drive-thru lanes do not interfere with overall flow and safety of the site.
3. WVPA favors plans that incorporate an appropriate mix of customer amenities into the design and ongoing operations. List proposed amenities to be offered to the public incorporating public features such as Wi-Fi, EV charging stations, outdoor seating, and elements that create an authentic and unique sense of place.

### Section 3.4 - Economic Proposal

In addition to providing high quality services to the public, WVPA is interested in developing a steady, reliable, and non-toll revenue source from the Travel Plazas. These new revenue sources will help to maintain the high standards that have been a hallmark of the West Virginia Turnpike.

1. Rent – The Financial Proposal forms, attached hereto as Exhibit 2 and as an Excel workbook, must be completed in its entirety for each Travel Plaza and the Snack Bar with a duly signed hardcopy included with the submission of the Proposal. Also, the completed spreadsheets must be provided electronically as instructed in **Section 3.1**.

The Authority reserves the absolute right to inspect the Demised Premises and to audit the accounting records of the Master Tenant and all subtenants regarding all amounts owed to the Authority from the operation of the Travel Plazas.

2. Development/Tenant Improvements Budget – Proposer must submit details on the budget for all the Tenant Improvement costs to the Travel Plazas, including, but not limited to, all Hard and Soft Costs for construction, infrastructure, equipment and

furnishings, cash control and security system interface, alarm systems, any off-site costs, and any other startup costs.

3. Marketing Approach and Merchandising – Proposer must submit a description of: (a) Proposer’s approach to marketing and/or advertising of the Travel Plazas; and (b) proposed merchandising (where applicable) for the Travel Plazas, including a brief description of signage, concept design, trade dress, and décor.

### **Section 3.5 – Transition Plan**

The current Lease and Operating Agreement with HMSHost (now a consortium majority owned and led by Blackstone Infrastructure Partners) currently expires December 31, 2021, at 11:59 PM EST. At the time of the issuance of this Request for Proposals, the Authority is negotiating a thirteen-month extension (through February 1, 2023) with the Operator.

Each Proposer will be required to submit a detailed plan for the proposed transition from the existing Operations to the Proposer’s interim foodservice and retail offerings which would be available to the public no later than February 1, 2023. Depending on the outcome of the extension negotiations, the Authority may ask the successful Proposer to expedite the transition timeline.

Each Transition Plan shall include the changeover of all operations including, but not limited to, proposed phasing, light renovation if required, removal of old equipment, installation of new equipment, signage, management, staffing, and employee training. The Transition Plan is subject to WVPA’s approval.

The proposed interim operations prior to the redevelopment of the Travel Plazas must be consistent with the Construction Schedule found in **Section 2.2 – West Virginia Parkways Authority’s Responsibilities**. Any impact to the public must be always minimized during all transition activities.

### **Section 3.6 - Quality, Variety, and Methodology of Services**

1. Operational Information – Proposer must describe all proposed food, retail, and services including, but not limited to: (i) special provisions for assistance to disabled, elderly or other customers; (ii) any special provisions for truck driver amenities at each Travel Plaza; and (iii) any special provisions for commuters and leisure travelers.
2. Subtenant Relationships – If applicable, Proposer must demonstrate to the WVPA that the Proposer has long-term relationships and/or proposed subleases/agreements with Subtenants with related experience that is of a first-class quality.
3. Other Services – Proposer must describe in detail all other proposed services or concepts, including, but not limited to, food, retail, commuter services, trucker amenities, pet waste disposal and/or other services or concepts. For each service and concept, Proposer must describe: (i) the nature of the services or products to be offered; (ii) brand names where applicable; (iii) price lists for products or services; and (iv) the relationship to fuel services, if any.

4. Customer Satisfaction – The Proposal must provide for a program to ensure customer satisfaction at the Travel Plazas, including, but not limited to, incident management, complaint resolution processes and/or other customer satisfaction approaches. Proposer must describe how the results of their customer satisfaction processes will be used in the ongoing management of the Travel Plazas.
5. Proposed Franchisee/Sub-Contractor Relationships – Proposer must include a detailed description of all proposed franchisee and/or subcontractor relationships, including, but not limited to, rents, percentage payments, costs, fees, and/or other charges for each different vendor and a clear statement of the relationship between Proposer and any franchiser, franchisee and/or subcontractor.
6. Proposer Participants/Consultants – Proposer must identify all other possible entities who will assist with or be involved with the Travel Plazas including, but not limited to, any proposed architect or other designers, construction managers, or building management personnel.
7. Operational Expertise – Proposer must provide evidence of operational expertise and capacity, including, but not limited to, descriptions of: (i) quality standards; (ii) company policies and operating standards; (iii) staff training and procedures including emergency response procedures (any training or procedures manuals should be included in an addendum to the Proposal); (iv) proposed property management; and (v) ability to provide backup management expertise on short notice.
8. Variety of Products and Services – Proposer shall provide a detailed list showing a variety of vended products and services in addition to the F&B and retail offerings.
9. Janitorial Services – Proposer must provide a description of how the Travel Plazas will be maintained in terms of cleanliness, building functionality, and safety. The housekeeping description must also include how trash will be removed from the Travel Plazas. Additionally, the description must include the entity that will be responsible for the janitorial services at the Travel Plazas, the proposed staffing levels for these services, and the frequency and extent of cleaning services.

### **Section 3.7 – Maintenance**

- The Authority shall be responsible for maintenance to and repairs to, the building structure, plumbing, electrical wiring and fixtures, heating, ventilating and air conditioning equipment, boilers, hot water equipment, compressors, pumps, walk-in refrigerators and freezers, windows and doors, hoods and exhaust systems, floors, ceilings, and wall structure, dishwashers, garbage disposals, toilets, water fountains, sinks and non-routine interior and exterior painting and all other equipment owned by the Authority and leased to Lessee hereunder, provided that if such repairs or replacements of the aforementioned are necessitated by Lessee/Operator negligent or willful acts, including but not limited to neglect or abuse, said repairs or replacements shall be at the expense of Lessee. The Lessee/Operator shall perform all routine cleaning operations on the building and equipment.

- The Authority will be responsible for the repair of sidewalks, entrance and exit areas, and all patio areas to keep in a safe state for patrons.
- The Lessee/Operator shall not make any structural alteration in any of the buildings or make any change in the permanent equipment installed by the Authority without prior written approval of the Authority which approval may be withheld for any reason or no reason.
- Lessee/Operator shall also use its best efforts to see that its use of the kitchen plumbing and drainage systems in all the restaurant facilities does not result in clogging, backups and overflows, resulting from introducing inappropriate substances (i.e., grease mixtures, overloads, etc.) into the said plumbing and drainage systems. With proven negligence The Authority will charge for labor and materials to unclog drains.
- The Lessee/Operator will be responsible for and pay all cost of interior lighting, gas, fuel, electric power, heating, exterior building lighting, air conditioning and water services within its area or zone of responsibility. These costs are considered to be operational costs to the Lessee/Operator.
- The Lessee/Operator shall be responsible for cleaning blockages in any waste lines within the restaurant buildings. After reasonable attempts are made by Lessee/Operator to clear the blockage, then the Authority will be notified, and personnel will be dispatched to facility to clear blockage.
- The Lessee/Operator shall provide and maintain in serviceable condition, fire extinguishers of such type and number as required by state fire laws. The Authority will be responsible fire extinguishers in their zone of responsibility. (ex. Craft Shops, mechanical rooms)
- The Lessee/Operator will be responsible for the cleaning of any hood suppression systems within the restaurant. The Authority will be responsible for the quarterly, semi-annual, or annual inspections and any repairs as required.
- The Authority will be responsible for the quarterly, semi-annual, or annual inspections and any repairs to sprinkler systems and panels.
- The Lessee/Operator will be responsible for the cleanliness of the restaurant facilities, including the portions of the buildings used for the handling, preparation, storage and service of food, disposal of waste and refuse, public lobbies and lounges, craft shops, public toilet rooms, entrances, exits, and areas at or immediately adjacent to snack bars, including receptacles used in conjunction with snack bars, picnic areas outside the building, and any portion of the picnic area which serves as a sidewalk. Lessee/Operator shall continually keep these in a neat, clean and sanitary condition (including measures to eliminate flies and other insects as may be necessary or as may be required by State laws, regulations and requirements). The housekeeping and sanitation duties required of the Lessee/Operator include, but are not limited to, the sweeping, mopping and periodic scrubbing of all floor surfaces, whether exposed or under counters, tables, or equipment: the proper cleaning of all kitchen equipment and utensils, both Authority-owned and



Lessee-owned, the handling and storage of food under sanitary conditions, free from contamination: the complete washing and cleaning of all walls, partitions, door and equipment; the cleaning of all glass surfaces of windows and doors; the removal of dust from windowsills, cabinet tops, and other areas where such may accumulate and all work necessary for the maintenance of kitchen, restaurant and rest room facilities in a continuously clean and sanitary condition, free from litter or objectionable material and odors.

- The Lessee/Operator shall provide training for the servicing and repair of Proprietary equipment/appliances, as well as; provide any books and literature on said equipment/appliances for purpose of maintenance and repair by Authority personnel.
- The Lessee/Operator shall observe and comply with all Federal, State, and local laws, ordinances, rules, and regulations respecting the safety, health, sanitary codes, and equipment permit requirements and all other legal requirements that may be applied or required. The Lessee/Operator shall secure all licenses and permits required by applicable ordinances or law for its operation of the Turnpike (Parkways Authority) restaurants and shall pay the fees therefore and shall pay taxes on all property owned by the Lessee.
- Care of grass, shrubs, trees, and other plantings will be the Authority's responsibility. The Authority will make repairs to the roadway and parking areas, including resurfacing, when necessary, and repairs to parking area floodlights and lamp replacement, thereof, at its own expense. The Lessee/Operator agrees to keep the leased areas in a clean and sightly condition at all times, making adequate provision for the collection and disposal of papers and rubbish therefrom and for general good housekeeping, at its own expense. The Lessee/Operator shall continuously provide an adequate number of refuse containers of a completely covered, closed type, each having a presentable appearance in keeping with the high standard of operation desired. The Lessee/Operator agrees to keep clean and presentable all sidewalks and entrances from cigarette butts, gum, and snow, etc.
- The Authority will maintain and pay for all highway, driveway, and parking area lighting.
- The Lessee/Operator shall be responsible for the removal of all garbage, refuse, debris, and other waste materials arising out of the occupancy and operation of the restaurant facilities. This includes the trash containers in the car parking area and around the building. The Authority will be responsible for trash removal and disposal in the truck parking area. The Authority will provide trash receptacles in the truck parking area.
- The Authority will be responsible for snow removal on roadways, entrance roads and parking areas. The Lessee/Operator will be responsible for snow removal at the restaurant entrances, exits and restaurant sidewalks. If an anti-icing agent is applied to these areas, the Lessee/Operator will use a product that is environmentally safe and not harmful to patrons or pets.
- If applicable, the Authority will be responsible for maintenance, repair and upkeep of water or wastewater treatment plants at any facilities.

### Section 3.8 – Statement of Qualifications

Each Proposal shall contain the following information regarding Proposer's qualifications:

1. A brief history and description of Proposer's organizational structure including size, scope of services, capability, and any area(s) of specialization. Proposer must also identify any companies or organizations of which Proposer is a subsidiary or directly affiliated therewith.
2. Detailed documentation of Proposer's qualifications and experience related to the scope of work required by this RFP.
3. The resumes of all key management and supervisory personnel who will be directly assigned to provide services to WVPA and a description of the specific function each individual will perform. This information must include each individual's qualifying experience to perform the assigned services and each individual's position and length of service with Proposer.
4. A client list including a detailed description of the size, total dollar value and specific services provided for each client to which Proposer provided similar services within the past ten (10) years, specifying the name, address, and telephone number of the individual responsible at each client organization for the supervision of such services.
5. A list of at least three (3) client references and two (2) banking references including the name and title of the reference, the name of the company and the email address and telephone number for the reference.
6. Evidence of Proposer's financial position:
  - a. Publicly Held Corporation. If Proposer or any part of Proposer is a publicly held corporation, this information must include consolidated financial statements as submitted to the Securities and Exchange Commission on Form 10-K for the last two fiscal years; the most recent Form 10-Q since the last Form 10-K was submitted; and any Form 8-Ks for the last fiscal year.
  - b. Privately Held Corporation. If Proposer or any part of Proposer is a privately held organization, this information must include: balance sheets for the last two fiscal years (all financial statements provided in the Proposal should be certified by an independent certified public accountant); a statement of income for the last two fiscal years; and a management discussion and analysis of the organization's financial condition for the last two fiscal years indicating any changes in the organization's financial position since the financial statements were originally prepared.
  - c. Limited Liability Company. If Proposer or any part of Proposer is a limited liability company, this information must include balance sheets for the last two fiscal years (all financial statements provided in the Proposal should be certified by an independent certified public accountant); a statement of operations for the last two fiscal years; a statement of members' capital; and a management discussion

and analysis of the organization's financial position since the financial statements were originally prepared.

- d. Partnership. If Proposer or any part of Proposer is a partnership, this information must include: balance sheets for the last two fiscal years (all financial statements provided in the Proposal should be certified by an independent public accountant); a statement of income for the last two fiscal years; a statement of partners' capital; and a management discussion and analysis of the partnership's financial conditions for the last two fiscal years indicating any changes in the partnership's financial position since the financial statements were originally prepared.
  - e. Additional Financial Information. Provide any additional information that will demonstrate Proposer's financial capacity to undertake and complete the proposed tenant improvements and provide the proposed services, including letters of interest from prospective investors or lenders.
- 7. A statement that Proposer is current on the payment of federal, state, and local taxes.
  - 8. Evidence that the Proposer will be able to secure the required insurance specified by the Authority as outlined in **Appendix A**.

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## ARTICLE IV – Evaluation of Proposals

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### Section 4.1 – Overview

An Evaluation Committee comprised of WVPA staff, consultants and/or outside counsel will review and evaluate each of the properly submitted written Proposals. The purpose of the evaluation process, which will be conducted as set forth in this Article, will be to determine which Proposals comply with the requirements of this RFP and to recommend the Proposal that best meets the selection criteria set forth in Section 4.3. The evaluation process may also include, at WVPA's sole discretion, reference checks, oral presentations, facility inspections and interviews with each Proposer (See Section 4.4).

### Section 4.2 - Preliminary Review

1. Each Proposal will be date and time stamped when received.
2. All Proposals will be reviewed to determine if they contain all the required elements and information required in this RFP. WVPA reserves the right, at its sole discretion, to disqualify, without any further evaluation, a Proposal that does not meet all the requirements of this Request for Proposals.

### Section 4.3 - Evaluation Criteria and Selection

The West Virginia Parkways Authority will make an award, if any, only to a Proposer that has been determined by WVPA to be fully responsive to the RFP requirements.

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**IMPORTANT: A Proposal that materially fails to provide information requested under the RFP will be judged non-responsive and may be rejected at WVPA's sole discretion.**

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Upon receipt of the Proposals, copies will be provided to WVPA's Evaluation Committee. The Evaluation Committee will review, and rate Proposals based upon the following weighted criteria:

CRITERIA	WEIGHTED	EVALUATION COMMITTEE GUIDANCE
Financial Benefit/Proposed Compensation	35%	Does the Proposed Compensation for the Travel Plazas provide a fair return on the WVPA's capital investment? Does the Compensation grow over time?
Proposed Offerings	25%	Will the Offerings serve a variety of Turnpike customers? Are the brands of Proposed Offerings well known to the traveling public? Are the proposed amenities sufficient? Has the Proposer agreed to operate the Snack Bar from 7 AM to 7 PM, 7 days a week at Rest Area 69?
Customer Experience	10%	Do the proposed offerings and interior designs provide an authentic sense of place?

		<p>Is the Proposer fully invested in creating a superior Customer experience?</p> <p>Does the Proposer have a suitable staffing plan?</p> <p>Is it clear how the Proposer will keep the facilities clean and well maintained?</p>
Financial Capability	15%	Does the Proposer have sufficient financial resources to deliver on their plan as well as the resiliency to stay in business over the long term?
Transition Plan	15%	Has the Proposer provided a realistic Transition Plan that minimizes the interruption of motorist services as the Travel Plazas are redeveloped?

## Selection Process

The West Virginia Parkways Authority reserves the right to change or amend the selection process, at its sole discretion. Prior to the submission date, all parties who have received a copy of the RFP will be notified in writing of any changes. After the submission date, only Proposers who have submitted Proposals prior to the deadline will be notified, in writing, or by electronic mail of changes.

1. Proposal Submission. All Proposals must be received by WVPA by the time, date and at the location stated in Section 3.1 of this RFP. Any Proposals received after the Proposal due date will be returned unopened.
2. Preliminary Evaluation. First, WVPA will review all the Proposals to determine if the Proposals contain the required forms and if all submittal requirements have been met. Proposer's failure to submit any required forms and failure to follow all submittal requirements may result in the Proposal being rejected.
3. Internal Review. All Proposals will be evaluated through an internal review process by WVPA, consultants and/or outside counsel to determine how well the Proposals meet the selection criteria. In addition to reviewing the Proposals, WVPA and its consultants may review references, conduct site visits to Proposer's other projects, and then may use the results of these activities in evaluating the Proposals.
4. Interviews. At WVPA's sole discretion, oral presentations and interviews may be scheduled with all Proposers, finalists only, with individual Proposers only, or not at all.
5. Additional Information. As part of its review of Proposals, the Authority may seek additional information or request revisions to submitted Proposals prior to making a recommendation. WVPA, at its sole discretion, may choose to request a Best and Final Offer ("BAFO") submission, and may choose to conduct a second round of interviews based on the BAFO submissions.
6. Recommendations. WVPA will rank the Proposals and make a recommendation to the WVPA Board of Directors for approval.
7. Selection. The WVPA Board of Directors will vote to approve a recommended Proposer.

8. Agreement Negotiation. WVPA will negotiate the final form of the Lease with the selected Proposer within forty-five (45) days of the selection of a Proposer.

### **Selection Criteria**

WVPA will select the Master Tenant for the Travel Plazas based upon information contained in Proposals that meet the selection criteria, WVPA's analysis, past projects, oral presentations (if any) and any other information available to WVPA. WVPA also reserves the right to request additional information of any or all Proposers in writing and to use that information in selecting or qualifying Proposers. The minimum selection criteria will include:

1. Proposer. The quality of Proposer and its capacity to meet the needs of the public will be considered, including, but not limited to, previous experience, similar projects, and senior management resumes. Particular attention will be given to demonstrated experience providing high-quality services in a similar setting. Consideration will also be given to prior experience working with community groups and government agencies and addressing their concerns and needs effectively.
2. Services Approach. Proposer's approach to providing innovative products and services will be considered, including, but not limited to, the proposed uses, services, and concepts; products, pricing, staffing and hours; market analysis and merchandising; security; operational expertise; proposed transition; and design and schedule for the Tenant Improvements.
3. Financial Proposal. WVPA will consider all elements of the Proposal including, but not limited to, the proposed Minimum Annual Rent Guarantee, the percentage rent, and annual rent escalation. The amount, timing, and total investment into the Travel Plazas will be considered as well as the amount, frequency, and nature of the reinvestment.  
  
WVPA will seek the best overall financial return and the financial offer best suited to its needs.
4. Financial Capacity. Each Proposer's financial capacity to carry out its Proposal will be considered, including, but not limited to, each Proposer's financial position, proposed financing, and franchiser interest.
5. Other. WVPA will consider all other issues relevant to the Proposal that may be in the best interest of the State of West Virginia, including, but not limited to, the quality, clarity, conciseness, and organization of the Proposal and any other materials presented.

### **Section 4.4 - Oral Presentations, Facility Inspections, and Interviews**

The West Virginia Parkways Authority reserves the right, at its sole discretion, to require Proposer to give an oral presentation regarding their Proposal and to answer questions at an interview with WVPA. WVPA also reserves the right to require a facility inspection at a Proposer's existing location that is open to the public. WVPA will not be liable for any costs a Proposer incurs in association with any such presentations, inspections and/or interviews.

WVPA will provide further information to Proposers who will be interviewed.

#### **Section 4.5 - Additional Procurement Rights**

The West Virginia Parkways Authority specifically reserves the following rights:

1. To accept or reject any or all Proposals received in response to this RFP.
2. Reject any Proposal where WVPA finds that Proposer is not in good standing with the State of West Virginia or any other state agency within the past five (5) years.
3. Correct any arithmetic errors in the Proposals.
4. Waive informalities and excuse minor irregularities contained in Proposals. This waiver will in no way modify the RFP or excuse a Proposer from full compliance with the RFP and/or the Lease.
5. Request that Proposer clarify elements in their Proposal and submit a revised Proposal that incorporates any such clarifications.
6. Negotiate Lease terms with Proposer that best serve the interests of WVPA, consistent with RFP requirements, statutory requirements and WVPA policies and procedures.
7. Contact any clients on Proposer's client list and/or references furnished as part of the Proposal.

#### **Section 4.6 - Questions and Inquiries**

In accordance with Section 1.5, all questions or concerns regarding this RFP must be directed in writing and transmitted electronically via email to the RFP Process Manager.

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## **ARTICLE V – Operating Agreement and Lease Terms and Conditions**

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As stated in **Section 4.3 - Evaluation Criteria and Selection**, the WVPA anticipates that the final form of the Operating Agreement and Lease will be negotiated with the successful Proposer within forty-five (45) days of the selection of a Proposer. Given the aggressive timeline, Proposers should carefully consider the following Sections and indicate their acceptance of the proposed terms or provide alternative language.

### **Section 5.1 – Termination**

The West Virginia Parkways Authority shall have the absolute right to terminate Lease negotiations or the Lease in the event the WVPA finds that any certifications or statements made by Proposer were intentionally false, intentionally incomplete, and/or intentionally misleading. Upon such a finding by WVPA, the Authority may exercise its absolute right to termination by providing written notification to Proposer.

### **Section 5.2 – Indemnification**

Proposer shall be responsible for all damage to life and property that is directly or indirectly caused by, or that arises out of: (1) the negligent or otherwise tortious acts, errors or omissions of Proposer, its officers, agents, contractors, subcontractors, Subtenants, assigns, employees, invitees, licensees and franchisees (the "Proposer's Parties") in connection with any of their services under the Lease; and/or (2) the use, occupancy or operation of the Travel Plazas or any part thereof by Proposer or any of Proposer's Parties.

Notwithstanding any other provision of law, Proposer hereby protects, indemnifies, holds harmless and defends the West Virginia Parkways Authority, the State of West Virginia and their respective officers, directors, agents, employees, assigns, contractors, and subcontractors and the successors and assigns of each of the foregoing from and against any and all liabilities, penalties, fines, forfeitures, demands, losses, claims, suits, causes of action, judgments, and the costs and expenses incidental thereto (including cost of defense, settlement, attorneys' fees, consultant fees and expert fees) and damages of any nature whatsoever that are directly or indirectly caused by, or that arise out of the use, occupancy or operation of the Travel Plazas or any part thereof by Proposer or any of Proposer's Parties and/or the performance of, or failure to perform, any services required by the RFP and the Lease by Proposer or any of Proposer's Parties, including, but not limited to:

- (a) Any planning, design, work, construction, re-construction, repair, maintenance or alteration, done in, on or about the Travel Plazas or any part thereof;
- (b) Any possession, occupation, condition, operation, maintenance or management of the Travel Plazas or any part thereof;
- (c) Any act, omission or negligence on the part of Proposer, or any of Proposer's Parties;
- (d) Any accident, injury or damage to any person or property occurring in, on or about the Travel Plazas, including, but not limited to loss of use of natural resources;



(e) Any failure on the part of Proposer or any of Proposer's Parties to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in the RFP and the Lease;

(f) Any Environmental Condition created on or introduced to the Travel Plazas by Proposer or any of Proposer Parties;

(g) Any investigation, monitoring, removal, or remediation of any Hazardous Waste on, within or released from the Travel Plazas, whether such investigation, monitoring, removal or remediation is done or completed by WVPA, Proposer, or any of Proposer's Parties or any other person or entity and regardless of whether or not such investigation, monitoring, removal or remediation is rendered pursuant to a court order or the order of an administrative agency;

(h) Any environmental contamination or threat of environmental contamination;

(i) Any claims asserted by any person or entity (including, without limitation, any governmental agency or quasi-governmental, board, bureau, commission, department, instrumentality, public body, public corporation, court or administrative tribunal), in connection with or in any way arising out of the presence, storage, use, disposal, generation, transportation or treatment of any Hazardous Waste at, upon, under or within the Travel Plazas;

(j) Non-compliance with, or violation of, any Environmental Law. As used herein, the term "Environmental Law" shall mean any local, state or federal law, rule, ordinance, regulation, governmental action, order, directive, administrative proceeding or ruling whatsoever, either in existence as of the date hereof or enacted or promulgated after the date hereof, related to the existence, management, control, discharge, treatment, containment, transportation and/or removal of substances or materials that are or may become a threat to public health or the environment; and any common law theory based on nuisance, trespass, negligence, strict liability, aiding and abetting or other tortious conduct; or

(k) The preparation of an environmental audit of the Travel Plazas, whether conducted or authorized by WVPA, Proposer, any of Proposer's Parties or any other third party, or the implementation of any environmental audit's recommendations including, but not limited to, conducting, or implementing the recommendations of such audit. WVPA may employ the attorneys and/or consultants of its choice.

Proposer agrees that such indemnity shall survive the termination of the Lease and shall not be limited by reason of any required insurance coverage.

Upon termination of the Lease, Proposer shall furnish WVPA with a general release for any damages claimed to have been sustained by Proposer arising from, out of or relating to its use of the Travel Plazas.

WVPA shall not be liable for injury to any person occurring in or on the Travel Plazas or in any way relating to the use and occupancy of the Travel Plazas by Proposer or by Proposer's Parties, or for any damage to, or loss of, property in, on or about the Travel Plazas belonging to Proposer

or any of Proposer's Parties or any other persons in, on or about the Travel Plazas, or for any damage or loss suffered by the business of Proposer, from any cause whatsoever, whether said damage or injury results from conditions arising upon the Travel Plazas or from other sources. Without limiting the foregoing, WVPA shall not be liable in any manner to Proposer, or any of Proposer's Parties or any other persons in or about the Travel Plazas, for any injury or damage to Proposer, Proposer's Parties or any other person in, on or about the Travel Plazas, or to any of their property, caused by the criminal or intentional misconduct, or by any act or negligence of third parties or of Proposer, Proposer's Parties or of any other person, or caused by an accident or fire.

Proposer covenants that no claim shall be made against WVPA by Proposer, or by any of Proposer's Parties, or by any other party claiming the right to be in, on or about the Travel Plazas, for any injury, loss, or damage to the Travel Plazas, or to any person or property, occurring upon the Travel Plazas or in connection with Proposer's use and occupancy of said Travel Plazas or that of Proposer's Parties. In no event shall WVPA be liable to Proposer or any of Proposer's Parties or any other persons in, on or about the Travel Plazas, for any consequential, incidental, or special damages, or lost profits sustained, or alleged to have been sustained by any of them.

### **Section 5.3 - Standard Lease Clauses (including, but not limited to, the following lease clauses)**

The West Virginia Parkways Authority's Board of Directors must approve the execution of the Master Lease. WVPA's power to lease land, appurtenant structures, and the conditions under which it does so derive from WV Code Section §17-16A-10(a).

1. Term – The term of the Lease ends on January 2, 2038, at 11:59 PM with no option to extend. The failure of Proposer to obtain any regulatory approvals necessary to implement the Tenant Improvements within three (3) months after the construction of the leased premises are substantially completed shall constitute an event of default, trigger the applicable default remedies, and default damages set forth in the Lease.
2. Travel Plaza Rent – The financial proposal form, attached hereto as Exhibit 3, must be completed in its entirety, signed by an authorized officer or agent of Proposer, and included with the submission of the Proposal.
  - a. Exhibit 3 must indicate for the Lease term: the projected rental revenue, the projected automatic vending revenue, the services gross receipts, and the projected rent payments to WVPA, based on the MAG rent and additional percentage rent offers described above. Proposer should describe clearly the formulas used for determining the MAG and/or percentage rent in the Proposal. Gross Receipts for automatic vending, automatic teller machines, and telephone service will be the payments made to Proposer by a third-party vendor. The financial projections section of the Proposal described above must include the anticipated rent payments and Tenant Improvements and must clearly indicate all assumptions, projected cash flows, and the basis for those projections.
  - b. Within a specified period after the end of each Lease year, Proposer shall provide certified financial statements of the actual amount of Gross Revenues and additional percentage rent due to WVPA for each such Lease year.

3. Financial Guarantee – WVPA will require Proposer to provide an unconditional, evergreen, irrevocable, clean letter of credit or performance bond at Proposer's sole cost and expense, to guarantee timely payment and operational performance during the term of the Lease. The financial guarantee shall be an unconditional, irrevocable, clean letter of credit or performance bond from an issuer domiciled in the State of West Virginia with a credit rating satisfactory to WVPA, payable to WVPA, in form and substance satisfactory to WVPA, in the principal amount of One Million Dollars (\$1,000,000.00) per location, increasing annually by two percent (2%). The Financial Guarantee shall be submitted by Proposer, in form and substance satisfactory to WVPA upon the execution of the Lease naming the West Virginia Parkways Authority as the account party and securing Proposer's indebtedness, liabilities, and obligations hereunder, together with all replacements thereof and substitutions therefor.
4. Tenant Improvements – Within thirty (30) days following execution of the Lease, Proposer will prepare and submit to WVPA for its approval a final proposed Tenant Improvements plan detailing improvements to the Master Tenant's demised spaces in the Travel Plazas. Proposer will determine the exact nature of the Tenant Improvements subject to approval by WVPA, in its sole discretion, which approval shall be exercised in a manner designed solely to ensure the public's safety, ADA compliance, the effective operation and maintenance of the Travel Plazas and first-class services are being provided to the public. Upon approval by WVPA, the Tenant Improvements plan will be incorporated into the Lease and implemented by Proposer. No uses or construction will be allowed at any of the Travel Plazas without WVPA's prior written approval to ensure the continued safe and effective operation of the highway.
5. WVPA Review and Approval – WVPA will retain the right to review and approve all schematic, design, construction, and remodeling drawings related to the Tenant Improvement plan. WVPA's approval shall be exercised in a manner designed solely to ensure the public's safety, ADA compliance, the effective operation of the Travel Plazas, and first-class services to the public in maintaining the Travel Plazas. Proposer will not be allowed to begin any construction or remodeling without the prior written approval by WVPA. Any future changes to or additional construction at each Travel Plaza will be subject to the same requirements. WVPA reserves the right to approve, alter, or amend at any time any aspect of the designs.
6. Lease – The Travel Plazas and any Tenant Improvements made by Proposer shall be leased to Proposer, who shall have the obligation to maintain the Travel Plazas and Tenant Improvements and to deliver them at the end of the Lease in a condition that is the same as or superior to the condition in which they were received.
7. Allowed Uses – Proposer will use the Travel Plazas only for those purposes specifically approved by WVPA and incorporated into the Lease. Proposer may not use the Travel Plazas for any other purpose without prior written approval from WVPA. Any future changes in use will require the prior written approval of WVPA. Such approvals may be granted or withheld at WVPA's sole discretion.
8. Reserved Rights – WVPA reserves the right to use or to allow others to use the Travel Plazas for any use so long as such use does not materially interfere with Proposer's permitted use of the Travel Plazas. Proposer will agree to work cooperatively with WVPA and any

designated entity to accommodate any such use by WVPA or others. Such uses may include but are not limited to Tourist Information Centers, WV Made shops, farmers' markets, wireless telephone facilities, fiber optic communications facilities, solar energy, EV Stations, hydrogen stations, and advertising. The rights pertaining to these activities are specifically reserved to WVPA. WVPA specifically reserves for itself the right to name the Travel Plazas, to promote specific products or companies at the Travel Plazas, and/or to provide for other forms of sponsorship but will consider ideas for including these stated as part of the Proposer's permitted uses if the Proposer suggests applicable ideas in their Proposals.

9. Permits and Approvals – Proposer will be solely responsible, including financially responsible, for all regulatory applications, reviews, permits and/or approvals required for the Tenant Improvements, operation, and reinvestment of the Travel Plazas. Proposer will be solely responsible, including financially responsible, for all required regulatory permit applications and/or reviews. Prior to contract award, the apparent successful Proposer must be properly registered with the West Virginia Purchasing Division [www.wvoasis.gov](http://www.wvoasis.gov), WV Secretary of State's Office, WV State tax Department, as applicable, and any other entities as necessary. Each of these entities has different fees that may be applicable to their respective registration requirements.
10. Health, Safety and Environmental Safeguards – Proposer must provide all safeguards at the Travel Plazas as are necessary to protect the health, safety and welfare of patrons, employees, and the public in accordance with federal, state and/or local statutes, regulations, bylaws and/or guidelines. Proposer will be solely responsible, including financially responsible, for all required regulatory permit applications and/or reviews.
11. Equipment and Furnishings – Any equipment and/or furnishings purchased and installed by Proposer in the Travel Plazas shall be of a type and class previously approved by WVPA in writing and must be in sufficient quantities to provide proper service to the patrons of WVPA. All of Proposer's purchased equipment and/or furnishings shall be new and of first-class material and construction. Proposer will be required to provide all other items necessary or appropriate to satisfactorily perform its obligations under the Lease. All such expenditures by Proposer must be approved in writing by WVPA before purchase and installation. Proposer shall own the above-referenced equipment and furnishings until the expiration or termination of the Lease. Upon the expiration or termination of the Lease, the title to the above-referenced equipment will automatically revert to WVPA except for any brand name signage fascia.
12. Fair Pricing – Prices charged at the Travel Plazas by Proposer shall be commercially reasonable and shall be subject to WVPA's review and approval. No discounts for WVPA personnel will be provided at Travel Plazas.
13. Management – WVPA will have the right to approve all members of Proposer's local management team. The naming by Proposer of the management team in the Proposal will be considered by WVPA as a commitment by Proposer to assign these individuals to those stated positions, subject to approval by WVPA. Any subsequent change in the General Manager (as referenced in Section 2.4(1)) or other management team members will require prior written approval by WVPA.

14. Insurance and Indemnity– Proposer must procure on or before Lease commencement and maintain until the Lease is terminated, insurance of the kinds and in the amounts specified by WVPA (for specific coverages and indemnity requirements see Appendix A) as follows:

- a) Commercial General Liability including contractual indemnity coverage and Garage Liability Insurance;
- b) Commercial Umbrella Liability Insurance;
- c) Commercial Property Insurance including Flood;
- d) Worker’s Compensation Insurance;
- e) Underground and Aboveground Liability Insurance;
- f) Business Auto Liability Insurance;
- g) Terrorism Risk Insurance; and
- h) Performance Bond.

In addition to the above insurance types, during any Construction/Renovation periods, Proposer shall provide the following insurance prior to the commencement of any work:

- a) Owner’s/Proposer’s Protective Liability Insurance;
- b) Professional Liability Insurance and Pollution Insurance;
- c) Contractor’s Legal Liability Insurance including Professional Insurance;
- d) Builders’ Risk Insurance; and
- e) Labor and Materials bond.

All insurance required by the Lease shall be obtained at the sole cost and expense of Proposer, maintained with insurance carriers licensed to do business in the State of West Virginia and acceptable to WVPA.

Proposer shall furnish WVPA with certificate(s) of insurance, executed by a duly authorized representative/underwriter of the insurance company, showing compliance with WVPA’s insurance requirements set forth herein.

All certificates and endorsed policies shall provide for thirty (30) days written notice to WVPA prior to the cancellation, non-renewal or material alteration of any insurance policies referred to therein. Such notice shall be sent by certified mail to: West Virginia Parkways Authority, Attn: Director of Operations 3310 Piedmont Road, Charleston, WV 25306.

Insurance policies utilized for WVPA projects may not contain deductibles or self-insured retentions unless reasonably approved by WVPA. If the Proposer’s insurance policies do not provide for full, one hundred percent (100%) coverage of loss up to maximum policy limits, then Proposer and its insurance carrier agree to be, and shall be, solely responsible for all such deficiencies and shall indemnify WVPA for all such amounts, including all costs and expenses related thereto.

Proposer shall provide, at WVPA’s request, certified copies of insurance policies for all insurance coverage required herein within ten (10) business days of WVPA’s request for said copies. Failure to provide such certified copies may, in the sole discretion of WVPA, result in the cancellation of the Lease.

Failure of WVPA to demand such certificates, policies, or other evidence of full compliance with these insurance requirements or failure of WVPA to identify a deficiency from evidence that is provided shall not be construed as a waiver of Proposer's obligation to maintain such insurance.

Failure to maintain the required insurance and provide proof of such coverage to WVPA may, in WVPA's sole discretion, result in termination of the Lease. If Proposer fails to maintain the required insurance, WVPA shall have the right, but not the obligation, to purchase said insurance at Proposer's expense. Proposer agrees that all premiums, costs, and expenses associated with such purchase, or the recovery of those purchase amounts by WVPA, shall be added to Proposer's payments due under the Lease, or by any other lawful means.

By requiring insurance, WVPA does not represent that certain coverage and limits will necessarily be adequate to protect Proposer, and such coverage and limits shall not be deemed a limitation on Proposer's liability under the indemnities granted to WVPA under the Lease or under any other provision of the Lease.

15. Assignment and Sublease – Proposer is not allowed to transfer or assign their interests in the Lease or to sublease all or any part of the Travel Plazas without WVPA's prior written approval, which may be granted or withheld at WVPA's sole discretion. For purposes hereof, an assignment shall include, without limitation, a transfer of control within Proposer's entity or twenty-five percent (25%) of the equity interest therein. Proposer will not be allowed to mortgage or otherwise encumber the Travel Plazas or any interest in the Lease without prior written consent of WVPA. WVPA will reserve the right to assign any or all its interest in the Travel Plazas in its sole discretion.
16. Access and Inspection – WVPA retains the right to enter the Travel Plazas at any time, with or without notice, for any purposes whatsoever, including, but not limited to, inspection, utilities, equipment, operations, cleanliness, or for maintenance of highway related facilities or to address an emergency, at WVPA's sole determination.
17. Reservation – In addition to the reservations set forth herein, WVPA reserves the right to alter, change and/or negotiate any and all aspects of the Proposal including, without limitation, the Lease after WVPA has selected the selected Proposer.

## **APPENDIX A**

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# **Insurance and Indemnity Requirements**

The Lessee and Lessee's successors, sub-lessee's or assigns shall restore, repair, and replace in a manner satisfactory to the Authority any and all damages done to any part of the Turnpike system by reason of or in connection with any work authorized by this Lease.

Lessee agrees to indemnify and same the Authority, its members, officers, agents and employees harmless from any costs, expense, claim, damage, demand or other recourse arising directly or indirectly from the Lease and operating Agreement hereby granted and the work to be performed hereunder or any work incidental thereto, except that portion of such costs, expense, claim, damage, demand or other recourse as may be caused by or grow out of the sole negligence or willful act of the Authority, its agents, employees, or contractors. The foregoing indemnification by Lessee shall include the defense, settlement, and satisfaction thereof and shall not be limited by the terms or limits of any insurance coverage required or obtained pursuant to this Lease.

Lessee agrees that it will obtain and maintain Commercial General Liability, Commercial Automobile Liability (designated Symbol 1), Workers Compensation and Employer's Liability, including standard form Insurance Services Office (ISO) contractual liability provisions, each with a combined single limit of at least One Million Dollars insuring against damage resulting from injuries including wrongful death and property damage for any accident or accidents which occur and involve the actions of or failure to act by Lessee or the installations and appurtenances thereto left subsequent to the completion of Lessee's work. Such insurance shall apply to any accident occurring upon Authority property and to any accident occurring off the Authority's property while engaged in work originating pursuant to or related to this Lease. The Authority shall be included as an Additional Insured under the Commercial General Liability and Commercial Automobile Liability policies.

The Commercial General Liability, Commercial Automobile Liability, Workers Compensation and Employer's Liability insurance policies will waive any rights by the insurer to subrogate against the Authority.

Lessee shall have the option to self-insure for the Workers Compensation and Employers Liability insurance requirements stated above, provided it meets all requirements of all laws, rules and regulatory agency guidelines and approvals for such self-insurance.

Lessee shall require that any sub-lessee working or providing services or materials under this Lease carry the same insurance required of Lessee under the terms of this Lease, including the naming of the Authority as an additional insured and shall comply with the provisions of the West Virginia Jobs Act.

Upon request, Lessee shall provide certificates of insurance to the Authority, evidencing the insurance required above. Should any of the required insurance coverage: (a) be or become unsatisfactory as to form or substance or if the insurance company or carrier shall be or become unsatisfactory to the Authority; and/or (b) be cancelled by the Applicant for any reason or cancelled or non-renewed by the insurance company or carrier or any reason, Lessee shall promptly (within 48 hours) provide written notice of such occurrences to the Authority and Lessee shall promptly obtain a new and satisfactory policy and furnish satisfactory proof of such replacement insurance policy or policies to the Authority. Lessee understands and agrees that at no time shall there be a lapse in the insurance coverage required under the terms of this Lease.



## **APPENDIX B**

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# **Preliminary Site Plans**

**BECKLEY TRAVEL PLAZA**

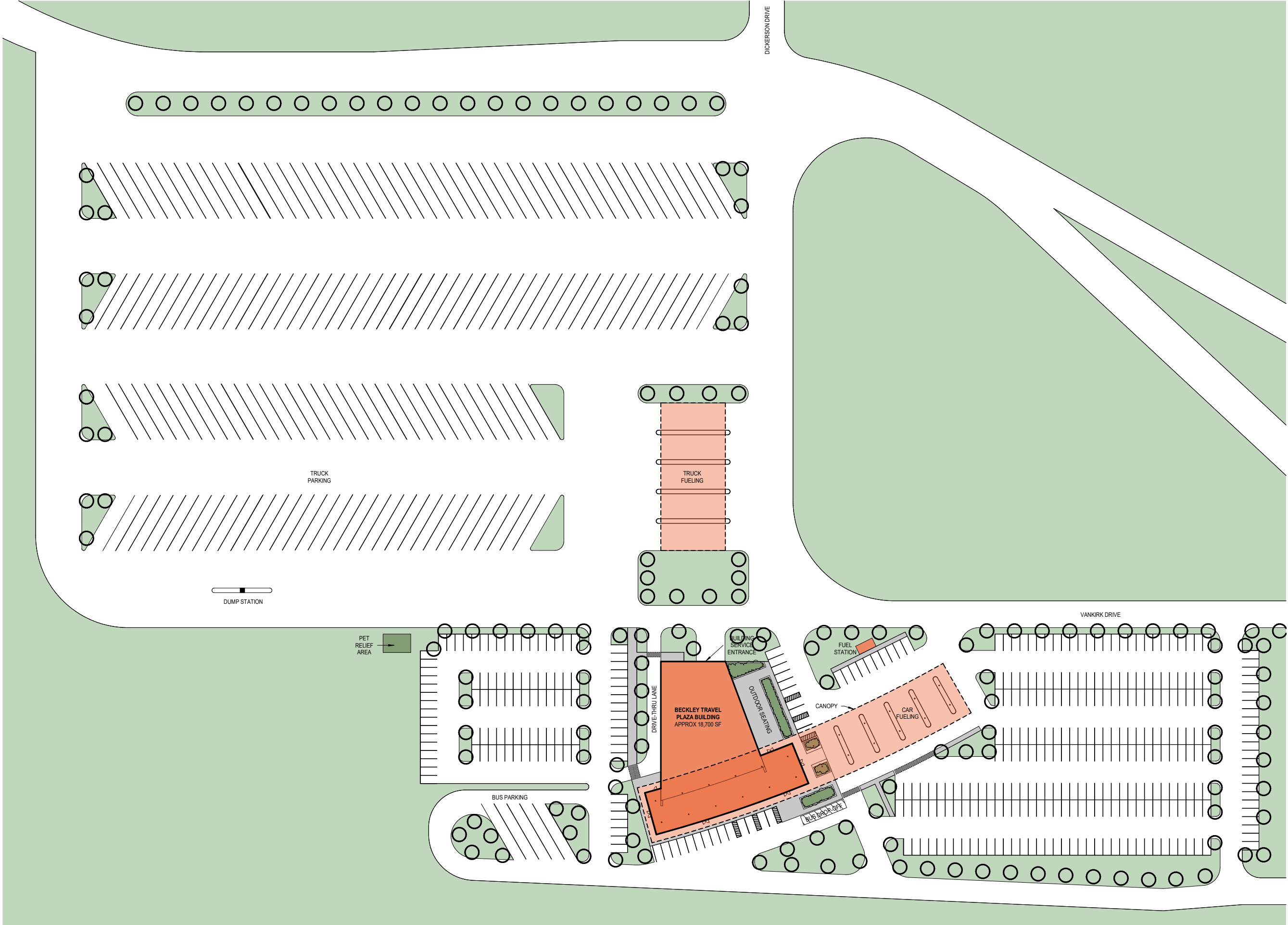
Site Plan  
1" = 100'-0"



Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.

398 Parking Spaces  
9 ADA Parking Spaces  
5 Bus Slots  
164 Truck Slots

**HNTB**  
WV Travel Plazas  
8/23/21

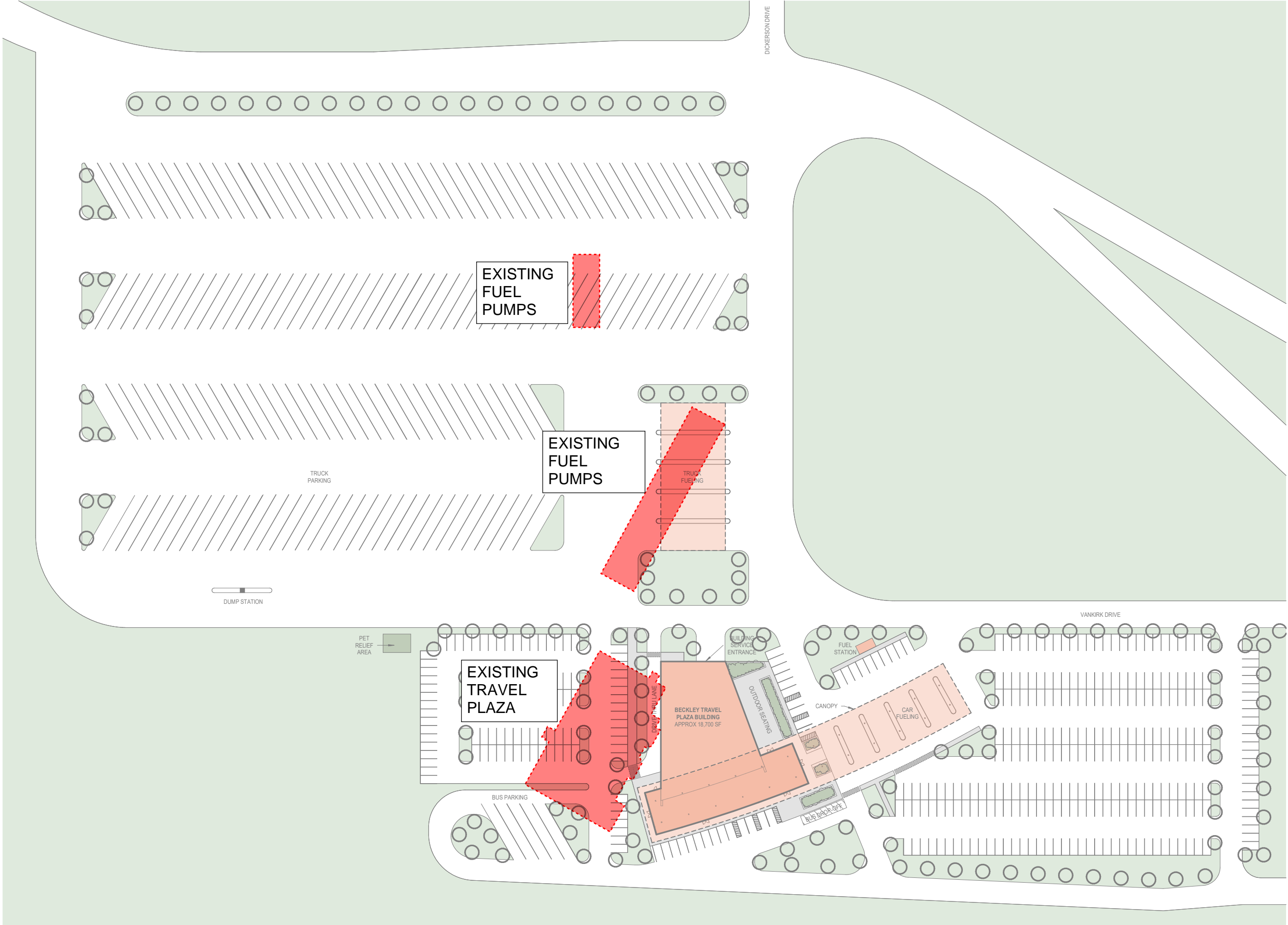


**BECKLEY TRAVEL PLAZA**

Site Plan  
1" = 100'-0"



Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.

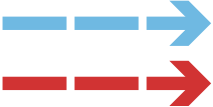


**BECKLEY TRAVEL PLAZA**

Site Plan  
1" = 100'-0"



Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.



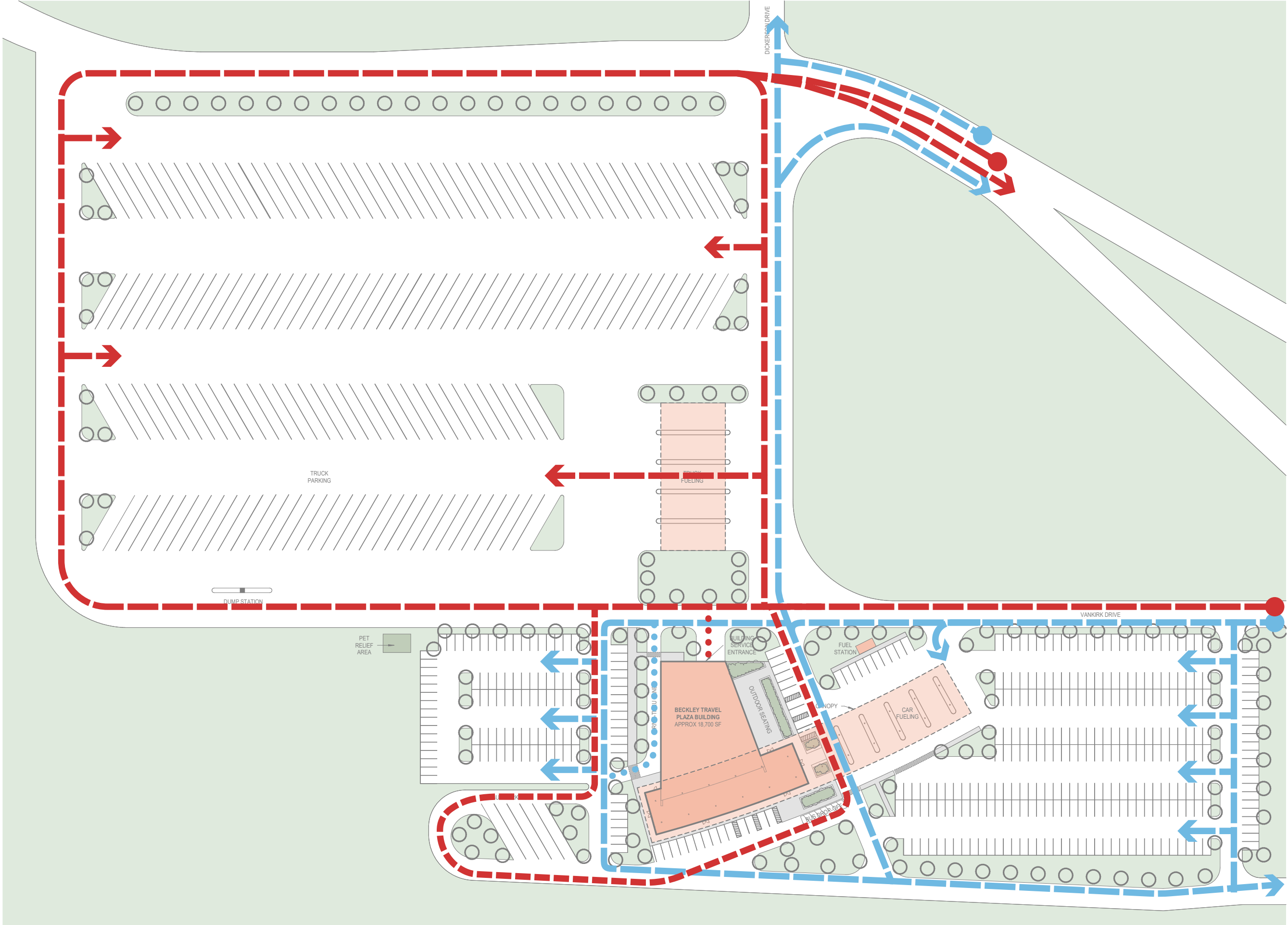
**Cars**

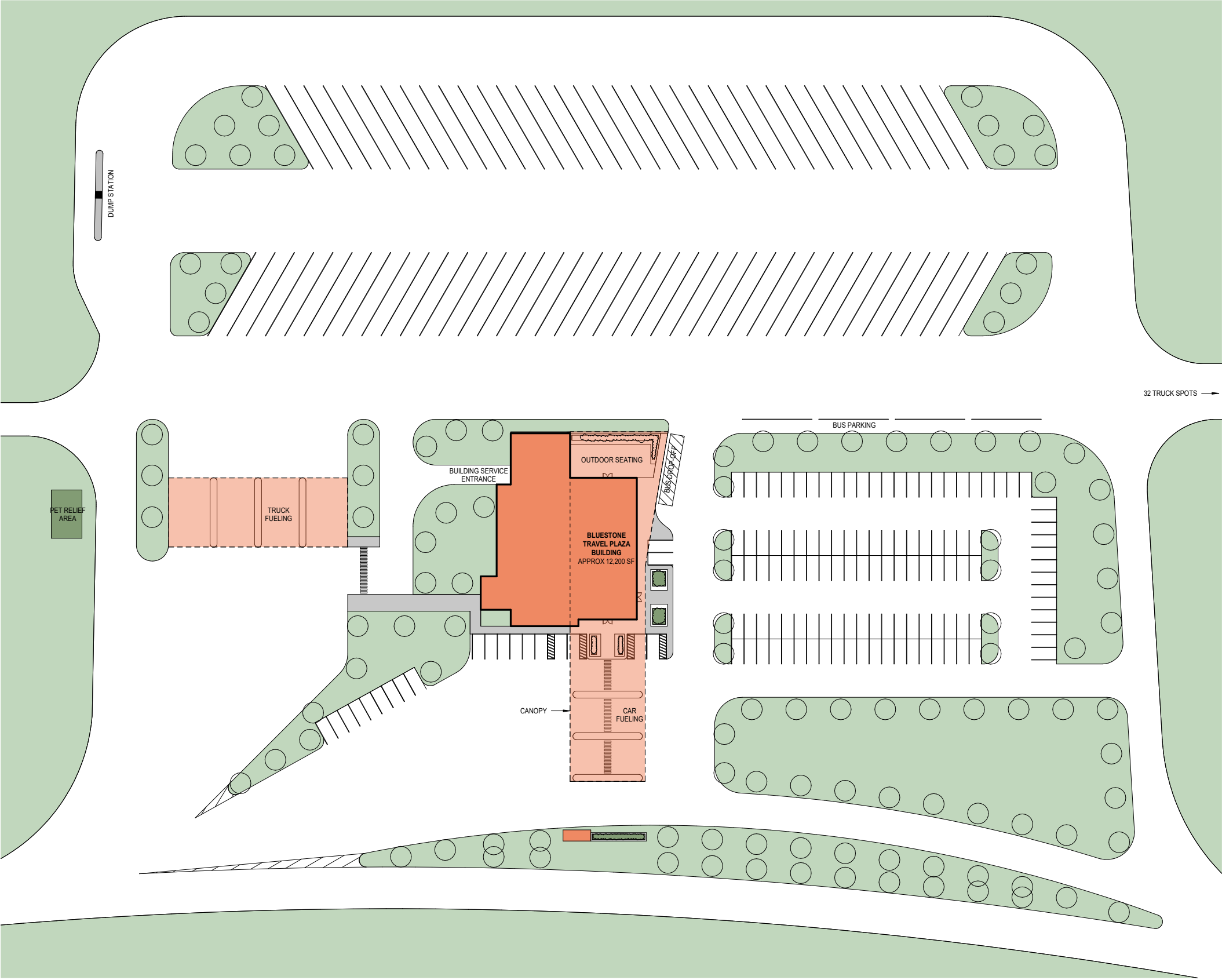
**Trucks**

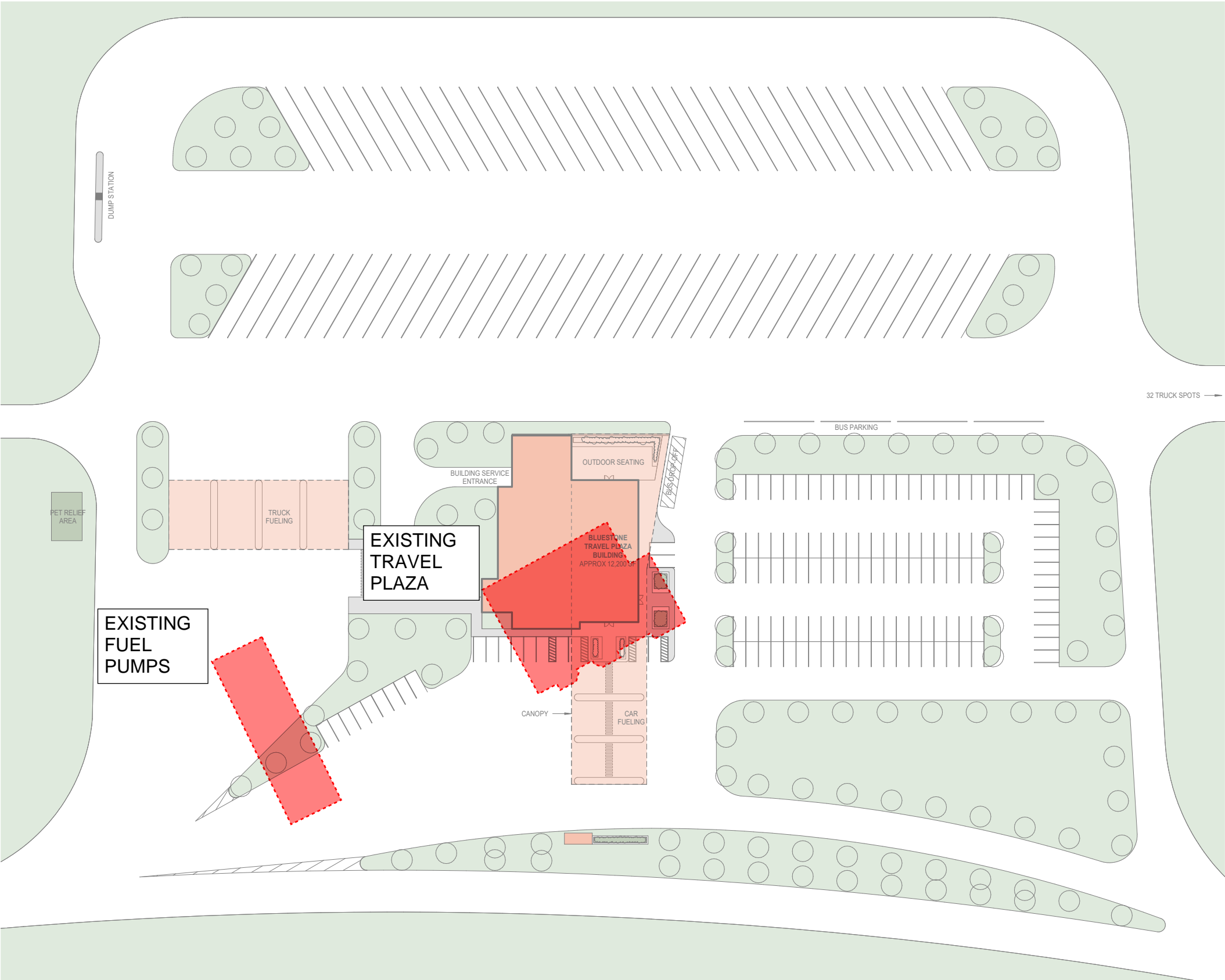


**Buses**

**Service**

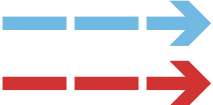








Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.



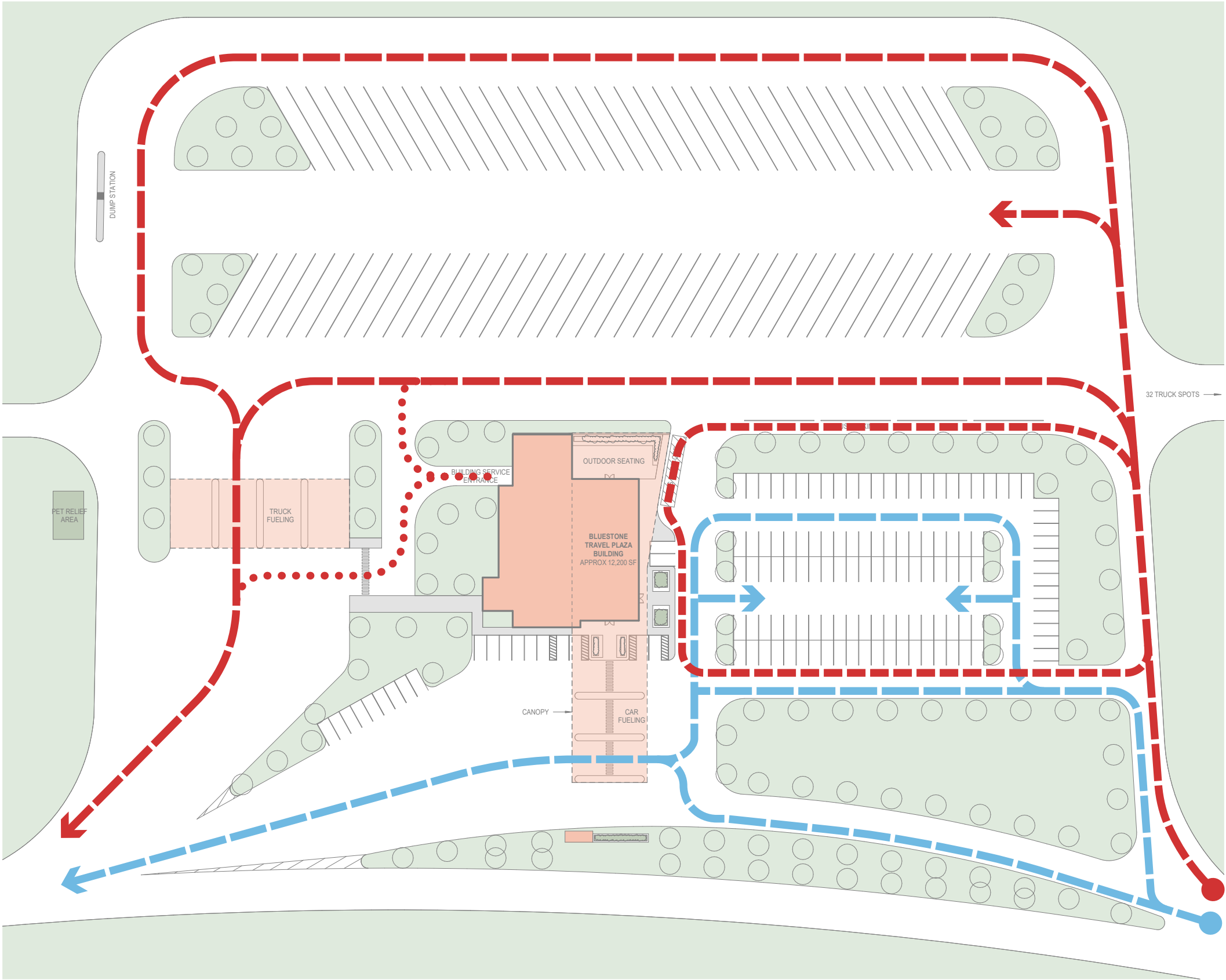
**Cars**

**Trucks**

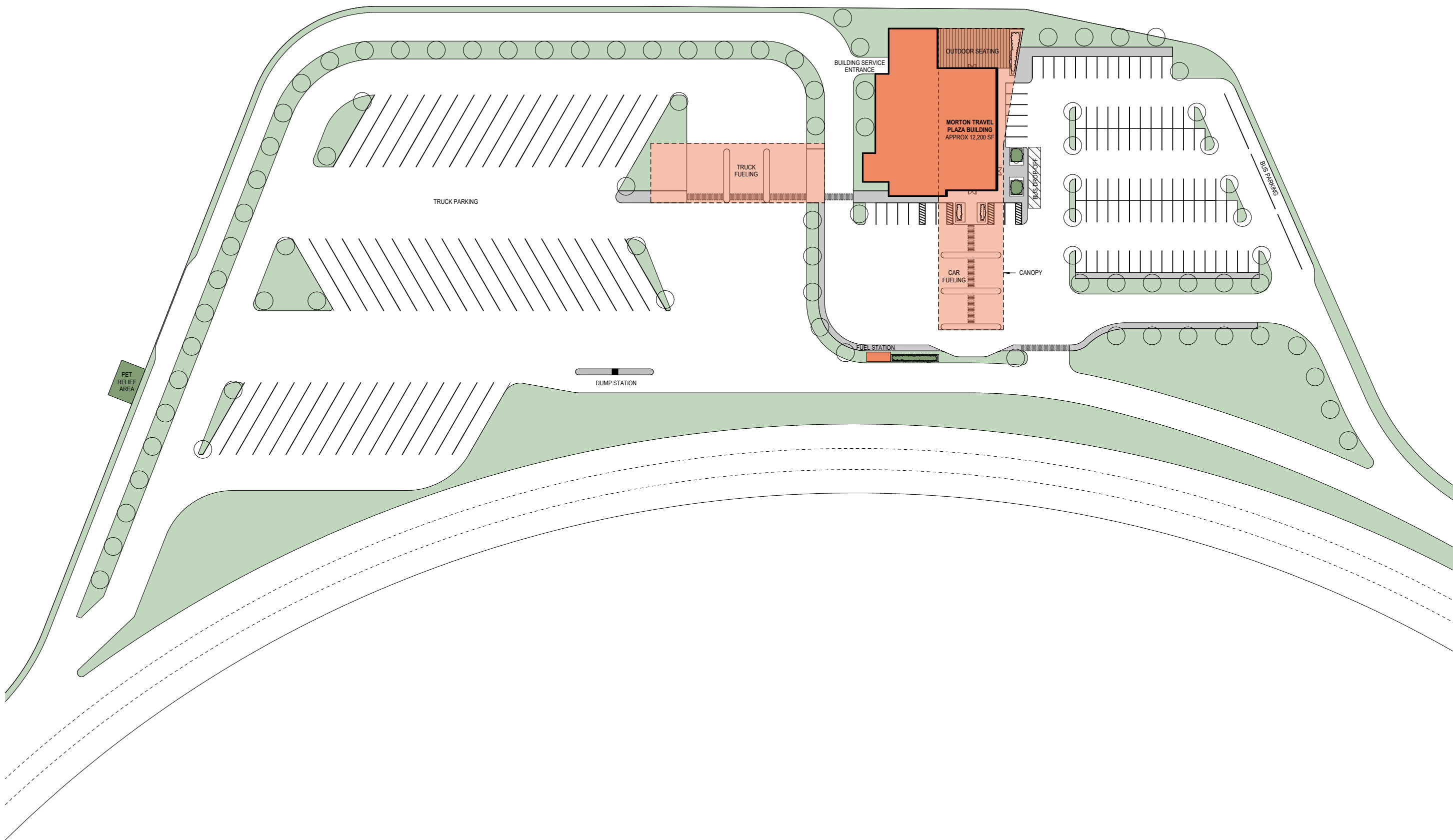


**Buses**

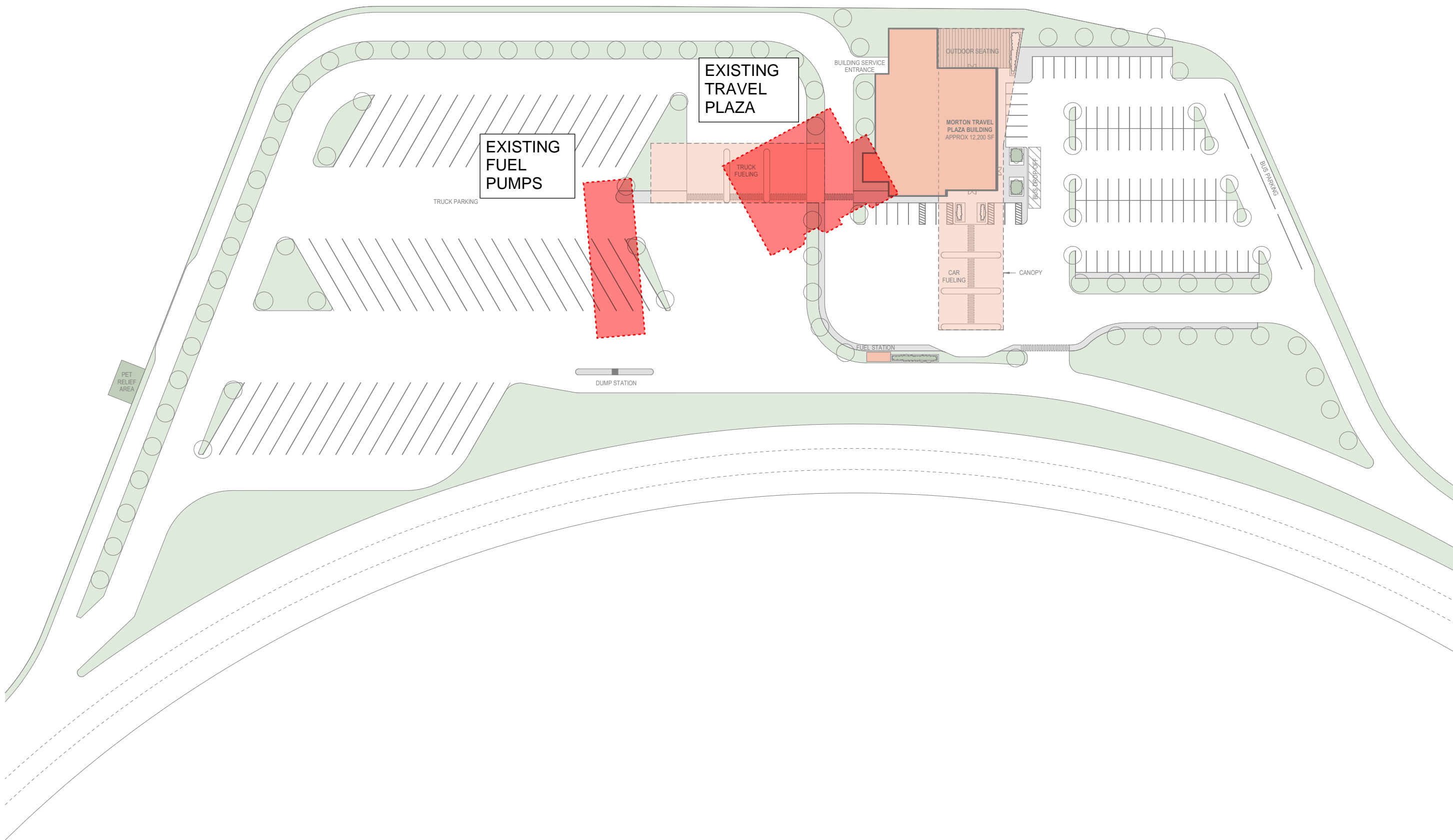
**Service**









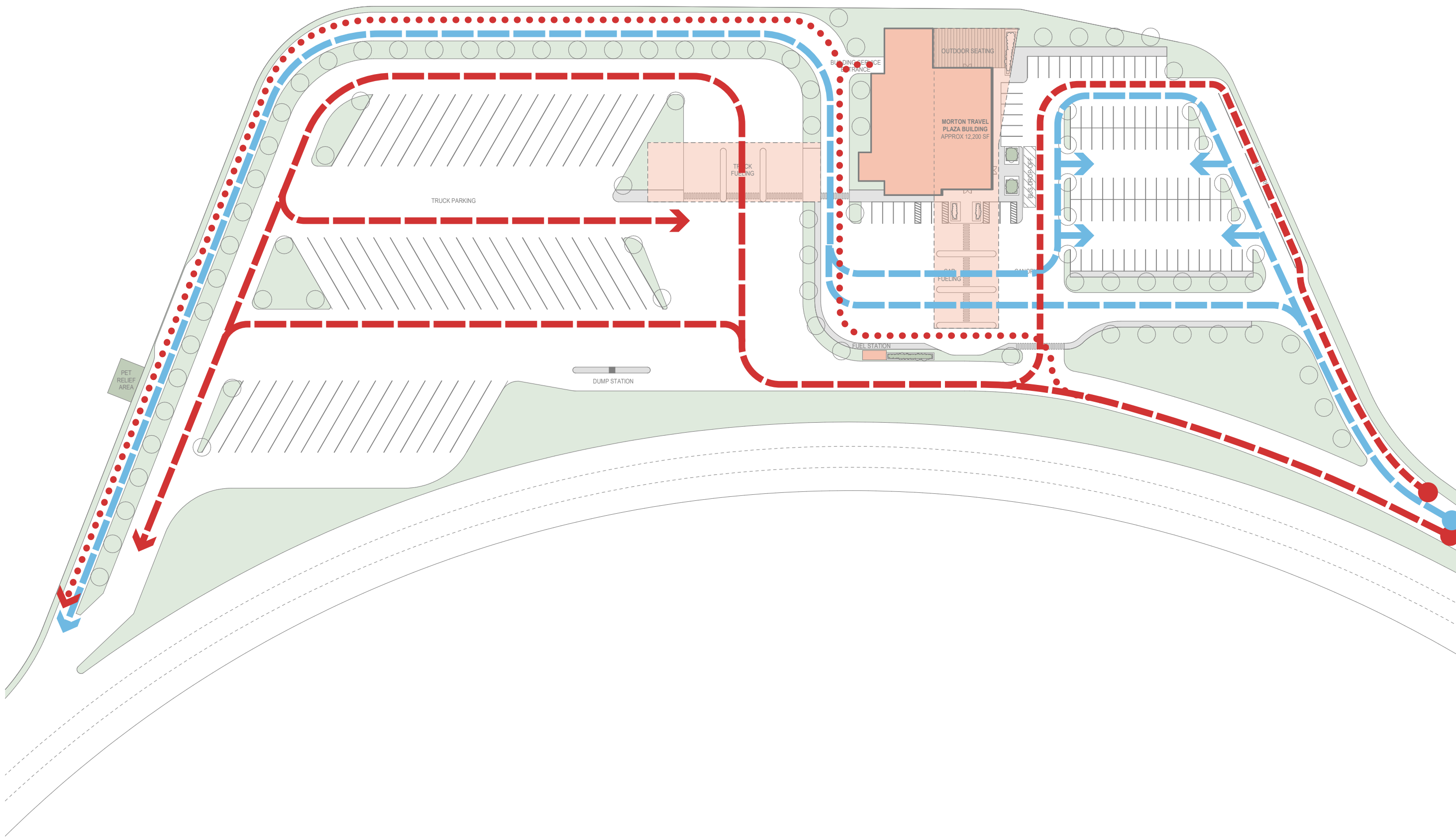


**MORTON TRAVEL PLAZA**

Site Plan  
1" = 80'-0"



Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.



Design intent shown is preliminary, advisory only.  
 Information is subject to change in the future.

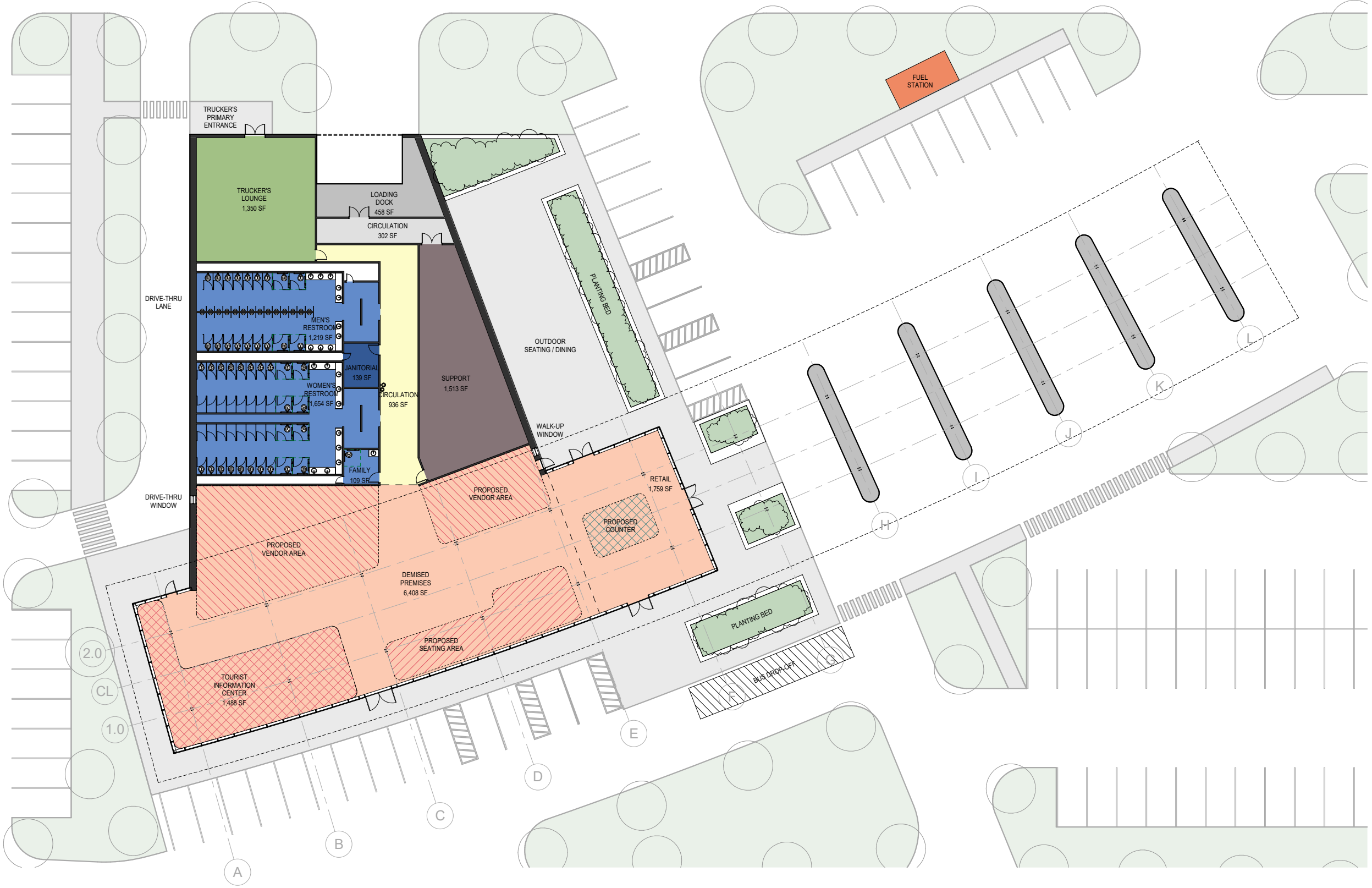
**Cars**  
**Trucks**

**Buses**  
**Service**

# **APPENDIX C**

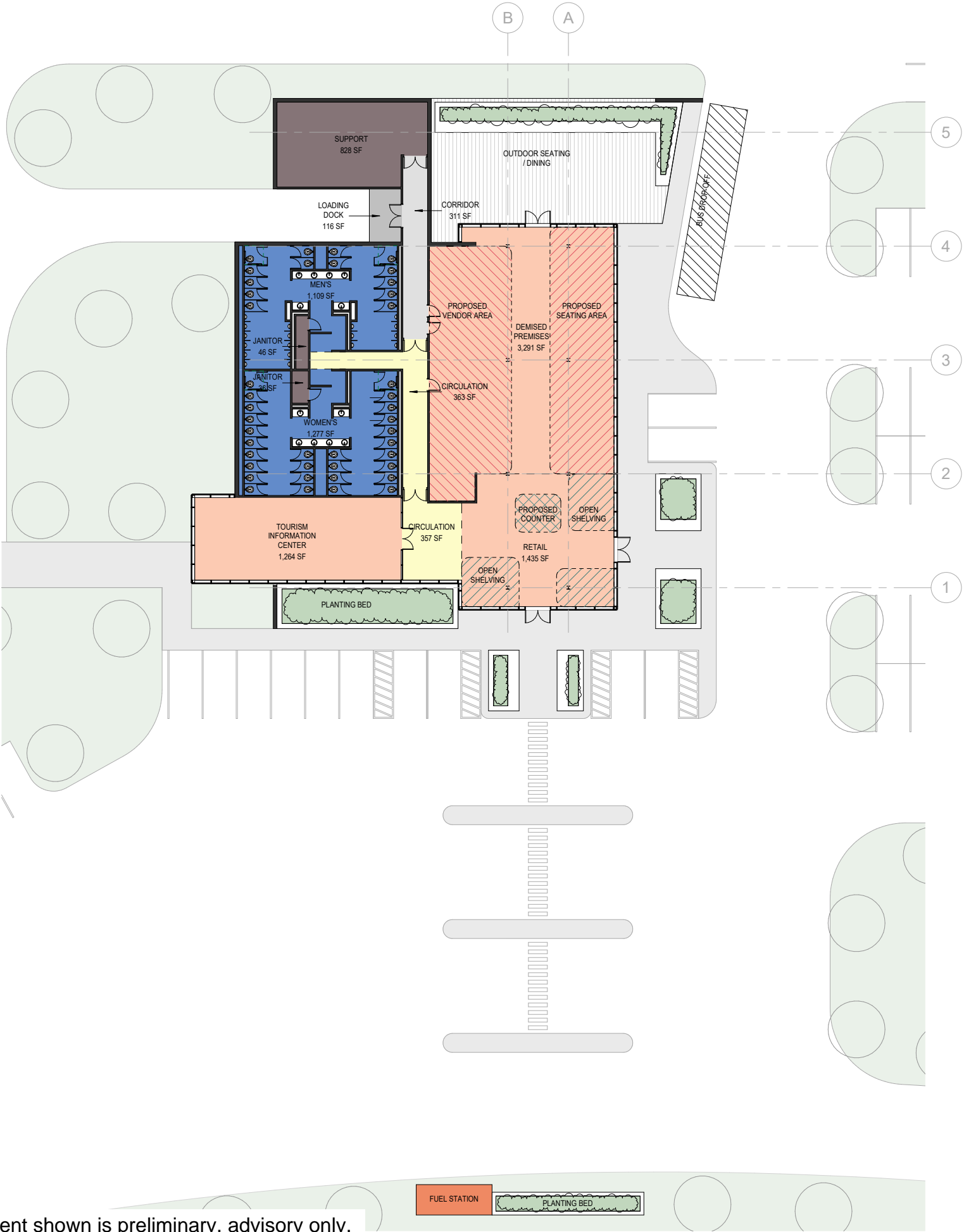
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## **Floor Plans and Renderings**



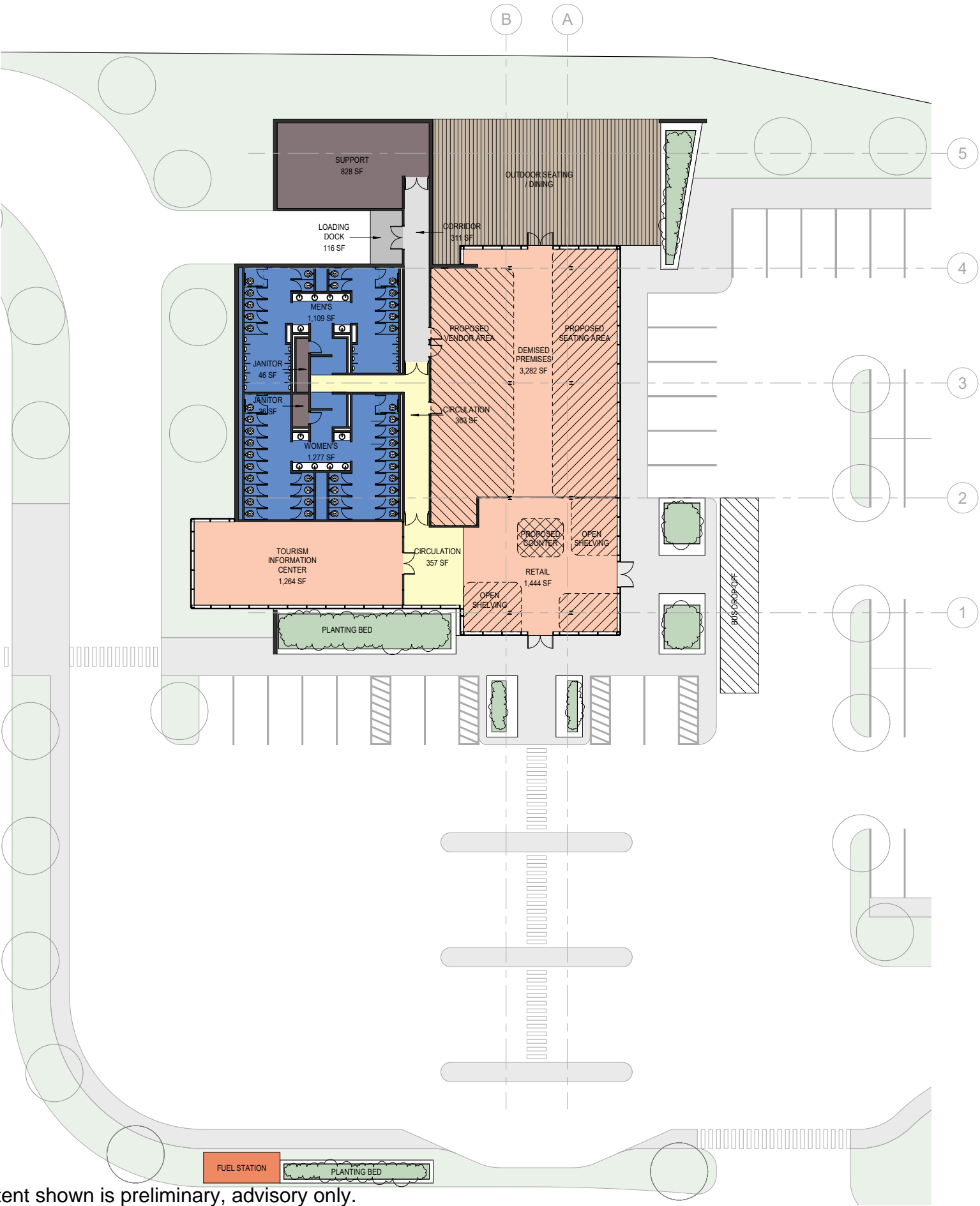


Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.







**BECKLEY** - View from Turnpike

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BECKLEY** - View from Turnpike

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BECKLEY** - Aerial from NW

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BECKLEY** - Aerial from SE

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BECKLEY** - Eye-Level from N

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BECKLEY** - Eye-Level from SE

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BECKLEY** - Interior Eye-Level from N

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BECKLEY** - Interior Eye-Level from S

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BLUESTONE** - Aerial from S

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BLUESTONE** - Aerial from NW

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BLUESTONE** - Eye-Level from W

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.

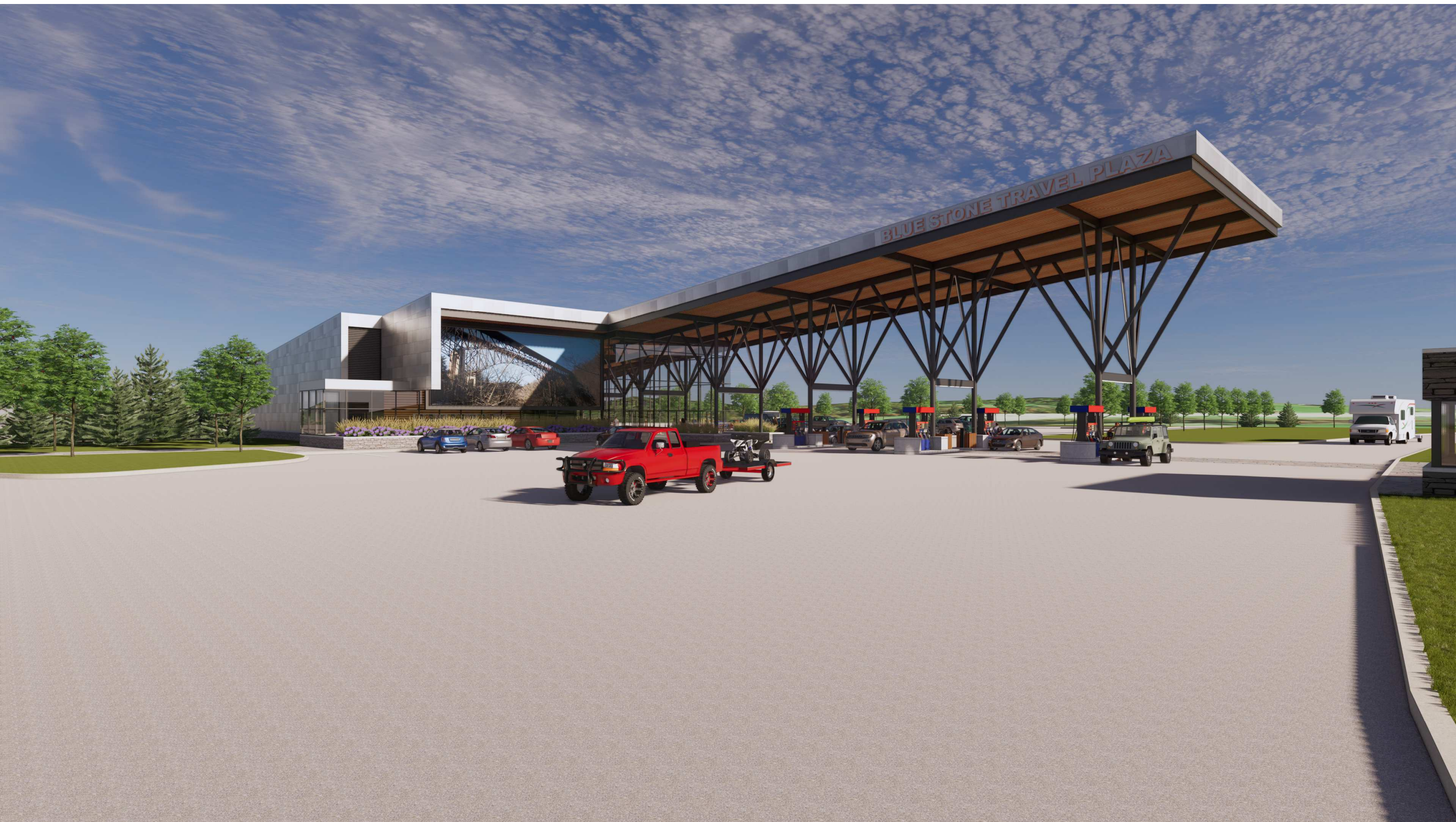




**BLUESTONE** - Eye-Level from W

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BLUESTONE** - Eye-Level from NW

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BLUESTONE** - Interior Eye-Level 1

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BLUESTONE** - Interior Eye-Level 2

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**BLUESTONE** - Eye-Level from W

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.

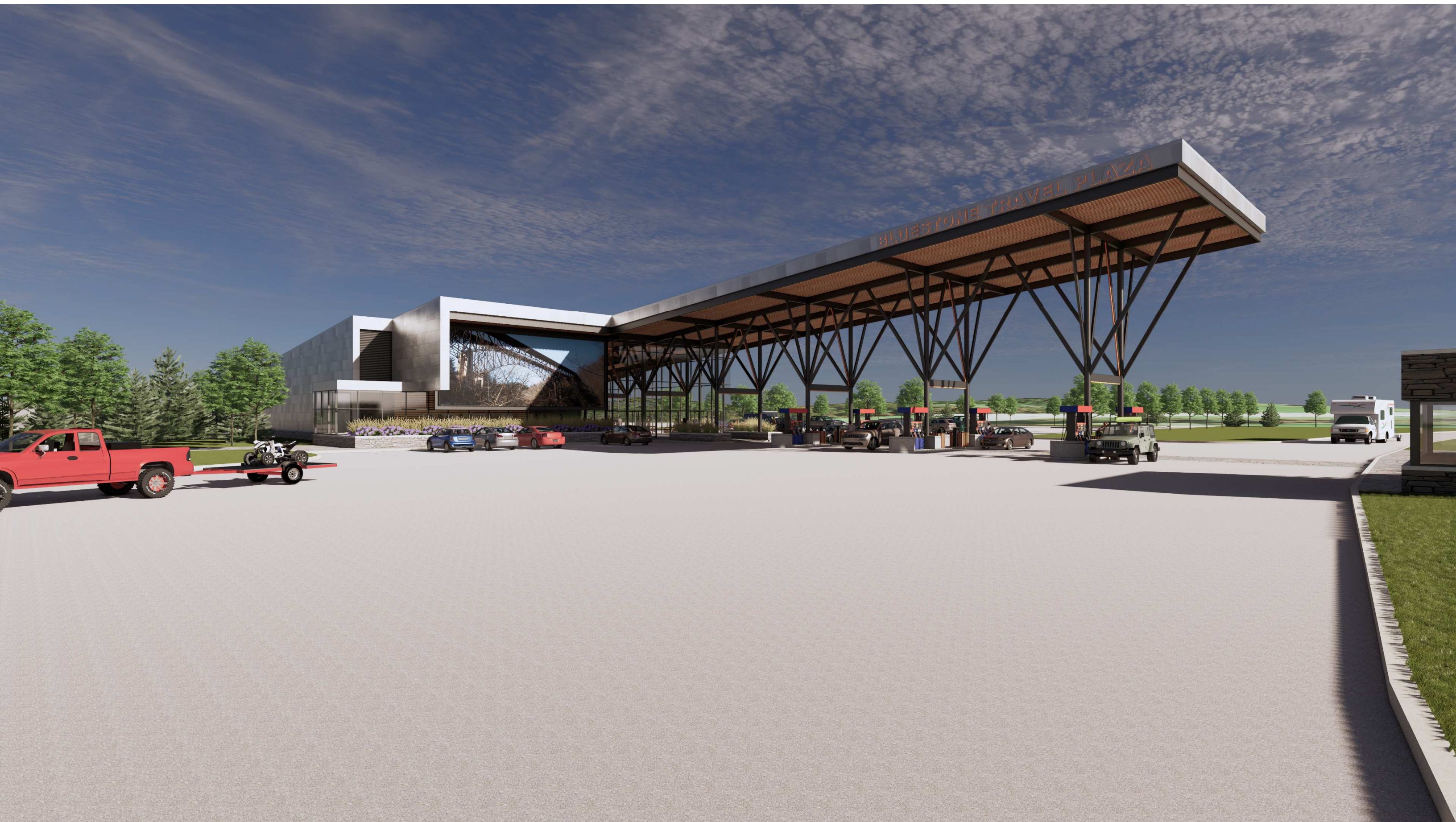




**BLUESTONE** - Eye-Level from W

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.

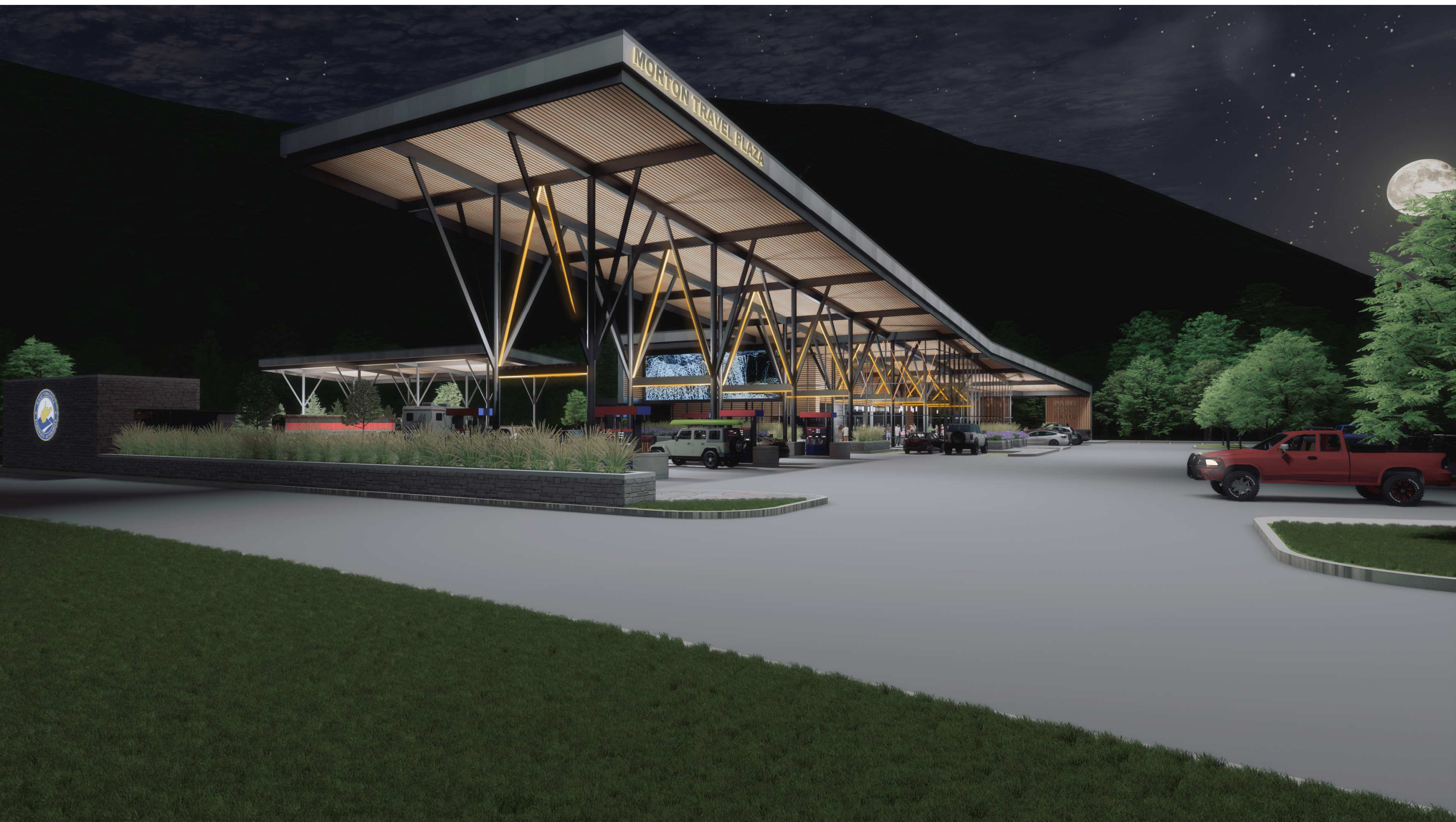




**BLUESTONE** - Eye-Level from NW

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**MORTON** - Eye-Level from W

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





**MORTON** - View of Patio

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





MORTON - Aerial from N

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





MORTON - Eye-Level from W

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.





MORTON - Eye-Level of Patio

Design intent shown is preliminary, advisory only.  
Information is subject to change in the future.



## **APPENDIX D**

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# **2021 Customer Survey Results**

# WEST VIRGINIA TURNPIKE TRAVEL PLAZAS: 2021 CUSTOMER EXPERIENCE SURVEY



## INTRODUCTION

- On Monday, May 10, 2021, a **West Virginia Turnpike Travel Plazas Customer Survey** was launched online ([www.WVTravelPlazas.com](http://www.WVTravelPlazas.com)).
- The Survey was administered as a general multiple-choice questionnaire along with three (3) site-specific versions (e.g., **Beckley.WVTravelPlazas.com**) and one tailored survey for Commercial Drivers.
- The Survey was promoted via WV Department of Transportation social media platforms, the Authority's website, QR-enabled signage and buck slips at all three Travel Plazas, and partnerships with associations and trade groups.
- From start to finish (Monday, June 21, 2021 @ 11:59 PM), Surveys were successfully completed by **1,686 Participants** (3,401 before filtering with an elevated level of fraudulent response detection).
  - 83.4 % Completion Rate
  - Average Time to Complete = 06:34



The graphic is a vertical banner with a blue background. At the top left is the West Virginia Turnpike Authority logo, which is a circular seal featuring a map of West Virginia and the text 'WEST VIRGINIA PARKWAYS AUTHORITY'. To the right of the logo, the text 'TAKE A SURVEY & WIN!' is written in large, bold, yellow capital letters. Below this, in white capital letters, is the text 'HELP US SHAPE THE FUTURE OF THE BECKLEY TRAVEL PLAZA (AND BE ENTERED TO WIN ONE OF TEN \$50 amazon GIFT CARDS)'. The next section has the text 'TAKE A QUICK SURVEY NOW WITH YOUR SMARTPHONE' in bold yellow capital letters. Below this text are two images: a circular icon of a hand holding a smartphone displaying a survey, and a square QR code. At the bottom of this section, the text 'OR VISIT Beckley.WVTravelPlazas.com' is written in white capital letters. The bottom section of the graphic features a 'Welcome To WEST VIRGINIA Wild and Wonderful' sign. The sign has a scenic background of mountains and trees. On the right side of the sign is the West Virginia state seal and the text 'Jim Justice Governor'.

**TAKE A SURVEY & WIN!**

HELP US SHAPE THE FUTURE OF THE  
**BECKLEY TRAVEL PLAZA**  
(AND BE ENTERED TO WIN ONE OF TEN \$50  GIFT CARDS)

**TAKE A QUICK SURVEY NOW WITH YOUR SMARTPHONE**

OR VISIT [Beckley.WVTravelPlazas.com](http://Beckley.WVTravelPlazas.com)

*Welcome To*  
**WEST VIRGINIA**  
*Wild and Wonderful*  
Jim Justice  
Governor

## METHODOLOGY: CUSTOMER SEGMENTATION

- The Survey asked Respondents to select one of four Customer Segments that best described their use of the West Virginia Turnpike or self-identify as a Commercial Driver:

### PERSONAL TRAVEL

### WORK RELATED

#### Occasional Turnpike User

- Shorter Trips (25 Miles or Less)
- User of the Turnpike, But Not Daily
- Routing Varies Depending on Tasks at Hand
- Seeks “Trip Chaining” Opportunities (e.g., Picking Up Dinner on the Way Home from an Appointment)

#### Commuter

- Passes Certain Travel Plaza(s) Every Weekday
- Looking for “Touch & Go” Products and Services (Drive Thru, Fueling)
- Short Dwell Times Important ( $\leq 15$  Minutes)
- Heavy User of Time-Saving Apps (e.g., Starbucks Mobile Ordering)

#### Leisure Traveler

- Vacationing or Traveling for a Personal Event (Class Reunion, Wedding, etc.)
- Traveling 100+ Miles Away from Home
- Likely Traveling with Family and/or Friends
- Wants Unique Experiences
- Typically, Highest Customer Spend

#### “Road Warrior”

- Typically, Salesperson or District Manager
- Looking for a Quiet Place to Work or Meet
- Savvy User of Technology to Stay Connected and Productive (Great Wi-Fi and Access to Electrical Outlets Critical)



# METHODOLOGY: CUSTOMER SEGMENTATION

- Distribution of All Respondents by Customer Segment:



- 1.7% of Respondents Identified Themselves as “Other”/Do Not Use West Virginia Turnpike
- Certain Customer Segments Were Over/Underrepresented in Site-Specific Surveys:
  - Example: A Whopping 55.3% of Respondents to the **Beckley Travel Plaza** Survey were **Leisure Travelers** vs 25.4% “Across the Board” Results
  - Example: **Commercial Drivers** Were Overrepresented at **Bluestone Travel Plaza** (13.7%) and **Morton Travel Plaza** (12.9%) and Underrepresented at the Beckley Travel Plaza (7.9%)
  - Example: 21.4% of “Across the Board” Respondents Self-Identified as **Commuters** Were a Robust 22.6% Share of **Morton Travel Plaza** Respondents. Commuters Made Up an Anemic 5.3% of Respondents at the **Beckley Travel Plaza** and 3.9% at the **Bluestone Travel Plaza**

## METHODOLOGY: FOCUS ON FOUR CUSTOMER EXPERIENCE METRICS

- The Survey was conducted as part of the WVPA's Planning for the Redevelopment of West Virginia Turnpike Travel Plazas
- The Questionnaire was designed to measure Four Critical Key Metrics:

1. Safety and Security (*"I felt safe and secure when I stopped at a Travel Plaza."*)



**SAFETY**

2. Authenticity and Sense of Connection to Surroundings (*"I had a sense of where I was and what makes West Virginia unique."*)



**CONNECTED**

3. Welcoming and Inviting Services (*"The staff was friendly. The restrooms were clean. Service was quick. I was thanked for my purchase."*)



**INVITING**

4. Visually Interesting (*"I wanted to post this place on Instagram."*)



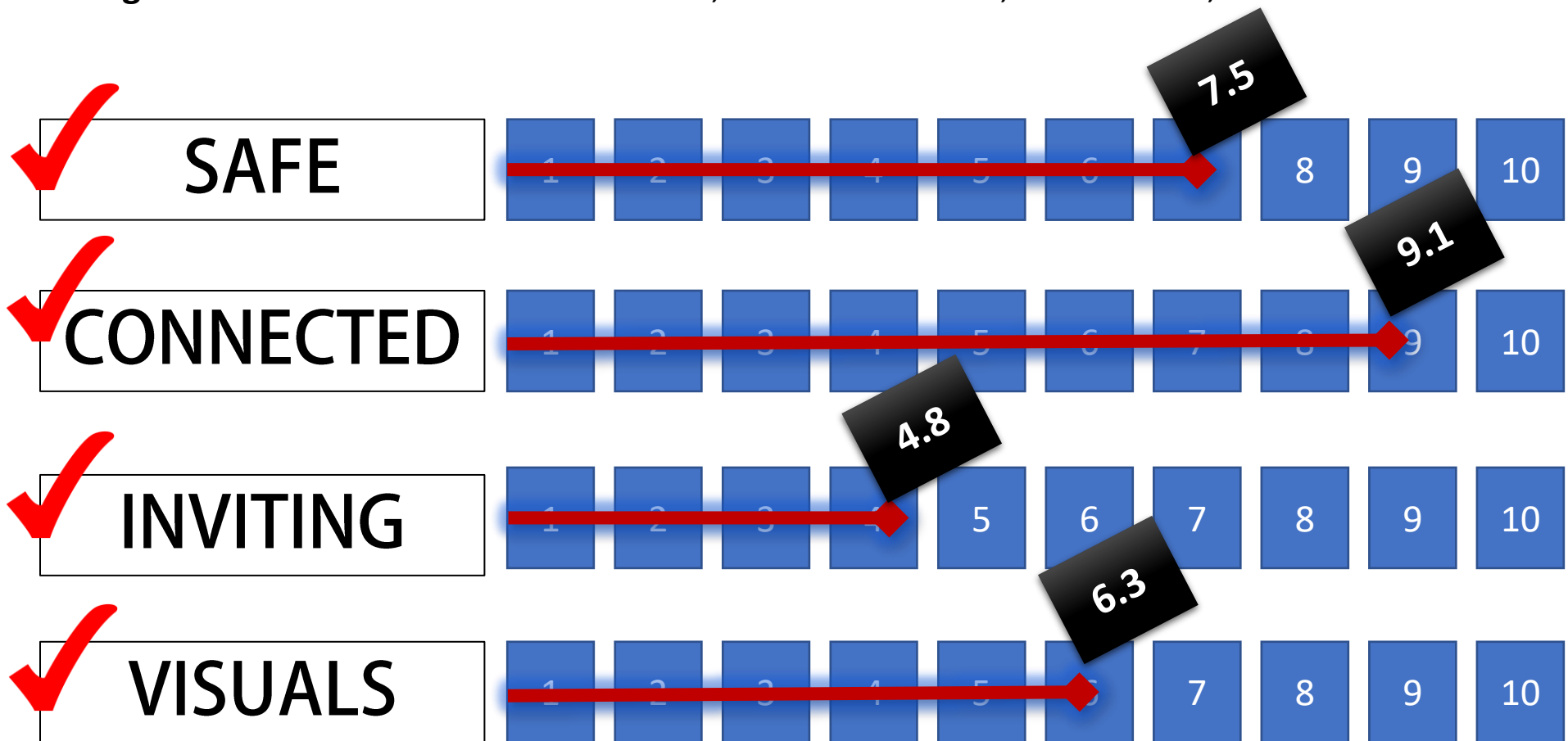
**VISUALS**

- **NOTE: Commercial Drivers** completed a separate set of questions focused on the specific needs of the Trucking Industry.



## METHODOLOGY: FOCUS ON FOUR CUSTOMER EXPERIENCE METRICS

- For the Travel Plazas, the **Customer Experience** (defined as the user's perception of these roadside amenities) is the “North Star” for the West Virginia Parkways Authority as it redevelops the properties.
- Four Metrics summarizes the current **Customer Experience** (1 – 10 Scale) for Four **Customer Segments Combined: Occasional Users, Leisure Travelers, Commuters, and Road Warriors**



- NOTE: Commercial Drivers** completed a separate set of questions focused on the specific needs.

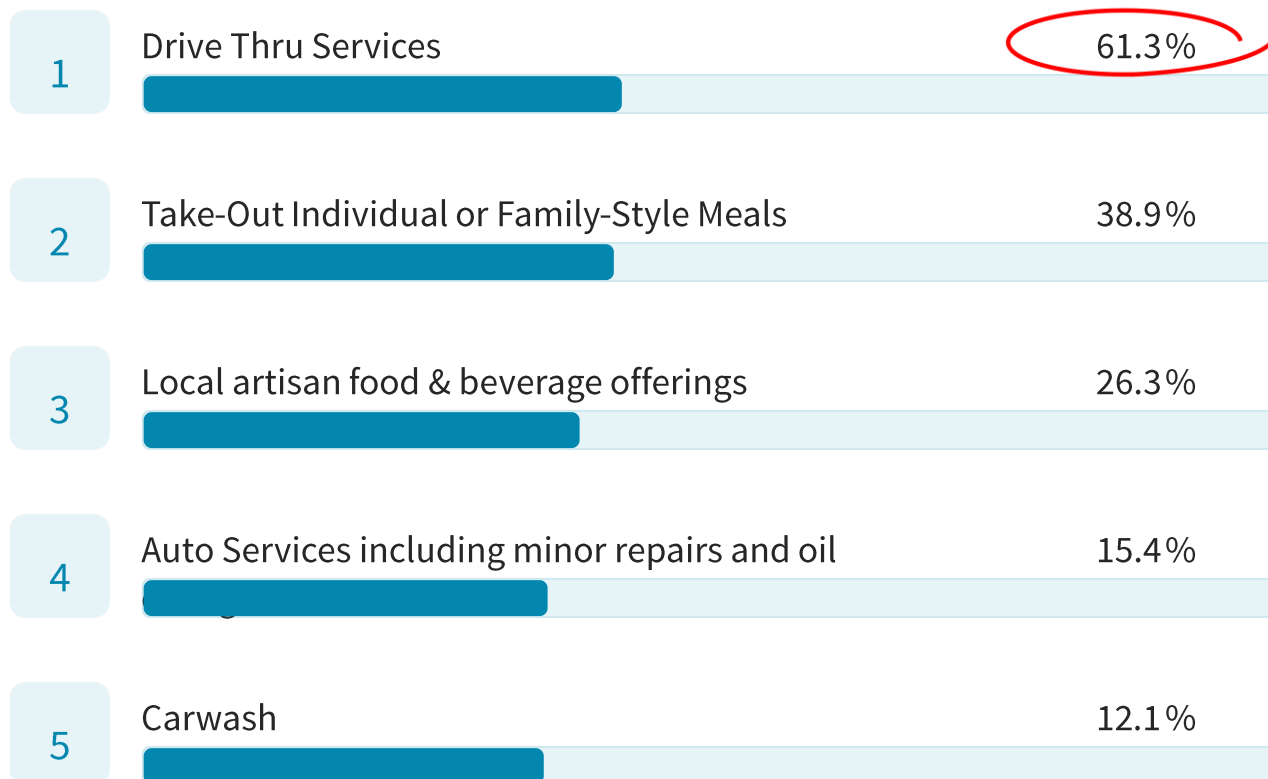
# WEST VIRGINIA TURNPIKE TRAVEL PLAZAS: 2021 CUSTOMER EXPERIENCE SURVEY

## OCCASIONAL TURNPIKE USERS



## OCCASIONAL TURNPIKE USERS (26.6% OF RESPONDENTS)

- **Definition:** An "Occasional Turnpike User" travels for personal appointments, shopping, errands, meeting up with family and friends, and social engagements
- 97.2% of Respondents Stated That Access to Electric Car Charging Was Important to Them Or Could Be Important to Them Within the Next Five Years
- 83.7% of Respondents Are Members of AAA
- 93.4% of Respondents Are Residents of the State of West Virginia
- Top 5 Wish List:



# WEST VIRGINIA TURNPIKE TRAVEL PLAZAS: 2021 CUSTOMER EXPERIENCE SURVEY

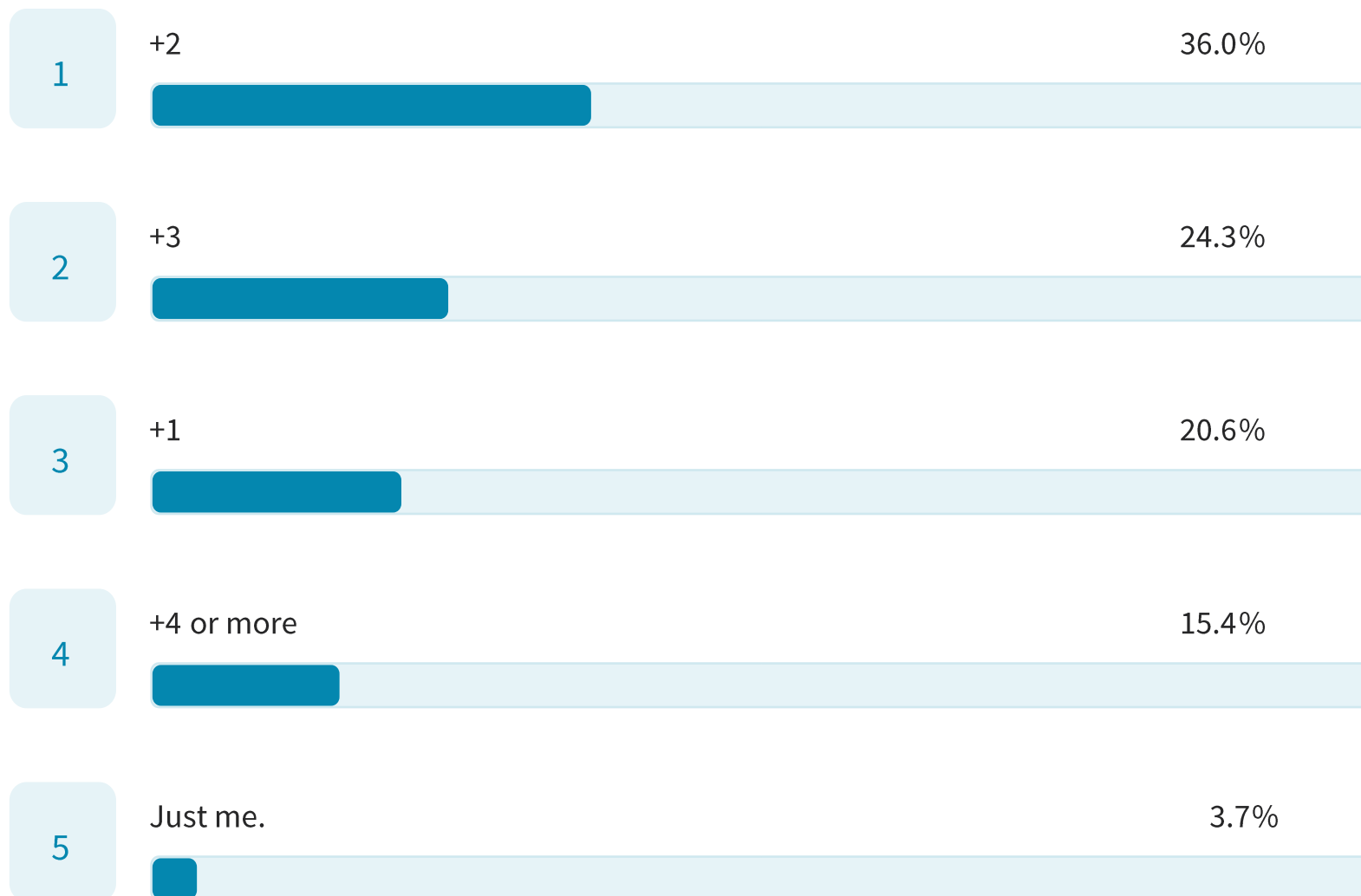
## LEISURE TRAVELER



## LEISURE TRAVELER (25.4% OF RESPONDENTS)

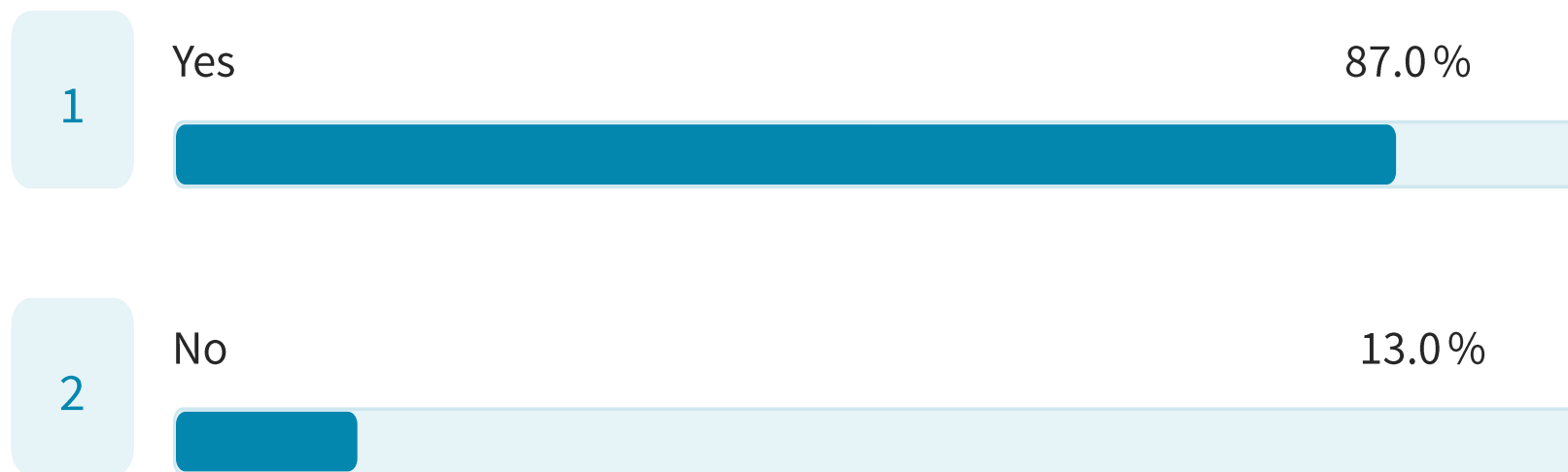
- **Definition:** A "Leisure Traveler" sightsees, visits historical places, or engages in other related activities. Typically, someone who is on vacation or a weekend getaway.

**When you travel on vacation, how many friends or family members are with you?**



## LEISURE TRAVELER (25.4% OF RESPONDENTS)

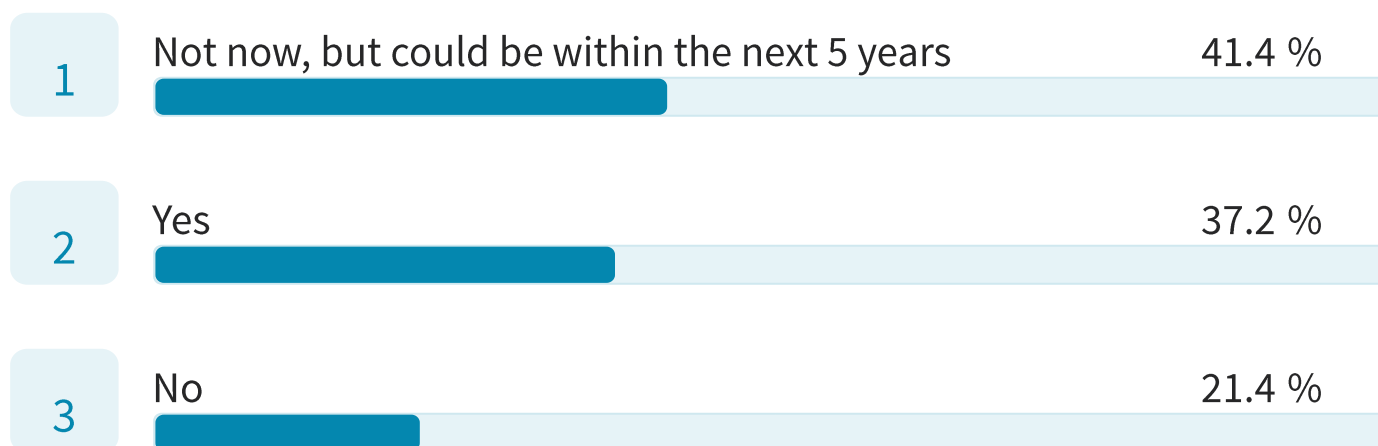
**The last time that you used the West Virginia Turnpike for vacation travel, did you stay at least one night away from home at a hotel/Airbnb/other rental or with friends/family?**





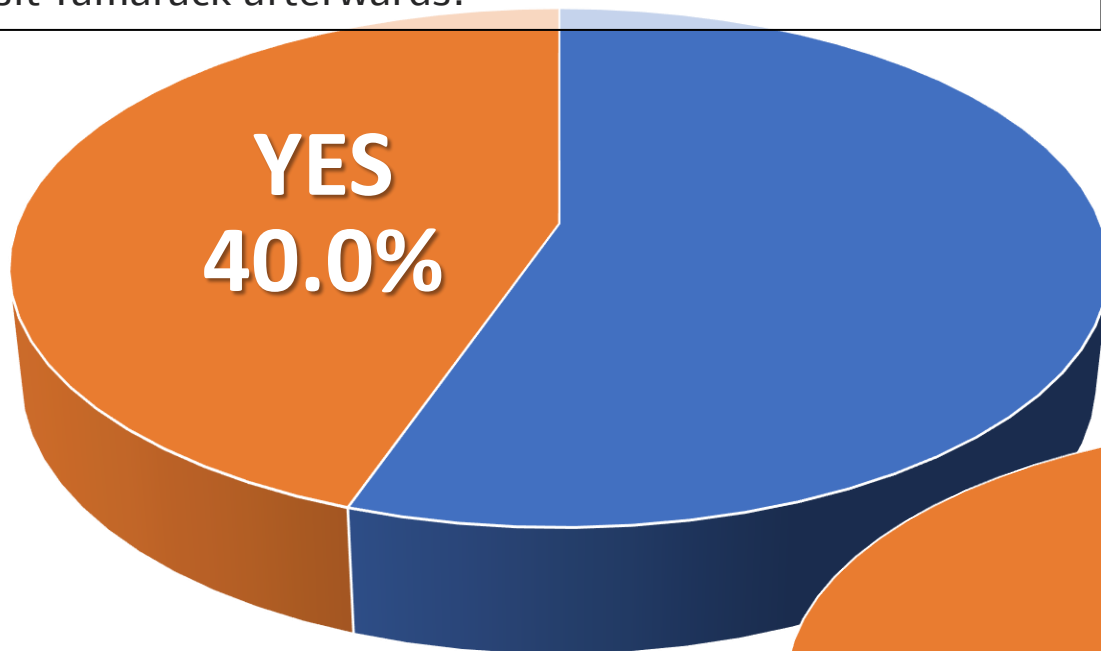
## LEISURE TRAVELER (25.4% OF RESPONDENTS)

Is access to an electric car charging station important to you?

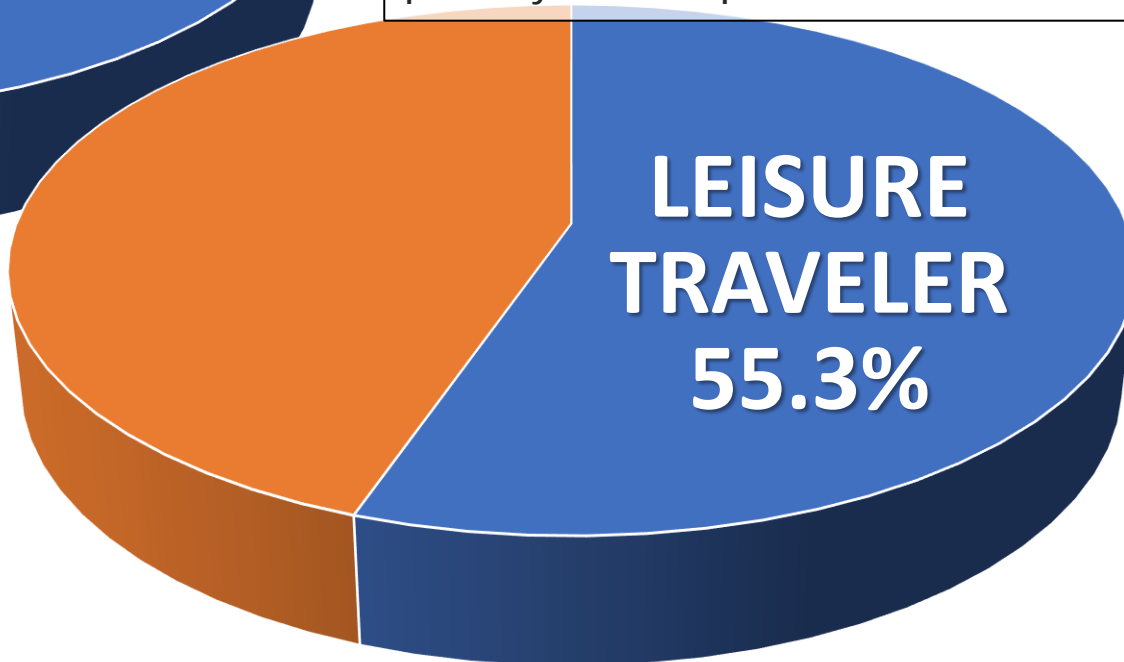


## SPECIAL NOTE: TAMARACK MAKES BECKLEY FLAGSHIP FOR FAMILIES

Did you visit **Tamarack: The Best of West Virginia** before stopping at the Beckley Travel Plaza or are you planning to visit Tamarack afterwards?



What is the BEST way to describe your primary WV Turnpike use?



More than double the System-Wide Survey Average



# WEST VIRGINIA TURNPIKE TRAVEL PLAZAS: 2021 CUSTOMER EXPERIENCE SURVEY

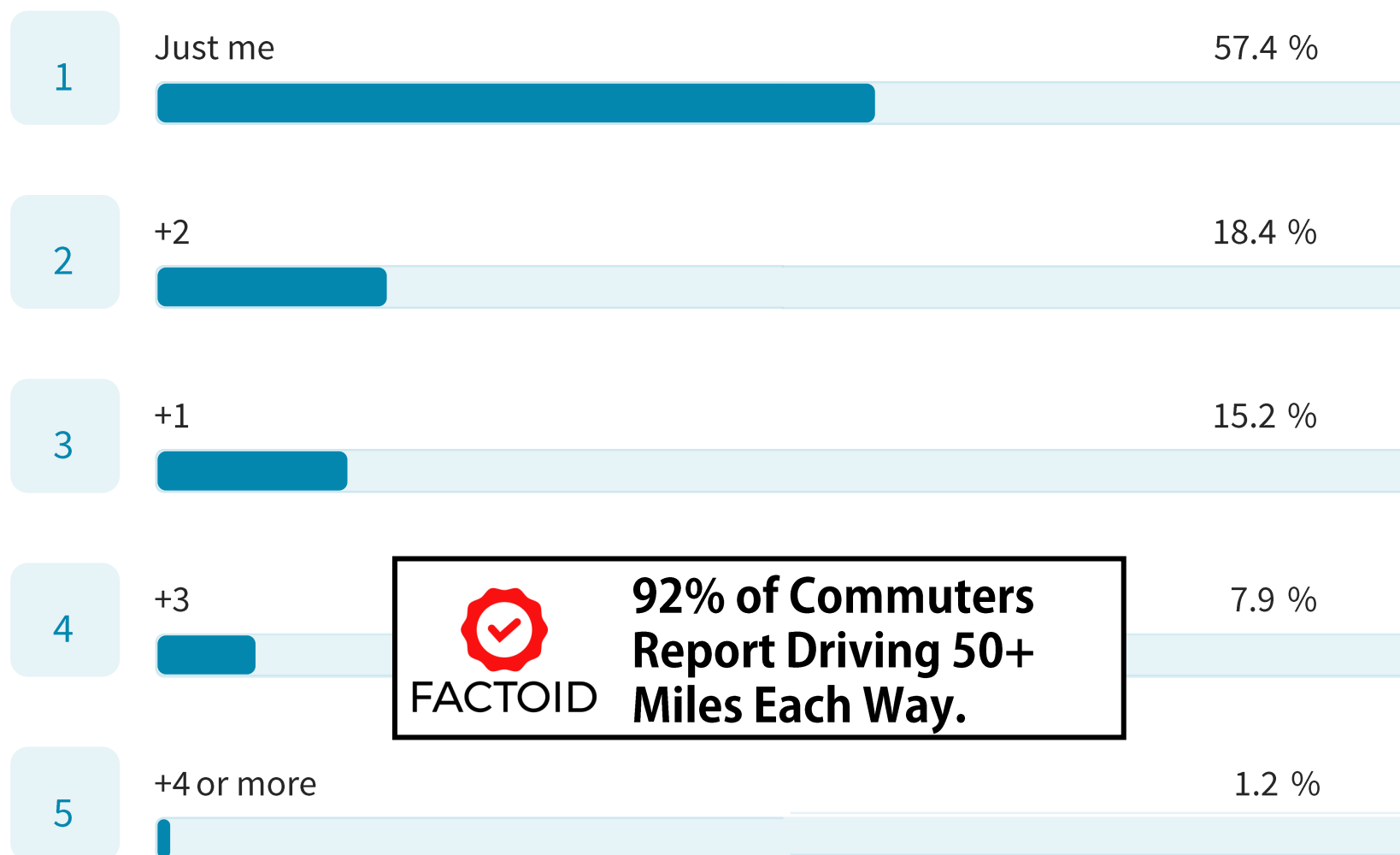
## COMMUTER



## COMMUTER (21.4% OF RESPONDENTS)

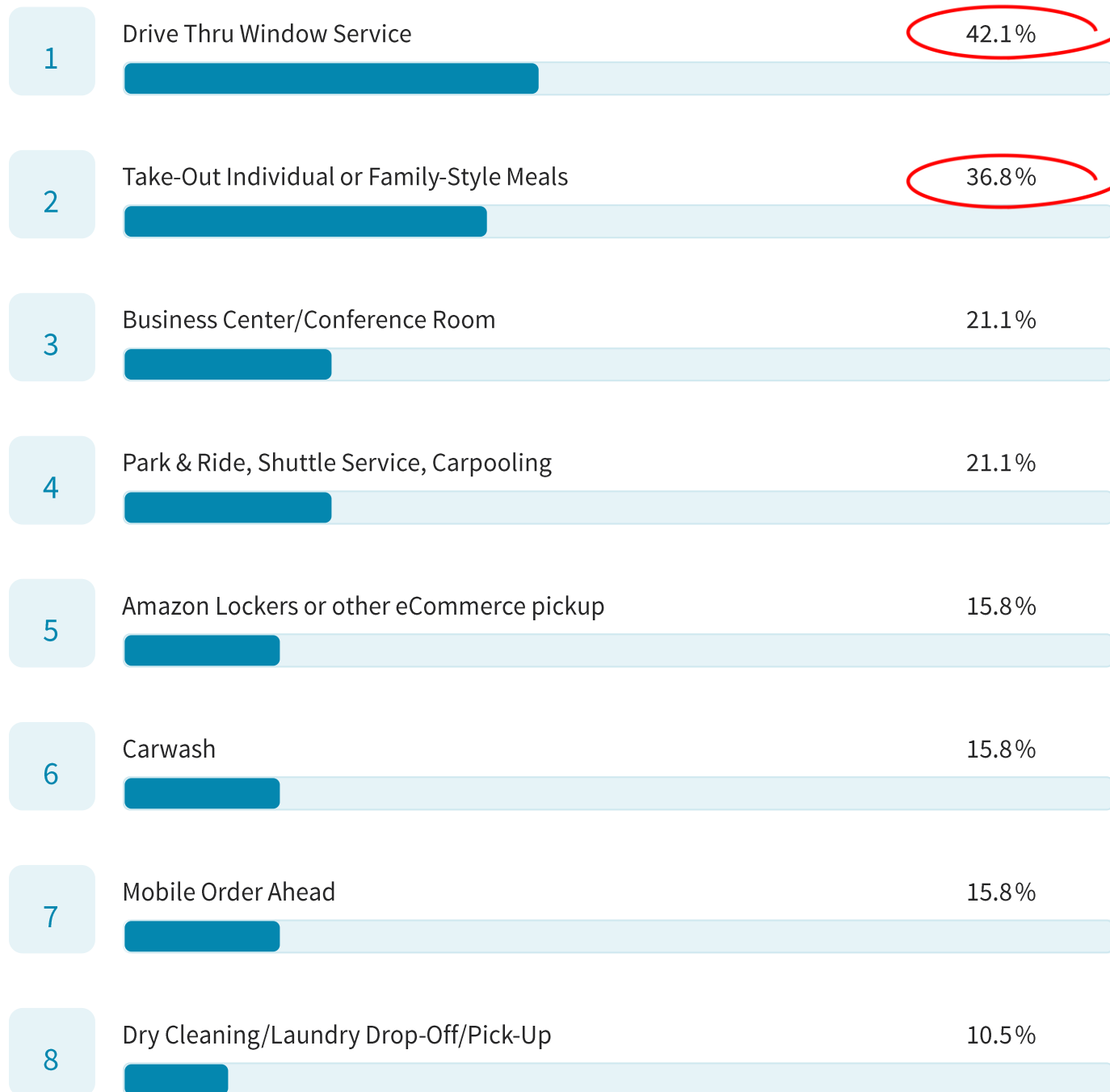
- **Definition:** A "Commuter" who travels from home to work/school and back daily.

### How many people normally carpool with you?





# COMMUTERS WISH LIST



# WEST VIRGINIA TURNPIKE TRAVEL PLAZAS: 2021 CUSTOMER EXPERIENCE SURVEY

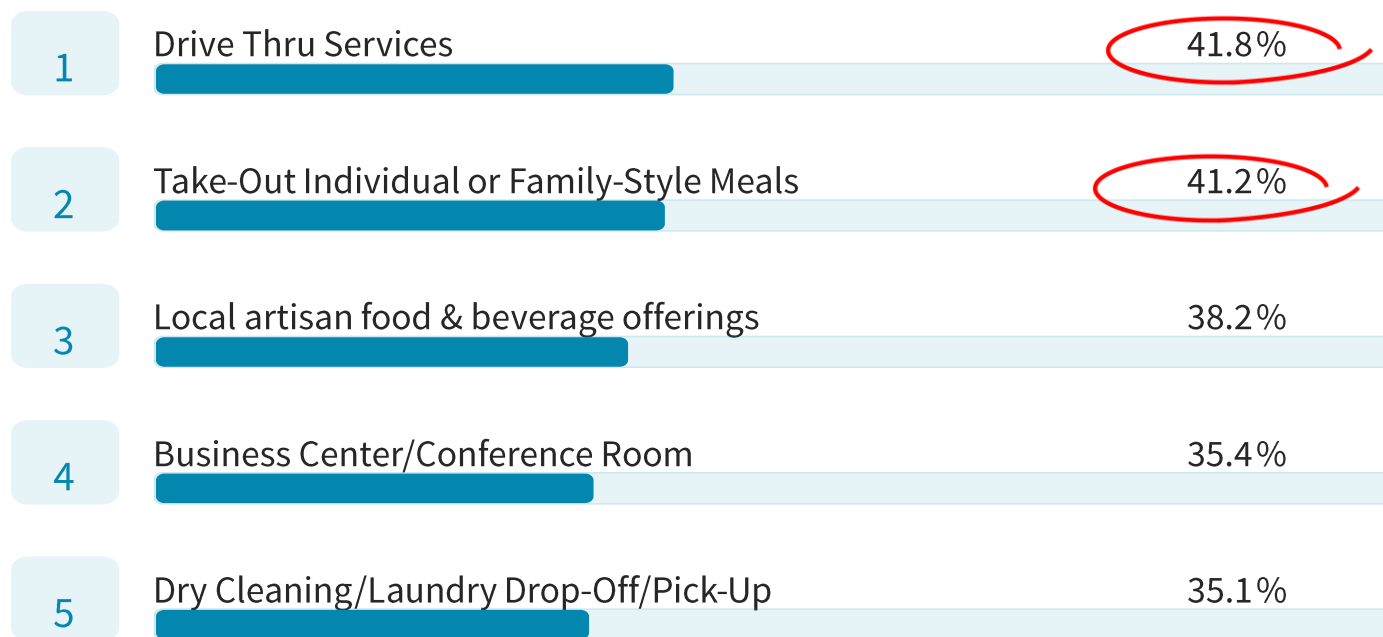
## ROAD WARRIOR/MOBILE WORKER





## ROAD WARRIOR/MOBILE WORKERS (15.9% OF RESPONDENTS)

- **Definition:** A "Road Warrior/Mobile Worker" frequently travels by car for business appointments and meetings.
- Top 5 Wish List:



# WEST VIRGINIA TURNPIKE TRAVEL PLAZAS: 2021 CUSTOMER EXPERIENCE SURVEY

## COMMERCIAL DRIVER

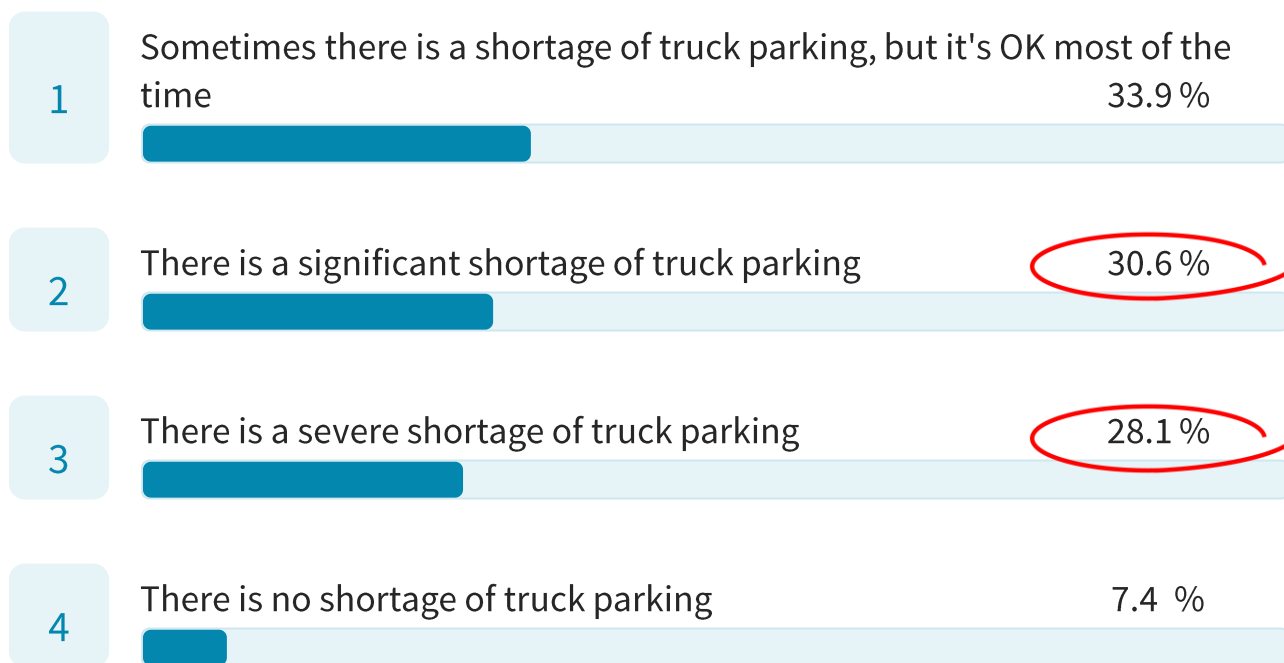




## COMMERCIAL DRIVERS (9.0% OF RESPONDENTS)

- **Definition:** A "Commercial Driver" hauls freight and/or makes deliveries.

**What is your overall assessment regarding the availability of safe and sufficient truck parking along the West Virginia Turnpike?**

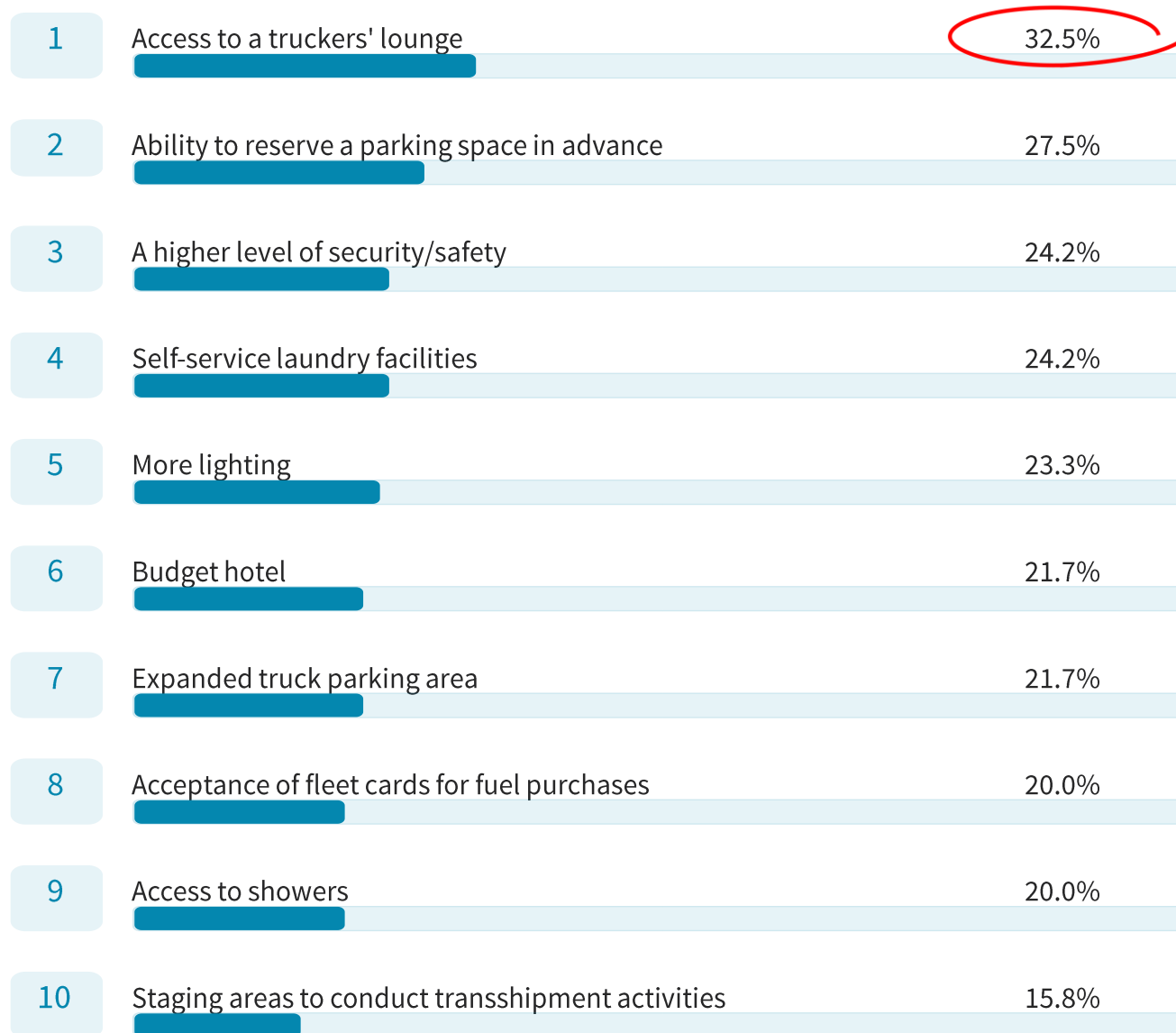


**FACTOID**

**58.7% of Commercial Drivers state there is a significant or severe shortage of safe parking.**

## COMMERCIAL DRIVERS WISH LIST

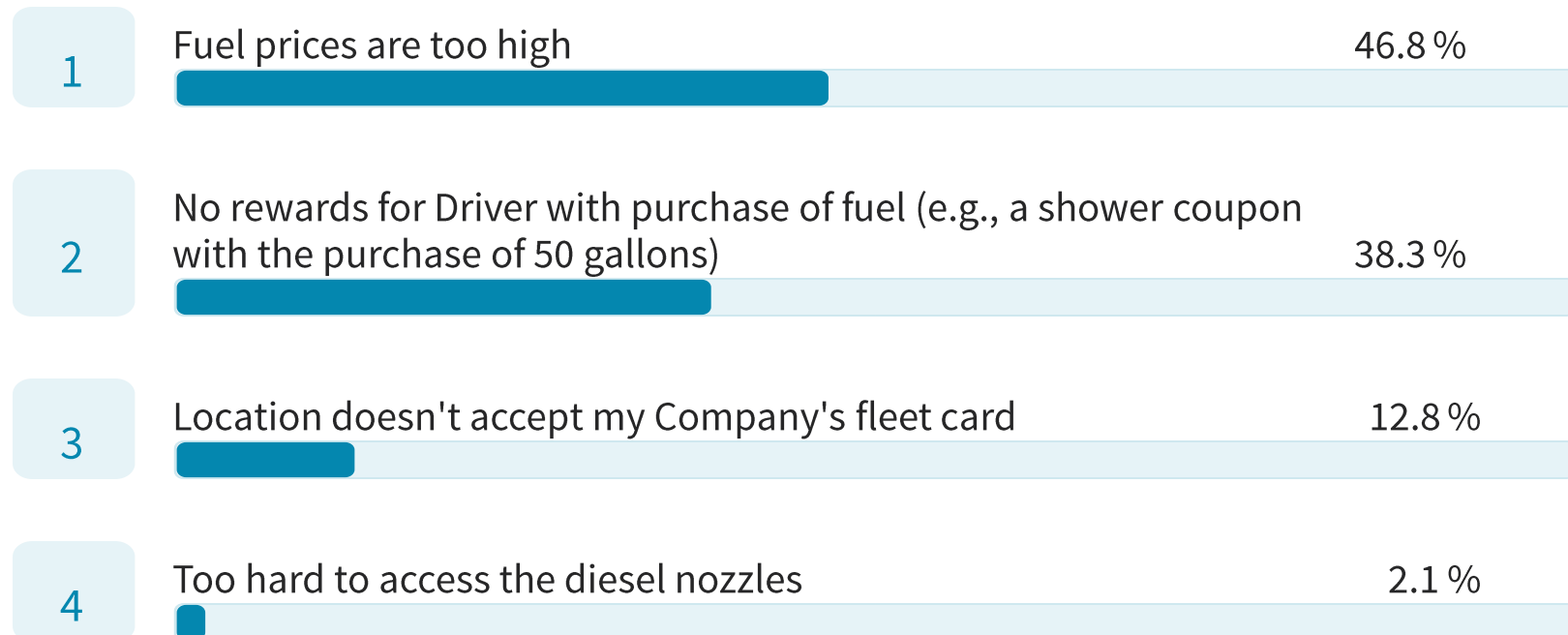
### What features and services/amenities would you like to see at the West Virginia Turnpike Travel Plazas?





## COMMERCIAL DRIVERS: CURRENT INHIBITORS TO FUEL PURCHASES

**Why do you rarely or never purchase fuel at the WV Turnpike Travel Plazas? (You can select more than one reason).**



# WEST VIRGINIA TURNPIKE TRAVEL PLAZAS: 2021 CUSTOMER EXPERIENCE SURVEY

## SUMMARY





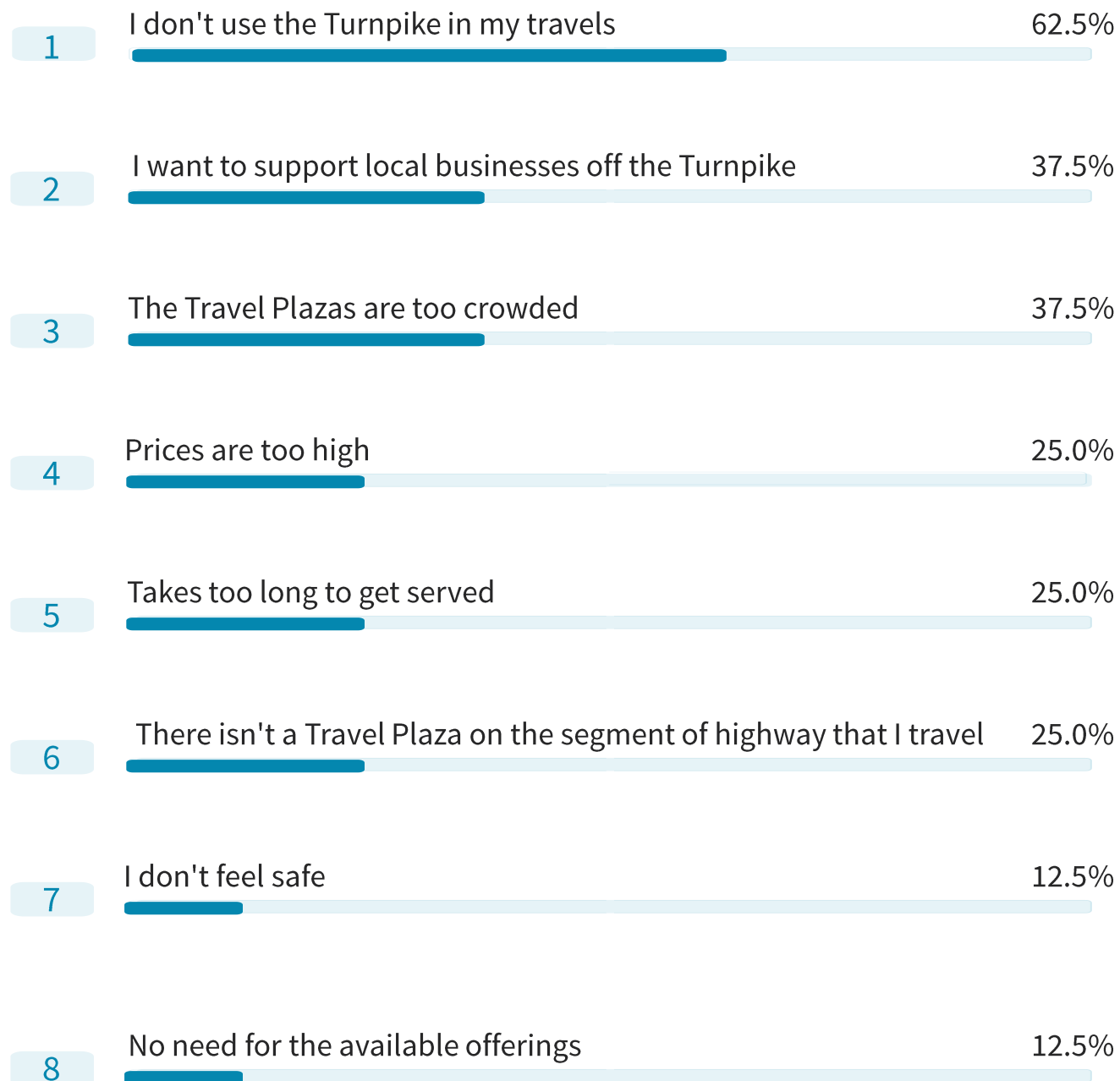
## ACROSS THE BOARD SUMMARY

- ❖ The General Perception: Travel Plazas are a Safe Place to Stop (All Customer Segments)
- ❖ Most Satisfied with Current Travel Plazas: **Occasional Turnpike Users**
- ❖ Least Satisfied: **Commercial Drivers** (Shortage of Parking and Related Stress)
- ❖ Response to Design of Current Travel Plazas
  - Building Site and Exteriors Get Good Marks
  - General Dislike of the Interior Layout with Barely a Passing Grade for the Restrooms
  - Upgrade in Outdoor Amenities Desired by All Customer Segments Especially Leisure Travelers with Families
- ❖ OK Marks Across the Board for Authenticity and a Sense of Place
- ❖ Small Minority of Respondents Pushed Back on Pricing of Food & Beverage and Retail with Leisure Travelers the Most Vocal
- ❖ Top Wish List Items (All Customer Segments Aggregated)
  - Drive Thru Services
  - Local Artisan Food & Beverages
  - Quiet Workspace (Especially for Road Warriors)
  - Electric Vehicle Charging Stations in the Next Five Years



## CURRENT INHIBITORS

Reasons for not stopping at the **West Virginia Turnpike Travel Plazas:**





## **APPENDIX E**

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# **2012 PM Terminals, Inc. Operating Agreement & Lease**

WEST VIRGINIA PARKWAYS AUTHORITY  
GASOLINE OPERATOR AGREEMENT AND LEASE  
WEST VIRGINIA TURNPIKE SERVICE STATIONS

This AGREEMENT, (the "Agreement") made as of the 3<sup>rd</sup> day of January, 2012, by and between the **WEST VIRGINIA PARKWAYS AUTHORITY**, an agency of the State of West Virginia (hereinafter referred to as the "AUTHORITY") and **PM Terminals, Inc.** (hereinafter referred to as the OPERATOR).

**W I T N E S S E T H:**

**WHEREAS**, the AUTHORITY is the owner of certain service areas and the real estate on which such service areas are located along the West Virginia Turnpike, at Morton, Bluestone and Beckley all in the state of West Virginia; and

**WHEREAS**, the AUTHORITY is authorized to enter into contracts for the operation of the service stations located within the service areas; and

**WHEREAS**, the AUTHORITY will negotiate with the OPERATOR to operate the service stations and to furnish to West Virginia Turnpike patrons quality products and high quality services in connection therewith; and

**WHEREAS**, the OPERATOR agrees to operate the aforementioned Service Station facilities, to provide quality products and high quality services in connection therewith in accordance with the terms, covenants and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**I. DEFINED TERMS**

The **AUTHORITY** shall mean the West Virginia Parkways Authority, an agency of the State of West Virginia established and existing pursuant to West Virginia Code 17-16A et seq. (the "Act");

**Environmental Laws** shall mean all federal, State of West Virginia and local laws and regulations relating to pollution or protection of human health or the environment, including, without

limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances (hereinafter defined), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq.; The Hazardous Waste Management Act, West Virginia Code 20-56-1, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.; The West Virginia Ground Water Protection Act, West Virginia Code 20-5M-1, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Air Pollution Control Act, West Virginia Code 16-20-1, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Water Pollution Control Act, West Virginia Code 20-5A-1, et seq.; the Occupational Safety and Health Act of 1970 20 U.S.C. § 651, et seq. ("OSHA"); The Solid Waste Management Act, West Virginia Code 20-5F-1 et seq.; West Virginia Underground Storage Tank Act, West Virginia Code 20-5H-1 et seq., and all amendments, rules and regulations promulgated pursuant to any of the foregoing;

**Hazardous Substance** shall mean any substance, material or waste, or component thereof, which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, or material or waste or component thereof by any Environmental Law;

**Motor Fuels** shall mean all types and grades of gasoline (unleaded regular, mid-grade, premium and such other grades as shall be offered by the OPERATOR and approved by the Authority), diesel fuel and all additional fuels that may come into general use for motor vehicles during the term of this Agreement (but this term does not include motor oils);

The **OPERATOR** shall mean (the company/firm selected to perform services pursuant to this Agreement and succeeding contract documents.)

**Restaurants** shall mean the facilities currently operated by Host International, Inc., d/b/a, HMS HOST (including buildings, portions of buildings and equipment) located in the Service Areas for the storage, preparation, handling and sale of food and beverages and for the disposal of refuse and waste, including, but not limited to lounges, rest rooms and telephones for use by the public, gift shops and other amenities;

**Service Areas** shall mean the buildings, including but not limited to all improvements, and fixtures, machinery, equipment and appliances comprising motorist service areas along the West Virginia Turnpike, and the real estate on which such service areas are located, at Morton (MP 73-N), Bluestone (MP 18-N), and Beckley (MP 44-N/S);



**Service Stations** shall mean the complete service station structure and facilities located in the Service Areas at the locations described on Exhibit A-1, A-2 and A-3, attached hereto and made a part hereof, including but not limited to all equipment, fixtures, betterments and improvements, including but not limited to employee locker rooms, sales and storage areas, all furnishings, all servicing islands, all dispensers and canopies, all motor fuel tanks and motor fuel lines currently in use or replaced during the term hereof, pumps, compressors, air lines, water lines and oil tanks, all portions of the paved area adjacent to, surrounding or servicing the building structure (as described on Exhibits A-1, A-2 and A-3), the dispensers, the servicing islands or the service stations, and all entrances, exits and walks appurtenant to the service stations;

**The Turnpike** shall mean the limited access express highway known as the West Virginia Turnpike, as defined and described in the Act;

**UST** shall mean one or a combination of tanks, including, all underground lines and pipes or other related equipment, used to contain Non-Hazardous Substances or Hazardous Substances, any portion of the volume of which, including the volume of pipes and other related equipment, is ten percent (10%) below the surface of the ground, and as otherwise defined by any Environmental Law.

**Personal property** shall mean that equipment installed by OPERATOR which shall remain the property of OPERATOR and which OPERATOR shall have a right to remove at the termination of this agreement, provided, that such removal is performed in accordance with the provisions of this Agreement.

## **2. TERM**

### **2.1 Term**

The Term of this Agreement (the "Term") shall commence on January 3, 2012 at 12:00 a.m. EST (the "Commencement Date") with respect to all Service Stations and shall continue for a period of 7 years, terminating on January 2, 2019 at 11:59:59 p.m. EST (the "Expiration Date"), unless sooner terminated in accordance with the provisions hereof. The OPERATOR shall be continuously in operation at each of the Service Stations with required staff of employees, providing the required services and with required amount of product for sale to Turnpike patrons on the first day of, and thereafter throughout the Term of, this Agreement.

For purposes of this Agreement, the first "operating year" shall commence on the Commencement Date and shall terminate on the one-year anniversary thereof; thereafter, each "operating year" shall consist of consecutive periods of twelve calendar months.

Any holdover occupancy of the Service Stations by the OPERATOR after the expiration of the Term of this Agreement which shall not be authorized in writing by the AUTHORITY shall not be deemed to extend the Term or renew this Operating Agreement or to have created or be construed as a tenancy of any kind; In addition to any other rights or remedies that the AUTHORITY may have as a result of any unauthorized holdover, OPERATOR shall pay to the AUTHORITY any and all damages that the AUTHORITY shall suffer by reason of such unauthorized holdover and, in addition, OPERATOR shall indemnify the AUTHORITY from and against all claims of any succeeding operator against the AUTHORITY caused by any delay in delivering possession of the Service Stations at the end of the Term.

### **2.2 Extension Term**

The term of this Contract may be extended for up to two (2) additional one year periods at the sole discretion of the AUTHORITY, its successors or assigns. If the AUTHORITY wishes to have the Contract extended for the one year extension periods, it shall give the operator written notice of its desire to do so no later than May 1, 2018 for the first one year extension and by May 1, 2019 for the second one year extension period.

## **3. SCOPE OF AGREEMENT**

### **3.1 Exclusive Rights.**

The AUTHORITY hereby grants to the OPERATOR the exclusive right to operate all Service Stations for the sale of its branded motor fuel, motor oil and related non-motor fuel products and accessories and for the servicing of vehicles in accordance with the terms and conditions hereof.

The Service Stations shall be operated for the convenience and benefit of the motoring public traveling the Turnpike. The parties hereto agree that the quality of the overall operation of the Service Stations is of the essence with respect to this Agreement. This Agreement may not be assigned nor sublet by the Operator for any reason without the written consent of the Authority, which consent may be withheld, delayed or conditioned for any reason or no reason. The Authority may assign its interests in this Agreement to any successor agency within the West Virginia Department of Transportation, or any successor Department of which the Authority is a part.

### **3.2 Convenience-Food Concessions**

The OPERATOR shall be permitted to merchandise certain food, beverage and convenience items intended for off-premises consumption, certain of which items may also be sold by the Restaurant in the same service area. Such items shall be merchandised at all times in a professional, clean and aesthetically pleasing manner, using display modules inside the service area structure that

meet the limitations set forth herein. All signs shall be professionally fabricated as well as displays located on the inside of the facility, on the motor fuel island or outside in the immediate vicinity of the Service Station. The AUTHORITY shall have the right to require the relocation of such signs or displays if the AUTHORITY, determines, in its sole discretion that such relocation is necessary for safety, traffic flow, public convenience or other purposes.

Under no circumstances shall alcoholic beverages be sold at the Service Stations.

Items that have been approved by the AUTHORITY and which may be sold at the Service Station facilities during the term hereof shall be limited to the following convenience related items:

Candy, sodas, milk (pre-packaged only), pre-packaged crackers and gum, candy bars, coffee, ice cream (packaged and branded only-no single servings) chips, ice, juices(canned or bottled only), dairy products (subject to ice cream limitations), personal care items, gifts/souvenirs (logo or promotional only) health aids, cakes and pastries (commercially prepared, packaged and branded), tobacco products and sunglasses.

Under no circumstances, except as otherwise provided herein or as otherwise agreed to by the AUTHORITY, shall the OPERATOR be permitted to sell gift items or promotional items which do not bear the OPERATOR'S logo.

However, notwithstanding the foregoing provision, the OPERATOR shall be permitted to distribute, without charge or for a reduced charge, promotional items not bearing OPERATOR'S logo, in connection with promotional programs offered on a limited-time basis at all of the OPERATOR'S Service Stations in West Virginia. All such promotional programs shall at all times be conducted in a professional, clean and aesthetically pleasing manner in compliance with all legal requirements.

The OPERATOR shall have the exclusive right, within the Service Station area, to operate vending machines which dispense pre-packaged food and pre-packaged drinks and shall be responsible for all such vending machines. The AUTHORITY reserves the right to limit or relocate such vending machines as it determines, in its sole discretion, when such limitation or relocation is necessary for safety, traffic flow, public convenience or other purposes.

The operation and maintenance of the public telephones within the OPERATOR'S areas defined by this Operating Agreement shall also be the responsibility of the OPERATOR.

#### **4. RENT**

Compensation (collectively, "Rent") shall be paid by the OPERATOR to the AUTHORITY from and after the Commencement Date and throughout the Term of this Agreement in the amounts and in accordance with the provisions set forth herein.

The parties shall enter into an operational memorandum of understanding ("MOU") pursuant to which fuel delivery vendors are allowed to receive reimbursement from the Operator for the actual costs of tolls incurred for deliveries to the Operator's locations and Operator can off-set those actual costs against rents owed by the Operator. The Authority reserves the right to monitor and modify the MOU as it deems appropriate in the future.

##### **4.1 Motor Fuel Sales Rent and Reporting, Etc.**

The OPERATOR shall pay to the AUTHORITY the amounts specified on its bid tendered to the AUTHORITY upon which this Agreement is based, which is attached to and made a part of this Agreement as Attachment 1, Bid / Rent Schedule.

##### **4.2 Guaranteed Minimum Annual Rent Payment**

The OPERATOR hereby guarantees a minimum annual rent payment for each retail fuel establishment which is the subject of this agreement. The guaranteed minimum annual rent for each location is equal to the total of the bid price paid to the AUTHORITY per gallon of fuel (gasoline and diesel) sold multiplied by ninety percent (90%) of the average annual gallons sold and ninety percent (90%) of the percentage of other products sold or services rendered in the calendar years 2008, 2009 and 2010 at each such retail fuel establishment as shown on Exhibit B-1. The actual amounts of the guaranteed minimum annual rental payment for each location are set forth herein below:

	BECKLEY	MORTON	BLUESTONE
Fuel	<u>\$467,093</u>	<u>\$129,799</u>	<u>\$93,268</u>
Merchandise	<u>\$36,072</u>	<u>\$26,816</u>	<u>\$13,825</u>

In the event that the total annual rent actually paid to the AUTHORITY is less than the guaranteed minimum rent per location, the difference shall be payable to the AUTHORITY not later than thirty (30) days after the end of each contract year. (The contract year ends on December 31, however, for the purpose of rent calculation, the second contract year commences January 1, 2013.)

Any part of the minimum rent requirement may be waived for reasons the AUTHORITY'S General Manager deems are outside the control of the OPERATOR.



## 5. ACCOUNTING

The OPERATOR shall keep detailed accounting records and detailed records of operations with respect to each Service Station, including inventory reports for each Service Station, services rendered, cost lists, lists of items sold and records of sales (by category of items sold) made as a result of operations at each of the Service Stations based upon generally accepted accounting principles, applied on a consistent basis, and which shall be separate and apart from its records of all other operations. These records shall be maintained at an office located in the State of West Virginia.

Such records of operations, excluding personnel records, under this Agreement shall be kept in form and manner in all events satisfactory to the AUTHORITY and shall be open for inspection or audit by designated representatives of the AUTHORITY upon reasonable notice during regular business hours. Said books and records shall be retained for the period normally required by the OPERATOR for its own accounting and tax purposes, and in no event less than six (6) years. In no event shall such books and records be disposed of or destroyed during the pendency of any dispute or claim between the AUTHORITY and the OPERATOR with regard to this Agreement.

The OPERATOR shall furnish the AUTHORITY'S General Manager on a monthly basis, a written report of the unaudited motor fuel sales of the immediately previous month, by grade and by Service Station.

## 6. FACILITIES

### 6.1 Facilities/Equipment Provided by AUTHORITY

Each Service Station is located adjacent to a Restaurant in a Service Area along the West Virginia Turnpike.

Each Service Station shall, at the commencement of the Term of this Agreement, be equipped by the Authority with the following items:

Building structure, including a sales room, an employees' locker room, janitor's closet, and a stock room, pump island intercom systems,  
Vending Islands, Canopy with lighting, Island booth shelters,  
Water and compressed air dispensary outlets and underground distribution systems for water and compressed air without compressors, Above-ground tank for the storage of waste oil, if collection is ever required by law. A fully registered and permitted Motor fuel storage and distribution system, including on site Stage I and Stage II vapor recovery, if required.

In addition, OPERATOR shall at its sole expense retro-fit AUTHORITY'S motor fuel dispensers to maintain the latest technology with the most rapid, efficient, user-friendly payment option mechanisms, including but not limited to credit card readers, PCI compliance changes as required, and Trendar Comm Data units (or their acceptable equivalents) on pumps that handle truck business for transactions greater than \$100.00. In the event OPERATOR elects to retro-fit any of the above, the same shall be done without damage to the AUTHORITY'S equipment and without rendering the AUTHORITY'S items so removed unfit for future use.

An inventory of all equipment owned and provided by the AUTHORITY at each Service Station (the "Inventory") shall at the option of the AUTHORITY be furnished by the AUTHORITY to the OPERATOR within sixty (60) days following the Commencement Date of this Agreement. Unless the OPERATOR objects, disputes or qualifies in any way the contents of the Inventory within thirty (30) days following receipt of same, the Inventory shall become a part of this Agreement. Any objection, dispute or qualification by the OPERATOR shall be submitted to the AUTHORITY in writing within the aforementioned time period and shall be resolved through good faith negotiations between the AUTHORITY and the OPERATOR.

At the expiration or earlier termination of this Agreement, all equipment and other items listed on the Inventory as being furnished by the AUTHORITY to the OPERATOR, and any replacement thereof or substitutions therefore, as well as all equipment and other items affixed to the buildings at the Service Stations, including but not limited to the canopies and the sign foundations (notwithstanding their having been furnished by the OPERATOR during the Term hereof) but excluding motor fuel dispensers, sign goalpost, logo signs and pricing signs, shall be returned to the AUTHORITY in good operating condition and repair, reasonable wear and tear excepted.

### 6.2 Equipment Provided by OPERATOR

The OPERATOR shall provide and maintain, at its own cost and expense, the retro-fit items outlined in 6.1 above as well as all other necessary or usual items of equipment customarily available at full service stations or otherwise necessary to provide quality products and high quality services to Turnpike patrons including, but not limited to, the following: display and storage cabinets, office equipment, wall fastenings and brackets, lockers, tools, trash cans and fire extinguishers.

All equipment installations and major furnishings even if solely of a decorative nature at the Service Stations, including but not limited to the foregoing, and any replacements or substitutions thereof, shall be approved by the AUTHORITY in writing as to quality and design before installation

and use. The OPERATOR hereby acknowledges that any approval issued by the AUTHORITY pursuant to these provisions shall not subject the AUTHORITY to liability or responsibility with respect to the quality, performance or fitness for a particular use of any such equipment, or for any other reason or on any other basis.

In addition, the OPERATOR shall furnish and install, at no cost to the AUTHORITY, all necessary point-of-sale equipment including, but not limited to:

- Cash Registers, Pump Controllers, Counter-Mounted Electronic
- Credit Card Verifier/Acceptors in island kiosks (where currently existing)
- Counter-Mounted Electric Sales, Receipt Printers in island Kiosks
- (where currently existing)
- Electronic Modulator/Demodulators (Modems), Necessary Telephone Lines

The particular hardware equipment and computer software furnished in compliance with this requirement may be of the OPERATOR's choice, provided same are of good quality and reliable for their specified purposes, meet all regulatory requirements of all federal and state agencies and are susceptible of being audited by the AUTHORITY.

All Service Station equipment provided by the OPERATOR shall be of good quality, safe and adequate for its purpose, and shall comply with all Legal Requirements (hereinafter defined). The AUTHORITY shall have the right to require substitution of equipment or the supplying of additional equipment by the OPERATOR when, in the judgment of the AUTHORITY, reasonably exercised, such action is necessary; provided, however, that the AUTHORITY shall have no responsibility or liability whatsoever with respect to the equipment or its condition by virtue of the AUTHORITY's right to require substitution or additional equipment.

All items furnished by the OPERATOR, including point-of-sale and Service Station automation computer-related equipment and motor fuel dispensers, shall remain its property; provided, however, that those items furnished by the OPERATOR and affixed to the buildings at the Service Stations shall become the property of the AUTHORITY as of the date such items are completed or as of the date such items are attached to or built into the Service Stations, whichever is later, and shall not be removed by the OPERATOR (unless the AUTHORITY so requires).

During the Term of this Agreement OPERATOR shall provide "Self Service" dispensing set ups at each of the Service Station locations governed by this Agreement. The OPERATOR shall at all times comply with (i) all Legal Requirements applicable to the operation of Service Stations offering self-service dispensing of motor fuels, and (ii) the guidelines set forth in the American

National Standards Institute/National Fire Protection Association NFPA 30A, entitled "Automotive and Marine Service Station Code," Section 9-5 ("Unattended Self-Service Stations") or any later applicable codes. OPERATOR must also make provisions with providing "Full Service" functions for those patrons who may be unable to access or properly use the "self service" dispensers. Operator shall also comply with all Legal Requirements applicable to the operation of Service Stations offering full-service dispensing of motor fuels.

## **7. Services**

### **7.1 Quality of Service**

The OPERATOR shall operate the Service Stations in a clean, neat, efficient, attractive and safe manner. Quality goods shall be sold and high quality services shall be rendered by the OPERATOR, which services shall meet high standards of cleanliness, professionalism and courtesy applicable to quality service station operations, all of the foregoing being of the essence with respect to this Agreement. The OPERATOR shall offer only those goods specifically permitted under Section 3.2 and Section 8 hereof and those services specifically permitted under Section 7 hereof, or such new goods and services as are otherwise approved by the AUTHORITY, in the AUTHORITY's sole and absolute discretion.

### **7.2 Hours of Operation**

The OPERATOR shall operate the Service Stations 24-hours per day, 7 days per week during the entire Term of this Agreement.

### **7.3 Staffing**

The Service Stations shall be operated at all times, including meal times, with a sufficient complement of well-trained and competent personnel and, in all events, with the necessary manpower requirements to carry out the requirements of this Agreement. The OPERATOR shall also provide competent supervision and experienced managers at each Service Station. The OPERATOR's supervisors shall conduct inspections during each of the shifts on a daily basis at each of the Service Stations and shall keep records thereof which shall be open to inspection by the AUTHORITY. The name of the current shift manager on duty, or other designated employee in charge, shall be displayed in a professional manner where it will be visible to Turnpike patrons while purchasing motor fuel.

During all hours of operation 100% of all gasoline filling positions shall be in operation.

All Service Station personnel shall have a neat, clean and professional appearance, dressed in appropriate gasoline brand uniforms approved by the AUTHORITY, which uniforms shall have the



first initial and the last name of the employee inscribed and clearly visible on the front of the uniform or imprinted on a professionally prepared badge affixed to the front of the uniform. The OPERATOR shall make available to its personnel uniform hats and shall use reasonable efforts to cause its personnel to wear such uniform hats, but an employee's failure to wear a uniform hat shall not constitute a default hereunder. The OPERATOR shall employ a laundry service for the cleaning and pressing of such uniforms on not less than a weekly basis.

OPERATOR's personnel shall be sufficiently knowledgeable in the geographical area and traffic routes of the vicinity in order to direct Turnpike patrons intelligently. OPERATOR's personnel shall be instructed as to the procedures for obtaining information through the Communications Center of the AUTHORITY with respect to local emergency services, including hospitals and ambulances, in order to assist Turnpike patrons.

The OPERATOR shall be responsible for the conduct, demeanor and appearance of its personnel. The OPERATOR shall promptly investigate and resolve all complaints and shall respond in writing to the complaining party. The AUTHORITY shall forward copies of all complaints received to the OPERATOR. The OPERATOR will take all normal and reasonable steps, including but not limited to termination of employment, to remedy the objectionable situation. The OPERATOR shall furnish the AUTHORITY with a written summary of each complaint and the resolution thereof, or the status of such resolution, if not completed, on a monthly basis.

OPERATOR agrees that it will adhere to and enforce the disciplinary procedures set out in its employee handbook, attached as Attachment 4, and the AUTHORITY agrees that such enforcement will be deemed adequate for all employee disciplinary obligations set out in this Agreement.

#### **7.4 Vehicle Repairs**

Service Station personnel shall recommend to Turnpike patrons only such equipment, repairs or replacements to be performed by the OPERATOR only on an emergency basis, as are immediately necessary to restore or keep the patron's automobiles and light trucks (one ton or less) in operating condition and necessary non-emergency repairs. As a general rule, vehicles shall not remain in the service station for repairs for more than two (2) hours. The following is a list of vehicle repair services that may be performed, upon patron's vehicles when necessary, by the OPERATOR but only on an emergency basis:

Tire repair (without dismounting from rim), Coolant leak repair and refilling  
Belt repair or replacement, Hose repair or replacement, Battery replacement  
Battery cable replacement, Headlamp replacement, emergency minor exhaust

system repairs, Emergency minor parts repairs

The OPERATOR shall agree to discipline any employee found to be recommending, permitting or otherwise encouraging any type of service or repair to be performed by the OPERATOR other than those approved by the AUTHORITY; provided however, that the foregoing shall not prohibit the OPERATOR and its employees from recommending or encouraging a repair or service that will not be performed by OPERATOR (by virtue of the fact that such repair or service is not approved by the AUTHORITY) but which the employee nevertheless considers necessary for the motor vehicle being inspected or serviced by OPERATOR.

The Labor Rate, which may be changed by OPERATOR, for such emergency repairs shall be established by a price survey done in a manner consistent with the provisions of Section 9.2 but using prevailing labor rates to establish an average rate per hour or any part thereof actually performed (the "Labor Rate"). Any changes in the Labor Rate shall be applied for to the AUTHORITY using additional price survey information as provided for in Section 9.2 but pertaining to labor rates for the same or similar repairs.

The OPERATOR expressly covenants and agrees that there shall be no payment of commissions to Service Station Personnel based upon sales made from the Service Stations or Emergency Repairs, or on moneys collected for the performance of such sales or services; provided, however, that employee general incentive plans benefiting the OPERATOR'S personnel and approved by the AUTHORITY shall be permitted.

All authorized emergency vehicle repairs shall be performed only in a safe location at the Service Stations. If a vehicle has become disabled at the service island, it shall be promptly towed or otherwise moved before performing any such repairs. No disabled vehicle shall remain at the service island for any reason whatsoever.

#### **7.5 Credit Cards**

The OPERATOR will honor all proprietary credit cards of its branded motor fuel products, as well as three national credit cards approved by the AUTHORITY. Such approval shall not be unreasonably withheld by the AUTHORITY, and initially, the three national credit cards shall be VISA, MasterCard, American Express. All other credit cards honored by the OPERATOR shall be approved by the AUTHORITY, except that the OPERATOR shall have the right, from time to time upon notice to the AUTHORITY, to conduct any "Honor All" credit cards program for a limited time without approval by the AUTHORITY of credit cards to be honored during such program. A list of

credit cards honored by the OPERATOR shall be conspicuously posted on each vending island and at the main entrance to each Service Station.

If requested to do so by the AUTHORITY, the OPERATOR shall honor the AUTHORITY's credit card/credit, if any, for all AUTHORITY operated vehicles. The AUTHORITY shall be billed directly for all purchases made with any such Authority credit cards/credit at the Service Stations. Invoices shall indicate the total billed to the AUTHORITY less all Federal and State taxes which taxes shall be separately itemized on the invoice, and such additional information as the AUTHORITY may, from time to time, require. The invoice must be supported by a tabulated run and a copy of each credit slip reflected in the invoice. Credit slips shall include the following information: account number, Turnpike vehicle license plate number, motor fuel grade purchased, number of gallons purchased, gross dollar value, quarts of oil purchased, gross dollar value of purchases other than motor fuel, actual purchase date and Service Station where purchased.

#### **7.6 Free Services**

In addition to such other services as may be described herein, the OPERATOR shall supply to Turnpike patrons, without charge, those services normally supplied and at least equal in quality and quantity as those supplied by service stations in the vicinity, including but not limited to: adequate devices with a sponge and squeegee arrangement for washing windshields and windows, air, air gauges and water without charge, and all equipment and facilities for dispensing same shall be in operating condition at all times. Air pressure gauges shall be checked periodically by the OPERATOR to assure accuracy.

The OPERATOR's personnel shall, to the best of their ability, provide travel information to patrons requesting such information and the OPERATOR shall, upon the AUTHORITY's request, make available to the traveling public at the Service Stations such informational travel or tourism material as the AUTHORITY shall supply to the OPERATOR.

### **8. Merchandise**

#### **8.1 Motor Fuel**

The OPERATOR shall at all times market all the same grades of unleaded gasoline, having the same quality and octane rating as gasoline of the same grades sold at same brand-identified off-Turnpike locations in the mid-Atlantic market, diesel fuel, lubricants and grades of motor oil marketed at OPERATOR'S off-Turnpike locations, all in accordance with all Legal Requirements. The OPERATOR agrees that if the additive ethanol (E-10) is utilized in any of its gasoline products, the content of such gasoline shall contain not more than ten (10%) percent ethanol by volume, unless

approved by the AUTHORITY. In the event the Authority approves the use of ethanol at a concentration higher than 10% in the gasoline/diesel blends sold at the service stations governed by this Agreement, it reserves the right to require the Operator to be responsible for the maintenance and replacement of any lines that deteriorate as a result. OPERATOR shall, upon direction by the AUTHORITY, offer for sale at one or more service stations during the term hereof, alternate motor fuels such as Liquid Petroleum Gas, Compressed Natural Gas or other alternatives to gasoline which OPERATOR'S objective market tests show will meet vehicle owners' performance expectations, will not harm vehicles, and may be safely marketed. Such fuels must be available in sufficient quantities to supply the anticipated demand and at commercial cost such that OPERATOR may earn a reasonable profit on its sale. In the event the AUTHORITY so directs the OPERATOR, it shall be the responsibility of the AUTHORITY to equip each such location where such sale is directed with appropriate tanks, lines, dispensers and other necessary equipment so that OPERATOR may comply with this direction. After such installation by the AUTHORITY, such facilities and all operations and sales there from shall be governed by the existing provisions of this Agreement regarding maintenance, upkeep, repair, replacement, pricing and the like.

#### **8.2 Tires, Batteries and Accessories**

The OPERATOR shall at all times market such additional supplies and non-motor fuel accessories as are customarily sold at full service stations.

At least twenty (20%) percent of the TBA items sold by the OPERATOR shall be of a name-brand other than the OPERATOR's, its parent or subsidiary companies.

#### **8.3 Promotional Items**

Under no circumstances, except as otherwise provided herein or as otherwise agreed to by the AUTHORITY, shall the OPERATOR be permitted to sell gift or promotional items not bearing the OPERATOR's logo.

Notwithstanding the foregoing provision, the OPERATOR shall be permitted to distribute, without charge or for a reduced charge, promotional items not bearing the OPERATOR's or branded motor fuel logo, but only in connection with promotional programs offered on a limited-time basis at all of the OPERATOR's same brand service stations in West Virginia. All such promotional programs shall at all times be conducted in a professional, clean and tasteful manner and in compliance with all Legal Requirements.

#### **8.4 Lottery Tickets**



OPERATOR shall have the right to sell Lottery Tickets approved by the West Virginia Lottery Commission provided such sales at state-owned facilities are permitted by applicable laws, rules and regulations and further provided that such sales areas utilized for lottery tickets do not adversely affect the space necessary for the essential services and sales provided for hereunder. Such sales shall not be subject to the percentage payment of rent.

## **9. Prices**

### **9.1 Motor Fuel Prices**

Prices of all motor fuel products, including diesel fuel, sold at the Service Stations shall initially and thereafter at all times be determined based upon a survey of the selected off-Turnpike service stations shown in Attachment 2. Such survey stations shall be selected by the parties using OPERATOR'S current "Pacesetter" criteria (if not a "pacesetter" system, then Operator's equivalent system). Neither party shall unreasonably refuse to agree to a "Pacesetter" designation from the other party.

OPERATOR'S price for each self-service grade of motor fuel, with similar octane, shall not be higher than the arithmetic average selling price of such self-service grade with similar octane in the Survey plus up to three cents per gallon (\$.03/g). The same procedure shall be used to calculate the maximum selling price for each grade of full-service motor fuel, except the full service prices instead of self service shall be used.

### **9.2 Price Survey by Reporting Institution**

In the event the parties determine to use the services of an industry-accepted reporting institution, it shall be the responsibility of the OPERATOR to negotiate, enter into and pay for the contract with the organization conducting the price survey.

### **9.3 TBA Prices**

Prices of TBA items sold at the Service Stations shall be comparable to and competitive with those at other service stations and truck stops in the State of West Virginia, and shall in no event exceed the manufacturer's suggested list price, if any. The OPERATOR must have available at all times for audit by the AUTHORITY a list of prices paid by the OPERATOR (the "cost" price), along with a list of manufacturer's suggested list prices, if any, for all TBA items sold by the OPERATOR at the Service Stations. The AUTHORITY shall have the continuing right to audit such price lists

charged to Turnpike patrons for TBA items sold at the Service Stations to assure they are competitive with those charged by off-Turnpike service stations.

## **10. Equipment**

### **10.1 Equipment**

Except as provided in Paragraph 10.2 below, the OPERATOR shall, at its own cost and expense, maintain and repair all equipment (regardless of when the same was supplied) on the vending islands so that same is in good operating condition, clean and freshly painted, including the canopy and canopy ceiling and fascia, island lighting, motor fuel dispensing units and shear valves, pump island shelters and related equipment (thermostats, lighting, etc.), and credit card imprinter stands, which maintenance and repair shall include such painting of the foregoing as is required and approved by the AUTHORITY. Any such repairs, replacements or upgrades which are the responsibility of the Operator shall be performed in a workmanlike manner, in accordance with all applicable building codes, rules, regulations and requirements of all applicable regulatory agencies with contractors, sub-contractors, material suppliers and laborers first approved in writing by the Authority.

The OPERATOR shall submit to the AUTHORITY on an annual basis or as required by the AUTHORITY results of the motor fuel dispensing units' inspection and checking by the appropriate Federal, State, County or Local officials attesting to the accuracy of each motor fuel dispensing unit used at the Service Stations. The OPERATOR agrees to expeditiously correct any inaccuracies disclosed by such testing or otherwise. Inspection fees, penalties and related costs shall be borne by OPERATOR.

The OPERATOR shall, at its own cost and expense, maintain, repair and replace any air compressors, air and water dispensers when necessary and otherwise, at such time and in such manner as determined by the AUTHORITY.

Such maintenance to be performed by OPERATOR shall include, but shall not be limited to cleaning, degreasing and painting of interior and exterior of the building, including the sales rooms, rest rooms, if any, stock rooms, employee locker rooms and all other areas, used by the OPERATOR and as required by the AUTHORITY.

The OPERATOR shall be responsible for the removal of blockages in all waste water lines in the Service Station. If OPERATOR cannot remove a blockage after making reasonable efforts to do so, the AUTHORITY shall remove such blockage at initially its own cost, subject to reimbursement as provided herein. If the AUTHORITY can demonstrate that the waste water line blockage was

caused in whole or in part by OPERATOR, the AUTHORITY shall have the right to require reimbursement from OPERATOR for the complete cost of the AUTHORITY's services in removing such blockage (in the amount of OPERATOR's proportionate share, if pro-rata is appropriate), which reimbursement shall be made promptly upon demand. To the extent the AUTHORITY cannot demonstrate or determine whether the blockage in the waste water line was caused by the OPERATOR or the Restaurant Operator, the AUTHORITY shall remove the blockage at its own cost, subject to the AUTHORITY's right to seek reimbursement from OPERATOR for an amount equal to 25% of such cost and to seek reimbursement from the Restaurant Operator for an amount equal to its proportionate share.

The OPERATOR shall also remove blockages in all waste oil lines, motor fuel lines and motor fuel vent lines, as well as other areas used by the OPERATOR.

The AUTHORITY shall, at its own cost and expense, maintain and operate the heating plants and heating distribution equipment located at each of the Service Stations. The AUTHORITY shall also maintain, at its own cost and expense, any water pumps in Service Stations, any wells and water softeners at the Service Stations, and any sewerage facilities in the Service Stations.

In the event repairs or replacements to any property or equipment of the AUTHORITY are necessitated by the negligence, gross negligence, recklessness or willful misconduct of the OPERATOR, its agents, servants or employees, said repairs or replacements shall be made promptly by the OPERATOR at OPERATOR's sole cost and expense. Said required repairs and replacements shall be made, at the expense of the OPERATOR, by the AUTHORITY, following notice by the AUTHORITY to OPERATOR that the AUTHORITY is holding the OPERATOR responsible therefor (except in the case of an emergency, in which case prior notice shall not be required but shall be provided as soon as possible thereafter), and the OPERATOR shall promptly reimburse the AUTHORITY for any costs and expenses incurred by the AUTHORITY in connection therewith.

In the event repairs or replacements to any property or equipment of the OPERATOR are necessitated by the negligence, gross negligence, recklessness or willful misconduct of the AUTHORITY, its agents, servants or employees, said repairs or replacements shall, following notice by OPERATOR to the AUTHORITY that OPERATOR is holding the AUTHORITY responsible therefor (except in the case of an emergency, in which case prior notice shall not be required but shall be provided as soon as possible thereafter), be made promptly by the OPERATOR at the expense of the AUTHORITY, and the AUTHORITY shall promptly reimburse the OPERATOR for any reasonable and necessary repair expenses incurred by the OPERATOR in connection therewith.

The AUTHORITY will replace all items supplied by it for OPERATOR's use after normal life expectancy has expired, or when repair of same, based on the AUTHORITY's reasonable evaluation exceeds 51% of the replacement cost.

All other replacements shall be performed by OPERATOR based on the same criteria, except the AUTHORITY shall not unreasonably require replacement during the final 60-days of this contract.

## **10.2 Building**

Except as provided to the contrary herein, the AUTHORITY shall maintain the structural elements of the buildings located at the Service Stations (i.e., the roof, floor slab and weight-bearing walls and columns), making all necessary structural replacements and repairs thereto. Any such repairs or replacements necessitated by the negligence, gross negligence, recklessness or willful misconduct of the OPERATOR, its agents, servants, employees, licensees or invitees shall be made by the AUTHORITY at the expense of the OPERATOR, and the OPERATOR shall promptly reimburse the AUTHORITY for any expenses incurred by the AUTHORITY in connection therewith.

The OPERATOR shall maintain, repair and replace as necessary or as required by the AUTHORITY, all elements of the Service Station buildings which are not the responsibility of the AUTHORITY including, but not limited to, underground utility lines, all plumbing and sewage facilities within the Service Stations, including free flow up to the main sewer line, electrical systems (whether or not located in the Service Stations), non-weight bearing walls, windows, frames, sashes, ceilings, floors and floor tiles, wall coverings, draperies, travel information signs and any other items of interior and exterior decoration, and shall otherwise maintain each Service Station in good condition and repair, including such painting of the interior and exterior of the building as is required and approved by the AUTHORITY.

At any time during the Term of this Agreement, the AUTHORITY, upon thirty (30) days written notice, may request, and the OPERATOR shall agree to assume, all responsibility for maintenance of the buildings and equipment located at the Service Stations for which the AUTHORITY is otherwise responsible pursuant to the foregoing provisions. In that event all reasonable and necessary costs, including costs of environmental remediation, (provided that such remediation costs are not otherwise the obligation of OPERATOR) incurred by the OPERATOR in connection with performing such maintenance responsibilities shall thereafter be reimbursed to



OPERATOR by the AUTHORITY following demand therefore and delivery of reasonably detailed evidence documenting the expenses incurred by the OPERATOR in connection therewith.

At the inception of this Agreement, and notwithstanding any other provision of this Agreement to the contrary, the Authority shall, within a reasonable time after the commencement of this Agreement, : (a) commence and complete certain selected (by the Authority) upgrades, replacements and repairs to the restroom facilities of the service station areas ; and (b) paint, or cause to be painted , the service station canopy roofs, the selection of the roof color being at the sole discretion of the Authority but taking into account the gasoline brand colors; and (c) repair the curbing around the pump islands . The Authority shall also provide an allowance to the Operator to help defray the cost of acquiring and installing a digital pricing board at each service station location and that allowance shall be an aggregate for all three digital pricing boards of 40% of the said total costs or \$20,000 whichever is less, prorated equally between the three service station locations.

Once the Authority provided items described in the paragraph immediately preceding this one are accomplished, all such responsibility for future repairs, upgrading and replacements of such items shall revert to and be governed by the permanent provisions of this Agreement regarding the usual responsibility for such repairs, replacements and upgrading.

#### **10.3 Landscaping**

The AUTHORITY shall mow and trim the grass in the Service Area beyond the curb lines and shall maintain existing shrubbery and plantings and any new shrubbery and plantings it may see fit to plant in the Service Areas beyond such curb lines. The OPERATOR shall be responsible for maintaining any landscaping, flower pots or boxes within the curb lines.

#### **10.4 Service Roads**

The AUTHORITY shall maintain and repair existing service roads, if any, to the Service Areas, which service roads may in the future permit access to the Service Areas from adjoining public streets or roads (not the Turnpike), and may, but is not required to include either parking spaces for employees of the OPERATOR or a service yard for rear access to the Service Area without travel on the Turnpike. The OPERATOR shall supervise the manner of ingress and egress for purposes of the OPERATOR's employees parking and the furnishing of deliveries and service roads for said purposes on a joint basis with the Restaurant Operator (hereinafter defined) and the AUTHORITY. Where necessary in the sole judgment of the AUTHORITY, the AUTHORITY may construct such future service roads.

#### **10.5 Non-Public Facilities**

Each Service Station is equipped with a salesroom, a stockroom, an employee's locker room, space for equipment and janitor's supplies for the OPERATOR's sole use during the Term of this Agreement. The OPERATOR shall maintain all of the foregoing in a well-functioning, clean and safe manner and otherwise in accordance with the provisions of this Agreement.

The OPERATOR shall comply in all respects with the Title I provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (the "ADA") including, without limitation, any necessary modifications to the employee's locker rooms and other employee-restricted areas, if any, at the Service Stations. The AUTHORITY shall be responsible for complying with all other provisions of the Americans with Disabilities Act of 1990.

#### **10.6 Public Facilities**

The AUTHORITY may provide one or more public telephones at each Service Area for use by the public, and shall grant to the OPERATOR the right to any revenue derived there from. The OPERATOR shall not install additional public telephones at the Service Stations.

The OPERATOR shall provide public rest room facilities at the Service Stations. The OPERATOR shall thereafter maintain all of such public restroom facilities in a well-functioning, clean and safe manner and otherwise in accordance with the provisions of prevailing law and this agreement.

#### **10.7 Removal of Ice and Snow**

The maintenance forces of the AUTHORITY engaged in snow removal on the principal roadways of the Turnpike shall also undertake all snow removal and salting in the Service Areas that can reasonably be accomplished with truck-mounted snow plows on through, continuous vehicle-clear roadways and parking lots, PROVIDED HOWEVER, THE AUTHORITY SHALL NOT HAVE ANY RESPONSIBILITY FOR SNOW AND ICE REMOVAL IN ANY OF THE AREAS UNDER THE CANOPIES AND ADJACENT TO THE PUMP ISLANDS AND THE ACCESS AREAS TO THE TANK FARM/ISLAND WHERE THE FUEL IS RECEIVED.

The OPERATOR shall be responsible for clearing, or causing to be cleared, all ice, snow and other slippery or hazardous materials from the sidewalks and paved surfaces at the Service Areas not cleared by the AUTHORITY, including, but not limited to pump islands, areas adjacent to the pump islands, and including but not limited to , all the areas underneath the canopies covering the pump islands, and the service areas not under the canopies, but adjacent to the pump islands, and further including fill pipe areas, employee parking lots and service roads, and any other areas within the Service Area as directed by the AUTHORITY's General Manager or Maintenance Engineer. The

OPERATOR shall also be responsible for salting and/or sanding these areas. Not later than October 15th of the first operating year under this Agreement, the OPERATOR shall submit to the AUTHORITY a proposed plan, in form acceptable to the AUTHORITY, for the OPERATOR's removal of snow at each Service Area, which plan shall be subject to review and approval by the AUTHORITY. Once approved by the AUTHORITY, such plan shall remain in effect during the Term of this Agreement and shall be modified only upon agreement by both the AUTHORITY and OPERATOR.

Under circumstances deemed necessary or appropriate by the Authority, it may, but is not required to, provide certain assistance in the clearing or removal of snow and ice in and around the pump islands, however, such assistance by the Authority shall not under any circumstances relieve or transfer the Operator's responsibility for the maintenance of the pump islands and other areas as identified elsewhere in this Agreement.

#### **10.8 Rubbish and Garbage Removal**

The OPERATOR shall, at its own expense, make adequate arrangements for the collection of non-hazardous or non-toxic refuse and waste at the Service Stations. The OPERATOR shall also, at its own cost and expense, bag and tie and provide approved containers for all of its non-hazardous and non-toxic refuse and place same for collection as directed.

It shall be the responsibility of the OPERATOR to dispose of OPERATOR's Hazardous Substance or Non-Hazardous Substances and any other materials which may require, by law, special handling, at its own expense and in compliance with all Legal Requirements, as set forth below. The OPERATOR shall be responsible for the proper and lawful disposal of all used tires and all recyclable materials generated by its operations including, but not limited to, waste oil, automotive batteries, empty oil cans and other aluminum cans, glass containers, corrugated cardboard and paper products. The OPERATOR shall, in connection therewith, be required to provide to the AUTHORITY annual reports detailing, by type, the total quantity of materials recycled.

The OPERATOR shall use commercially reasonable efforts to obtain its own EPA identification number in connection with OPERATOR's requirements hereunder. The OPERATOR shall be considered the generator of record with regard to the disposal of the OPERATOR's Hazardous Substances and shall be responsible for preparing and filing all required manifests and reports with the appropriate governmental agency having jurisdiction there over. In the event an EPA identification number cannot be obtained by OPERATOR, OPERATOR may use the

AUTHORITY's EPA identification number, provided, however, that the OPERATOR shall become the generator of record and shall so state on all manifests and reports submitted to any governmental agency, and the OPERATOR shall be responsible for any and all damages, costs or liabilities in connection therewith. The OPERATOR shall notify the AUTHORITY prior to the disposal of any such Hazardous Substances and shall promptly deliver to the AUTHORITY a copy of any manifest or report filed with a governmental agency in connection with such disposal.

#### **11. Utilities**

Facilities necessary to supply utility services are available at each Service Station, including but not limited to telephone, electricity, heating, water, storm drainage and sewerage (collectively "sewerage") services. The AUTHORITY does not and shall not guarantee the quality or reliability of any utility service, and the AUTHORITY shall not be subject to any claims, whether for direct or consequential damages, as a result of any utility system failure, the failure of any utility company to properly supply services, or for any interruption in utility services to any of the Service Stations for any cause whatsoever.

##### **11.1 Utilities Provided by the AUTHORITY**

(i) **HVAC** The AUTHORITY currently provides heating, ventilation and air conditioning facilities at each of the Service Stations. If required, heating fuel will be purchased by the OPERATOR or the Restaurant Operator, as indicated, in accordance with the provisions of this Agreement.

##### **(ii) Water and Sewerage**

The AUTHORITY currently provides some water and sewerage services in different forms to the Morton and Bluestone Service Stations only. The AUTHORITY will provide monthly billing of these services to the OPERATOR based upon pro-rata share between the Restaurant and Service Station Facilities, however, AUTHORITY reserves the right to bill the Restaurant for usage and require Restaurant to bill the Service Station Operator their appropriate share.

The AUTHORITY reserves the right, upon thirty (30) days written notice, at any time during the Term of this Agreement, to discontinue supplying water and/or sewerage services to the aforesaid Service Stations and to cause the appropriate public utility company to supply such services in lieu of the AUTHORITY. In such event, the OPERATOR will contract directly with the public utility company, and the cost of all water and sewerage services supplied by the public utility companies at



each Service Station shall be paid for by the OPERATOR directly to the appropriate public utility company. The Beckley Service Station is supplied by public utilities.

#### **11.2 Utilities Shared by Restaurant and Service Station**

##### **(i) Water and Sewerage**

In each Service Area where water and sewerage services are supplied by a public utility company (and not by the AUTHORITY), and the same can not be individually metered or billed, the cost of such services shall be paid initially by the Restaurant Operator directly to the public utility company. Thereafter, the Restaurant Operator will bill for OPERATOR's share, within thirty (30) days following receipt of such statement from Restaurant Operator, at the rate of thirty-five percent (35%) of the total cost of water and sewerage services.

##### **(ii) Utility Formulas**

The AUTHORITY reserves the right, upon sixty (60) days written notice, at any time during the Term of this Agreement, to make adjustments to the foregoing formulas, based on a utility survey of the Service Area or other reliable measure of the use of specific utilities. The OPERATOR and the Restaurant Operator will each have the right, provided such right does not cause the AUTHORITY to be in violation of any contract to which it is a party or by which it is bound, upon notice to the other and to the AUTHORITY, to require that a utility survey be performed with respect to a specific Service Area. If such right is granted and exercised and it is determined, as a result of such a survey, that either the OPERATOR or the Restaurant Operator has been paying more than three and one-half (3.5) percentage points in excess of the actual amount attributable to such party as its share of the total cost of a particular utility at the Service Area, the AUTHORITY shall adjust the formula in accordance with the results of the survey and the cost of the audit shall be borne by the OPERATOR and the Restaurant Operator in the same proportion as shown on the utility survey, provided that if the party requesting the utility survey has been paying less than three and one-half (3.5) percentage points in excess of the actual amount attributable to such party as its share of the total costs of the particular utility at the Service Area, then there shall be no change in the utility formula and the cost of the audit shall be borne entirely by the requesting party.

#### **11.3 Reimbursement of Public Utility Services.**

Notwithstanding any of the foregoing provisions requiring that the AUTHORITY pay the cost of a particular public utility service and shall be reimbursed thereafter by OPERATOR, the AUTHORITY shall have the right, upon thirty (30) days written notice, at any time during the Term hereof, to require that the OPERATOR pay the cost of any of such public utility services and be

reimbursed thereafter by the Restaurant Operator at the rates set forth herein or as otherwise established pursuant to the terms hereof.

#### **11.4 General Area Lighting**

General area lighting at the Service Areas not related to operations at the Service Stations shall be furnished at the sole expense of the AUTHORITY. All other interior and exterior lighting incidental to operation of the Service Stations shall be paid for by the OPERATOR.

#### **11.5 Electricity**

The OPERATOR shall contract directly with the appropriate utility company for the furnishing of electric current necessary to the operation of the Service Stations, including all mechanical (heating and air conditioning) and electrical equipment, and the OPERATOR shall pay all charges accruing for such electric current directly to the utility company.

All Service Stations are metered for electricity separately from the Restaurant. There currently exists at each Service Station electrical service to the light fixtures, junction boxes, outlet boxes and switches, including pick-up points at walls and floors.

#### **11.6 Telephones; Public Telephones**

The OPERATOR shall enter into its own contract with the appropriate utility company for the furnishing of telephone service necessary for the operation of the Service Stations, other than service for public telephones, and the OPERATOR shall pay all charges accruing for such telephone service directly to the utility company.

Notwithstanding the provisions of Section 3.2 regarding public telephones, the AUTHORITY reserves the sole right at any time during this Contract to install public telephones in or about the Service Stations.

#### **12. Alterations/Improvement of Facilities**

##### **12.1 Alterations**

The OPERATOR shall not make any alterations, changes, additions or improvements (the "Alterations") to any of the buildings, alter electrical or wiring systems and/or circuits, or make any changes to the property or permanent equipment installed by the AUTHORITY or the OPERATOR without the prior written approval of the AUTHORITY and subject to strict compliance with the provisions of 10.1 above.

##### **12.2 Initial Improvements "NOT USED"**

### **12.3 Plans and Specifications**

Before proceeding with any request for consent to perform Alterations, the OPERATOR shall submit to the AUTHORITY's Maintenance Engineer detailed plans and specifications therefore, including, but not limited to specifications, layouts and architectural renderings, for the AUTHORITY's review and approval.

### **12.4 Compliance with Laws/Insurance Requirements**

All Alterations shall be completed in compliance with all Legal Requirements, pursuant to the provisions of Section 14.1 and in compliance with the Insurance Requirements (hereinafter defined) set forth in Section 13. No approval of plans or specifications by the AUTHORITY or consent by the AUTHORITY allowing the OPERATOR to make Alterations, shall in any way be deemed to be an agreement by the AUTHORITY that the contemplated work complies with all Legal Requirements and Insurance Requirements hereunder or with any certificate of occupancy now in effect or to be issued for the Service Stations or Service Areas, nor shall such approval or consent be deemed to be a waiver by the AUTHORITY of any of the provisions of this Agreement.

Notice is hereby given that the AUTHORITY shall not be liable for any labor or materials furnished or to be furnished to the OPERATOR upon credit, and that no mechanics or other liens for such labor or materials shall attach to or affect any estate or interest of the AUTHORITY or any other such party in and to the Service Areas.

### **12.5 Fixtures**

Except for the equipment and personal property, all fixtures installed at the Service Stations during the Term of this Agreement as part of any Alteration shall be and shall remain a part of the Service Stations and shall be deemed the property of the AUTHORITY as of the date such fixtures are completed, or as of the date such fixtures are attached to or built into the Service Stations, whichever is later, and shall not be removed by the OPERATOR at any time during the Term of this Agreement or upon the expiration or earlier termination hereof. Any equipment and personal property which is removed by OPERATOR shall be done only in accordance with the requirements of Section 12.6 of this Agreement.

At the AUTHORITY's option, any or all of the foregoing that may be designated by the AUTHORITY shall be removed by the OPERATOR, at the OPERATOR's sole cost and expense, on or before the expiration or earlier termination of this Agreement, in which event the OPERATOR shall restore the Service Station premises to their condition prior to the making of such Alterations, and repair any damage or injury to the Service Stations at its sole cost and expense.

### **12.6 Removal of Operator's Property**

Any removal of the OPERATOR's personal property from the Service Stations shall be accomplished at OPERATOR's expense in a manner that will minimize any damage or injury to the Service Stations and the Service Areas and any such damage or injury shall be promptly repaired by the OPERATOR at its sole cost and expense. Any personal property of the OPERATOR not removed by the OPERATOR within 48 hours after the expiration or earlier termination of this Agreement shall, at the AUTHORITY's option, either become the property of the AUTHORITY or shall be disposed of or stored by the AUTHORITY at the OPERATOR's risk and expense. The OPERATOR hereby authorizes the AUTHORITY to take any and all of the aforementioned actions, including but not limited to the removal and storage of any such personal property of OPERATOR's, and the OPERATOR hereby agrees that the AUTHORITY shall have no liability for damages or otherwise as a result of the AUTHORITY's taking of any such action.

## **13. Insurance**

### **13.1 Insurance Requirements**

The OPERATOR shall obtain and keep in full force and effect during the Term of this Agreement a policy or policies of insurance in accordance with the amounts and coverage requirements set forth below (collectively, the "Insurance Requirements"). Should any of the required insurance coverage: (a) be or become unsatisfactory as to form or substance or if the insurance company or carrier shall be or become unsatisfactory to the Authority; and (b) be cancelled by the Operator for any reason or cancelled or non-renewed by the insurance company or carrier for any reason, Operator shall promptly (within 48 hours ) provide written notice to The Authority of such occurrences and Operator shall immediately obtain new and satisfactory policies and furnish satisfactory proof of such replacement insurance policy or policies to the Authority. Operator understands and agrees that at no time shall there be a lapse in the insurance coverage required under the terms of this Agreement. The OPERATOR shall, prior to the Commencement Date, submit to the AUTHORITY copies of each such policy or certificate thereof and, at least thirty (30) days prior to the expiration of any such policy, shall deliver to the AUTHORITY evidence reasonably satisfactory to the AUTHORITY of the renewal of each such policy.

Such insurance shall include the following coverage in not less than the following amounts:

- (a) **Garage Keeper's Liability** with a minimum limit of \$2,000,000.00
- (b) **General Liability:** Operator agrees that it will obtain and maintain Commercial General Liability, Commercial Automobile Liability (designated symbol 1), Worker's Compensation and



Employer's Liability, including standard form Insurance Service Office (ISO) contractual liability provisions, with a combined single limit of at least \$2,000,000.00 insuring against damage resulting from injuries including wrongful death and property damage for any accident or accidents which occur and involve the operations of Operator as contemplated by this Agreement. Such insurance shall apply to any accident occurring upon Authority property and to any accident occurring off the Authority's property while engaged in work originating pursuant to or relating to this Agreement. The Authority shall be included as an Additional Insured under the Commercial General Liability and Commercial Automobile Liability policies.

The Commercial General Liability, Commercial Automobile Liability, Workers Compensation and Employer's Liability Insurance policies will waive any rights by the insurer to subrogate against the Authority.

Operator shall require that all contractors and subcontractors working or providing services or materials to Operator in connection with its duties and obligations of performance hereunder shall carry the same insurance required of Operator under the terms of this Agreement, including naming the Authority as an Additional Insured.

(c) Coverage required hereunder shall include but not be limited to coverage for product liability, broad form contractual liability, Employment Practices Liability, automobile liability, personal injury including wrongful death, and broad form property damage, arising from the OPERATOR's use of the Service Station and Service Area premises and for which it has any responsibility under the terms hereof, or arising out of or in any manner connected with operations under this Agreement by the OPERATOR, its agents, employees, or representatives or any of them. Such insurance shall include insurance against product liability extending to the service and sale of motor vehicle fuels, oils, compressed air tanks and other accessories and any and all items and classes of merchandise sold or served, and shall be effective irrespective of whether the product to which any claims may relate shall have been taken or used on or off the premises and irrespective of the time of any accident or injury claimed to have been caused by such product or any such use. Limits of liability shall be no less than \$1,000,000 per occurrence and \$2,000,000 annual general aggregate. Such policy or policies shall include the following endorsements:

(i) an endorsement naming the Authority, its officers, agents and employees as

additional insureds; and (ii) an endorsement stating that the naming of the Authority as an additional insured does not exclude the liability of the OPERATOR or anyone acting by, through or for OPERATOR for damages to the property or facilities of the Authority. Operator shall also provide, as part of its requirements hereunder, contractual indemnity coverage for the indemnity provisions of this Agreement.

**(d) Excess Liability**

In addition to the primary coverages listed above, the OPERATOR will maintain an umbrella or excess liability policy of not less than \$5,000,000.00 for any one occurrence and subject to the same aggregate over the comprehensive automobile liability, and comprehensive general liability and environmental protection coverages.

**(e) Environmental Protection**

Coverage of no less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate per Service Station.

**(f) Owner's Protective Insurance**

In connection with any Alterations to be undertaken by the OPERATOR, Owners Protective Insurance will be required prior to the commencement of any such work with limits of no less than \$2,000,000 per occurrence for bodily injury and property damage. Owner's Protective Insurance shall be purchased and maintained by the OPERATOR and shall name The Authority its officers, agents and employees as additional named insureds.

**(g) Building Insurance**

The AUTHORITY shall, at its own cost and expense, insure and keep insured the buildings and other improvements hereby leased to OPERATOR. Such insurance shall be "all risk" coverage on a replacement cost form acceptable to the AUTHORITY. All other insurance on the premises or improvements shall be maintained by OPERATOR.

**(h) Builder's Risk/Installation Floater Coverage**

Builder's Risk Insurance and/or Installation Floater coverage, except for the initial improvements is not provided by the AUTHORITY. The OPERATOR is responsible for any loss that would be insured under such coverage.

The foregoing amounts shown govern the amount of insurance to be carried by the OPERATOR during the Term of this Agreement, but in the event that due to changing economic conditions the AUTHORITY hereafter shall reasonably determine that an increase or decrease in the insurance limits herein provided is desirable or warranted, the AUTHORITY shall have authority to require or permit an increase or decrease in the insurance to be carried by the OPERATOR, which increase or decrease shall be consistent with then-current standards applicable to commercial properties in the State of West Virginia or as otherwise required by law, rule or regulation by which either the AUTHORITY or the OPERATOR may be bound.

If in effect and upon request, OPERATOR may be named as an additional insured under the Authority's coverage afforded by the West Virginia Petroleum Underground Storage Tank Insurance Fund (the "Tank Fund"), provided further that such addition is permitted by the Tank Fund. In the event Operator elects to take advantage of such coverage and the Authority approves its election in lieu of other required insurance, the AUTHORITY may require OPERATOR to be responsible for and pay a proportionate share of the premium and any deductible. (the premium for the 2011-2012 year shall be paid by the AUTHORITY, but OPERATOR may incur the prorated deductible obligation as of the commencement of this agreement as provided in Paragraph 2).

All Insurance Requirements shall be effected under valid and enforceable policies issued by reputable and independent insurers authorized to do business in the State of West Virginia, approved by the AUTHORITY and rated in A.M. Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a comparable national reputation) as having a general policyholder rating of "A-" or better and a financial rating of at least "XI" In addition, OPERATOR shall deliver to the AUTHORITY, within thirty (30) days following the Commencement Date hereof, a certificate of good standing from the West Virginia Department of Labor with respect to Wage Payment Bonds, proof of Worker's Compensation insurance as required by the State of West Virginia and the West Virginia Department of Employment Programs with regard to Employment Security payments. In the event that OPERATOR either fails to comply for any fiscal year the AUTHORITY shall notify the OPERATOR of such default and OPERATOR shall have sixty (60) days following receipt of such notice within which to cure default.

As soon as is practicable after the occurrence of any accident or other event that results in or might result in injury to the person or property of any person, and which arises in any manner from OPERATOR's performance under this Agreement or occurs in the area for which OPERATOR is responsible, the OPERATOR shall immediately send written notice thereof to the AUTHORITY setting forth a full and precise statement of the facts pertaining thereto.

The OPERATOR shall immediately send to the AUTHORITY a copy of any summons, subpoena, notice or other document served upon or received by the OPERATOR, or any agent, employee or representative of OPERATOR, arising in any manner from OPERATOR's performance of this Agreement or due to the OPERATOR's use of the Service Stations or any part thereof or which arises from an incident that occurred in the area for which the OPERATOR is responsible.

**13.2 Indemnity**

The OPERATOR shall indemnify, hold harmless and defend the AUTHORITY, its members, officers, agents, servants and employees, from and against any and all fines, suits, procedures, claims, actions, damages, liabilities, judgments, court costs and expenses of any kind or nature whatsoever to the extent caused by or to the extent resulting from the performance or non-performance by OPERATOR of the terms and conditions of this Agreement, or to the extent caused by any act or omission of the OPERATOR, its officers, agents or employees (including reasonable attorneys' fees, litigation expenses and all other amounts incurred by the AUTHORITY). Provided, however, that said indemnification shall not apply to fines, suits, procedures, claims, actions, damages, liabilities, judgments, court costs and expenses, to the extent that the same result from the sole negligence of the AUTHORITY, its members, officers, agents, servants or employees.

Notwithstanding the foregoing, if the AUTHORITY determines, based upon the circumstances of any litigation, that OPERATOR would not be able vigorously to defend both the AUTHORITY and OPERATOR in the same lawsuit (by virtue of there being a conflict of interest or otherwise) the AUTHORITY shall have the right to hire its own counsel at OPERATOR's sole expense.

The prevailing party in any action to enforce the covenants and conditions of this Agreement shall be reimbursed for any and all court costs and expenses and reasonable attorney's fees incurred or paid by such party to third parties in connection with enforcing the covenants and conditions set forth in this Agreement.

**14. Compliance with Laws**

**14.1 General Compliance Requirements**



The OPERATOR shall, at its own expense, comply with all applicable governmental laws, statutes, ordinances and regulations applicable to its operations, other than those applicable to the AUTHORITY's Environmental Responsibilities (hereinafter defined), including, without limitation, those laws, statutes, ordinances and regulations respecting the safety of its equipment and operations, environmental matters, health, sanitary codes and employment; provided, however, that the reasonable and necessary costs of any equipment additions or changes required by changed laws or regulations shall be reimbursed to OPERATOR by the AUTHORITY. This obligation encompasses all laws, statutes, ordinances and regulations in effect on the Commencement Date, and any amendments or modifications to those laws, statutes, ordinances and regulations, as well as all laws which may become applicable to the OPERATOR's operations after the Commencement Date (hereinafter, "Legal Requirements"). "Compliance" shall be deemed to include, but is not limited to, compliance with all performance and administrative requirements (e.g., filing of reports) of any such Legal Requirements, as well as financial responsibility for any and all required remedial measures for which OPERATOR is responsible under this contract or any law, rule or regulation, and/or fines associated with non-compliance but does not include completion of remediation or attainment of remediation goals.

#### **14.2 Base Line Data**

"Base Line Data" shall be determined for each of the Service Stations from the following three sources:

- (a) Existing AUTHORITY technical data derived from the analytical results obtained by the AUTHORITY from environmental testing at the Service Stations.
- (b) Data from the environmental site assessments conducted by OPERATOR at the Service Stations within 60-days after the Commencement Date hereof. Prior to conducting such testing, the OPERATOR will discuss the scope of such testing with the AUTHORITY and the parties will agree on a method which does not disrupt ongoing operations. The OPERATOR will give the AUTHORITY sufficient written notice in advance of any such testing to afford the AUTHORITY the opportunity to appear and observe the testing procedure, and sufficient samples will be taken to permit "splitting" of the samples with the AUTHORITY to allow duplicate testing by a laboratory of the AUTHORITY'S choosing if it so

desires. In the event the AUTHORITY elects not to split the samples so taken, the OPERATOR will make available to the AUTHORITY, and the AUTHORITY will have received the results of all environmental site assessments conducted by the OPERATOR prior to or at any time subsequent to the commencement date hereof. The AUTHORITY shall submit in a timely manner any required reports to the appropriate regulatory agencies.

- (c) Results of additional tests, if any, conducted by the AUTHORITY.

Should there be a new release of toxic or hazardous material, the foregoing sources shall be used to derive the Base Line Data and, hence, the Base Line measure of Pre-existing Conditions (hereinafter defined) at the Service Stations in the following manner: The AUTHORITY and OPERATOR will accept the most recent data, prior to any new release, from the AUTHORITY developed sampling wells, if any, ("existing wells") for purposes of establishing a Base Line (This shall not require the AUTHORITY to install such wells). The AUTHORITY will accept data from OPERATOR-developed wells, during the 30-day period subsequent to the commencement date as provided for herein, for the purpose of formulating the base line, unless the West Virginia Department of Environmental Protection, Division of Natural Resources should invalidate such data. Also, the AUTHORITY may accept data from OPERATOR developed wells, for the purpose of at any time updating the environmental condition of the property, unless the West Virginia Department of Environmental Protection, Division of Natural Resources should invalidate such data. Any data which OPERATOR seeks to have the AUTHORITY accept either during the thirty day additional gathering period subsequent to the commencement date, or at any other time during the operation of this Agreement will be data derived by environmental consultants and laboratories approved by the AUTHORITY.

#### **14.3 Environmental Laws**

##### **A. The AUTHORITY's Environmental Responsibilities**

The AUTHORITY will have disclosed in written form to the OPERATOR, in a manner identified by the AUTHORITY, prior to the Commencement Date hereof, all threatened or pending litigation, administrative actions, existing cleanup operations or other compliance procedures, planned cleanup operations or other compliance procedures relating to spills, discharges, releases or other emissions, or the unlawful presence of Hazardous Substances or Non-Hazardous Substances

(collectively, "releases") or other violations of Environmental Laws at the Service Stations prior to the Commencement Date (collectively, "Pre-existing Conditions"), including: (a) Applications, if any for permits issued pursuant to the regulations under the National Pollution Discharge Elimination System (NPDES), (b) any DEP or DNR Permits received (c) Spill Prevention, Control and Countermeasure Plans for any Service Station in the possession of the AUTHORITY, and (d) results of all UST tank and line tightness tests for motor fuel USTs at the Service Stations, and (e) site conditions indicated by the Base Line Data, whether the specific facts pertaining to the events that caused the conditions are known or not (subject to the provision below pertaining to supplementary Base Line Data submitted by OPERATOR).

The Base Line Data will, to the extent practicable within the time limitations placed upon the parties in their efforts to execute this Agreement, define the scope of the Pre-existing Conditions. Subject to the provisions of the next succeeding paragraph, and except for any substances which were the responsibility of others before the execution of this Agreement, the AUTHORITY will be responsible for all Hazardous and Non-Hazardous Substances which are revealed by the Base Line and are attributable to pre-existing conditions. The AUTHORITY, within its sole discretion, may accept additional data from OPERATOR indicating pre-existing conditions which are not OPERATOR's responsibility but are not revealed by the Base Line data. The AUTHORITY agrees it will not unreasonably refuse to accept such data regarding Pre-existing Conditions to update the Base Line, provided, however, that OPERATOR can clearly demonstrate by tangible proof that such conditions have not been caused since the effective date of this contract by the action or failure to act on the part of the OPERATOR and are not the result of any Pre-existing Conditions for which OPERATOR is otherwise responsible. A failure by the AUTHORITY to agree to such additional Pre-existing Conditions not revealed by the Base Line shall not be a matter which will be subject to arbitration or binding mediation under the terms of this Agreement.

In the event OPERATOR is responsible for pre-existing conditions or has incurred any prior liability or responsibility for hazardous or non-hazardous substances at or in connection with any of the Service Station sites including any environmental law or will in the future incur such liability or responsibility in any other manner except as a result of the OPERATOR under this agreement, the terms hereof shall not act to release OPERATOR from or indemnify it against such liability or responsibility.

The AUTHORITY shall cause all Service Stations to be in compliance with Environmental Laws in connection with (a) Pre-existing Conditions at the Service Stations (except for those which

are the responsibility of OPERATOR) (b) new releases to the extent caused by or discovered during any retrofitting, upgrading, or replacement of USTs as a part of any UST Upgrading Program, (c) registering, permitting, retrofitting, upgrading and replacing, including on site Stages I and II Vapor Recovery, where necessary, all USTs at the Service Stations except where the same is performed by OPERATOR, and (d) any releases other than those occurring as a result of or caused by any action or inaction of OPERATOR or OPERATOR's agents, employees or representatives; (clauses (a) - (d) shall hereinafter be collectively referred to as the "AUTHORITY's Environmental Responsibilities").

In order for the AUTHORITY to be in compliance with Environmental Laws with respect to a particular location, and to the extent that DNR, subsequent to the Commencement Date, demands that any permits be obtained, including but not limited to NPDES Permits, the AUTHORITY shall be deemed to be in compliance for purposes of this Section so long as the AUTHORITY has complied with DNR (DEP) rules and procedures and has applied for any permit which DNR (DEP) decides is required, and, if a permit is issued, is implementing the requirements within the time periods allowed thereunder. It is understood that the AUTHORITY shall not be deemed to be out of "compliance" as that term is defined in Section 14.1 hereof, as a result of the fact that the AUTHORITY has not completed remediation or attainment of remediation goals.

To the extent a cleanup or other such remedy is required in connection with any of the AUTHORITY's Environmental Responsibilities, the AUTHORITY shall perform same at the AUTHORITY's expense, causing only such disruption or interference with the business activities of the OPERATOR at the Service Stations as is necessary under the circumstances.

Consistent with its obligations under existing law: (i) the AUTHORITY has, where required, advised the DNR of all releases occurring prior to the Commencement Date (i.e., Pre-existing Conditions) at the Service Stations; (ii) the AUTHORITY has filed, or is in the process of preparing, any required reports regarding such Pre-existing Conditions; (iii) or the AUTHORITY is in the process of discussion and negotiation with the DNR concerning necessary and appropriate actions to be taken in regard to such Preexisting Conditions. Upon completion of the disclosure required under Section 14.3 hereof, if any, the AUTHORITY will have advised OPERATOR of these Preexisting Conditions and its actions to date in complying with Environmental Laws in regard to Preexisting Conditions.

So as not to disrupt or interfere with the AUTHORITY's fulfillment of its environmental responsibilities with respect to Preexisting Conditions, and except as otherwise provided herein with respect to a commingling of a new release and a release that is the AUTHORITY's Environmental



Responsibility, OPERATOR agrees that the AUTHORITY will, without the consent or consultation of OPERATOR, control all matters relating to Preexisting Conditions during the Term hereof including, without limitation, making all decisions as to the implementation and consummation of the cleanup and negotiating all matters relating to the cleanup of, including the issues of necessary permits in connection with, Preexisting Conditions with the DNR. This provision in no way modifies reporting obligations of either party hereof in regard to newly discovered past or future releases as set forth herein and is designed only to prohibit OPERATOR's involvement, for its own economic benefit, in matters relating to Preexisting Conditions, since the AUTHORITY has assumed all responsibility for dealing with Preexisting Conditions as that responsibility is defined by Environmental Laws and interpretations and implementations of said laws by the DNR. Violations of this provision will be a material breach of this Agreement.

#### **B. The OPERATOR's Environmental Responsibilities**

Attached hereto and made a part hereof and known as Attachment 3, is an outline of OPERATOR's existing policies, and responsibilities for responding to contamination resulting from a release of Hazardous or Non-Hazardous Substances at any of the Service Stations. The OPERATOR's policies must have been modified to incorporate a specific notification to the AUTHORITY. The policies include contamination disclosed during a UST removal or UST testing and actual spills, overfills and releases. The OPERATOR shall follow these policies with respect to all releases for which OPERATOR has responsibility pursuant to the terms hereof, whether individually or jointly with the AUTHORITY.

Not in limitation of the provisions of Section 14.1 hereof, the OPERATOR shall comply with all Environmental Laws applicable to activities at, and the operation of, the Service Stations, except for those specifically defined as the AUTHORITY's Environmental Responsibilities. The OPERATOR shall grant to the AUTHORITY the right to inspect, at any time and without notice, the Service Stations throughout the Term of this Agreement in order to determine that the OPERATOR is in compliance with Environmental and all other Laws. The OPERATOR agrees to timely provide the AUTHORITY upon request with all information necessary to ascertain whether the OPERATOR is in compliance with Environmental Laws.

OPERATOR shall be responsible for any and all new releases at any of the Service Stations at which such new release has occurred, except for those specifically defined as the AUTHORITY's Environmental Responsibilities. If a new release occurs for which the AUTHORITY is otherwise responsible (by virtue of it being the AUTHORITY's Environmental Responsibility), the

OPERATOR shall share the cost of remediation pursuant to the provisions of Section 14.3C hereof, to the extent the OPERATOR's failure to honor its obligations pursuant to Section 14.5 results in a delay in discovering, or is an exacerbation of, the release.

In the event a cleanup must be undertaken as a result of a release at any of the Service Stations during the Term of this Agreement, other than those releases specifically defined as the AUTHORITY's Environmental Responsibilities, the OPERATOR shall, at its own expense, prepare and submit the required plans and financial assurances in a timely manner, and carry out the approved plan in accordance with all Environmental Laws and all Legal Requirements. The AUTHORITY shall have the absolute right to review and advise regarding any cleanup plan prepared or to be prepared pursuant to the provisions hereof. To the extent the new release is commingled with a release or releases defined as the AUTHORITY's Environmental Responsibility, the AUTHORITY shall have the right to join OPERATOR in negotiating any remediation or containment measure with the appropriate Environmental Agency, and to receive reasonable prior written notice of any such meeting, and the parties' respective liabilities for the cost of any such remediation shall be as set forth in Section 14.3C hereto. It is not the intention of the AUTHORITY to require OPERATOR to expend funds for any cleanup, remediation, or containment measure in excess of a reasonable and necessary cost of such measures, giving due regard for the economic impact of certain remedies which may be approved by any appropriate environmental agency, however, OPERATOR agrees to use the most expeditious method possible, however, giving due regard for the economic realities of the situation.

At the conclusion of an OPERATOR cleanup, the OPERATOR will remove its equipment and restore the property to the conditions which existed prior to installation of the remediation equipment.

The OPERATOR will promptly inform the AUTHORITY (Operations/Communications Center at 1-304-926-1900) and the appropriate Environmental Agency of any suspected leak or release or other violation of Environmental Laws or other activity or occurrence that is reportable to any federal, state or local governmental authority regulating Environmental Laws (collectively, an "Environmental Agency"). The AUTHORITY shall also report any such release, activity or occurrence to the appropriate Environmental Agency. If a release should occur in connection with a UST, the AUTHORITY shall make the appropriate written report upon receipt of information from OPERATOR regarding such releases, and the AUTHORITY will supply OPERATOR with a copy of

the report submitted so that OPERATOR can determine if its independent reporting obligations have been satisfied.

### **C. Joint Environmental Responsibility**

The AUTHORITY and the OPERATOR recognize that a future cleanup including, without limitation, the cleanup, removal and/or remediation of any Hazardous Substance and/or other environmental contamination at, on, under and/or migrating within or from the Service Area may involve contamination that is the responsibility of the AUTHORITY (by virtue of it being defined as an AUTHORITY Environmental Responsibility) and contamination that is the responsibility of the OPERATOR (a "Future Cleanup"). The parties agree that they will use their best efforts to treat each Future Cleanup on a location by location basis and to treat a Future Cleanup as involving divisible environmental conditions. To the extent a Future Cleanup involves releases caused by, or which are the responsibility of, both parties and the parties cannot reasonably agree on apportionment of the costs for such Future Cleanup, this dispute shall be submitted to binding arbitration under the rules of the American Arbitration Association. The cleanup date shall not be affected by such arbitration.

In the event the OPERATOR is required to obtain a West Virginia Department of Environmental Protection (DEP/DNR) or any other Permit as a result of a release for which OPERATOR is responsible after the Commencement Date hereof, the AUTHORITY shall be responsible for paying only that portion of the costs incurred, in complying with the terms of such Permit, which are solely attributable to any Pre-existing Conditions at the site of the release, it being the intention of the parties that, should any such Permit require the treatment of a Pre-existing Condition, the OPERATOR shall not be liable for that portion of the compliance costs attributable to the Pre-existing Condition. In the event there is a dispute regarding the respective liabilities of the parties in connection with such compliance, such dispute shall be resolved in accordance with the dispute resolution provisions set forth in this Section 14.3C, and the opinion of the consultant shall be final, nonappealable and binding upon the parties hereto, but only for the purposes of allocating or apportioning the cost of complying with such Permit.

Any party whose failure to comply with Environmental Laws results in the imposition of fines, sanctions or fees, shall be responsible for paying any fines, sanctions or fees caused by that party's failure to comply.

The respective responsibilities of the AUTHORITY and OPERATOR, as defined in Section 14.3 hereof, are not exclusive, and the responsibilities and obligations defined in Section 13.1,

Section 14.4 and Section 14.5 are to be read together with the responsibilities and obligations defined in Section 13.3.

### **14.4 Underground Storage Tanks**

#### **A. AUTHORITY's Responsibilities**

(i) The results of Full System Tank tests of all USTs and lines ("Full System Tank Test"), other than waste oil and heating fuel oil tanks, previously performed by the AUTHORITY as required by law and results thereof shall be submitted to the OPERATOR prior to the execution of this Operating Agreement to aid in the interpretation of the Base Line Data or the Pre-existing Conditions. The testing method must be a state-approved testing methodology. All such testing costs shall be borne by the AUTHORITY.

(a) If any UST has failed such Full System Tank Test, the AUTHORITY shall be responsible for all contamination encountered during excavation, and the AUTHORITY shall make all reasonable efforts, consistent with requirements for the letting of contracts, to repair or replace the USTs within 3 months thereafter in accordance with federal, state and local laws;

(b) In the event that a UST passes the Full System Tank Test prior to commencement of the Operating Agreement but soil contamination is encountered during UST upgrade or UST tank or line failure during the Term of the Operating Agreement, the OPERATOR and the AUTHORITY shall allocate liability for contamination to the extent the OPERATOR contributed to the contamination around the UST's. If the AUTHORITY and OPERATOR are unable to agree upon the proper allocation, the dispute shall be submitted to binding arbitration under the rules of the American Arbitration Association.

If prior to the later of any testing of UST's, or effective date of this operating Agreement, no new release for which OPERATOR is responsible occurs that directly impacts the soil around the UST's, or the OPERATOR's product cannot be identified by other means, the AUTHORITY shall be 100% responsible for soil disposal and cleanup. In addition, if a release does not occur and OPERATOR's product is not identified by any other recognized means, the AUTHORITY will handle all contaminated water for dewatering due to UST removal/installation.

(ii) During the Term of this Agreement, the AUTHORITY may determine a program of upgrading and/or replacing certain monitoring systems at the Service Stations, (the "Systems Upgrading Program"). The AUTHORITY shall be responsible for compliance with all Legal Requirements, including Environmental Laws (including registrations and certifications), in connection with the Systems Upgrading Program. After Systems Upgrading, the AUTHORITY shall



make available to the OPERATOR, for the remainder of the Term of this Agreement any rights, remedies or warranties that the AUTHORITY may have against the provider of any product or services used in the monitoring Systems Upgrading.

All work in connection with the Systems Upgrading Program shall be performed by the AUTHORITY both prior to and during the Term of this Agreement. No specific timetable has been set for the Systems Upgrading Program but all work in connection therewith shall be staged so that disruption of operations will be eliminated to the extent reasonably possible. The AUTHORITY shall provide reasonable written notice to OPERATOR prior to commencing work at a particular location in connection with any Systems Upgrading Program. To the extent time permits, the AUTHORITY shall provide OPERATOR with an opportunity to review plans for such work in order to ensure compatibility between what is being installed by the AUTHORITY and OPERATOR's motor fuel dispensing system. Opportunities for the OPERATOR to inspect the work in connection with the Systems Upgrading Program shall be provided upon request.

(iii) The AUTHORITY shall be responsible for the maintenance of all storage tanks and underground lines except as provided in Sections 14.4B and all monitoring and leak detection equipment.

#### **B. OPERATOR's Responsibilities**

(i) The OPERATOR shall be responsible for compliance with all Legal Requirements, including Environmental Laws, in connection with all USTs at the Service Stations during the Term hereof, other than those specifically defined as the AUTHORITY's Environmental Responsibilities. If the OPERATOR elects, but is not required by any Legal Requirement, to upgrade or replace any UST, such upgrading or replacement must receive the express consent of the AUTHORITY and must be performed by the OPERATOR who shall thereafter maintain and repair all USTs (other than heating oil tanks) at such Service Station during the Term hereof, at OPERATOR's expense. In addition, OPERATOR shall perform all required monitoring of USTs, pursuant to the provisions of Section 14.5 hereof.

(ii) Any UST that must be replaced during the Term hereof as a result of the acts of OPERATOR or OPERATOR's officers, agents or employees, shall be replaced by the OPERATOR at the OPERATOR's expense. Any UST that must be replaced during the Term hereof, other than as a result of OPERATOR's acts, (for example, and not by way of limitation, where required by any Legal Requirement or due to tank failure not caused by faulty maintenance), shall be replaced by the OPERATOR at the AUTHORITY's expense, provided that the AUTHORITY gives prior written

approval of such replacement following the AUTHORITY's review of data supporting replacement and plans therefore submitted by the OPERATOR which prior written approval shall not be unreasonably or untimely withheld.

Any replacement UST, regardless of the reasons therefore and regardless of who pays for it, becomes the sole property of the AUTHORITY and all rights, remedies, and warranties that OPERATOR obtains (as Purchaser) shall be assigned to the AUTHORITY upon completion of such installation.

The OPERATOR shall maintain, for a period of not less than six (6) years, all records as required by Legal Requirements with respect to USTs including, but not limited to, those in connection with monitoring, manual tank gauging, monthly inventory reconciliations, calibration, maintenance and repair of monitoring systems. The OPERATOR shall deliver copies of any such records to the AUTHORITY promptly upon request therefore or as otherwise provided herein.

(iii) Operator shall also be responsible for the additional maintenance requirements under Section 8.1 as a result of the introduction of ethanol gasoline/diesel blends with ethanol concentrations greater than 10%.

#### **14.5 Monitoring/Submissions to the AUTHORITY**

OPERATOR shall be responsible during the Term hereof for monitoring all in service USTs and above ground storage tanks and determining if said USTs are leaking. The AUTHORITY retains the right to install, alter, modify or upgrade any monitoring system now or hereafter in place. With respect to the period prior to completion of Monitoring System Upgrading at a particular location, OPERATOR's performance of its monitoring obligations shall be measured by its compliance with applicable Environmental Protection Agency's monitoring rule or any other Federal, State, or local laws, rules and regulations dealing with such monitoring. Following completion of the System Upgrading at a particular location, OPERATOR's performance of its monitoring obligations shall be measured by the same standard of compliance with applicable Environmental Protection Agency's monitoring rules, or any other Federal, State, or local laws, rules and regulations. If OPERATOR suspects that a release may exist, the OPERATOR shall promptly notify the AUTHORITY and the AUTHORITY shall be responsible for any further tank tightness testing or other requirements of applicable UST rules. If further testing does not confirm the existence of a release, and it is shown OPERATOR has erred in concluding there was a suspected release, OPERATOR shall reimburse the AUTHORITY for any testing necessitated by the OPERATOR's unsubstantiated belief that a release existed. Responsibility for repair or replacement will be

pursuant to Section 14.4(B)(ii) above. Any tank tightness testing required by law subsequent to the Commencement Date shall be the responsibility of the AUTHORITY.

The OPERATOR shall perform monitoring of any observation wells or other devices around UST locations in a manner consistent with sound Environmental Engineering Practices on a monthly basis (or more or less frequently as required by Environmental Laws of Environmental Agencies), and reports of the results thereof shall be delivered within two (2) weeks to the AUTHORITY (to the attention of the Maintenance Engineer), or if applicable, simultaneously with any submission to any Environmental Agency, if sooner. The AUTHORITY shall reimburse OPERATOR for any reasonable and necessary costs that are incurred as part of a remediation response to contamination for which the AUTHORITY is responsible hereunder and to which it fails to respond after reasonable notice.

The OPERATOR shall supply the AUTHORITY, at the OPERATOR's own expense and promptly upon the OPERATOR's receipt thereof, copies of (i) any and all correspondence, reports or other submissions made by the OPERATOR to any Environmental Agency with respect to the Service Stations; (ii) all field reports, test results, laboratory and analytical data received or obtained by the OPERATOR in connection with any environmental condition at the Service Stations; and (iii) any and all notices, correspondence, directives or other documentation received by the OPERATOR from any Environmental Agency with respect to the Service Stations.

#### **14.6 Indemnity**

In addition to the provisions of Section 13.2, and for occurrences after the commencement date of this Agreement, the parties (the Authority only to the extent permitted by law) shall indemnify, defend and save harmless each other from and against all fines, suits, procedures, claims, actions, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses and any and all other direct amounts paid in settlement thereof) of any kind incurring as a result of any release of Hazardous Substances or the violation of any Environmental Laws, but only to the extent caused by: (i) the action, inaction or activity of the other party or the other party's employees, agents, contractors, licensees or invitees from and after the Commencement Date hereof; (ii) the generation, storage, treatment, handling, transportation, disposal or release of any Hazardous Substance at or near a Service Station by the other party or the other party's employees, agents, contractors or licensees during the Term hereof, including, but not limited to, a release of Hazardous Substances from a Service Station or the surrounding area into the soil, water or air, or (iii) the other party's failure to provide all information,

make all submissions and otherwise take all actions necessary to comply with all Environmental Laws, or (iv) a release for which such party is responsible under the terms of this Agreement without regard to causation.

Both party's obligations and liabilities with respect to compliance with Environmental Laws shall continue after the expiration or earlier termination of this Agreement for so long as the other party shall be responsible for any release of Hazardous Substances or compliance with Environmental Laws as a result of the activities or operations at the Service Stations before or during the Term of this Agreement. Any decision on the part of either party to admit liability and/or settle any claim to which this indemnity pertains without notice to and a reasonable opportunity for the other party to object or take other appropriate action shall be prohibited.

The above indemnity provision shall not in any way alter, release, modify or otherwise reduce any indemnity obligation of OPERATOR to the AUTHORITY already existing under this Section 14.6 or any other agreement.

### **15. Assignment, Mortgaging, Subletting and Change of Brands**

#### **15.1 Prohibited Transfers**

The OPERATOR shall not: (i) assign or otherwise transfer this Agreement or the Term and estate hereby granted; (ii) sublet some or all of the Service Stations or any part of a Service station or allow the same to be used or occupied by others in violation of the provisions hereof; or (iii) mortgage, pledge or encumber this Agreement or some or all of the Service Stations or any part of a Service Station in any manner by reason of any act or omission on the part of the OPERATOR, without the prior written consent of the AUTHORITY in each instance, which consent the AUTHORITY shall be entitled to withhold in its sole and absolute discretion (the parties specifically acknowledging and agreeing that this absolute right of the AUTHORITY was fully and freely negotiated).

The OPERATOR acknowledges and agrees that the AUTHORITY has entered into this Agreement with OPERATOR in order to obtain for the benefit of the AUTHORITY the unique attraction of the OPERATOR's trade name and product line associated with OPERATOR's business and the unique combination of OPERATOR's operating expertise and financial integrity, and the foregoing prohibition on assignment or subletting or the like is expressly agreed to by OPERATOR as a material inducement to the AUTHORITY to enter into this Agreement with OPERATOR.

#### **15.2 Stock Sales**



If the OPERATOR is a corporation, and if at any time during the Term hereof the entity or entities that owns or own a majority of such corporation's voting shares on the date of this Agreement, ceases or cease to own a majority of such shares (whether such transfer occurs at one time or at intervals so that, in the aggregate, such a transfer shall have occurred), then (i) the OPERATOR shall give the AUTHORITY prior written notice of such event, and (ii) any such event shall be considered to be an assignment prohibited by the provisions of Section 15.1. This provision shall not be applicable to any corporation, all of the outstanding voting stock of which is listed on a national securities exchange (as defined in the Securities Exchange Act of 1934, as amended). For purposes of this Section, stock ownership shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1954, as the same existed on August 16, 1954, and the term "voting stock" shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation.

### **15.3 Change of Brands**

Operator will not change from the motor fuel brand provided for herein without the written approval of the Authority. Provided, if any brand to which such change is sought is a national brand competitive in name-recognition and volume of sales and maintains a national proprietary credit card, such approval will not be unreasonably or untimely withheld.

## **16. Casualty Damage**

### **16.1 Restoration**

The OPERATOR shall give immediate notice (by telephone, confirmed in writing) to the AUTHORITY of any damage, other than that which is de minimis in nature, caused to any of the Service Stations by fire or other casualty. If the AUTHORITY does not elect to terminate this Agreement with respect to that Service Station pursuant to the provisions of Section 16.2 hereof, the AUTHORITY shall proceed with reasonable diligence and at its sole cost and expense, but only up to the limit of net insurance proceeds therefore, to repair and restore the Service Station to substantially the same condition as immediately prior to said fire or other casualty (excluding the OPERATOR's Alterations to the Service Station and any personal property of the OPERATOR).

If a fire or other casualty has occurred at a Service Station, Service Area or Restaurant and this Agreement has not been terminated with respect to the affected Service Station pursuant to Section 16.2 hereof, those items of Rent payable pursuant to applicable Sections hereof shall be abated in proportion to the degree to which the OPERATOR's use of the Service Station is impaired during the period of repair or restoration. Except for such abatement, the OPERATOR shall not be

entitled to any compensation for loss of use of the whole or any part of the Service Station and/or any inconvenience, or any other loss, annoyance or any other consequential damage occasioned by such damage, destruction, repair or restoration.

### **16.2 Termination**

If a Service Station shall be destroyed or if 25% of the square footage is damaged by a casualty not covered by the AUTHORITY's insurance or the OPERATOR's Section 13.1 insurance requirements, or if 25% or more of the square footage of Service Station improvements is damaged or rendered untenable by a casualty covered by the AUTHORITY's or the OPERATOR's insurance, and cannot be rebuilt for the net amount of the insurance proceeds or if the Service Station is not affected but 25% or more of the square footage of the Service Area improvements, or such portion of the Restaurant as shall render the Service Station or the Service Area untenable, is damaged or rendered untenable, then in any such event the AUTHORITY may elect, in its sole and absolute discretion, either to terminate this Agreement with respect to that Service Station or to proceed to rebuild and repair the Service Station or that portion of the Service Area so damaged. The AUTHORITY shall give written notice to the OPERATOR of such election within ninety (90) days after the occurrence of such casualty, or within thirty (30) days after the adjustment of the insurance settlement, whichever is later. In the event that a notice of termination shall be given with respect to a Service Station, this Agreement shall terminate with respect to that Service Station as of the date provided in the notice of termination (whether or not the Term shall have commenced) with the same effect as if that date were the Expiration Date set forth herein. In no event shall the OPERATOR be entitled to any damages, including but not limited to damages for lost anticipated profits or goodwill for the remaining Term of the Agreement, as a result of such termination.

Notwithstanding the foregoing, the items of Rent payable under applicable Sections hereof shall be proportionately reduced by the respective amounts attributable to the Service Station so closed.

## **17. Eminent Domain**

### **17.1 Restoration**

If any portion of a Service Station or Service Area shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose and the AUTHORITY does not elect to terminate this Agreement with respect to that Service Station pursuant to Section 17.2 hereof, the AUTHORITY shall proceed with reasonable diligence and at its sole cost and expense (but only up to the net amount of condemnation proceeds) to repair and restore the Service Station (except for

items belonging to OPERATOR) or Service Area, as applicable. OPERATOR shall be entitled to an abatement of items of Rent payable under applicable Sections of this Agreement during the period of repair and restoration, which abatement shall be in proportion to the degree to which the OPERATOR's use of the Service Station is impaired during such period of repair or restoration.

If a portion of the Service Station is included in the real property so acquired or condemned, from and after the date of the vesting of title, the Rent items payable shall be reduced on a pro-rata basis with any reduction in the amounts payable under contracts for these services as a result of such condemnation, to be effective on the date OPERATOR ceases to be able to use the condemned portion or of the vesting of title in the condemning authority, whichever occurs first. Except for such reductions, the OPERATOR shall not be entitled to any compensation for loss involving any portion of the Service Station so condemned and/or any inconvenience, annoyance or any other loss occasioned by such condemnation, repair and restoration.

#### **17.2 Termination**

If the whole or any portion of a Service Station or the Service Area shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then in such event either party may elect to terminate this Agreement with respect to that Service Station as of the date OPERATOR ceases to be able to use the Service Station, or the date of the vesting in or acquisition of title by the condemning authority, whichever occurs first, with the same effect as if said date were the Expiration Date set forth herein. The AUTHORITY shall give written notice to OPERATOR of any termination of this Agreement with respect to the condemned Service Station pursuant to this Section 17.2 within ninety (90) days after receipt of the net proceeds from the condemnation with respect to the affected Service Station. OPERATOR shall give ninety (90) days written notice of its intention to terminate under this subparagraph.

In no event shall the OPERATOR be entitled to any damages, including but not limited to damages for lost anticipated profits or goodwill at the Service Station for the remaining Term of the Agreement, as a result of such termination.

Notwithstanding the foregoing, the items of Rent payable under applicable Sections shall be reduced proportionately by the respective amounts attributable to the Service Station so closed.

#### **17.3 Condemnation Proceeds**

The entire proceeds of any condemnation award shall be the property of the AUTHORITY, whether such award is compensation for damages to the AUTHORITY's or OPERATOR's interest in the Service Station, and OPERATOR hereby assigns all of its interest in any such award to the

AUTHORITY; provided, however, that the AUTHORITY shall have no interest in any award made to OPERATOR for relocation expenses or for the taking of OPERATOR's personal property if a separate award for such items is made to OPERATOR which does not serve to reduce the award to the Authority.

### **18. Suspension of Operations/Early Termination**

#### **18.1 Changing Needs**

In the event that all or a portion of a Service Station or Service Area is needed by the AUTHORITY for Turnpike purposes other than those provided for herein at any time during the Term of this Agreement, the AUTHORITY, in its sole and absolute discretion, shall have the right to suspend or discontinue operations at the affected Service Station or Service Area upon sixty (60) days prior written notice to the OPERATOR.

In the event of a suspension or discontinuance of Service Station Operations as a result of the changing needs of the AUTHORITY pursuant to the provisions of this Section, the OPERATOR's sole remedy shall be reimbursement for all documented actual capital expenses incurred by the OPERATOR during the Term of the Agreement with respect to the affected Service Station, including expenditures incurred as a result of such discontinuance or suspension of operations, which reimbursement shall be in accordance with the provisions of Section 18.3 hereof. In no event shall the OPERATOR be entitled to any damages, including but not limited to damages for lost anticipated profits or goodwill for the remaining Term of the Agreement, as a result of such discontinuance or suspension of operations, the parties agreeing that the payment, if any, provided for pursuant to Section 18.3 shall be the OPERATOR's sole compensation.

In addition, effective upon the date of station closure, the Rent items payable shall be reduced proportionately by the respective amounts attributable to the Service Station so closed.

#### **18.2 Major Repairs**

In the event that the AUTHORITY decides to make any major repairs at any of the Service Areas or Service Stations for non-emergency purposes during the Term of this Agreement, including the initial improvements, or in the event that the AUTHORITY is required to make major repairs at any of the Service Areas or Service Stations as a result of an emergency, or in the event the AUTHORITY decides, or is required as a result of an emergency, to make major repairs on the Turnpike roadway, which repairs limit or prevent access to the Service Station or Service Area, the AUTHORITY shall have the right to require, upon fourteen (14) days prior written notice to the OPERATOR in case of non-emergency work and upon telephonic notice, if practicable, in the case



of emergency work, that Service Station operations at such Service Area or Service Station be temporarily suspended or curtailed in order to perform the necessary work. The OPERATOR shall continue to be obligated to pay Rent without setoff, recoupment or deductions of any kind except as hereinafter provided, and shall not be entitled to any damages, including but not limited to damages for lost anticipated profits or goodwill for the period of closure, as a result of such suspension or curtailment of operations. In the event the suspension or curtailment of operations is five (5) days or more, the OPERATOR's sole remedy shall be a pro rata reduction in items of Rent set forth in applicable Sections hereof, calculated from and after the first (1st) day of such suspension of operations. The AUTHORITY shall make all reasonable efforts to schedule such work so as to cause as little interference as possible to the Service Station operations.

It is expressly agreed that the provisions of this Section 18.2 shall not be applicable to any suspension or curtailment of operations as a result of (i) any UST or Monitoring System Upgrading Program (including the remediation of any releases of Hazardous Substances in connection therewith, if any) or (ii) any repairs, whether on a planned or emergency basis, at a Restaurant in the Service Area, except where such repairs at a Restaurant in the Service Area require the temporary suspension of operations at the Service Station.

### **18.3 Compensation**

In the event the AUTHORITY terminates this Agreement prior to its natural expiration (i) with respect to a particular Service Station or Service Stations as a result of changing needs, pursuant to Section 18.1 hereof, or (ii) with respect to all the Service Stations as a result of an Event of Default pursuant to the provisions of Section 24.1 (K) hereof, the AUTHORITY shall compensate the OPERATOR as of the date of such termination for its costs incurred in those Alterations paid for by OPERATOR that have been permanently affixed to the Service Station or Service Stations, as the case may be. Such compensation shall be in an amount equal to the then amortized value, calculated from the date of completion or attachment to the Service Station or Service Stations, whichever is later, and shall be based on the actual useful life of such Alterations using IRS guidelines or the actual useful life, whichever is less, and assuming a zero (\$0) salvage value. The OPERATOR shall supply the AUTHORITY with invoices marked "paid in full" or the like for all items considered for reimbursement under the provisions of this Section. The parties acknowledge that the provisions of this Section shall not apply to any Event of Default; occurring pursuant to the provisions of Sections 24.1 (a) - (j) hereof.

### **19. Transitions**

In the event a new operator assumes responsibility for the operation of some or all of the Service Stations prior to, on or after the Expiration Date of this Agreement for any reason whatever, the OPERATOR shall cooperate fully with the new operator to achieve an orderly transition of services without interruption of such service to Turnpike patrons. This cooperation shall include granting the succeeding operator reasonable access to all of the Service Stations during the last ninety (90) days of the Term of this Agreement (or any shorter period caused by events) to install equipment and make all other changes necessary for the transition of operations, and also to inspect and test existing equipment, including the underground fuel storage tanks and fuel distribution systems, provided new OPERATOR shall not unreasonably interfere with OPERATOR'S operations. Said transition of service shall be substantially completed by the Expiration Date of this Agreement.

The OPERATOR shall, upon request by the AUTHORITY, permit the succeeding operator to assume responsibility for operation of the Service Stations, provided that the succeeding operator shall assume responsibility for all of the Service Stations in accordance with a schedule to be mutually agreed upon by OPERATOR and the AUTHORITY.

Upon the expiration or earlier termination of this Agreement, OPERATOR shall give to the succeeding operator the option to purchase from the OPERATOR any Service Station equipment furnished by and remaining the property of the OPERATOR, excluding trademarked items and proprietary software. The price and terms upon which the succeeding operator may purchase OPERATOR's equipment shall be as determined by OPERATOR but shall, in all events, be reasonable and fair under the circumstances. In the event the OPERATOR and the succeeding operator cannot agree upon a mutually satisfactory price upon which such equipment may be sold to the succeeding operator at least sixty (60) days prior to the expiration or earlier termination of this Agreement, OPERATOR shall notify the AUTHORITY and the AUTHORITY shall act as arbitrator. Any determination made by the AUTHORITY with respect to price shall be final and binding upon the OPERATOR and the succeeding operator. The AUTHORITY shall rely upon third party appraisals, which consider, such factors as (i) the true "in place" value of the equipment, (ii) the salvage value of the equipment and (iii) the then-current custom and usage in the industry, in deciding upon the market value of such equipment. Any equipment purchased from the OPERATOR by the succeeding operator under the aforesaid option shall be purchased on an "as is, where is" basis and shall be left at the Service Station at which such equipment was located during the Term hereof, and may be used by the succeeding operator, pending resolution of any outstanding negotiations concerning the price to be paid therefore. OPERATOR agrees that such negotiations

shall be conducted expeditiously and in good faith in order to reach an agreement as fairly and as promptly as possible. Environmental remediation equipment is excluded from the provisions of this paragraph. OPERATOR may remove such equipment provided it is not then in use for the remediation of any hazardous or non-hazardous substance. Such environmental remediation equipment may be removed upon completion of any such ongoing remediation projects.

Removal of any equipment by the OPERATOR upon transition shall be authorized and shall be accomplished in such a manner as to cause no damage to any property of the AUTHORITY and otherwise in accordance with the provisions of this Agreement dealing with the removal of OPERATOR's property. The OPERATOR shall remove all trademark and other identifying markings prior to completion of the transition.

## **20. Performance Bond**

Upon execution of this Agreement, the OPERATOR shall provide to the AUTHORITY, at the OPERATOR's sole cost and expense, an insured guaranty of performance (a "bond") which shall be satisfactory (in all respects including, but not limited to, the company upon whom same may be drawn) to the Legal Counsel of the AUTHORITY. The bond shall be in the amount of \$100,000.00. Such bond shall be guaranteed by an insurance company authorized to transact business in the State of West Virginia and reasonably acceptable to the AUTHORITY, and shall be kept continuously in effect during the entire Term hereof, including any extensions or renewals of such Term. In addition, the bond shall cover the performance of all of the terms of this Agreement and shall contain full indemnification provisions (including indemnification respecting reasonable attorneys' fees and court costs) to safeguard against theft, lack of performance and breach of contract.

In the event that it becomes necessary for the AUTHORITY to terminate this Agreement due to the OPERATOR's unfaithful performance of its obligations, the amount of this bond shall be forfeited to the AUTHORITY as partial liquidated damages (and not as a penalty, the parties agreeing that defaults causing termination are not readily susceptible to specific damage amounts for OPERATOR's failure to perform and this sum shall not be construed in any sense as a penalty). The AUTHORITY may, at its option, nevertheless sue the OPERATOR for the damages it has suffered for any breach of this Agreement, in which case the amount of the bond shall be applied as a credit in any such award for damages.

## **21. SIGNS**

### **21.1 Turnpike Signs**

The AUTHORITY has provided, and will continue to provide until further notice, adequate signage on the Turnpike indicating entrances to the Service Areas, as well as signs to direct traffic flow within the Service Areas. The OPERATOR shall supply reflector-type logos for these and any other signage which shall meet the specifications of, and shall be approved by, the AUTHORITY. The OPERATOR shall have the right to install "goal post" price signs before, at or after the entrance ramp to each Service Area, plans for which, and the exact locations of which, shall be submitted to the AUTHORITY for approval, which approval may be withheld in the AUTHORITY's sole and absolute discretion.

The AUTHORITY reserves the right, during the Term of this Agreement, to reasonably require the OPERATOR, in cooperation with the AUTHORITY, to install additional or replacement signs on the Turnpike at the OPERATOR's sole expense. The location, size, height, type and installation of any such additional or replacement signage to be erected or installed by the OPERATOR shall be subject to the prior review and written approval of the AUTHORITY.

Notwithstanding the provisions hereof, OPERATOR shall have the right, at its sole expense, to install additional signs and relocate existing signs with the AUTHORITY'S prior approval. Such approval shall not be unreasonably withheld.

### **21.2 Service Area Signs**

Subject to the AUTHORITY's approval with respect to location, size, height, type and installation, the OPERATOR shall have the right to promote its facilities through the use of appropriate signs, including but not limited to motor fuel price signs located at the Service Stations and in the Service Areas. The cost of providing, installing and maintaining such signage shall be paid by the OPERATOR.

## **22. SUBORDINATION OF OPERATING AGREEMENT**

This Agreement is subject and subordinate to the terms, provisions and conditions of any present or future bond resolution of the AUTHORITY, and the purchaser or holders of the AUTHORITY's bonds or obligations as well as any and all mortgages, now or hereafter placed upon the Service Stations or Service Areas, as the same may be extended, consolidated, renewed, amended or otherwise modified. The OPERATOR shall, upon demand by the AUTHORITY, execute, acknowledge and deliver any instrument or other documents which may be required to evidence or confirm this subordination and, in case of the failure of the OPERATOR to do so, the OPERATOR shall be in violation hereof and, in addition to all other remedies available to the AUTHORITY, the



AUTHORITY is hereby irrevocably authorized to execute, acknowledge and deliver all such subordinations and other documents in the name of the OPERATOR as its attorney-in-fact.

## **23. COOPERATION WITH OTHERS**

### **23.1 Within Each Service Area**

The operating responsibilities for each Service Area are divided and shared among the Restaurant Operator, the OPERATOR and the AUTHORITY. Each operating agreement identifies the responsibilities of each operator regarding maintenance and service, and both the OPERATOR and the Restaurant Operator are expected to perform their responsibilities in compliance with the performance requirements of the AUTHORITY. The OPERATOR herein shall faithfully perform its maintenance and other responsibilities, shall cooperate fully with the Restaurant Operator, and shall work for the common interests of both parties and the AUTHORITY.

In the event of a dispute between the Restaurant Operator and the OPERATOR, which the said parties cannot resolve between themselves, the AUTHORITY shall, upon receipt of written notice of such dispute from either party, arbitrate such dispute and the decision of the AUTHORITY shall be final and binding.

### **23.2 Other Contracts**

This Agreement shall not be construed so as to limit or impair the right of the AUTHORITY, the Restaurant Operator or any other contractors of the AUTHORITY under separate agreements; provided, however, that nothing in this Agreement shall be limited or impaired by the rights of the Restaurant Operator or any other direct contractor of the AUTHORITY under their respective agreements with the AUTHORITY. In the event of a dispute between the OPERATOR and any other direct contractor of the AUTHORITY regarding the operation of the Service Stations or Service Areas, which said parties cannot resolve between themselves, the AUTHORITY shall, upon receipt of written notice of such dispute from either party, arbitrate such dispute and the decision of the AUTHORITY shall be final and binding.

## **24. EVENTS OF DEFAULT**

### **24.1 Events of Default**

The occurrence of any one or more of the following events and continuation thereof beyond the applicable cure period herein provided, if any, shall constitute an "Event of Default:"

(a) If the OPERATOR shall default in the payment of Rent due hereunder and such default shall continue for a period of fifteen (15) days after written notice from the AUTHORITY of such default;

(b) if the OPERATOR shall default in the observance or performance of any of its covenants or obligations under this Agreement (other than the payment of Rent), and shall not have cured such default within thirty (30) days after written notice from the AUTHORITY of such default, or, if such default is of such a nature that it cannot be completely remedied within said thirty (30) days, the OPERATOR shall not (i) have promptly, upon delivery of such notice by the AUTHORITY, advised the AUTHORITY of the OPERATOR's intention to institute all steps necessary to remedy such situation, (ii) promptly institute and thereafter diligently prosecute to completion all steps necessary to remedy the same, and (iii) complete such remedy within a reasonable time after the delivery of said notice by the AUTHORITY and in any event prior to such time as would subject the AUTHORITY or the AUTHORITY's agents to adverse claims; or

(c) if any event shall occur or any contingency shall arise whereby this Agreement or the rights hereby granted or the unexpired balance of the Term would, by operation of law or otherwise, devolve upon or pass to any person other than the OPERATOR; or

(d) Other than in connection with a temporary or permanent suspension of operations of a Service Station by the AUTHORITY pursuant to the provisions of Section 16, 17 or 18 hereof, if any of the Service Stations shall become vacated, deserted or abandoned for a period of six (6) consecutive hours or if the OPERATOR shall fail to take immediate occupancy of any of the Service Stations; or

(e) if the OPERATOR shall file a voluntary petition in bankruptcy or insolvency, or commence a case under the Federal Bankruptcy Code, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law (foreign or domestic), or shall make an assignment for the benefit of creditors or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the OPERATOR or of all or any part of the OPERATOR's personal property; or

(f) if, within sixty (60) days after the commencement of any proceeding against the OPERATOR, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law (foreign or domestic), such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee, receiver or liquidator of the OPERATOR or of all or any

part of the OPERATOR's personal property, without the consent or acquiescence of the OPERATOR, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall be issued against the OPERATOR or any of the OPERATOR's personal property pursuant to which some or all of the Service Stations, or any part of a Service Station, shall be taken or occupied or attempted to be taken or occupied; or

(g) if the OPERATOR becomes disqualified from bidding or negotiating public contracts with the State of West Virginia, the U.S. Government or any agency, department, branch, division or authority thereof for any reason; or

(h) if the OPERATOR has been found guilty by a court of competent jurisdiction of violating any laws of the United States of America or the State of West Virginia or of violating public policy, in either case in connection with the procurement of or operations under this Agreement; or

(i) if the OPERATOR causes or allows a lien to be asserted upon any of the Service Stations without removal thereof or bonding against same within ten (10) days following receipt of notice thereof; or

(j) if there has occurred a successful felony criminal action against the OPERATOR or its officers relating to the obligations of the OPERATOR under this Agreement; or

(k) if, in the AUTHORITY's sole judgment, reasonably exercised, following notice thereof and OPERATOR's failure to cure within thirty (30) days following receipt of such notice, the effect of the OPERATOR's policies or practices in the management of any of the Service Stations, including, but not limited to, policies affecting health, fairness or courtesy to patrons, promptness and efficiency, safety, personnel (other than with respect to the mandatory manpower requirements set forth a violation of which shall be deemed to be a default under Section 24.1 (b) hereof, and patron welfare and satisfaction, is detrimental to the AUTHORITY in the fulfillment of its legal duties to the patrons of the Turnpike or its bondholders. In its written notice of termination to the OPERATOR, the AUTHORITY shall specify the policies, practices or circumstances that, in the AUTHORITY's sole judgment, reasonably exercised, make termination necessary.

At the option of the AUTHORITY, breach of this Agreement as to one Service Station shall be considered a breach of the Agreement for all Service Stations covered by the Agreement.

#### **24.2 Waiver of Specific Performance**

It is agreed by and between the parties hereto that a close and cooperative relationship based upon mutual trust and confidence is essential to the successful operation of the Service Stations upon the Turnpike, and that reasonable people may reasonably differ as to the character and quality of

services provided by the OPERATOR hereunder, as well as the degree to which the OPERATOR has met or is meeting the standards of service prescribed herein. For this reason, in the event the OPERATOR claims that this Agreement has been or is being wrongfully terminated, the OPERATOR's sole remedy shall be limited to damages and the OPERATOR hereby waives its right, if any, to specific performance of the Agreement.

### **25. REMEDIES and TERMINATION**

#### **25.1 The AUTHORITY's Remedies**

The relationship between the parties is, in part, one of landlord and tenant.

(a) Upon the occurrence and continuation of an Event of Default beyond notice and applicable cure period, if any, the AUTHORITY shall have the immediate right to reenter the Service Stations and to dispossess the OPERATOR and all other occupants there from and to remove and dispose of all property of the OPERATOR therein or, at the AUTHORITY's election, to store such property in a public warehouse or elsewhere at the cost and for the account of the OPERATOR, and without the AUTHORITY being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Upon the occurrence of any such Event of Default, the AUTHORITY shall also have the right, at its option, in addition to and not in limitation of any other right or remedy, to terminate this Agreement by giving the OPERATOR three (3) days' notice of termination and upon the expiration of said three (3) days, this Agreement and the Term hereof shall cease and terminate as fully and completely as if the date of expiration of such three (3) day period were the Expiration Date provided herein and thereupon, unless the AUTHORITY shall have theretofore demanded possession of the Service Stations, the AUTHORITY shall have the immediate right of possession, in the manner aforesaid, and the OPERATOR and all other occupants shall quit and surrender possession of the Service Stations to the AUTHORITY, but the OPERATOR shall remain liable as hereinafter mentioned.

However, if an Event of Default should occur (i) in the payment of Rents, charges or other sums reserved hereunder or in the timely submission of any Report or Rent Statement, as required herein, and any such Event of Default shall be repeated for a total of two (2) times in any period of twelve (12) months, or (ii) in the performance of any other covenant of this Agreement more than four (4) times, in the aggregate, in any period of fifteen (15) months then, notwithstanding that such Events of Default shall have been cured within the period after notice as above provided, the AUTHORITY may, following any further similar events of default, serve a final three days' notice of termination without affording the OPERATOR an opportunity to cure such Events of Default.



(b) If by reason of the occurrence of any Event of Default, the Term shall end before the Expiration Date, or the AUTHORITY shall take possession of the Service Stations, or the OPERATOR shall be ejected, dispossessed or removed there from by summary proceedings or in any other manner, whether or not specifically enumerated by this Agreement, or if the Service Stations or any one of them become vacant, deserted or abandoned, for the period specified here, the AUTHORITY at any time thereafter may relet the Service Station or Stations, or any part or parts thereof, either in the name of the AUTHORITY or as agent for the OPERATOR, for the term or terms which may, at the AUTHORITY's option, be less than or exceed the period of the remainder of the Term hereunder, and at such rent or rentals and upon such other conditions, which may include concessions and free rent periods, as the AUTHORITY, in its sole discretion, shall determine; provided, however, that notwithstanding the foregoing, the AUTHORITY shall use reasonable good faith efforts to mitigate damages incurred hereunder. The AUTHORITY shall receive the rents from such reletting and shall apply the same first, to the payment of such expenses as the AUTHORITY may have incurred in connection with reentering, ejecting, removing, dispossessing, reletting, altering, repairing, redecorating, subdividing or otherwise preparing the Service Station or Stations for reletting, including brokerage and attorneys' fees and expenses; second, to the payment of any indebtedness other than Rents, charges and other sums due hereunder from the OPERATOR to the AUTHORITY; and the residue, if any, the AUTHORITY shall apply to the fulfillment of the terms, covenants and conditions of the OPERATOR hereunder and the OPERATOR hereby waives all claims to the surplus, if any. Except with respect to an Event of Default under Section 24.1 (k) hereof, the OPERATOR shall be and hereby agrees to be liable for and to pay the AUTHORITY any deficiency between the Rents, charges and other sums prescribed hereunder and the net rentals, as aforesaid, of reletting, if any, for each month of the period which otherwise would have constituted the balance of the Term hereunder. The OPERATOR hereby agrees to pay such deficiency in monthly installments on the days specified in this Agreement for the payment of Rent, and any suit or proceeding brought to collect the deficiency for any month, either during the Term hereunder or after any termination thereof, shall not prejudice or preclude in any way the rights of the AUTHORITY to collect the deficiency for any subsequent month by a similar suit or proceeding. The AUTHORITY shall in no event be liable in any way whatsoever for the failure to relet the Service Station or Stations or in the event of such reletting, for failure to collect the rents reserved there under, except to the extent the AUTHORITY has not used good faith efforts to mitigate damages, as required hereunder. The AUTHORITY is hereby authorized and empowered to make

such repairs, alterations, decorations, subdivisions or other preparations for the reletting of the Service Station or Stations as the AUTHORITY shall deem advisable, without in any way releasing the OPERATOR from any liability hereunder, as aforesaid.

(c) No such reentry or taking possession of the Service Station or Stations by the AUTHORITY shall be construed as an election on its part to terminate this Agreement unless the AUTHORITY gives written notice to the OPERATOR of such intention or the termination thereof shall result as a matter of law or be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the AUTHORITY may at any time thereafter elect to terminate this Agreement for such previous default.

(d) In the event this Agreement is terminated pursuant to the foregoing provisions, other than in connection with an Event of Default pursuant to Section 24.1(k) hereof, the AUTHORITY may recover from the OPERATOR, in addition to the damages recoverable under Section 25.1(b) above (measured by monthly deficiency, if any), all damages it may sustain by reason of the OPERATOR's default, including but not limited to the cost of recovering the Service Station or Stations and attorneys' fees and expenses.

(e) In the event of any breach or threatened breach by the OPERATOR of any of the terms and provisions of this Agreement, the AUTHORITY shall have, in addition to all other available remedies at law or in equity, the right to injunctive relief and declaratory relief as if no other remedies were provided herein for such breach but in addition to, to the extent permitted by law, all such other available remedies.

(f) The rights and remedies herein reserved by or granted to the AUTHORITY and the OPERATOR are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice the AUTHORITY's or the OPERATOR's right to exercise any or all others. Whether or not specifically enumerated in this Agreement, the AUTHORITY and the OPERATOR each hereby reserves all rights and remedies at law and in equity and nothing contained in this Agreement shall be construed as a limitation of any such rights or remedies.

(g) The AUTHORITY and the OPERATOR hereby expressly waive any right to assert a defense based on merger of judgment and agree that neither the commencement of any action or proceeding, nor the settlement thereof nor the entry of judgment therein shall bar the AUTHORITY or the OPERATOR from bringing any subsequent actions or proceedings from time to time.

(h) Nothing contained in the Section shall be deemed or construed to require the AUTHORITY to give the notices herein provided for prior to the commencement of a summary

proceeding or other action for nonpayment of Rent on account of any default in the payment of Rent, it being intended that any such notice or notices are for the sole and only purpose of creating a conditional limitation or a condition precedent hereunder pursuant to which this Agreement shall terminate and the OPERATOR shall become a holdover tenant.

(i) The words "recenter", "reentry" and "reentered" as used in this Agreement shall not be deemed to be restricted to their technical legal meanings.

(j) In the event the AUTHORITY commences any summary proceeding or action for nonpayment of Rent, the OPERATOR covenants and agrees that it will not interpose, by consolidation of actions or otherwise, any counterclaim or other claim seeking affirmative relief of whatsoever nature or description in any such proceeding.

#### **25.2 Curing the OPERATOR's Defaults**

If an Event of Default shall occur and be continuing hereunder, the AUTHORITY, without thereby waiving such Event of Default, may, but shall not be obligated to, perform the same for the account and at the expense of the OPERATOR, without notice in case of emergency and upon ten (10) days prior notice in all other cases. The AUTHORITY may enter the Service Station or Stations at any time to cure any Event of Default without thereby incurring any liability to the OPERATOR or anyone claiming through or under the OPERATOR. Bills for any expenses incurred by the AUTHORITY in connection with any such performance or as a result of collecting or endeavoring to collect Rent or enforcing or endeavoring to enforce any rights against the OPERATOR under or in connection with this Agreement or pursuant to law, including any cost, expense and disbursement involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor or services provided, furnished or rendered, including reasonable attorneys' fees and expenses, shall be paid by the OPERATOR upon demand. In the event that the OPERATOR is in arrears in payment of Rent, the OPERATOR waives the OPERATOR's right, if any, to designate the items against which any payments made by the OPERATOR are to be credited and the AUTHORITY may apply any payments made by the OPERATOR to any items the AUTHORITY sees fit, irrespective of and notwithstanding any designation or requests by the OPERATOR as to the items against which any such payments shall be credited.

#### **26. NOTICES**

Except as otherwise expressly set forth herein, all notices, requests, demands, approvals or consents required hereunder or by law shall be in writing and shall be given by personal delivery or mailing the same, certified or registered mail return receipt requested, postage prepaid, or by

nationally recognized overnight courier service providing for delivery against a signed receipt (such as Federal Express) addressed to the parties at the addresses set forth below. Notice shall be deemed delivered upon such personal delivery or, if mailed, two (2) business days after mailing, or, if sent by way of overnight courier service, one (1) business day after pick-up by such courier. The persons designated for the receipt of Notices, and the addresses to which Notices may be given or made by either party may be changed or supplemented by Notice given or made by either party, to the other and, notwithstanding the preceding sentence, such Notice shall be effective ten (10) days after mailing or delivery.

Notices shall be sent to the parties at the following addresses:

If to the AUTHORITY: West Virginia Parkways Authority  
P.O. Box 1469  
3310 Piedmont Road  
Charleston, WV 25325-1469  
Attn: Gregory Barr, General Manager

If to the OPERATOR: PM Terminals, Inc.  
3000 Ogden Road  
Roanoke, Virginia 24018

With Copy to: PM Terminals, Inc.  
2403 Commerce Road  
Richmond, Virginia 23234

#### **27. FORCE MAJEURE**

In the event that OPERATOR'S operations hereunder shall be delayed, interrupted or prevented by reason of damage or destruction due to Acts of God, inability to procure materials, sabotage, civil insurrection, restrictive governmental laws or regulations, or any other cause beyond the reasonable control of OPERATOR, lack of conduct of such operations by OPERATOR shall be



excused for the period of such delay or interruption; provided, however, that lack of funds shall not be a basis for non-compliance by OPERATOR.

If the supply of motor fuel contemplated by and required under the terms of this Agreement becomes unavailable or inadequate due to damage or destruction resulting from Acts of God, wars, hostilities, sabotage, floods, restrictive governmental laws or regulations, strikes, or for any other cause beyond OPERATOR'S reasonable control when acting in good faith and in the ordinary course of business, and as a result thereof, the OPERATOR is unable to meet the demands of the AUTHORITY and/or the Service Stations under this Agreement and is required to allocate among all its retail gasoline facilities, the OPERATOR shall grant to the AUTHORITY, and the Service Stations the best allocation reasonably available to the OPERATOR, provided that the OPERATOR'S plan does not unlawfully discriminate among the AUTHORITY and other gasoline facilities supplied by the OPERATOR.

#### **28. WARRANTY OF SIGNATORY**

The undersigned signatory for the OPERATOR hereby represents and warrants that he/she has full and complete authority to execute this Agreement on behalf of the OPERATOR. This representation and warranty is made for the purpose of inducing the AUTHORITY to execute this Agreement.

#### **29. ACTION BY AUTHORITY**

Anything to be performed under this Agreement by the AUTHORITY may be performed by the General Manager or by such of its employees or such other persons, corporations or firms as the AUTHORITY may designate.

#### **30. CONCURRENT USE**

The AUTHORITY reserves the right, in its sole discretion, to use any portion of any Service Station not regularly used by the OPERATOR and not otherwise integral to the operation of the Service Station in accordance with the terms of this Agreement for any purpose which the AUTHORITY deems to be in its interest, provided same does not materially impair the operations of OPERATOR.

#### **31. CONFLICTS**

The OPERATOR shall comply with the West Virginia Conflict of Interest Law, and Code of Ethics. The OPERATOR represents that it has no such conflict as defined therein.

#### **32. MISCELLANEOUS**

(i) No provision of this Agreement shall be deemed to have been waived by the AUTHORITY or the OPERATOR unless such waiver be in writing, signed by the party making such waiver. The failure of the AUTHORITY or the OPERATOR to seek redress for violation of, or to insist upon strict performance of, any covenant or condition of this Agreement, shall not be deemed a waiver thereof or prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

(ii) The receipt by the AUTHORITY of Rent with knowledge of the breach of any covenant to this Agreement shall not be deemed a waiver of such breach. No payment by the OPERATOR or receipt by the AUTHORITY of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest Rent reserved hereby which is due and owing at the time such payment is received by the AUTHORITY. No endorsement or statement on any check or any letter accompanying any check or payment of any such Rent shall be deemed an accord and satisfaction, and the AUTHORITY may accept such check or payment without prejudice to the AUTHORITY's right or remedy provided in this Agreement.

(iii) The captions used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

(iv) Any Exhibits hereto are hereby incorporated into this Agreement and made a part hereof as if fully set forth herein.

(v) This Agreement and all other agreements and instruments signed contemporaneously herewith contain the entire agreement between parties, and no agreement, representation or inducement shall be effective to change, modify or terminate this Agreement in whole or in part unless such agreement, representation or inducement is in writing and signed by both parties hereto. The parties agree that if there exists a latent or patent ambiguity in this Agreement, such ambiguity shall not be construed against the AUTHORITY merely because the AUTHORITY has drafted the provisions of this Agreement.

(vi) The OPERATOR at any time or from time to time at the request of the AUTHORITY shall execute, acknowledge and deliver to the AUTHORITY an estoppel certificate by the OPERATOR certifying:

(a) that this Agreement has not been modified, changed, altered or amended in any respect and is in full force and effect (or, if there have been modifications, stating the modifications and that the Agreement is in full force and effect as modified);

(b) that this Agreement is the only Agreement between the AUTHORITY and the OPERATOR affecting the service Stations;

(c) that the OPERATOR has accepted possession and operation of the Service Stations, is in occupancy of the service Stations, and is paying rent hereunder, for which it is then liable on a current basis;

(d) that there are then existing no credits, offsets or defenses against the enforcement of any provisions of this Agreement (or, if so, specifying the same);

(e) the dates, if any, to which the Rent or other charges due hereunder have been paid in advance and that there has been no prepayment of Rent other than as provided for in this Agreement;

(f) that there are no existing defaults by the AUTHORITY or the OPERATOR under this Agreement (or, if so, specifying such default);

(g) that there are no actions, whether voluntary or otherwise, pending against the OPERATOR under the bankruptcy laws of the United States or any state thereof; and

(h) such further information with respect to this Agreement or the Service Stations as the AUTHORITY may request.

Any such certificate may be relied upon by any prospective purchaser of the Service Stations or of the interest of the AUTHORITY in any part thereof, by any bondholder of prospective bondholder thereof, or by an OPERATOR or prospective OPERATOR thereof. The failure of the OPERATOR to execute, acknowledge and deliver to the AUTHORITY a statement in accordance with the provisions of this Section within twenty (20) days after request therefore shall constitute an acknowledgement by the OPERATOR, which may be relied upon by any person who would be entitled to rely upon any such statement, that such statement as submitted by the AUTHORITY is true and correct.

(vii) If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

(viii) In the event of any default or breach by the AUTHORITY with respect to any of the terms, covenants and conditions of this Agreement to be observed and performed by the AUTHORITY, the OPERATOR shall look solely to the estate and property of the AUTHORITY represented by the Turnpike Roadway and improvements for the collection of any sum of money on a judgment, or for the payment or expenditure of any money under any decree of specific performance, injunctive relief or other equitable relief (or other judicial process) requiring

performance by the AUTHORITY of any obligation under this Agreement. No other property or asset of the AUTHORITY, the AUTHORITY's agents, incorporators, shareholders, officers, directors, commissioners, partners, principals (disclosed or undisclosed) or affiliates shall be subject to levy, execution or other enforcement procedure for the satisfaction of the OPERATOR's remedies.

(ix) The term "the AUTHORITY" shall mean only the owner at the time in question of the present AUTHORITY's interest in the Service Stations and in the event of a sale or transfer of the Service Stations (by operation of law or otherwise), the transferor shall be and hereby is automatically and entirely released and discharged, from and after the date of such sale or transfer, of all liability in respect of the performance of any of the terms of this Agreement on the part of the AUTHORITY thereafter to be performed.

(x) The OPERATOR hereby expressly waives any and all rights granted by or under any present or future laws to redeem the OPERATOR's reversionary interest, if any, in the Service Stations. In addition, in the event of any lawful termination of the Term or any repossession of the Service Stations by reason of the OPERATOR's default hereunder, the OPERATOR waives (i) any notice of reentry or of the institution of legal proceedings to that end, (ii) any right of redemption, reentry or repossession, and (iii) the benefit of any laws now or hereafter in force exempting property from liability for rent or otherwise. The provisions of this Section shall survive the expiration Date or sooner termination of this Agreement.

(xi) Neither the AUTHORITY nor the OPERATOR shall record this Agreement, any amendment to this Agreement, or any other memorandum of this Agreement without the prior written consent of the other party and in the event such consent is given the party requesting such consent shall pay all transfer or excise taxes, recording fees and other charges in connection with such recording notwithstanding any provision of law imposing liability therefor upon the other party.

(xii) This Agreement shall be deemed to be made under and shall be construed in accordance with and governed by the internal laws of the State of West Virginia, without regard to principles of conflicts of laws. It is agreed that any action arising under this Agreement for breach of contract or otherwise shall be brought and decided only in a Court of competent jurisdiction in the State of West Virginia. The parties hereto hereby submit to the jurisdiction of such Court and personal service upon the OPERATOR shall be deemed effected by notification as provided for herein.

(xiii) The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way



connected with this Agreement, the relationship of the AUTHORITY and the OPERATOR created hereby, the OPERATOR's use or occupancy of the Service Stations or any claim for injury or damage.

(xiv) The OPERATOR hereby expressly waives any and all rights of redemption, if any, granted by or under any present or future laws in the event the OPERATOR shall be evicted or dispossessed from the Service Stations for any cause, or the AUTHORITY reenter the Service Station or Stations following the occurrence of any Event of Default hereunder, or this Agreement is terminated before the Expiration Date provided herein.

(xv) The OPERATOR and the AUTHORITY each expressly acknowledge that neither they nor their respective agents have made or are making, and neither party in executing and delivering this Agreement is relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this agreement, and no rights, easements or licenses are or shall be acquired by either party by implication or otherwise unless expressly set forth in this Agreement.

(xvi) The OPERATOR and the AUTHORITY each warrant to the other that it has not employed nor had any dealings or discussions with any broker or agent in connection with the negotiation or execution of this Agreement. Each party agrees to indemnify the other and hold the other harmless from and against any and all liability for commissions or other compensation or charges and all costs and expenses incurred in the defense of the claim if this warranty is breached. In the event of a suit on any such claim, the named party in such suit shall notify and implead the other, or the other may intervene.

(xvii) The OPERATOR hereby waives any claim against the AUTHORITY which it may have based upon any assertion that the AUTHORITY has unreasonably withheld or unreasonably delayed any consent, and the OPERATOR agrees that its sole remedy, unless otherwise prohibited herein, shall be an action or proceeding to enforce any such provision or for specific performance, injunction or declaratory judgment; provided, however, that the foregoing shall not prevent OPERATOR from raising as a defense in an action brought by the AUTHORITY against OPERATOR that the AUTHORITY has unreasonably withheld or unreasonably delayed its consent. In the event it is determined by a final and unappealable judgment that the AUTHORITY did unreasonably withhold or delay its consent, the requested consent shall be deemed to have been granted on the date of the issuance of such final and unappealable judgment. The sole remedy for the

AUTHORITY's unreasonably withholding or delaying of consent shall be as provided in this Section.

(xviii) Anything contained in this Agreement to the contrary notwithstanding, the OPERATOR agrees that the OPERATOR's covenants and obligations under this Agreement shall be independent of the AUTHORITY's covenants and obligations under this Agreement and that each such covenant and obligation is independent of any other covenant or obligation. The AUTHORITY's breach or non-performance of any of the AUTHORITY's covenants or obligations under this Agreement shall not excuse the OPERATOR of the OPERATOR's covenants and obligations under this Agreement, and shall not be the basis for any defense, of any kind or nature whatsoever, to any suit by the AUTHORITY for the OPERATOR's breach or non-performance of any of the OPERATOR's covenants or obligations under this Agreement (including, without limitation, the OPERATOR's failure to pay Rent or other payments due under this Agreement). It is the express agreement of the AUTHORITY and the OPERATOR that all payments of Rent or other payments due under this Agreement are absolutely and unconditionally due at the time set forth herein, without any right of set-off, recoupment or deduction of any kind or nature whatsoever. In furtherance of the foregoing and not in limitation thereof, the OPERATOR agrees not to interpose, by consolidation of actions, removal or otherwise, any counterclaim or other claims of set-off, recoupment or deduction of Rent in a summary proceeding or other action for non-payment of Rent or based on termination, holdover or other default in which the AUTHORITY seeks repossession of the Service Stations from the OPERATOR.

(xix) The terms of this Agreement shall bind and benefit the successors and assigns of the parties with the same effect as if mentioned in such instance where a party is named or referred to, except that no violation of the provision of Section 15.1 hereof shall operate to vest any right in any successors or assignees of the OPERATOR and the provisions of this section shall not be construed as modifying the conditions and limitations contained in Section 15.1 hereof.

The parties hereto have executed this Agreement on the day and year first above written.

AUTHORITY:

WEST VIRGINIA PARKWAYS AUTHORITY

BY: Gregory C. Barr

ITS: GENERAL MANAGER

OPERATOR:

PM Terminals, Inc.

BY: Ronald R. Hare

ITS: Chairman

STATE OF WEST VIRGINIA

COUNTY OF Kanawha TO-WIT:

The foregoing instrument was acknowledged before me on this the 10<sup>th</sup> day of July, 2012 by

Gregory C. Barr, General Manager, of the West Virginia Parkways Authority, on behalf of said



June 3, 2012

Teresa G. Missel  
Notary Public

STATE OF Virginia

COUNTY OF Roanoke TO-WIT:

The foregoing instrument was acknowledged before me on this the 23<sup>rd</sup> day of January, 2012

by Ronald R. Hare, Chairman, behalf of said company.

My commission expires: 6-30-2012



Deborah L. Bryant Spence  
Notary Public

This Document Prepared By:

A. David Abrams, Jr.  
ARLAND & BYRON  
Attorneys at Law  
P.O. Drawer 10  
Hickman, West Virginia 25802

## ATTACHMENT 1

### WEST VIRGINIA TURNPIKE BID / RENT SCHEDULE GUIDELINE

OPERATOR agrees to pay rent in accordance with this Schedule for all locations, as the same bid response will apply at each area.

SERVICE AREA	COUNTY	MILEPOST
Bluestone	Mercer	18
Beckley	Raleigh	44
Morton	Kanawha	73

#### Rents are based on:

- |   |       |
|---|-------|
| A. (1) Cents per gallon of gasoline sold.   | .1107 |
| (2) Cents per gallon of diesel sold.  | .1010 |
| (3) Percentage of gross revenues from all other products sold or services rendered. | .20   |
| (4) Flat rental rate per year paid monthly  |       |

**Any alternate or combination of alternates may be bid with the WV PARKWAYS AUTHORITY determining the best alternate and highest bid will be the basis for the rental to be paid by the Lessee during the term of the lease.**

Sales amounts will be reported to the AUTHORITY by OPERATOR in a manner satisfactory to the AUTHORITY, in both form and substance, and such reports will be delivered to the Authority by the 5th day of the month following the month in which such sales actually occurred. Payment of rent calculated in accordance with this Agreement will be paid no later than the 15th day of the month following the month in which such sales actually occurred.

Failure to report or pay in accordance with the terms of this Agreement will be considered an event of default hereunder.

The Authority makes no warranty or representation concerning the sales in the future at any Service Area.



## ATTACHMENT 2

### CURRENT SURVEY ("PACESETTER") OF OFF-TURNPIKE FUEL STATIONS

Service Stations for Beckley / Morton area:

<u>NAME</u>	<u>LOCATION</u>
Exxon	Ghent, WV
BP	Harper Road, Beckley, WV
Chevron	Harper Road, Beckley, WV
Amoco/BP	Byrd Drive, Beckley, WV
Exxon	North Beckley, WV
Exxon	Mossy, WV

Service Stations for Bluestone area:

<u>NAME</u>	<u>LOCATION</u>
Exxon	Camp Creek, WV
Amoco/BP	Exit 9, Rt. 460, Princeton area
Exxon	Exit 9, Rt. 460, Princeton area
Chevron	Exit 9, Rt. 460, Princeton area

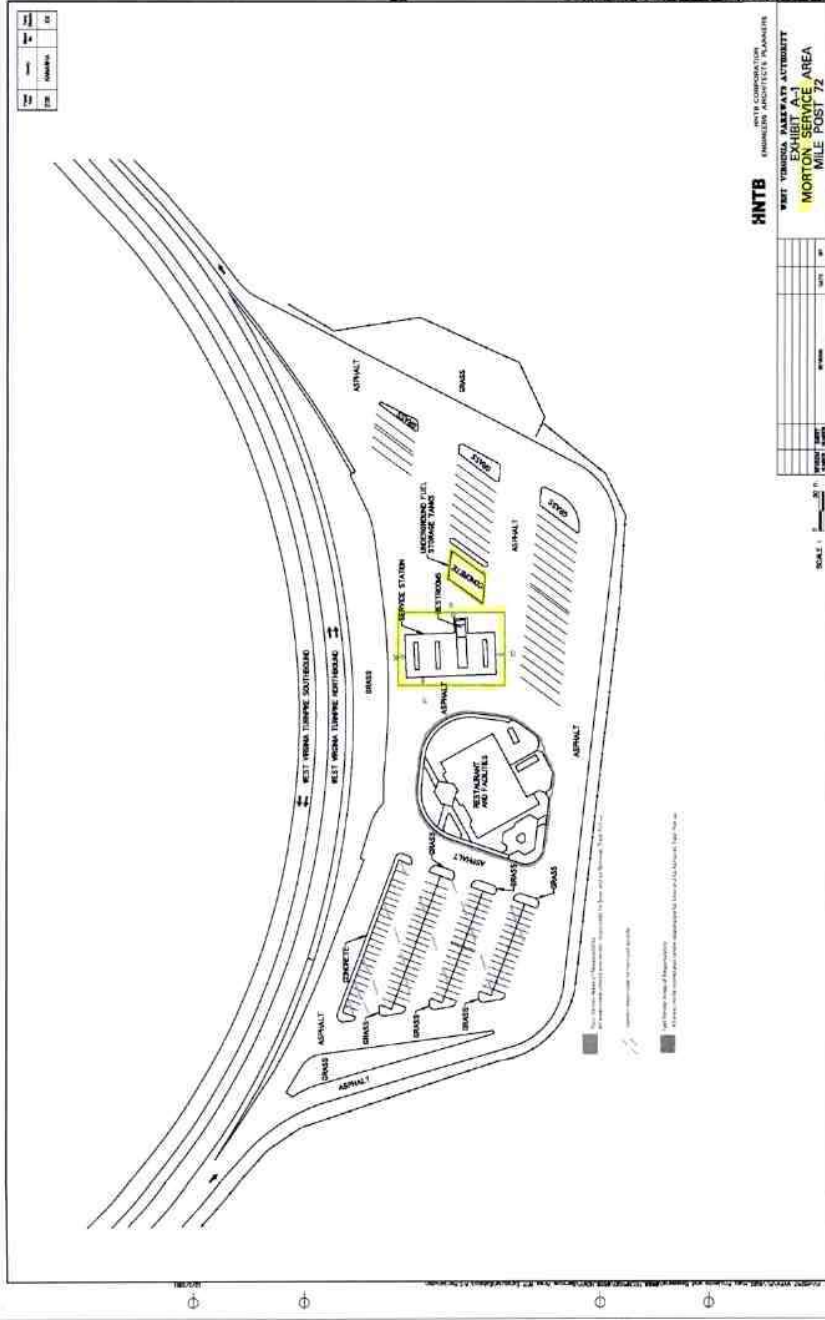
NOTE: The Parkways Authority will use name brand establishments in close proximity to the WV Turnpike Roadways for future surveys.

## ATTACHMENT 3

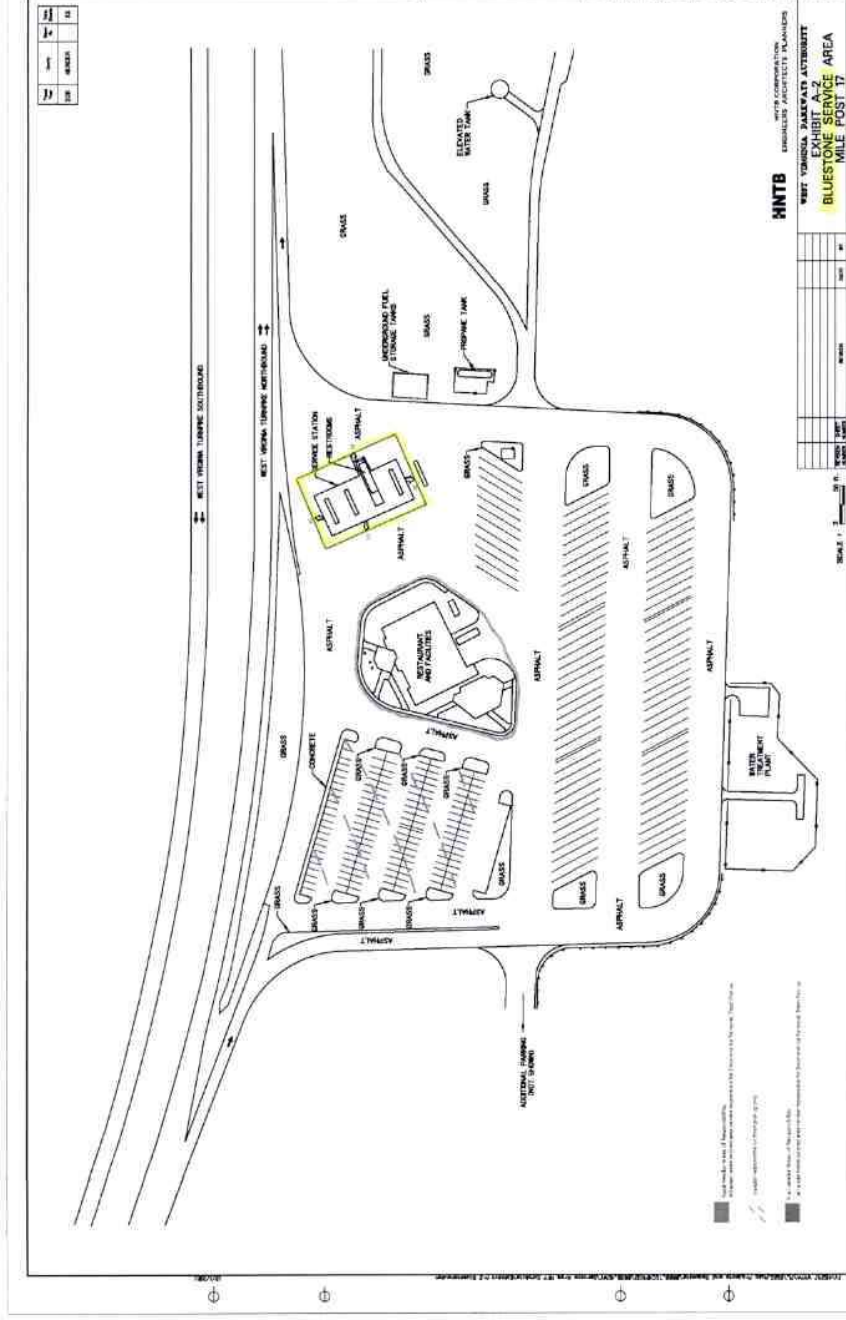
TO BE USED FOR THE OPERATOR'S ENVIRONMENTAL POLICIES

*PMI does not have.  
Did not supply  
previously - per  
Jay Ruckes*

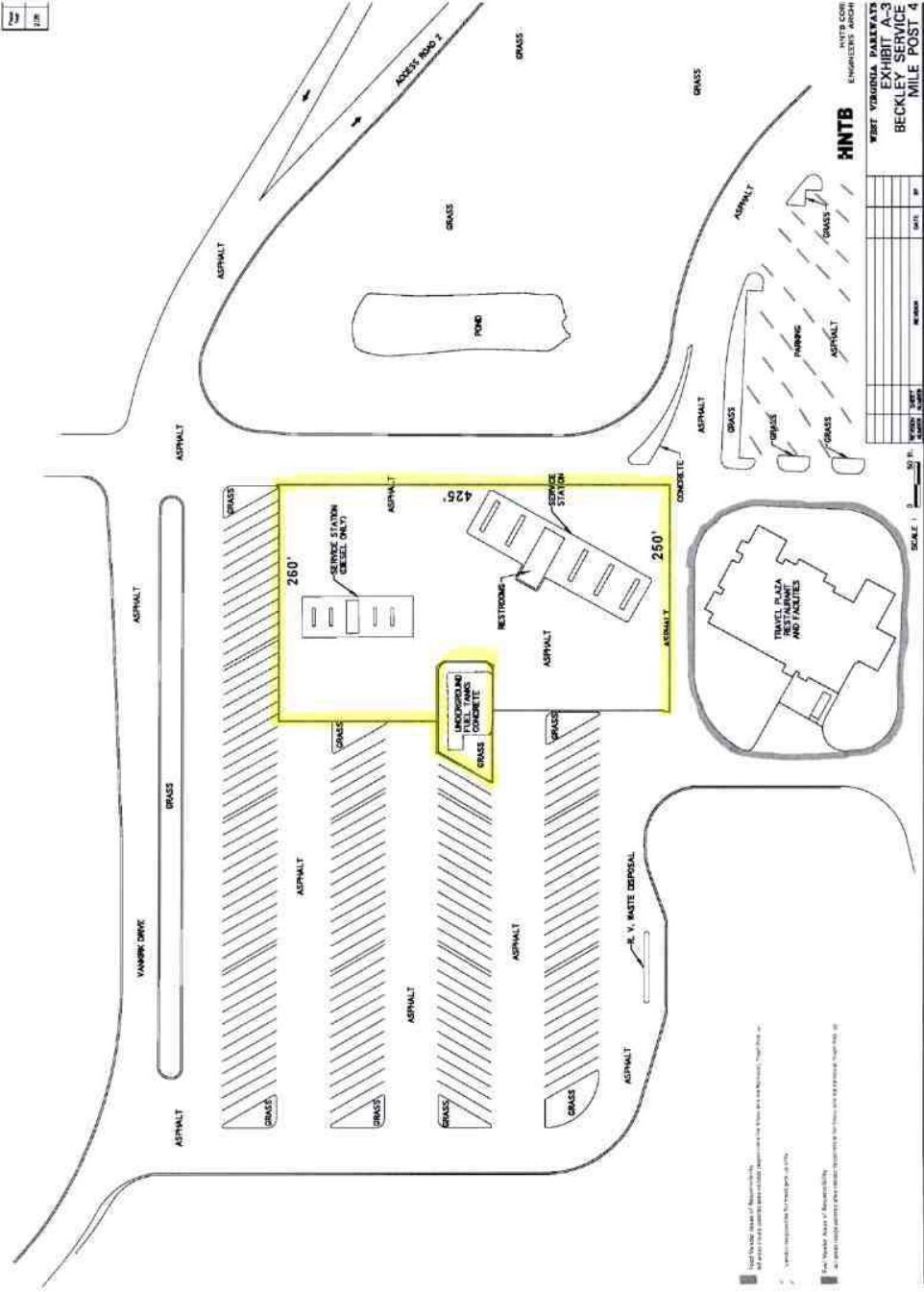
1	2	3
4	5	6
7	8	9



1	2	3
4	5	6
7	8	9







## **APPENDIX F**

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# **Past Sales Data, Traffic Counts, Travel Plazas Exit Data**



**Gross Sales & Fuel Volumes 2020 – 2015****TRAVEL PLAZA GROSS SALES**

<b>YEAR</b>	<b>MORTON</b>	<b>BECKLEY</b>	<b>BLUESTONE</b>	<b>TRAVEL PLAZAS TOTAL</b>
2020	\$1,607,300	\$3,623,367	\$834,533	\$6,065,200
2019	\$3,164,156	\$6,650,467	\$1,478,706	\$11,293,328
2018	\$3,044,161	\$7,393,722	\$1,666,350	\$12,104,233
2017	\$2,923,811	\$7,863,828	\$2,981,044	\$13,768,683
2016	\$2,850,328	\$8,033,783	\$1,544,594	\$12,428,706
2015	\$2,981,044	\$7,683,633	\$1,476,650	\$12,141,328

**GASOLINE VOLUMES (GALLONS)**

<b>YEAR</b>	<b>MORTON</b>	<b>BECKLEY</b>	<b>BLUESTONE</b>	<b>TRAVEL PLAZAS TOTAL</b>
2020	1,485,518	2,873,853	894,213	5,253,584
2019	1,594,295	3,533,167	1,015,075	6,142,537
2018	1,447,974	3,799,439	1,050,552	6,297,965
2017	1,450,240	3,933,931	1,018,385	6,402,556
2016	1,509,483	4,135,696	1,022,709	6,667,888
2015	1,427,985	4,033,424	953,357	6,414,766

**DIESEL VOLUMES (GALLONS)**

<b>YEAR</b>	<b>MORTON</b>	<b>BECKLEY</b>	<b>BLUESTONE</b>	<b>TRAVEL PLAZAS TOTAL</b>
2020	259,818	1,119,381	206,955	1,586,154
2019	255,095	1,394,930	230,655	1,880,680
2018	241,632	1,660,197	295,304	2,197,133
2017	215,478	1,578,307	222,019	2,015,804
2016	187,017	1,615,308	203,363	2,005,688
2015	192,755	1,421,171	213,440	1,827,366

**FUEL SERVICES RETAIL SALES**

<b>YEAR</b>	<b>MORTON</b>	<b>BECKLEY</b>	<b>BLUESTONE</b>	<b>TRAVEL PLAZAS TOTAL</b>
2020	\$286,230	\$282,497	\$138,929	\$707,656
2019	\$248,622	\$333,137	\$143,109	\$724,868
2018	\$241,596	\$359,474	\$130,557	\$731,627
2017	\$231,774	\$323,941	\$117,913	\$673,628
2016	\$229,215	\$327,119	\$120,709	\$677,043
2015	\$223,575	\$303,581	\$119,290	\$646,446



# **Toll Plaza Traffic 2020 – 2015**

YEAR	TOLL BARRIER LOCATION	TOLL PAYMENT METHOD						GRAND TOTALS
		MANUAL LANE	TRANSPONDER	COIN COLLECTION*	EMERGENCY VEHICLES	TURNPIKE VEHICLES	VIOLATORS	
2020	PLAZA A - NB	1,913,236	2,552,196	—	3,532	20,235	111,904	4,601,103
	PLAZA A - SB	1,904,163	2,577,689	—	786	21,248	98,360	4,602,246
	PLAZA B - NB/SB	3,451,184	4,824,298	—	2,615	52,600	207,343	8,538,040
	PLAZA C - NB/SB	3,480,886	5,017,410		1,576	51,846	219,010	8,770,728
	NORTH BECKLEY	<u>442,281</u>	<u>2,513,961</u>	<u>923,218</u>	<u>520</u>	<u>25,710</u>	<u>124,260</u>	<u>4,029,950</u>
	<b>TOTALS</b>	<b><u>11,191,750</u></b>	<b><u>17,485,554</u></b>	<b><u>923,218</u></b>	<b><u>9,029</u></b>	<b><u>171,639</u></b>	<b><u>760,877</u></b>	<b><u>30,542,067</u></b>
2019	PLAZA A - NB	2,510,730	2,842,192	—	2,863	21,089	97,701	5,474,575
	PLAZA A - SB	2,501,406	2,862,074	—	995	24,280	85,030	5,473,785
	PLAZA B - NB/SB	4,450,285	5,485,095	—	2,756	77,955	178,297	10,194,388
	PLAZA C - NB/SB	4,472,721	5,702,668	—	2,242	77,813	190,825	10,446,269
	NORTH BECKLEY	<u>617,162</u>	<u>3,159,868</u>	<u>1,377,499</u>	<u>862</u>	<u>27,215</u>	<u>132,030</u>	<u>5,314,636</u>
	<b>TOTALS</b>	<b><u>14,552,304</u></b>	<b><u>20,051,897</u></b>	<b><u>1,377,499</u></b>	<b><u>9,718</u></b>	<b><u>228,352</u></b>	<b><u>683,883</u></b>	<b><u>36,903,653</u></b>
2018	PLAZA A - NB	3,084,716	2,227,723	—	1,775	32,158	78,999	5,425,371
	PLAZA A - SB	3,121,671	2,226,701	—	1,078	28,024	67,887	5,445,361
	PLAZA B - NB/SB	5,671,988	4,313,189	—	2,252	68,869	147,253	10,203,551
	PLAZA C - NB/SB	5,746,028	4,441,657	—	2,398	66,721	144,140	10,400,944
	NORTH BECKLEY	<u>722,540</u>	<u>2,630,986</u>	<u>2,101,312</u>	<u>966</u>	<u>30,976</u>	<u>128,769</u>	<u>5,615,549</u>
	<b>TOTALS</b>	<b><u>18,346,943</u></b>	<b><u>15,840,256</u></b>	<b><u>2,101,312</u></b>	<b><u>8,469</u></b>	<b><u>226,748</u></b>	<b><u>567,048</u></b>	<b><u>37,090,776</u></b>

YEAR	TOLL BARRIER LOCATION	TOLL PAYMENT METHOD						GRAND TOTALS
		MANUAL LANE	TRANSPONDER	COIN COLLECTION*	EMERGENCY VEHICLES	TURNPIKE VEHICLES	VIOLATORS	
2017	PLAZA A	6,735,707	4,166,975	—	2,631	49,596	123,605	11,078,514
	PLAZA B - NB/SB	6,170,061	3,995,917	—	2,253	68,800	117,561	10,354,592
	PLAZA C - NB/SB	6,249,847	4,083,745	—	2,350	65,314	122,231	10,523,487
	NORTH BECKLEY	<u>780,123</u>	<u>2,540,130</u>	<u>2,179,129</u>	<u>5,098</u>	<u>31,184</u>	<u>113,975</u>	<u>5,649,639</u>
	<b>TOTALS</b>	<b><u>19,935,738</u></b>	<b><u>14,786,767</u></b>	<b><u>2,179,129</u></b>	<b><u>12,332</u></b>	<b><u>214,894</u></b>	<b><u>477,372</u></b>	<b><u>37,606,232</u></b>
2016	PLAZA A	6,874,539	3,902,360	—	3,080	50,606	112,148	10,942,733
	PLAZA B - NB/SB	6,323,371	3,750,057	—	2,059	66,591	105,188	10,247,266
	PLAZA C - NB/SB	6,409,957	3,813,173	—	2,328	63,149	105,203	10,393,810
	NORTH BECKLEY	<u>798,834</u>	<u>2,390,176</u>	<u>2,223,419</u>	<u>1,169</u>	<u>33,724</u>	<u>106,013</u>	<u>5,553,335</u>
	<b>TOTALS</b>	<b><u>20,406,701</u></b>	<b><u>13,855,766</u></b>	<b><u>2,223,419</u></b>	<b><u>8,636</u></b>	<b><u>214,070</u></b>	<b><u>428,552</u></b>	<b><u>37,137,144</u></b>
2015	PLAZA A	6,857,441	3,684,094	—	3,811	49,788	100,835	10,695,969
	PLAZA B - NB/SB	6,331,195	3,588,637	—	2,457	62,271	91,124	10,075,684
	PLAZA C - NB/SB	6,415,421	3,663,783	—	2,532	61,470	93,660	10,236,866
	NORTH BECKLEY	<u>838,381</u>	<u>2,326,288</u>	<u>2,242,561</u>	<u>1,128</u>	<u>32,559</u>	<u>106,842</u>	<u>5,547,759</u>
	<b>TOTALS</b>	<b><u>20,442,438</u></b>	<b><u>13,262,802</u></b>	<b><u>2,242,561</u></b>	<b><u>9,928</u></b>	<b><u>206,088</u></b>	<b><u>392,461</u></b>	<b><u>36,556,278</u></b>

\* COIN COLLECTION AT NORTH BECKLEY ONLY

#### TOLL BARRIER LOCATIONS

Toll Plaza/Gantry "A"      Milepost 30.1  
Toll Plaza/Gantry "B"      Milepost 56.4  
Toll Plaza/Gantry "C"      Milepost 82.3  
North Beckley              Milepost 42.0



## 2019 Travel Plazas Exit Data



PASSING TRAFFIC	5,292,500
CAPTURE RATE	13.5%
LIGHT VEHICLES	442,190
HEAVY VEHICLES	271,020
OCCUPANTS	1,009,477

### PORTFOLIO TOTALS

1,450,899 LIGHT VEHICLES

861,010 HEAVY VEHICLES

**3,284,011 OCCUPANTS**



PASSING TRAFFIC	21,170,000
CAPTURE RATE	5.2%
LIGHT VEHICLES	709,870
HEAVY VEHICLES	384,034
OCCUPANTS	1,569,517

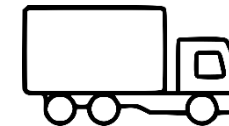
### VEHICLES → HEADCOUNT



1 Light Vehicle



1.67 Occupants



1 Heavy Vehicle



1 Occupant



PASSING TRAFFIC	6,022,500
CAPTURE RATE	8.4%
LIGHT VEHICLES	298,839
HEAVY VEHICLES	205,956
OCCUPANTS	705,017

Source: 2018 National Household Travel Survey, FHWA

## **APPENDIX G**

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# **Snack Bar Operations at Southbound Rest Area 69**











### **Snack Bar at Rest Area 69 – Milepost 69 Southbound**

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The 1,463 square foot limited-menu Snack Bar is an amenity provided by the WVPA to southbound travelers and operated by the Travel Plazas Master Tenant or its subtenant. These operations must provide speedy service, convenience, and affordable prices and menu items appropriate for each daypart.

Unlike the 24/7 Travel Plazas, the Hours of Operation are from 7 AM to 7 PM, seven days a week including holidays.

There is limited indoor dining (two booths) and ample outdoor picnic areas.

The space is well equipped and maintained. The Authority's personal property will remain and includes, but not limited to, the following:

- Traulson Cooler
- Nemco Hot Dog Roller
- Victory Freezer
- Manitowoc Commercial Ice Machine
- Turbo Chef Rapid Cook Oven
- Delfield Refrigerator
- Under Counter Beverage Cooler
- True Reach-In Cooler

Housekeeping, restroom cleaning, and utilities are provided by the Authority's janitorial vendor.

Total Gross Sales for 2015 – 2019 are as follows:

<b>YEAR</b>	<b>SALES</b>
2015	\$406,161
2016	\$138,476 *
2017	\$130,952 *
2018	\$312,955
2019	\$348,780 **

\* Closed for reconstruction for part of the year.

\*\* WVPA Estimate

# **EXHIBIT 1**

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## **Proposer Qualification Questionnaire**



Completion of this form is required by West Virginia Parkways Authority before you can be considered for selection. Proposer may be required to submit additional information. Whenever more space is needed to answer any questions or to give further explanation, complete by attaching extra pages. All questions must be answered.

☐ Yes. ☐ No.

## GENERAL INFORMATION

- ## EXPERIENCE

- ## OWNERSHIP, MANAGEMENT, AFFILIATION

- [illegible]

5. Has the firm defaulted or been terminated on, or had its surety called upon to complete, any lease awarded within the past five (5) years?

☐ Yes. ☐ No.

If yes, give date(s), agency(s)/owner(s), project(s), lease number(s) and describe the result.

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6. For all leases within the past five (5) years: a) list and describe all liens or claims over Twenty-Five Thousand Dollars (\$25,000) filed against the firm and remaining undischarged or unsatisfied for more than ninety (90) days; and b) list and describe all liquidated damages assessed.

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## FINANCING

7. Please attach to this document any letters of interest from investors or lenders.

## PROPOSER INFORMATION

8. Within the past five (5) years has the firm, any affiliate, any predecessor company or entity, or any person identified herein been the subject of any of the following:

*(Respond to each question and describe in detail the circumstances of each affirmative answer. Attach additional pages if necessary.)*

- a) A judgment of conviction for any business-related conduct constituting a crime under state or federal law? ☐ Yes. ☐ No.
- b) A criminal investigation or indictment for any business-related conduct constituting a crime under state or federal law? ☐ Yes. ☐ No.
- c) A grant of immunity for any business-related conduct constituting a crime under state or federal law? ☐ Yes. ☐ No.
- d) A federal, state, or local suspension or debarment? ☐ Yes. ☐ No.
- e) A rejection of any bid for lack of qualification or responsibility? ☐ Yes. ☐ No.
- f) A denial or revocation of prequalification to bid on a federal, state, or local lease due to the submission of misleading or inaccurate information? ☐ Yes. ☐ No.
- g) Any suspension or revocation of any business or professional license? ☐ Yes. ☐ No.
- h) Any bankruptcy proceeding? ☐ Yes. ☐ No.



- i) An OSHA Citation and Notification of Penalty containing a violation classified as serious and/or willful? ☐ Yes. ☐ No.
- j) A violation of prevailing wage or supplement payment regulation deemed willful or any other significant State Labor Law violation? ☐ Yes. ☐ No.
- k) Any citations, Notices, violation orders, pending administrative hearings or proceedings or determinations for violations of unemployment insurance or workers compensation coverage or claim requirements? ☐ Yes. ☐ No.

## **CERTIFICATION**

The undersigned recognizes that this questionnaire is submitted for the express purpose of responding to a Request for Proposals and possibly inducing a lease award. The undersigned acknowledges that intentional submission of false or misleading information may constitute a felony or a misdemeanor and states that the information submitted in the questionnaire and any attached pages is true, accurate, and complete.

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By: Duly Authorized

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Print Name / Title

---

Date

## **EXHIBIT 2**

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# **Financial Proposal Forms**



## Instructions for Financial Proposal Forms

Beginning on the page following these instructions, Proposers will find the **Financial Proposal Forms** with one tab for each of the Travel Plazas (Beckley, Bluestone, and Morton) and the Rest Area Snack Bar. Each of the four spreadsheets must be completed.

An Excel workbook has been developed by the WVPA to assist in the Proposer's calculations and is attached to this PDF file **HERE**. It is also available for download at the project's website: [www.WVTravelPlazas.com](http://www.WVTravelPlazas.com). Proposers must use the workbook to ensure that the same set of formulas are used by each Proposer.

A copy of a completed **Financial Proposal Forms** must be submitted electronically as part of the Proposer's Financial Offer as requested in **Section 3.1 - Submission of the Proposal**.

### PROPOSING ENTITY

PROPOSING COMPANY OR TEAM:	XYZ Restaurants of West Virginia LLC
COMPANY OR TEAM SIGNOR:	<i>John W. Smith</i>
NAME OF SIGNOR:	John W Smith
TITLE OF SIGNOR:	Managing Partner

Sign Here

In the highlighted fields on worksheet, enter the following information:

1. Proposing Company or Team. Enter the name of the entity who is submitting the Financial Proposal.
2. Company or Team Signor. The form must be signed by the individual who is authorized to legally obligate the Proposer. One originally signed Financial Proposal Form (marked "Original") must be part of the hardcopy submission as requested in **Section 3.1**.
3. Name of Signor. Type or print the name of the signor.
4. Title of Signor. Enter the title of the authorized signor.

### FINANCIAL OFFER

RETAIL AND FOODSERVICE CATEGORIES				
PROJECTED RETAIL SALES (CALENDAR YEAR 2028)	\$ 3,500,000	+	PROJECTED FOODSERVICE SALES (YEAR 1)	\$ 4,200,000
% OF RETAIL SALES OFFERED AS RENT (2028)	18.00%		% OF FOODSERVICE SALES OFFERED AS RENT	12.00%
YEAR-TO-YEAR GROWTH IN SALES (2028 - 2037)	3.00%			
MINIMUM ANNUAL GUARANTEED RENT (2028 - 2037)	\$ 1,000,000		TOTAL MINIMUM ANNUAL GUARANTEED RENT FOR RETAIL AND FOODSERVICE	
ESCALATION IN GUARANTEED RENT	5.00%		ESCALATION AT THE START OF JANUARY 1, 2033	
ESCALATION IN PERCENTAGE RENT	5.00%		INCREASE AT THE START OF JANUARY 1, 2033	

5. Projected Retail Sales (Calendar Year 2028) and Projected Foodservice Sales (Calendar Year 2028). Enter the projected sales for the first year of operations for the retail and foodservice categories.
6. % of Retail Sales Offered as Rent and % of Foodservice Offered as Rent. For each category, please enter the fraction of sales offered as Percentage Rent.

7. Year-to-Year Growth in Sales. Proposers should enter a year-over-year percentage growth in sales. It is the Authority's position that this percentage should be not less than the 10-year average Mid-Atlantic Consumer Price Index ("CPI").
8. Minimum Annual Guaranteed ("MAG") Rent. This is the guaranteed annual base rent payable at the beginning of each month in twelve (12) equal installments.
9. Escalation in Guaranteed Rent. After the Development Period, the Proposer can escalate the guaranteed rent with the start of the sixth year of the 10-year lease on January 1, 2033.
10. Escalation in Percentage Rent. After the Development Period, the Proposer can escalate their Percentage Rent with the start of the sixth year of the 10-year lease on January 1, 2033.

**Notes:**

- Based on the values entered in the highlighted fields, the Financial Proposal will be automatically calculated and displayed.

10 YEAR LEASE TERM WITH 12/31/37 EXPIRY AND NO EXTENSIONS	CY 2028	\$ 3,500,000	18.00%	\$ 630,000	\$ 4,200,000	12.00%	\$ 504,000	\$ 1,134,000	\$ 1,000,000	88.2%
	CY 2029	\$ 3,605,000	18.00%	\$ 648,900	\$ 4,326,000	12.00%	\$ 519,120	\$ 1,168,020	\$ 1,000,000	85.6%
	CY 2030	\$ 3,713,150	18.00%	\$ 668,367	\$ 4,455,780	12.00%	\$ 534,694	\$ 1,203,061	\$ 1,000,000	83.1%
	CY 2031	\$ 3,824,545	18.00%	\$ 688,418	\$ 4,589,453	12.00%	\$ 550,734	\$ 1,239,152	\$ 1,000,000	80.7%
	CY 2032	\$ 3,939,281	18.00%	\$ 709,071	\$ 4,727,137	12.00%	\$ 567,256	\$ 1,276,327	\$ 1,050,000	82.3%
	CY 2033	\$ 4,057,459	18.90%	\$ 766,860	\$ 4,868,951	12.60%	\$ 613,488	\$ 1,380,348	\$ 1,050,000	76.1%
	CY 2034	\$ 4,179,183	18.90%	\$ 789,866	\$ 5,015,020	12.60%	\$ 631,892	\$ 1,421,758	\$ 1,050,000	73.9%
	CY 2035	\$ 4,304,559	18.90%	\$ 813,562	\$ 5,165,470	12.60%	\$ 650,849	\$ 1,464,411	\$ 1,050,000	71.7%
	CY 2036	\$ 4,433,695	18.90%	\$ 837,968	\$ 5,320,434	12.60%	\$ 670,375	\$ 1,508,343	\$ 1,050,000	69.6%
	CY 2037	\$ 4,566,706	18.90%	\$ 863,107	\$ 5,480,047	12.60%	\$ 690,486	\$ 1,553,593	\$ 1,102,500	71.0%
10-YEAR TOTALS		\$ 40,123,578		\$ 7,416,118	\$ 48,148,293		\$ 5,932,895	\$ 13,349,013	\$ 10,352,500	77.6%
10-YEAR TERM SALES (RETAIL & FOODSERVICE) =		\$ 88,271,871		10-YEAR TERM PROJECTED RENT (RETAIL & FOODSERVICE) =		\$ 20,765,131				

- The redevelopment of the Travel Plazas will be staggered to maintain some services to motorists. Therefore, the 10-Year Term will start on January 1, 2028, with no extensions. However, the Authority anticipates turning over Demised Premises to the Master Tenant before that date. Any early delivery of these new facilities does not count against the Lease Term which expires on December 31, 2037, at 11:59 PM EST.
- In addition to the 10-year term, Proposers should manually enter PROJECTED RETAIL SALES, proposed RETAIL PERCENTAGE RENT, PROJECTED F&B SALES, proposed PROJECTED F&B RENT, and the TOTAL BASE RENT GUARANTEED corresponding to their Transition Plan for each calendar year from 2023 through 2027.

DEVELOPMENT PHASE FROM 02/01/2023 TO NO LATER THAN 12/31/2026	CALENDAR YEAR ("CY")	GROSS RETAIL SALES			GROSS FOODSERVICE SALES			SUMMARY		
		PROJECTED RETAIL SALES	RETAIL PERCENTAGE RENT	PROJECTED RETAIL RENT	PROJECTED F&B SALES	F&B PERCENTAGE RENT	PROJECTED F&B RENT	TOTAL PROJECTED RENT	TOTAL BASE RENT GUARANTEED	% PROJECTED RENT GUARANTEED
NO LATER THAN 12/31/2026	CY 2023	BECKLEY TRAVEL PLAZA CLOSED FOR CONSTRUCTION (23 MONTHS)								
	CY 2024									
	CY 2025	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2026	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
STABILIZED	CY 2027	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%



**ADDITIONAL REQUESTED INFORMATION**

11. Transactional Profits. In a scenario where the Proposer's Project was sold to a third-party or refinanced with equity withdrawn, please state how the Authority would share in the profits of the transaction.
12. Contingencies. Please list any contingencies (i.e., specific outstanding items that must be addressed to proceed to the execution of the Lease contract).

BECKLEY TRAVEL PLAZA | MILEPOST 45 NORTHBOUND & SOUTHBOUND

PROPOSING COMPANY OR TEAM:

COMPANY OR TEAM SIGNOR:

NAME OF SIGNOR:

TITLE OF SIGNOR:

Sign Here

RETAIL AND FOODSERVICE CATEGORIES				
PROJECTED RETAIL SALES (CALENDAR YEAR 2028)	\$ -	+	PROJECTED FOODSERVICE SALES (YEAR 1)	\$ -
% OF RETAIL SALES OFFERED AS RENT (2028)	0.00%		% OF FOODSERVICE SALES OFFERED AS RENT	0.00%
YEAR-TO-YEAR GROWTH IN SALES (2028 - 2037)	0.00%			
MINIMUM ANNUAL GUARANTEED RENT (2028 - 2037)	\$ -	TOTAL MINIMUM ANNUAL GUARANTEED RENT FOR RETAIL AND FOODSERVICE		
ESCALATION IN GUARANTEED RENT	0.00%	ESCALATION AT THE START OF JANUARY 1, 2033		
ESCALATION IN PERCENTAGE RENT	0.00%	INCREASE AT THE START OF JANUARY 1, 2033		

DEVELOPMENT PHASE FROM 02/01/2023 TO NO LATER THAN 12/31/2026	CALENDAR YEAR ("CY")	GROSS RETAIL SALES			GROSS FOODSERVICE SALES			SUMMARY		
		PROJECTED RETAIL SALES	RETAIL PERCENTAGE RENT	PROJECTED RETAIL RENT	PROJECTED F&B SALES	F&B PERCENTAGE RENT	PROJECTED F&B RENT	TOTAL PROJECTED RENT	TOTAL BASE RENT GUARANTEED	% PROJECTED RENT GUARANTEED
	CY 2023	BECKLEY TRAVEL PLAZA CLOSED FOR CONSTRUCTION (23 MONTHS)								
	CY 2024									
	CY 2025	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2026	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
STABILIZED	CY 2027	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10 YEAR LEASE TERM WITH 12/31/37 EXPIRY AND NO EXTENSIONS	CY 2028	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2029	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2030	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2031	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2032	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2033	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2034	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2035	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2036	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2037	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10-YEAR TOTALS		\$ -		\$ -	\$ -		\$ -	\$ -	\$ -	0.0%

10-YEAR TERM SALES (RETAIL & FOODSERVICE) =	\$ -	10-YEAR TERM PROJECTED RENT (RETAIL & FOODSERVICE) =	\$ -
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**BLUESTONE TRAVEL PLAZA | MILEPOST 18 NORTHBOUND**

PROPOSING COMPANY OR TEAM:

COMPANY OR TEAM SIGNOR:
 

Sign Here

NAME OF SIGNOR:

TITLE OF SIGNOR:

RETAIL AND FOODSERVICE CATEGORIES				
PROJECTED RETAIL SALES (CALENDAR YEAR 2028)	\$ -	+	PROJECTED FOODSERVICE SALES (YEAR 1)	\$ -
% OF RETAIL SALES OFFERED AS RENT (2028)	0.00%		% OF FOODSERVICE SALES OFFERED AS RENT	0.00%
YEAR-TO-YEAR GROWTH IN SALES (2028 - 2037)	0.00%			
MINIMUM ANNUAL GUARANTEED RENT (2028 -2037)	\$ -		TOTAL MINIMUM ANNUAL GUARANTEED RENT FOR RETAIL AND FOODSERVICE	
ESCALATION IN GUARANTEED RENT	0.00%		ESCALATION AT THE START OF JANUARY 1, 2033	
ESCALATION IN PERCENTAGE RENT	0.00%		INCREASE AT THE START OF JANUARY 1, 2033	

DEVELOPMENT PHASE FROM 02/01/2023 TO NO LATER THAN 12/31/2026	CALENDAR YEAR ("CY")	GROSS RETAIL SALES			GROSS FOODSERVICE SALES			SUMMARY		
		PROJECTED RETAIL SALES	RETAIL PERCENTAGE RENT	PROJECTED RETAIL RENT	PROJECTED F&B SALES	F&B PERCENTAGE RENT	PROJECTED F&B RENT	TOTAL PROJECTED RENT	TOTAL BASE RENT GUARANTEED	% PROJECTED RENT GUARANTEED
	CY 2023	BLUESTONE TRAVEL PLAZA CLOSED FOR CONSTRUCTION (23 MONTHS)								
	CY 2024									
	CY 2025	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2026	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
STABILIZED	CY 2027	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10 YEAR LEASE TERM WITH 12/31/37 EXPIRY AND NO EXTENSIONS	CY 2028	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2029	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2030	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2031	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2032	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2033	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2034	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2035	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2036	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2037	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10-YEAR TOTALS		\$ -		\$ -	\$ -		\$ -	\$ -	\$ -	0.0%

10-YEAR TERM SALES (RETAIL & FOODSERVICE) =
 \$ -

10-YEAR TERM PROJECTED RENT (RETAIL & FOODSERVICE) =
 \$ -

MORTON TRAVEL PLAZA | MILEPOST 72 NORTHBOUND

PROPOSING COMPANY OR TEAM:

COMPANY OR TEAM SIGNOR:

Sign Here

NAME OF SIGNOR:

TITLE OF SIGNOR:

RETAIL AND FOODSERVICE CATEGORIES				
PROJECTED RETAIL SALES (CALENDAR YEAR 2028)	\$ -	+	PROJECTED FOODSERVICE SALES (YEAR 1)	\$ -
% OF RETAIL SALES OFFERED AS RENT (2028)	0.00%		% OF FOODSERVICE SALES OFFERED AS RENT	0.00%
YEAR-TO-YEAR GROWTH IN SALES (2028 - 2037)	0.00%			
MINIMUM ANNUAL GUARANTEED RENT (2028 -2037)	\$ -		TOTAL MINIMUM ANNUAL GUARANTEED RENT FOR RETAIL AND FOODSERVICE	
ESCALATION IN GUARANTEED RENT	0.00%		ESCALATION AT THE START OF JANUARY 1, 2033	
ESCALATION IN PERCENTAGE RENT	0.00%		INCREASE AT THE START OF JANUARY 1, 2033	

DEVELOPMENT PHASE FROM 02/01/2023 TO NO LATER THAN 12/31/2026	CALENDAR YEAR ("CY")	GROSS RETAIL SALES			GROSS FOODSERVICE SALES			SUMMARY		
		PROJECTED RETAIL SALES	RETAIL PERCENTAGE RENT	PROJECTED RETAIL RENT	PROJECTED F&B SALES	F&B PERCENTAGE RENT	PROJECTED F&B RENT	TOTAL PROJECTED RENT	TOTAL BASE RENT GUARANTEED	% PROJECTED RENT GUARANTEED
	CY 2023	\$ -	12.00%	\$ -	\$ 1,000,000	12.00%	\$ 120,000	\$ 120,000	\$ -	0.0%
	CY 2024	\$ -	12.00%	\$ -	\$ 1,000,000	12.00%	\$ 120,000	\$ 120,000	\$ -	0.0%
	CY 2025	MORTON TRAVEL PLAZA CLOSED FOR CONSTRUCTION (19 MONTHS)								
	CY 2026									
STABILIZED	CY 2027	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10 YEAR LEASE TERM WITH 12/31/37 EXPIRY AND NO EXTENSIONS	CY 2028	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2029	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2030	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2031	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2032	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2033	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2034	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2035	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2036	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2037	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10-YEAR TOTALS		\$ -		\$ -	\$ -		\$ -	\$ -	\$ -	0.0%

10-YEAR TERM SALES (RETAIL & FOODSERVICE) = \$ -

10-YEAR TERM PROJECTED RENT (RETAIL & FOODSERVICE) = \$ -



SNACK BAR AT REST AREA 69 | MILEPOST 69 SOUTHBOUND

PROPOSING COMPANY OR TEAM:

COMPANY OR TEAM SIGNOR:

Sign Here

NAME OF SIGNOR:

TITLE OF SIGNOR:

RETAIL AND FOODSERVICE CATEGORIES

PROJECTED RETAIL SALES (CALENDAR YEAR 2028)

\$ -

+ PROJECTED FOODSERVICE SALES (YEAR 1)

\$ -

=

\$ -

% OF RETAIL SALES OFFERED AS RENT (2028)

0.00%

% OF FOODSERVICE SALES OFFERED AS RENT

0.00%

YEAR-TO-YEAR GROWTH IN SALES (2028 - 2037)

0.00%

MINIMUM ANNUAL GUARANTEED RENT (2028 -2037)

\$ -

TOTAL MINIMUM ANNUAL GUARANTEED RENT FOR RETAIL AND FOODSERVICE

ESCALATION IN GUARANTEED RENT

0.00%

ESCALATION AT THE START OF JANUARY 1, 2033

ESCALATION IN PERCENTAGE RENT

0.00%

INCREASE AT THE START OF JANUARY 1, 2033

DEVELOPMENT PHASE FROM 02/01/2023 TO NO LATER THAN 12/31/2026	CALENDAR YEAR ("CY")	GROSS RETAIL SALES			GROSS FOODSERVICE SALES			SUMMARY		
		PROJECTED RETAIL SALES	RETAIL PERCENTAGE RENT	PROJECTED RETAIL RENT	PROJECTED F&B SALES	F&B PERCENTAGE RENT	PROJECTED F&B RENT	TOTAL PROJECTED RENT	TOTAL BASE RENT GUARANTEED	% PROJECTED RENT GUARANTEED
	CY 2023	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2024	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2025	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2026	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
STABILIZED	CY 2027	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10 YEAR LEASE TERM WITH 12/31/37 EXPIRY AND NO EXTENSIONS	CY 2028	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2029	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2030	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2031	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2032	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2033	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2034	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2035	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2036	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
	CY 2037	\$ -	0.00%	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	0.0%
10-YEAR TOTALS		\$ -		\$ -	\$ -		\$ -	\$ -	\$ -	0.0%

10-YEAR TERM SALES (RETAIL & FOODSERVICE) = \$ -

10-YEAR TERM PROJECTED RENT (RETAIL & FOODSERVICE) = \$ -