



236 THIRD STREET  
GREENPORT, NY 11944

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villageofgreenport.org

**MAYOR**  
KEVIN STUESSI  
EXT 215

**TRUSTEES**  
MARY BESS PHILLIPS  
DEPUTY MAYOR

PATRICK BRENNAN

LILY DOUGHERTY-  
JOHNSON

JULIA ROBINS

**VILLAGE  
ADMINISTRATOR**  
PAUL J. PALLAS, P.E.  
EXT 219

**TREASURER**  
STEPHEN GAFFGA  
EXT 217

**August 24, 2023 at 6:00 PM  
Mayor and Board of Trustees – Regular Meeting  
Third Street Firehouse  
Greenport, NY 11944**

**MOTION TO OPEN THE MEETING**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

Jean Helen Cooper  
James Peter Mellas  
Eileen Marie Walters

**ANNOUNCEMENTS**

The Village Offices will be closed on September 4, 2023, in celebration of Labor Day.

Last performance of Dances in the Park Hoodoo Band (New Orleans Party Band) on Monday, August 28, 2023.

**PUBLIC HEARINGS**

Public hearings regarding a local law amending Chapter 150, entitled "Zoning", and repealing Chapter 42, entitled "Arts District", of Code of the Village of Greenport. Public hearing regarding a local law to amend the zoning map of the Village of Greenport, to reclassify certain property from the WC Waterfront Commercial District to the CR Retail Commercial District and property from the R-2 One-and Two-Family Residence District to the Park District and property from CR Retail Commercial District to the WC Waterfront Commercial District remains open.

A public hearing regarding the Wetlands Permit Application submitted by Kate Rummel, Agent on behalf of 67 Sound Cheshire LP for the property at 520 Madison Avenue, Greenport, New York, 11944 to perform the following work:

to renovate the existing house, add two 1-story additions, install inground swimming pool, outdoor shower, gravel driveway and walkway, as well as an ecological restoration wetland buffer. +/- 144 cubic yards of fill will be excavated. Excavated material will be graded on site. The public hearing was left open for further comments until the Village of Greenport receives a copy of the Southold Town Trustees Report remains open.

**PUBLIC TO ADDRESS THE BOARD**

**REGULAR AGENDA**

**RESOLUTIONS****RESOLUTION # 08-2023-1**

RESOLUTION adopting the August, 2023 agenda as printed.

**RESOLUTION # 08-2023-2**

RESOLUTION accepting the monthly reports of the Greenport Fire Department, Village Administrator, Village Treasurer, Village Deputy Clerk, Village Attorney, Mayor and Board of Trustees.

**FIRE DEPARTMENT****RESOLUTION # 08-2023-3**

RESOLUTION to declare as surplus, and no longer needed for municipal purposes, the Village of Greenport Fire Department vehicle known as "Fire Engine 8-3-5".

**RESOLUTION # 08-2023-4**

RESOLUTION approving the donation of Village of Greenport Fire Department vehicle known as "Fire Engine 8-3-5" as is, without warranty or representation of condition to the Terry Farrell Firefighters Fund.

**RESOLUTION # 08-2023-5**

RESOLUTION authorizing the solicitation of bids for the purchase of a one (1) new 2023 (or Current Model Year) Dodge Ram 1500 Night Edition or Equivalent, as approved by the Village of Greenport Fire Department Board of Wardens on August 16, 2023; to be used as a Chief's vehicle for the Village of Greenport Fire Department, and directing Clerk's office to notice the Request for Bids accordingly.

**RESOLUTION # 08-2023-6**

RESOLUTION approving the hiring of a part-time Firehouse Attendant and part -time Administrative Assistant.

**VILLAGE ADMINISTRATOR****RESOLUTION # 08-2023-7**

RESOLUTION approving the attached Change Order from MDB Construction Corp , authorizing Mayor Stuessi to execute the Change Orders, and authorizing the payment of the attached Change Orders in the amount of \$11,330, to the contract between the Village of Greenport and MDB Construction Corp for the Roof Replacement Project at various Village owned facilities.



**RESOLUTION # 08-2023-8**

WHEREAS, the Village is desirous of renovating the North Ferry queueing area as described in a proposed Construction License Agreement between the Long Island Rail Road Company and the Village of Greenport, NOW, THEREFORE, the Board approves the proposed Construction License Agreement, subject to Village Attorney approval as to form, and authorizes the Mayor to execute the amendment upon such approval.

**RESOLUTION # 08-2023-9**

RESOLUTION authorizing the solicitation of bids for the replacement of siding at the Road Department annex building and the roof replacement at the Road Department main building, and directing Village staff to notice the bid solicitation accordingly.

**VILLAGE CLERK****RESOLUTION # 08-2023-10**

RESOLUTION approving the Public Assembly Permit Application submitted by the Greenport Fire Department for the use of a portion of the Fifth Street Beach/Park from 12:00 noon. through 6:00 p.m. on September 3, 2023 for the annual Greenport Fire Department Picnic, and approving a waiver of the \$50 application fee.

**RESOLUTION # 08-2023-11**

RESOLUTION approving the Public Assembly Permit Application submitted by the Relief Hose Company #2 of the Greenport Fire Department for the use of the Polo Grounds at Moore's Lane from 9:00 a.m. through 1:00 p.m. from October 24, 2023 for the Car Show Fundraiser, and approving a waiver of the \$50 application fee.

**RESOLUTION # 08-2023-12**

RESOLUTION approving the Public Assembly Permit Application submitted by Richard Vandenburg on behalf of The Greenport Harbor Brewing Company, for the annual Oyster Festival, from 1:00 p.m. through 6:00 p.m. on October 8, 2023 and to include for further safety reasons temporarily closing a limited area of Carpenter Street in front of the brewery from the intersection of Bay Avenue to the driveway entrance of Stidd Systems.

**RESOLUTION # 08-2023-13**

RESOLUTION approving the Public Assembly Permit Application submitted by Rebecca Santana Caraballo on behalf of Iglesia Alfa y Omega for the use of a portion of the Fifth Street Beach/Park from 8:00 a.m. through 3:00 p.m. on September 4, 2023 for a group baptism.

**VOUCHER SUMMARY****RESOLUTION # 08-2023-14**

RESOLUTION approving all checks for Fiscal Year 2022/2023 per the Voucher Summary Report dated 08/21/2023, in the total amount of \$1,703.29 consisting of:

- o All regular checks in the amount of \$1,703.29.

**RESOLUTION # 08-2023-15**

RESOLUTION approving all checks for Fiscal Year 2023/2024 per the Voucher Summary Report dated 7/24/2023, in the total amount of \$2,947,515.16:

- o All regular checks in the amount of \$2,551,966.97 , and
- o All prepaid checks (including wire transfers) in the amount of \$395,548.19.



MDB CONSTRUCTION CORP  
5 SPLIT RAIL PLACE COMMACK NY 11725  
PH 631-499-5850  
DIBELLAROOOF@VERIZON.NET

7/26/23

VILLAGE OF GREENPORT  
236 THIRD STREET  
GREENPORT NY 11944

INVOICE #1 Roof replacements and or Repairs Various Locations Village Of Greenport  
Additional work Change orders

TREATMENT PLANT Polymar – Storage build.  
6 sheets of ply wood – 20 LF Fasia repair  
Total Price Complete for the cost of \$1,950.00

Flint Street Fire Station Upper Roof  
20 sheets of plywood complete for the cost of \$6,400.00  
Lower roof 3 sheets of ply wood complete for the cost of \$960.00

Village Sloped Basement Roof  
3 sheets of plywood Complete for the cost of \$960.00

Road Barn Annex Building Sixth St and Pump Station  
3 Sheets plywood ,10 FT of Fasia and Soffit  
Complete for the Cost Of \$1,060.00

Total Additional Change Orders Invoice #1 \$11,330.00

**CONSTRUCTION LICENSE AGREEMENT  
BY AND BETWEEN  
THE LONG ISLAND RAILROAD COMPANY  
AND  
THE VILLAGE OF GREENPORT**

THIS CONSTRUCTION LICENSE AGREEMENT (the “Agreement”), dated as of \_\_\_\_\_, 2023 (“Effective Date”), is by and between the Long Island Rail Road Company (“LIRR,” or “Licensor”), a public benefit subsidiary corporation of the Metropolitan Transportation Authority (“MTA”), with a principal office at 93-02 Sutphin Boulevard, Jamaica, New York, 11435, and the Village of Greenport, a municipal corporation of the State of New York, with a principal office at 236 Third Street, Greenport, New York 11944 (the “VILLAGE” or “Licensee”). The LIRR and the VILLAGE shall each be referred to herein, individually, as a “Party” and collectively, as the “Parties.”

WITNESSETH:

**WHEREAS**, the LIRR is the fee owner of certain property located at or about Wiggins Street, between Fourth Street and Greenport Harbor, in the Village of Greenport, County of Suffolk, State of New York, as shown in the Site Plan, attached hereto and included herein as Attachment A (the “LIRR Premises”);

**WHEREAS**, (i) the LIRR, as landlord, and the County of Suffolk, as tenant, entered into a lease agreement dated on or about August 14, 1981, pursuant to which LIRR leased to the County of Suffolk four (4) parcels of land containing 108,720 square feet, more or less (collectively, the “Original Premises”), situated south of Wiggins Street, between 4<sup>th</sup> Street and Greenport Harbor in the Village of Greenport, County of Suffolk, State of New York, including, without limitation, a boat dock, a bulkhead along the waterfront of the Original Premises, LIRR’s railway turntable and related facilities, LIRR’s station building, a parking lot, and a roadway across the Original Premises, (ii) the County of Suffolk and the VILLAGE entered into that sublease agreement dated December 22, 1982 pursuant to which the VILLAGE subleased the Original Premises from the County of Suffolk, (iii) Village of Greenport Resolution dated April 23, 1992 authorizing the County of Suffolk to enter into an amended lease with the LIRR and an amended sublease with the VILLAGE, (iv) the County of Suffolk and the VILLAGE entered into an indemnification agreement dated April 24, 1992, (v) the LIRR and the VILLAGE entered into a first amendment to the lease and a sublease agreement dated on or about January 22, 1993 to amend the permitted use thereunder, (vi) the County of Suffolk and VILLAGE entered into that assignment and assumption agreement dated February 29, 2016 pursuant to which the County of Suffolk assigned its interest in the Original Premises and under the lease to the VILLAGE, and (vii) LIRR and the VILLAGE entered into a second amendment to the lease agreement [dated]<sup>1</sup>, to add a parcel of land measuring approximately 20,009 square feet, to the Original Premises, depicted and labeled in Attachment A as the “Proposed Lease Area” (the Original Premises and Proposed Lease Area (but expressly excluding the area on which the communication cases (“C-Case”) are located, as shown on Attachment A and is labeled “Utility Boxes”) collectively, referred to as the “Leased Premises”) (all of the foregoing agreements collectively, referred to as the “Lease Agreement”);

**WHEREAS**, the VILLAGE desires to construct a project (the “Project”), which includes,

<sup>1</sup> NTD: Parties to add date of second amendment to the lease agreement after it is executed.



*inter alia*, (i) expansion of the ferry queue capacity; (ii) reconfiguration of access to the ferry; (iii) resurfacing or installation of pavement and expansion of parking in the lot south of the LIRR station; (iv) installation of pavement markings and signs; (v) installation of new sidewalks and ramps; (vi) reconstruction of the parking lot in area surrounding the Seaport Museum; (vii) installation of a [stormwater treatment system south of the LIRR tracks;]<sup>2</sup> (viii) installation of [a new subsurface infiltration system north of the LIRR tracks;]<sup>3</sup> and (ix) the replacement of the wooden guide rails with applicable highway standard guiderails, all of the foregoing in accordance with the scope of work and plans to be approved by LIRR, the preliminary version of which is attached hereto as Attachment B, and as may be amended and updated from time to time upon approval by LIRR (the “Scope of Work”);

**WHEREAS**, part of the Project will require work on the parking lot south of the LIRR station and the pedestrian crossing over the LIRR tracks near the Seaport Museum, as depicted in Attachment A, which are not included, and expressly excluded from the Leased Premises (the “Non-Leased Premises”). The Leased Premises and Non-Leased Premises are hereinafter collectively referred to as the “Licensed Area”;

**WHEREAS**, the VILLAGE requires a temporary revocable license from the LIRR to enter upon the Licensed Area in order to construct the Project in general accordance with the Scope of Work, upon approval by LIRR of a design (the “Permitted Work” or “Work”); and

**WHEREAS**, the LIRR is willing to grant the VILLAGE a revocable, non-exclusive temporary license to enter upon the Licensed Area for the Permitted Work, subject to the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the LIRR and the VILLAGE covenant and agree as set forth above and as follows:

**1. GRANT OF TEMPORARY CONSTRUCTION LICENSE.**

A. Subject to and in accordance with the terms and conditions of this Agreement, including without limitation, the Access Protocols (as defined herein), the LIRR hereby grants to the VILLAGE a temporary, revocable non-exclusive license for the VILLAGE and its duly authorized employees, contractors, subcontractors, agents and consultants (individually, a “VILLAGE Party”, and, collectively, the “VILLAGE Parties”) to access and use the Licensed Area solely for the purpose of performing the Permitted Work and for use as a construction staging and work area for equipment, materials, and workers, (the “Temporary License”). The Temporary License granted herein is subject to compliance by the VILLAGE Parties with all the terms and provisions set forth in this Agreement, including satisfaction by the VILLAGE of all Licensee obligations, as a condition of entering onto the Licensed Area, to provide any necessary insurance certificates, and any release and indemnification forms as hereinafter provided. Any modifications or amendments to the Permitted Work that (1) has the potential to impact upon or change the protection needed for the Licensed Area or the LIRR Premises and/or (2) is not expressly permitted under the License shall be submitted to the LIRR for review and approval (any such plan modifications approved by LIRR from time to time, the “Plan Modifications”). Prior to entry to

<sup>2</sup> Question for Village: Is this improvement going to be located exclusively on LIRR property?

<sup>3</sup> Question for Village: Is this improvement going to be located exclusively on LIRR property?



the Licensed Area to perform the Permitted Work, the Village shall first provide to LIRR for its review and approval full sets of stamped design plans prepared by an architect or engineer licensed to practice in the State of New York with qualifications and experience performing work of a similar in nature and complexity to the work to be performed,

B. The VILLAGE Parties may enter the Licensed Area for the sole purpose of performing the Permitted Work and for no other purpose. Any Work proposed to be performed by the VILLAGE on the Licensed Area pursuant to this Agreement shall be done at such time or times, in such manner, with such materials and under such general conditions and in accordance with such plans as shall be satisfactory to and approved in writing by the LIRR, or its duly authorized agent. Any such Permitted Work shall be carried out in such a way as will not interfere with the proper and safe use, operation and enjoyment of the LIRR's property, including work associated with operation of the railroad. The VILLAGE shall, after the performance of any such Work, restore the Licensed Area to the same or as good a condition as existed prior to the commencement of said Work, taking into account changes to the Licensed Area made pursuant to the Permitted Work performed in accordance with plans approved by LIRR pursuant to the terms of this Agreement.

C. The Temporary License granted to the VILLAGE to perform the Permitted Work shall be exercised: (i) in a prompt, safe, limited, and efficient manner; and (ii) so that, on completion of the Permitted Work, the Licensed Area is restored in compliance with Section 11 hereof, with all debris removed. The VILLAGE shall diligently perform and complete, and cause its VILLAGE Parties to diligently perform and complete using good faith efforts, and fully complete, in a good and workerlike manner, the Permitted Work and any Plan Modifications in accordance with the Access Protocols, sound construction practices that meet or exceed the standards generally observed by professionals performing services of a similar nature under similar circumstances, and applicable law and the terms, conditions and provisions of this Agreement applicable to the performance of such Work.

D. The rights granted herein shall be a limited license only, and no easement shall be created as a result of this Agreement or the VILLAGE's use of the Licensed Area. Upon the expiration or earlier termination of this Agreement, the Temporary License granted herein shall be deemed expired.

E. LIRR shall have the right (but shall not be required) to pre-approve in writing VILLAGE's subcontractors and other VILLAGE Parties performing work within the Licensed Area. The VILLAGE shall fully inform, and require compliance by, all VILLAGE Parties of the terms and conditions of this Agreement. Any subcontracts or other agreements between the VILLAGE and VILLAGE Parties shall expressly incorporate this Agreement by reference and stipulate that the services performed and/or equipment and/or materials furnished shall comply with the requirements of this Agreement.

F. No entry or use of the Licensed Area for the Permitted Work will be allowed until LIRR has issued a written notice (email acceptable) that the VILLAGE may proceed, upon satisfaction (or waiver in writing by LIRR, of each of the following conditions): (a) this Agreement is executed by all Parties; (b) all required insurances are obtained and evidence of such insurances on the appropriate ACORD certificate of insurance form satisfactory to LIRR is provided to LIRR, together with an endorsement to the applicable policy showing the required additional insureds; (c) VILLAGE submits and receives LIRR's approval of a schedule for all Permitted Work, upon prior notice to LIRR's chief engineer ("LIRR Chief Engineer") which shall be no less than five (5) business



days; (d) VILLAGE provides the notice required in Section 5 of this Agreement and LIRR has advised that it is in a position to handle the request; (e) VILLAGE, and any contractors and subcontractors successfully complete any safety training and any other training required by LIRR (the foregoing, collectively, referred to as “Access Protocols”).

G. VILLAGE will provide, implement and enforce a health and safety plan and will comply with and enforce all safety regulations in the Licensed Area, including but not limited to (i) the use of safety glasses and hard hats, and (ii) the requirements of 49 CFR Part 219.

H. The VILLAGE acknowledges that the LIRR has not made and does not make any representations with respect to the condition of the Licensed Area and the VILLAGE shall have no claim against the Indemnitees Parties (as defined in Section 15) arising out of the condition of the Licensed Area, it being specifically agreed that the VILLAGE accepts the Licensed Area for all purposes, on an “as is” and “where is” basis. LIRR does not make, and hereby disclaims, any express, implied, statutory, or common law warranty, guarantee, or promise, representation or assurance including any warranty of fitness for a particular purpose, concerning the suitability or condition of the Licensed Areas for any purpose including, without limitation, the Project.

I. This Agreement and the Temporary License granted to the VILLAGE are, and at all times shall be, subject and subordinate to all leases, agreements, easements, covenants, mortgages, deeds of trust, liens, encumbrances and agreements now existing or hereafter enter into which may be recorded against or otherwise affect the real property of the LIRR Premises, of which the Licensed Area forms a part of. This Agreement does not create or grant to VILLAGE or VILLAGE Parties any right, title, estate or interest of any kind or character in or to the Licensed Area or any MTA property and does not constitute covenants that run with the land.

J. In accordance with the terms of the second amendment to the lease agreement, the VILLAGE hereby covenants and agrees that:<sup>4</sup> (1) LIRR’s vehicles may need to utilize the parking areas of the Licensed Area and should be exempt from ticketing; (2) VILLAGE must ensure wood guide rail is intact and functional<sup>5</sup>; (3) VILLAGE must ensure that parking stops are installed to prevent cars from entering the railroad track area; (4) Emergency access/fire lane must be maintained; (5) VILLAGE must ensure that the locations of all of LIRR’s and all third-party utilities are located and “marked out” so that their locations are identified by the VILLAGE’s contractors and their subcontractors, if any, at least ten (10) business days prior to the commencement of any construction or excavation activities; (6) the operation of LIRR’s communication poles on the Licensed Area and any areas adjacent to the Licensed Area must not be disrupted; and (7) notwithstanding anything to the contrary in the Lease Agreement, VILLAGE and VILLAGE Parties have access to the Leased Premises and the adjacent C-Case twenty-four (24) hours a day/seven (7) days a week, and may repair and maintain the LIRR’s communication poles thereon as and when the LIRR deems necessary.

## **2. TERM OF AGREEMENT; TERMINATION.**

A. Unless sooner terminated according to its terms or subsequently modified in writing and agreed to by both Parties, this Agreement is effective as of the Effective Date and shall end

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<sup>4</sup> NTD: Parameters are from Paragraph 3 of the draft Second Amendment to the Lease Agreement. May need to update if Second Amendment to Lease Agreement is updated.

<sup>5</sup> NTD: This provision may need to be deleted (in both second amendment to lease and this CLA) as Village has to upgrade the wood guide rail to meet State standards.



automatically at midnight on the sooner of: (1) the date of completion of the Permitted Work (including restoration of the Licensed Area pursuant to Section 11), (2) the date of expiration or earlier termination of the Lease Agreement, or (3) [ALT 1: (\_\_\_\_\_) days from the Effective Date of this Agreement; ALT 2: (INSERT END DATE)]<sup>6</sup> (the “Expiration Date”). Prior to expiration or termination, the VILLAGE must vacate and remove its materials, equipment and property from the Licensed Area and restore the Licensed Area pursuant to Section 11 hereof. If the VILLAGE no longer needs use of or access to the Licensed Area for itself or its VILLAGE Parties prior to the expiration of this Agreement, VILLAGE shall so notify LIRR in accordance with Section 5(C) hereof and in such event this Agreement shall end and expire on the date indicated in such notification or the date set forth above for its expiration, whichever is earlier.

B. In addition to all other rights and remedies under this Agreement, LIRR may terminate and/or revoke this Agreement and the license granted hereunder in its sole and absolute discretion (for any reason or for no reason), upon sixty (60) calendar days’ prior written notice to VILLAGE (which period need not include full calendar months). LIRR’s notice in the preceding sentence may be given by LIRR, by LIRR’s attorneys or by LIRR’s property manager (which, as of the date hereof, is Greystone Management Solutions). Upon the revocation of any license or termination of this Agreement, VILLAGE shall immediately discontinue its use of the Licensed Area and vacate from the Licensed Area.

3. **LICENSE FEE.** The fee for the Temporary License granted hereunder shall be one dollar (\$1.00), payment of which is hereby waived.

4. **ACCESS.**

A. The VILLAGE’s exercise of the Temporary License by the VILLAGE or any VILLAGE Party shall be subject to the terms and conditions of this Agreement, including without limitation, the Access Protocols.

B. The VILLAGE understands that the Licensed Area is located adjacent to active rail road and public transportation facilities and as such, the use and maintenance of the Licensed Area in a safe and secure manner and condition is of paramount importance to LIRR. LIRR and the VILLAGE agree that LIRR has no responsibility to the VILLAGE with respect to the Project, other than to provide access to the Licensed Area in accordance with this Agreement. The VILLAGE shall be solely responsible for securing and safeguarding (i) its employees, agents and authorized invitees, and any VILLAGE Party acting on its behalf in accessing or using any portion of the Licensed Area; (ii) the VILLAGE Project; and (iii) any and all equipment, tools, supplies, materials and other personal property of the VILLAGE or VILLAGE Parties brought onto or located at or about the Licensed Area, against loss, theft, and damage in the Licensed Area.

C. Any access by the VILLAGE or any VILLAGE Party, and any Work performed by or on behalf of the VILLAGE throughout the term of this Agreement, shall be conducted in such manner and at such time, that it shall in no way interfere with the traffic or operations of the Long Island Rail Road system (the “Railroad System”), except as approved by the LIRR in writing.

D. The VILLAGE shall and shall cause the VILLAGE Parties to, at all times, comply with the instructions of the LIRR personnel at the site. In no event shall the VILLAGE’s exercise of the Temporary License entitle the VILLAGE, or the VILLAGE Parties to free transportation on

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<sup>6</sup> Question to Village: How long do you anticipate the work will take to complete?



the Railroad System. The LIRR shall also have the right to require background checks, badging and other safety and security procedures with respect to all the VILLAGE Parties seeking access to the LIRR's property.

E. At all times, the LIRR reserves unto itself the right: (i) to install, construct, maintain, repair and renew, as may be required by LIRR at LIRR's sole discretion, any transportation facilities that may now exist or may be hereafter constructed or installed by LIRR within the LIRR Premises or the Licensed Area; and (ii) to grant any third party the right to lease, license or access over, under, across and through the Licensed Area (including without limitation the right to install, construct, maintain, repair, renew, and inspect the pole, pipe, wire lines and other utilities on, over, under, through and across the Licensed Area, or for any purpose without notice to the VILLAGE and LIRR shall retain all compensation that may be obtained therefrom, but the LIRR shall require that such other parties do not materially and adversely interfere with the VILLAGE's Project). LIRR shall at all times have access, without notice to the VILLAGE, to the Licensed Area. The VILLAGE covenants and agrees that it shall not interfere with access or use by LIRR of the Licensed Area, or by parties acting by and through the LIRR.

F. The VILLAGE acknowledges that the primary responsibility of the LIRR is to operate the Railroad System. The rights or privileges granted shall be exercised by the VILLAGE subject at all times to (x) the prior and paramount right of the LIRR, in its absolute discretion, to operate the Railroad System according to the requirements and exigencies of the public interest, and (y) the prior and paramount right of the LIRR to operate the trains in the Railroad System on the schedule established by the LIRR.

G. If LIRR is unable to make available the Licensed Area for the VILLAGE's use on any particular date, for any reason whatsoever, LIRR will not be liable to the VILLAGE for such failure to make the Licensed Area available on said date and the validity of this Agreement will not be impaired thereby.

H. The VILLAGE shall and will ensure that the VILLAGE Parties comply at all times with the terms of this Agreement and conduct its business in the Licensed Area in such a manner so as to not impede or interrupt the free flow of vehicular and pedestrian traffic at the LIRR Premises or interfere in any way with the operation of the Railroad System (except as approved by the LIRR in writing).

I. Except for the initial construction of the Project under the terms of this Agreement, the VILLAGE may not construct or install any improvements or structures at, or make any additions or alterations to, the Licensed Area without the prior written consent of LIRR, which consent may be withheld by LIRR in its sole and absolute discretion.

## **5. NOTIFICATION TO LIRR.**

A. VILLAGE shall notify LIRR's Chief Engineer at least five (5) business days in advance, or such shorter period as may be agreed to by the Parties, before entering upon or commencing or allowing its subcontractor(s) or any other VILLAGE Party to perform any Work to enter upon or commence any Work upon the Licensed Area and shall keep or cause its VILLAGE Parties to keep LIRR's designee fully advised of all activities.

B. VILLAGE must advise LIRR's project manager ("LIRR Project Manager") on a weekly basis of its Work progress as it relates to its use and occupancy of the Licensed Area.



C. VILLAGE shall notify LIRR's designee in writing when the Work is complete and VILLAGE intends to permanently vacate and remove its materials, equipment and property and all VILLAGE Parties from the Licensed Area.

D. In the event of an accident, injury or damage to the Licensed Area, VILLAGE shall immediately notify LIRR's Project Manager by phone and by e-mail.

**6. HAZARDOUS SUBSTANCES.**

A. The VILLAGE shall (i) not generate, manufacture, transport (except to remove Hazardous Substances as approved by LIRR in writing), treat, discharge, store, install, dispose of or otherwise handle at, on or in the LIRR Premises, or in or around any facility at which the LIRR Premises is located, any hazardous materials, hazardous waste, hazardous substances, pollutants, dangerous or toxic materials or wastes, including, without limitation, any petroleum or petroleum products, or asbestos or asbestos containing materials, or any other substance, waste, constituent or material defined or regulated as such in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., each as amended, or any other federal, state or local law now or hereafter in effect and regulating, relating to, or imposing liability or standards of conduct concerning air emissions, water discharges, noise emissions, the release or threatened release or discharge of such materials into the environment or otherwise concerning pollution or the protection of the outdoor or indoor environment or employee and human health and safety (all of the foregoing herein referred to as "Hazardous Substances"); (ii) at its own cost and expense, perform all Required Remediation Activities (defined below) and investigate, remove, dispose of, clean-up and remedy any Hazardous Substance in the LIRR Premises or any facility at which the LIRR Premises is located, including, without limitation, any plants that contain or may contain toxins or other Hazardous Substances to the satisfaction of the LIRR and in compliance with all applicable law and insurance requirements, if the presence of such Hazardous Substances resulted from the VILLAGE's acts or omissions, or any one of the VILLAGE Parties, or otherwise was caused by the VILLAGE or VILLAGE Parties and (iii) to the fullest extent permitted by applicable law, defend, indemnify and hold harmless the Indemnitees, their past, present and future affiliates, and their respective partners, members, officers, directors, employees, agents, representatives, successors and assigns, from and against any and all liabilities, claims, costs, expenses, fines, damages, penalties, fees or expenditures, including reasonable attorney fees, arising from VILLAGE acts or omissions, Required Remediation Activities, and any environmental conditions or contamination caused by the VILLAGE or its contractors, subcontractors or agents, or any violations of law pertaining to environmental conditions or contamination, including, without limitation, the presence of or release of Hazardous Substances at the LIRR Premises, personal injury resulting from exposure to, or the release of, Hazardous Substances, natural resource damages, and the disposal or arrangement for disposal of a Hazardous Substance by the VILLAGE. The foregoing shall not preclude the VILLAGE from using and storing cleaning supplies in the ordinary course of the VILLAGE's business, provided that (a) such materials are in small quantities, properly labeled and contained, (b) such materials are handled and disposed of in accordance with accepted industry standards, and (c) such materials are used, transported, stored, handled and disposed of in accordance with all applicable law and the requirements of all applicable insurance policies.

B. As used herein, "Required Remediation Activities" means all assessment, testing, removal, abatement, remediation, and/or any other activity required to be performed under applicable environmental laws arising from or in connection with, or caused by, or exacerbated as



a result of any VILLAGE acts or omissions.

C. The obligation in this Section 6 shall survive the expiration or sooner termination of this Agreement.

**7. DESIGN AND CONSTRUCTION OF THE PROJECT.**

A. The VILLAGE may not commence any Work in the Licensed Area until the LIRR has reviewed and approved the design, materials, schedule and plans and specifications for the Scope of Work, [including the design plans submitted by the VILLAGE for the Project, which is attached herein as Attachment F]<sup>7</sup>. Any approvals by the LIRR with respect to the Scope of Work, any modifications thereto, the materials and methodologies used by the VILLAGE or its contracts is not intended to and shall not constitute an opinion or agreement of the LIRR, the MTA or their affiliates, employees, contractors or agents that the same are adequate or sufficient for their intended purpose, are in compliance with any law or the design. The LIRR and the MTA do not assume any responsibility or liability with respect to their safety, sufficiency, reliability or otherwise, whether apparent on their face or otherwise, which responsibility or liability shall be and remain with the VILLAGE.

B. The VILLAGE acknowledges that maintaining safe conditions on the LIRR Premises at all times during the term of this Agreement is of utmost importance. Prior to commencement of the Permitted Work, the VILLAGE shall provide to the LIRR work and safety plans, including a job hazard analysis, for such work and construction activities which shall be approved by LIRR.

C. Notwithstanding any other provision of this Agreement to the contrary, in connection with all Work being performed by or on behalf of the VILLAGE which is a public improvement for purposes of Section 5 of the New York Lien Law for which no public fund has been established, the VILLAGE shall post, or cause to be posted, at no cost to LIRR, a bond or other form of undertaking guaranteeing prompt payment of moneys due to contractors, their subcontractors and to all persons furnishing labor or materials to the contractors or their subcontractors in prosecution of the work on the public improvement, to the extent required under Section 5 of the New York Lien Law.

D. The VILLAGE, at its sole cost and expense, shall make all necessary provisions and take all necessary steps to protect the existing track, track support, ballast, walls, duct lines, drainage lines, signage, lighting, conduit, cable, and all other facilities located on or about the portions of the LIRR Premises where the Work is taking place, as well as LIRR personnel, throughout the course of the performance of the Work. The VILLAGE further agrees that during construction and any maintenance or other work is being performed by the VILLAGE, VILLAGE shall not interfere with LIRR operations, or any facilities on the LIRR Premises, except as approved by LIRR in advance in writing and subject to the conditions included therein.

E. The LIRR shall have the right to inspect, test and examine all Work within the LIRR Premises, including all materials and workmanship. Upon request by the LIRR, the VILLAGE shall ensure that it, or VILLAGE Parties, promptly facilitate the LIRR's investigation of same.

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<sup>7</sup> NTD: To be edited if design plans are approved prior to Effective Date and/or the guiderail replacement design is still outstanding.



**8. FORCE ACCOUNT PERSONNEL AND FORCE ACCOUNT COSTS.**

A. Except as otherwise expressly set forth in this Agreement, LIRR will furnish the services of their inspectors, watchpersons, flagpersons, lookouts, engineers, technical and professional staff, laborers, LIRR field personnel or other personnel employed or retained by LIRR, including general engineering consultant personnel (as applicable) to act as an extension of LIRR staff (collectively, "Force Account Personnel") with respect to design, construction and operation of the Project, which require access to or interference with the LIRR Premises and operations, (i) to the extent required by applicable contractual obligations under applicable labor agreement, (ii) which affect LIRR's railroad tracks (including third rail), signal and communications systems, electric tractions systems, electrical power and lighting system, mechanical and plumbing systems, infrastructure, other utility systems, and roadways, pathways and access ways at the LIRR Premises, and/or (iii) as required by the approved plans, specifications and according to the Approved Construction Schedule, as defined in Section 8(B). The availability and scheduling of Force Account Personnel shall at all times be subject to the availability of resources and labor and LIRR's operational needs (including without limitation, work of the LIRR), which shall take precedence in all cases. The VILLAGE with the assistance of the LIRR shall identify and highlight all such work in the development of the work plans. No Work which requires Force Account Personnel shall proceed if the necessary Force Account Personnel are not present. If at any time the LIRR, in its sole but reasonable discretion, deems additional Force Account Personnel desirable and necessary to protect operations or property, LIRR shall have the right to utilize such additional Force Account Personnel. The provision of Force Account Personnel and track outages and/or foul time is subject to full reimbursement of LIRR's costs by the VILLAGE. The instructions from the Force Account Personnel that are intended to assure that the Work is performed safely and in accordance with the Approved Plans and Specifications, must be strictly and promptly obeyed by the VILLAGE and VILLAGE Parties. A failure to follow instructions from LIRR's personnel at the Licensed Area (or the surrounding area) will lead to withdrawal of this Agreement, thus closing the Licensed Area to VILLAGE and VILLAGE Parties, if any.

B. LIRR's Project Manager shall, to the extent practicable and subject at all times to the availability of resources and personnel (and applicable union agreements), and the priority of LIRR's operational needs, assign and supply Force Account Personnel and arrange any track outages or foul time based on the construction schedule approved by the LIRR (the construction schedule for the performance of work comprising the approved Work plans and specifications, as submitted by the VILLAGE and approved by LIRR in writing (as the same may thereafter be updated, modified and/or supplemented upon written approval by LIRR), the "Approved Construction Schedule").

C. Any furnishing of (or failure to furnish) LIRR Force Account Personnel by LIRR, will not release VILLAGE from any and all other liabilities assumed by VILLAGE under the terms of this Agreement.

D. The Work shall be performed at the sole cost and expense of the VILLAGE, and the VILLAGE shall reimburse LIRR for all labor, materials and equipment costs and related expenses actually incurred by the LIRR in good faith connection with or as a result of the performance of the Work and any LIRR activities and work in support of the VILLAGE's Project. The VILLAGE agrees that it shall be liable for the LIRR's Force Account Costs (defined below) and any other costs of any kind which the LIRR may incur in connection with activities under this Agreement. The VILLAGE agrees to pay or reimburse the LIRR for the entire cost



of any work performed by the LIRR in support of the Project and the Scope of Work, including engineering review services, flagging and safety support. In no event shall LIRR be responsible to the VILLAGE for any costs, fees or liabilities associated with a delay. The costs incurred by LIRR shall be paid or reimbursed by the VILLAGE within thirty (30) days of receipt of an invoice from LIRR for such costs.

E. The VILLAGE's obligation to pay or reimburse the LIRR shall include any services provided by the LIRR and the premiums of any and all insurance policies procured by the LIRR under this Agreement in accordance with said Project. The VILLAGE's obligation to pay or reimburse the LIRR shall be limited to the actual work performed and provided by the LIRR to support the construction of the Project and any activities related to LIRR's management and support to this Agreement (including without limitation the VILLAGE's use and enjoyment of the Licensed Areas).

F. Upon the Effective Date and through the term of the Agreement, the LIRR shall submit to the VILLAGE evidence of the costs for the aforesaid work performed or facilities provided by the LIRR, as evidenced by reasonably detailed invoices. The VILLAGE shall reimburse the LIRR in the amount of the approved costs so submitted for work performed and facilities provided, and for the liability insurance policy or policies procured by the LIRR, which LIRR estimates shall not exceed the sum of \$96,910 (the "Force Account Estimate"); it being understood that nothing herein shall be construed as obligating the LIRR to support or complete all the work described herein by LIRR for the amount of the estimate, which is an estimate only and that such sum is based upon the LIRR's Force Account Estimate dated July 21, 2023 and August 2, 2023, attached hereto and included herein as Attachment C. Whenever the actual costs have reached 75% of the approved cost estimate and any supplemental agreement or at any point where the LIRR reasonably anticipates that there will be a cost overrun, the LIRR may request a supplemental agreement to cover such anticipated cost overrun which shall be reasonably supported by an updated force account estimate. Should the VILLAGE determine that it has, at any point during the Project, incurred Force Account Costs totaling approximately 75% or more of the then current force account cost estimate, and the VILLAGE anticipates that the Force Account Costs will exceed such force account cost estimate prior to completion of the Project, the LIRR shall provide an updated force account cost estimate to the VILLAGE within a reasonable time upon request by the VILLAGE. In the event the cost of the work performed hereunder by the LIRR shall reach the amount of the estimate before completion of construction or completion of the Project and the Parties hereto fail to reach agreement after a reasonable period of negotiation as to reimbursement for additional costs, the Temporary License granted hereunder to the VILLAGE to enter upon the property of the LIRR will terminate on thirty (30) days written notice from the LIRR to the VILLAGE and the VILLAGE and its contractors will promptly remove all equipment stored on the property of the LIRR within thirty (30) days from their receipt of such notice. Notwithstanding the Parties' inability to reach an agreement after a reasonable period of negotiation as to reimbursement for the additional costs as referenced in the preceding sentence, the VILLAGE shall reimburse the LIRR for its actual costs incurred in connection with LIRR's oversight of the VILLAGE's demobilization/removal from the LIRR property upon termination.

G. As used herein, "Force Account Costs" shall mean the sum of Equipment Costs, Direct Material Costs, Direct Labor Costs and those management costs treated by the LIRR as Force Account Costs, plus such percentage thereof as represents LIRR's overhead costs at the time the costs are incurred (which shall be adjusted by LIRR for each calendar year as set forth below) plus premiums for any force account insurance covering liability, physical damage and medical payments as is customary at the time in connection with force account



work for private parties by LIRR. "Direct Labor Cost" as used herein means the gross pay (including, without limitation, any associated costs paid by LIRR pursuant to all applicable contractual obligations under any labor agreements), including overtime and reimbursable employee expenses, if any, paid to the Force Account Personnel in connection with work which must be performed by Force Account Personnel as required by applicable contractual obligations under applicable labor agreements. Notwithstanding the foregoing, Direct Labor Costs for general engineering consultant personnel and other third-party contractors shall be invoiced by LIRR to the VILLAGE in the same amounts as invoiced by such general engineering consultant personnel and other third-party contractors to LIRR and no additional overhead charge shall be applied thereto. "Direct Material Cost" as used herein means the replacement cost of any material necessary for the performance of the work that is taken from inventory or the total purchase and delivery price, including applicable taxes, if any, on any such item purchased. "Equipment Cost" means the rental value of any equipment owned by LIRR and necessarily used in conjunction with the work or invoice cost of any equipment rented by LIRR for such use. If, at the time of determination of Force Account Costs, LIRR has a list of standard equipment rental rates in effect, such list shall be prima facie evidence of the rental value of equipment owned by it. Subject to the foregoing, the pay and overhead rates, plus the rate for force account insurance premiums, shall be in accordance with the rates then applicable to force account work charged to private parties by LIRR for the calendar year in which the work is performed.

**9. VILLAGE PARTIES' PERSONNEL.**

A. The VILLAGE shall and shall cause the VILLAGE Parties working at the LIRR Premises to conduct themselves in a lawful and safe manner. LIRR reserves the right to require that any VILLAGE Party having access to the LIRR Premises be identified by a badge or identification tag, or in such other manner as may be approved by LIRR in writing.

B. All VILLAGE Parties' personnel and equipment used in the Licensed Area must be supervised at all times, unless authorized in advance and in writing by LIRR. In no event shall VILLAGE or VILLAGE Parties allow vehicles to enter the Licensed Area without LIRR's prior written consent. VILLAGE and VILLAGE Parties must provide an English-speaking supervisor at the Licensed Area who can communicate (including translating as necessary) instructions from flagmen, inspectors or other representatives of LIRR to the VILLAGE's and VILLAGE Parties. VILLAGE shall use and shall cause VILLAGE Parties to use appropriate precaution and measures to minimize any inconveniences to surrounding residents, landowners, and the public in general. No VILLAGE Party shall engage in any activity that may obstruct, impede, or interfere with the public use of the surrounding area.

C. The VILLAGE covenants and agrees that its representatives and employees shall not intentionally deposit or scatter any rubbish, waste or litter in or about the facility at which the LIRR Premises is located or on any other property of LIRR other than in receptacles sufficient to contain the rubbish, waste and litter of the VILLAGE and VILLAGE Parties that are furnished and maintained at the VILLAGE's own cost and expense. The VILLAGE shall ensure that all rubbish, waste and litter generated by the VILLAGE, or the VILLAGE Parties, is securely bagged or boxed and removed from the LIRR Premises, at the VILLAGE's sole cost and expense, at the end of each workday or, at other such intervals as approved by LIRR in writing. Upon a request by LIRR, the VILLAGE shall, at the request of LIRR, furnish LIRR with bills and receipt of payment evidencing regular removal of such rubbish, waste, and litter.



**10. CLEARANCES; HAZARDOUS WASTE; DANGEROUS OR ADVERSE CONDITIONS AND UTILITIES.**

A. All equipment or material in use by VILLAGE Parties at the Licensed Area shall be kept at all times not less than fifteen (15) feet from the nearest rail of any track, except to the extent LIRR explicitly permits in writing such equipment or materials in use by the VILLAGE Parties at the Licensed Area to be kept within fifteen (15) feet from the nearest rail of any track. VILLAGE and VILLAGE Parties, if any, shall conduct its and their operations so that no part of any equipment shall foul any track, transmission, signal or communication lines, or any other structure of LIRR.

B. The VILLAGE shall maintain the Licensed Area in a reasonably safe condition and not cause any (i) condition that creates a reasonably foreseeable substantial risk of injury, (ii) dangerous condition, or (iii) condition LIRR determines in its sole discretion in the exercise of its reasonable judgment to be adverse to its property, railroad, personnel, customers or other operations at the LIRR Premises (any of the foregoing, an “Adverse Condition”). The VILLAGE shall promptly comply with any LIRR order to correct an Adverse Condition. LIRR may, upon reasonable notice by email to VILLAGE, correct any Adverse Condition caused by VILLAGE at VILLAGE’s sole cost and expense, understood to be at reasonable cost in accordance with industry standards.

C. The VILLAGE shall dispose of any wastes, including hazardous wastes, generated by the VILLAGE or VILLAGE Parties (either purposefully or accidentally and including disposal of pre-existing waste within the work limits) in connection with activities performed pursuant to this Agreement in accordance with applicable laws, regulations, ordinances, and orders, at VILLAGE’s sole cost and expense. The VILLAGE’s contractors or subcontractors shall dispose of said wastes using their own EPA generator number, as necessary. In no event shall LIRR be identified as the generator of any such wastes caused or contributed to by the VILLAGE or VILLAGE Parties. The VILLAGE will promptly provide LIRR with a copy of any hazardous waste manifests. LIRR reserves the right to require the VILLAGE to provide to LIRR a copy of the results of any tests conducted by or for the VILLAGE on any such wastes, to receive split samples, and/or, at LIRR’s request, to perform additional tests or examinations of any such wastes at the VILLAGE’s expense, prior to disposal.

D. The VILLAGE agrees to take all precautions reasonably necessary to ensure the utilities at the LIRR Premises are protected.

**11. RESTORATION OF PREMISES.** Before this Agreement expires or terminates, VILLAGE must restore or cause a VILLAGE Party to restore the Licensed Area to substantially the same condition it was in at the commencement of this Agreement, taking into account changes to the Licensed Area made pursuant to Work performed in accordance with plans approved by LIRR pursuant to the terms of this Agreement. If, in the sole discretion of LIRR, the Licensed Area has not been satisfactorily cleared of all of VILLAGE’s and any other VILLAGE Party’s property (including but not limited to, materials and equipment) and restored to an acceptable condition, then LIRR shall have the right, but not the obligation, to restore the Licensed Area, including the removal of any materials, equipment and/or fencing, to a satisfactory condition at VILLAGE’s sole cost and expense. LIRR will have no liability for any equipment, materials or structures it removes from the Licensed Area. If repairs are necessary, then VILLAGE must make repairs or cause other VILLAGE Party’s to make repairs in a manner acceptable to LIRR. LIRR may



elect to make repairs itself at VILLAGE's sole cost and expense.

**12. NO LIRR OBLIGATIONS REGARDING GRANT FUNDING REQUIREMENTS.** The VILLAGE acknowledges that the LIRR is not an applicant, sub-applicant, recipient or a sub-recipient of the VILLAGE's Federal Highway Administration ("FHWA") or New York State Department of Transportation ("NYSDOT") grant funding in support of the Project, including the Scope of Work. The VILLAGE further understands and agrees that notwithstanding any reimbursement of LIRR's costs by the VILLAGE (i) LIRR shall have no responsibility to comply with any FHWA or NYSDOT grant funding requirements, or any other current sources of funding which exists or may come to be; (ii) the LIRR shall have no responsibility to ensure that its activities comport with the VILLAGE's obligations under its FHWA or NYSDOT grant or other funding sources; and (iii) the LIRR shall have no financial obligation with respect the VILLAGE grants or funding sources, including without limitation, with respect to in-kind contributions, cost matches or any other matter.

**13. DISCHARGE OF FINES AND OTHER PENALTIES.** VILLAGE shall protect, defend and hold LIRR harmless from and against, and VILLAGE shall within sixty (60) days after written notice, pay and discharge, all fines, violations, liens and encumbrances incurred by LIRR or affecting the LIRR Premises (including, the Permitted Work) arising out of or in any way directly or indirectly relating to this Agreement.

**14. INDEMNIFICATION AND LIABILITY.**

A. To the fullest extent permitted by law, the VILLAGE shall at all times defend (with counsel approved by LIRR), indemnify, and hold harmless the Long Island Rail Road Company, the Metropolitan Transportation Authority, the State of New York, and each of the foregoing's respective subsidiaries and affiliates existing now or in the future, its or their successors and assigns, and its or their employees, members, officers, directors, contractors, subcontractors, agents, consultants, representatives, commissioners, and any other persons acting on their behalf (the foregoing, each, an "Indemnitee", and, collectively, the "Indemnitees") from and against, and hereby releases (on behalf of itself and anyone claiming by, through or under the VILLAGE) the Indemnitees from, any and all damages, losses, costs, liabilities, suits, obligations, violations, fines, damages, penalties, liens, claims, judgments, charges, detriments, and expenses (collectively, "Costs") which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees arising out of or in connection with (directly or indirectly): (a) any acts or failure to act, including any negligent or tortious act or failure to act, in connection with the design, construction, performance, installation, maintenance, use, occupancy, repair or replacement of any aspect of a Project or the Work performed or undertaken by or on behalf of the VILLAGE, its officers, directors, employees, agents, licensees, invitees, contractors and subcontractors, including, without limitation, any accident, injury (including death at any time resulting therefrom), or damage to any person or property (except to the extent caused by the gross negligence or willful misconduct of the Indemnitees), or (b) any failure on the part of the VILLAGE to keep, observe, perform or comply with any of the covenants, agreements, provisions, terms, conditions or limitations contained in this Agreement. "Costs" shall include reasonable attorneys' fees and other costs incurred by the any Indemnitee. Each of the VILLAGE and LIRR intends that each of the Indemnitees be, and each Indemnitee is, a third-party beneficiary of this Agreement.



B. It is understood and agreed that each VILLAGE Party by its entry upon the Licensed Area pursuant to this Agreement is agreeing to assume all risk of losses, damages, expenses, personal injury or death which he or she may suffer or sustain while upon, about or in the vicinity of the tracks, trains, facilities, property or premises of LIRR or any of its affiliates. Accordingly, VILLAGE on its own behalf and on behalf of each VILLAGE Party, as a condition to such VILLAGE Party's entry upon the Licensed Area, hereby releases and discharges the Indemnitees from and against, and covenants not to sue the Indemnitees for, any and all liability, claims, suits, demands, losses or damages on any account, which VILLAGE, or any VILLAGE Party or any of their respective heirs, executors, or administrators, or other persons claiming under or through VILLAGE, have or can or may have as the result of any losses, damages, expenses, personal injuries, or death which VILLAGE, or any persons whatsoever claiming under or through VILLAGE, may suffer or sustain while upon, about or in the vicinity of the tracks, trains, facilities, property or premises of LIRR or any of its affiliates, whether said losses, damages, expenses, personal injuries or death is caused or alleged to be caused, in whole or in part, by the fault, failure or negligence of any or all of the Indemnitees or otherwise.

C. The obligations in this Section 14 shall survive the expiration or sooner termination of this Agreement.

**15. INSURANCE.**

A. VILLAGE and VILLAGE's contractors and subcontractors, shall for the entire term of this Agreement, maintain, at their sole expense the insurance coverages set forth in Attachment E to this Agreement.

B. VILLAGE will furnish, or cause to be furnished, an ACORD Certificate of Insurance together with endorsements to the policy naming the Additional Insureds (as defined on Attachment E hereto) as additional insureds and providing a waiver of subrogation or a waiver of transfer of rights of recovery against others in favor of such Additional Insureds under the policy and return the Certificate together with the endorsements to LIRR with the signed Agreement. Said Certificate and endorsements must be signed by an authorized representative of the insurance carrier.

C. LIRR may, at its discretion, procure, provide, and thereafter maintain in effect during the term of this Agreement for and on behalf of LIRR any and all force account insurance deemed necessary by LIRR but only after a thirty (30) day period has been provided to VILLAGE to remedy any breach. The provision of such insurance shall not be deemed a limitation on any liability of VILLAGE arising under the terms of this Agreement. The premiums paid by LIRR for such force account insurance shall be reimbursed by VILLAGE in accordance with the provisions of this Agreement.

D. To the extent that VILLAGE is satisfying any of the insurance requirements through its contractors who are VILLAGE Parties, VILLAGE shall cause each such contractor to sign a release, waiver and indemnification in the form attached to this Agreement as Attachment D.

**16. NO ENCUMBRANCES.** VILLAGE shall not by its act or omissions cause this Agreement, the Licensed Area, improvements, installations, or any of the work performed by VILLAGE to be encumbered by any mortgage, lien, or other security interest of any nature whatsoever. In the event that any lien is filed against the LIRR Premises, any improvements to the



LIRR Premises or any property of the LIRR on account of labor or material furnished or alleged to have been furnished in connection with work the VILLAGE is required or permitted to perform hereunder, the VILLAGE shall cause such lien to be satisfied or bonded and discharged of record within sixty (60) calendar days after the filing thereof. If the VILLAGE fails to satisfy or bond and discharge such lien within such sixty (60) calendar day period, the LIRR shall have the right to satisfy or bond and discharge the lien, and all costs thereof and all related costs shall be chargeable to the VILLAGE and payable to the LIRR immediately upon request. Nothing herein shall be construed to constitute the consent, express or implied, of the LIRR to the performance of any labor or furnishing of any materials by the VILLAGE's contractors for any alteration or repair of the LIRR Premises, or as giving the VILLAGE the authority to contract for any rendering of labor or furnishing of services or materials that would give rise to the filing of any mechanic's lien against the LIRR's interest in the LIRR Premises. The VILLAGE covenants and agrees and shall at all times, to the fullest extent permitted by applicable law, defend, indemnify and hold harmless the Indemnitees from and against any and all mechanic's and other liens and encumbrances filed in connection with any work covered under this Agreement, including any security interest in any materials, fixtures or articles, and against all costs, expenses and liability incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon.

17. **NOTICES.** Except as otherwise expressly provided in this Agreement, all notices, demands, requests, submissions or other communications which are required to be given under this Agreement shall be in writing and shall be given either by hand delivery against a receipt or by U.S. Certified Mail, Return Receipt Requested, postage pre-paid or by reputable overnight courier service, addressed as follows:

If to LIRR:

Metropolitan Transportation Authority  
2 Broadway, A4.25  
New York, New York 10004  
Attention: David Florio, Chief Real Estate Transactions and Operations Officer

with copies to

The Long Island Rail Road Company  
Jamaica Station Building  
93-02 Sutphin Boulevard, 4<sup>th</sup> Floor  
Jamaica, New York 11435  
Attention: Vice President-General Counsel & Secretary

and

Metropolitan Transportation Authority  
Jamaica Station Building  
93-02 Sutphin Boulevard, 4<sup>th</sup> Floor  
Jamaica, New York 11435  
Attention: Deputy General Counsel & Unit Chief – Special Projects

If to Licensee:



**VILLAGE OF GREENPORT:**

Notices so addressed shall be deemed properly given when personally delivered in the case of hand delivery or overnight courier service or when receipt is rejected or, in the case of delivery by certified mail, three (3) business days after the same is duly deposited in the United States mail. Either Party may, by written notice to the other, change the address to which notices to such Party shall thereafter be given.

**18. ADDITIONAL PERMISSION(S); PERMITS AND LICENSES.** The VILLAGE shall be responsible for obtaining or causing VILLAGE Parties to obtain any additional permissions, permits or authorizations which may be required including, but not limited to, those which are or may be necessary to photograph a person, or the name, trademark or logo of a business while on the Licensed Area. Otherwise, neither VILLAGE nor any other VILLAGE Party shall use the name, trademark or logos of any of the Indemnitees for any purpose, nor shall any such name, trademark or logo appear in any of the photographs taken by VILLAGE or any other VILLAGE Party. VILLAGE shall obtain, at its own cost, all required permits and approvals for performing the Work in the Licensed Area and for its entry and use of the Licensed Area.

**19. FORCE MAJEURE.** If either Party is delayed or prevented from the performance of any obligation under this Agreement by any cause or causes beyond the control and without the fault or negligence of the other Party, including labor disputes, unless solely restricted to employees, agents or subcontractors of the VILLAGE's suppliers; inability to procure materials; failure of utility service; restrictive governmental law or regulations implemented after the execution of this Agreement; riots or insurrection; war; extremely adverse weather; Acts of God, or other similar causes beyond the control of such Party, the performance of such obligation shall be excused for the period of the delay. Regardless of which Party is delayed or prevented from performance and same is excused pursuant to this Section, when such delay or prevention continue for a period which renders the Work contemplated by this Agreement impossible, then either Party may terminate this Agreement upon notice to the other Party. Upon termination under this Section, the VILLAGE shall remove all structures and/or fixtures installed by the VILLAGE on the LIRR Premises and restore same to the reasonable satisfaction of the LIRR, less wear and tear.

**20. COMPLIANCE WITH LAWS.** VILLAGE shall at all times conduct its activities and cause each other VILLAGE Party to at all times conduct such person's Work in strict accordance with all applicable federal, state, and local laws, rules, codes, statutes, orders, ordinances, plans, policies, decrees and regulations, and with the highest commercial standards. VILLAGE must comply and cause each other VILLAGE Party to comply promptly with any notices received regarding remedial efforts LIRR considers necessary to satisfy any law, rule, code or regulation.

**21. ASSIGNMENT.** VILLAGE may not, without the prior written consent of LIRR, which may be withheld in the LIRR's sole discretion, (i) assign, transfer, license, sublicense or encumber this Agreement nor the rights and privileges herein granted to the VILLAGE; (ii) no right, interest or property granted herein shall pass to or vest in any person whatsoever, either by the act of the VILLAGE or by operation of law, whether under the provisions of the statutes relating to consolidation or merger of corporations or otherwise.

**22. APPLICABLE LAW AND JURISDICTION.** This Agreement is governed by and shall be construed under the laws of the State of New York, without reference to its conflict of law provisions. Any dispute or claim arising out of or relating to this Agreement shall be brought



exclusively in the federal or state courts located within the County of New York.

**23. DEFAULT/TERMINATION/WORK STOPPAGE.**

A. Each of the following shall be an “Event of Default” hereunder:

(1) A default by the VILLAGE or any affiliates of the VILLAGE under any contract, lease, permit, agreement, or other instrument with the LIRR or the MTA, which remains uncured after the expiration of any notice and cure period provided for in such contract, lease, permit, agreement, or other instrument;

(2) If the VILLAGE shall fail to pay any amount due to LIRR hereunder (it being acknowledged that the VILLAGE may request from LIRR a reasonable extension of time in order for the VILLAGE to obtain additional funding or appropriations to fund its obligations under this Agreement in the event that unforeseen costs and charges are encountered during the course of construction) when due and such failure shall continue for thirty (30) days after notice from LIRR to the VILLAGE which shall specify the items in default and contain a clear statement that LIRR intends to exercise its rights hereunder in the event such default becomes an Event of Default;

(3) Any attempt on the part of the VILLAGE or its agents, servants, employees or contractors to defraud the LIRR or any of its affiliates or subsidiaries, the MTA or any of its affiliates or subsidiaries, or the State of New York;

(4) If the VILLAGE shall have failed to timely provide proof to LIRR of the insurances required under this Agreement, or if the VILLAGE fails to maintain the required insurances under this Agreement at all times, and LIRR treats such failure as an Event of Default;

(5) The VILLAGE’s commencement of any Work in the Licensed Areas without LIRR’s approval;

(6) The VILLAGE’s failure to cause its Work to be immediately suspended upon direction of LIRR;

(7) The VILLAGE’s abandonment of the Work which continues for thirty (30) days;

(8) The VILLAGE’s failure to immediately observe the direction of LIRR personnel at the Licensed Area;

(9) The VILLAGE’s failure to correct in the time specified by LIRR or otherwise in a timely manner any unsafe condition in or about the LIRR Premises after receipt by the VILLAGE of a written demand to correct or a violation notice signed by any LIRR officer or employee with responsibility to inspect or monitor the safety of the Work on the LIRR Premises or adjacent property;

(10) If the VILLAGE fails to perform or observe one or more of the other terms, provisions, covenants, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after notice thereof from the LIRR to the VILLAGE specifying such failure, which notice shall prominently state the LIRR’s intention to exercise its rights under this Section



23 by reason of such default, unless such failure requires work to be performed, acts to be done, or conditions to be removed that cannot by their nature be reasonably performed, done or removed, or the VILLAGE's default is not otherwise reasonably capable of cure, within such thirty (30)-day period, in which case no Event of Default shall be deemed to exist as long as the VILLAGE shall have commenced curing the same within such thirty (30)-day period and shall diligently and continuously prosecute the same to completion.

B. At any time during the continuance of an Event of Default, LIRR may serve a written notice to the VILLAGE terminating this Agreement upon a specified date. Following any termination pursuant to this Section 23, the VILLAGE shall remain liable for damages as provided in this Agreement.

C. If this Agreement shall be terminated by reason of an Event of Default, the LIRR shall be entitled to reimbursement for all expenses incurred by the LIRR in terminating this Agreement and removing and/or storing or disposing of the VILLAGE's property.

D. The failure of the LIRR to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Agreement, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Agreement or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by the LIRR of any reimbursements or payments with knowledge of breach by the VILLAGE of any obligation of this Agreement shall not be deemed a waiver of such breach and no remedy exercised after an Event of Default shall relieve the VILLAGE of its liabilities and obligations hereunder accrued prior to the exercise of such remedies.

E. If LIRR reasonably determines that (i) the VILLAGE has failed to comply with its obligations under the Access Protocols, (ii) unsafe conditions exist as a result of the Work, (iii) the workmanship of any portion of Project is defective, or (iv) any portion of the Work fails to materially conform with the specifications, or the approved Work plans, then in any such case, if such conditions (other than a condition relating to safety, in which case there shall be no cure period) are not corrected by the VILLAGE within five (5) business days after notice thereof from LIRR (provided that if such condition is not reasonably susceptible of cure within such five (5) business day period and the VILLAGE is diligently endeavoring to cure the same, such period shall be extended to be the period reasonably required to cure the same with the exercise of such diligence), LIRR may, but shall not be obligated to, in addition to any other remedies they may have hereunder, use self-help (and the VILLAGE shall promptly reimburse the MTA/LIRR for all direct costs incurred by the MTA/LIRR in connection therewith) and/or order the VILLAGE (and the VILLAGE's contractors and other persons connected with the VILLAGE's construction) to stop work on those activities that do not so comply, and such self-help right and/or stoppage may be exercised until such unsafe or other conditions are remedied. No delay or other loss or hindrance of the VILLAGE arising from any such self-help or stop-work order by the MTA or LIRR shall form the basis for any claim by the VILLAGE against LIRR or excuse the VILLAGE from the full and timely performance of its obligations under this Agreement.

F. The LIRR reserves the right to self-help, including to suspend the VILLAGE's performance of the Work, if in the LIRR's sole but reasonable discretion, LIRR determines that the Work contains defective workmanship, does not conform with LIRR requirements, and/or



applicable law or regulations.

G. The remedies to which the LIRR may resort under this Agreement are cumulative and are not intended to be exclusive of any other remedies to which the LIRR may be lawfully entitled at any time and the LIRR may invoke any such remedies allowed at law or in equity as if specific remedies were not provided for herein.

**24. WAIVER.** No consent, express, or implied, by LIRR to or of any breach or Event of Default by VILLAGE or any other VILLAGE Party in the performance or observance of any obligations hereunder on such person's part to be performed or observed shall be deemed or construed to be a consent or waiver to or of any other breach or default. LIRR's failure to complain of any act or failure to act on the part of VILLAGE or any other VILLAGE Party or to declare VILLAGE or such other VILLAGE Party in breach or default of this Agreement, irrespective of how long such failure continues, shall not constitute any waiver of LIRR's rights hereunder.

**25. SEVERABILITY.** In the event any section, paragraph, sentence, clause or phrase contained in this Agreement shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other sections, paragraphs, sentences, clauses or phrases of this Agreement, which shall remain in full force and effect as if the section, paragraph, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally part hereof.

**26. NO JOINT VENTURE OR AGENT.** Nothing contained in this Agreement shall be construed as creating any joint venture or partnership relationship between LIRR and the VILLAGE or any other VILLAGE Party or as constituting VILLAGE or any other VILLAGE Party as the agent of LIRR or MTA in respect of the service or facilities herein provided for, and LIRR assumes no responsibility for the conduct, operation of the facilities or service of VILLAGE or any other VILLAGE Party or for anything arising in connection therewith; but on the contrary VILLAGE is and shall be solely responsible (on a joint and several basis with any other VILLAGE Party) and will assume all liability for the same.

**27. DOCUMENTS COMPRISING AGREEMENT.** The documents forming this Agreement include:

1. This Agreement / document;
2. Attachment A – Site Plan
3. Attachment B – Scope of Work
4. Attachment C – Force Account Estimate;
5. Attachment D – Form of Release, Waiver of Liability and Assumption of Risk;
6. Attachment E – Insurance Requirements; and
7. Attachment F – Design Plans.

**28. ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between the LIRR and VILLAGE with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, written or oral, with respect thereto.

**29. CAPTIONS AND ATTACHMENTS.** The captions of this Agreement are for convenience or reference only and in no way defines, limits or describes the scope of intent or in any way affect this Agreement. The attachments, exhibits and schedules to this Agreement are



incorporated herein by reference and made a part of the same as though fully set forth in the body of this Agreement.

30. **NO ORAL MODIFICATION.** Any modification to this Agreement must be in writing, contain an explicit statement that it constitutes an amendment to this Agreement, and be signed by an authorized officer of each Party.

31. **AUTHORITY OF SIGNATORIES.** Each Party represents and warrants that the person executing this Agreement on its behalf is fully authorized to execute this Agreement.

32. **WAIVER OF JURY TRIAL.** Each Party to this Agreement hereby waives trial by jury in any action or proceeding arising out of this Agreement or VILLAGE's or any VILLAGE Party's use and occupancy of the Licensed Area.

33. **RECITALS AND ATTACHMENTS.** The recitals to this Agreement and all attachments to this Agreement are incorporated into, and made a part of, this Agreement.

34. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

35. **NO THIRD-PARTY BENEFICIARY.** This Agreement is intended to be for the sole benefit of the Parties hereto and their respective successors and assigns, and none of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third person. No other person shall acquire or have any rights under or by virtue of this Agreement.

36. **SURVIVAL.** The provisions of and obligations under this Agreements, which either by their express terms or by the nature of such terms or obligations are intended to survive, shall survive the expiration or earlier termination of this Agreement.

37. **COUNTERPARTS; ELECTRONIC DELIVERY.** This Agreement may be executed in counterparts, and all such counterparts shall be deemed an original, but all of which together shall constitute one original document.



IN WITNESS WHEREOF, this Agreement has been duly executed by LIRR and VILLAGE as of the date first above written.

**LIRR**

**MTA LONG ISLAND RAILROAD**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**VILLAGE OF GREENPORT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**ATTACHMENT A**  
**SITE PLAN**

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**ATTACHMENT B**  
**SCOPE OF WORK**

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**ATTACHMENT C**  
**FORCE ACCOUNT ESTIMATE**

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**ATTACHMENT D**

**FORM OF RELEASE, WAIVER OF LIABILITY AND ASSUMPTION OF RISK**

In consideration of being permitted to enter upon the property (the “Property”) of Metropolitan Transportation Authority and/or Long Island Railroad (collectively, the “MTA”) in furtherance of the business or other activities of \_\_\_\_\_ (“Licensee”) on \_\_\_\_\_, 202[ ] with respect to its work at \_\_\_\_\_, pursuant to that certain Agreement dated \_\_\_\_\_, 202[ ], issued to Licensee by the MTA as the same may be amended, extended and/or re-issued from time to time (the “Agreement”), the undersigned representative, employee, agent, contractor or invitee of Licensee, is executing this Release, Waiver of Liability, and Assumption of Risk (this “Release”), for itself and its successors and assigns:

1. **RELEASE.** The undersigned hereby releases, discharges and covenants not to sue the MTA (as such term is defined above), the State of New York, and each of the foregoing’s respective subsidiaries or affiliates existing now or in the future, its or their successors and assigns, and its or their contractors, subcontractors, agents, consultants, representatives, officers, directors, commissioners, agents, members, employees and any other persons acting on their behalf (each an “Indemnitee”, collectively, the “Indemnitees”), from and against any and all liability, claims, suits, demands, losses or damages on my account, which the undersigned, or my heirs, executors, or administrators, or other persons claiming under or through the undersigned, have or can or may have as the result of any losses, damages, expenses, personal injuries or death which the undersigned, or any persons whosoever claiming under or through the undersigned, may suffer or sustain while upon, about or in the vicinity of the tracks, trains, facilities, property or premises of the Railroad, whether said losses, damages, expenses, personal injuries or death is caused or alleged to be caused, in whole or in part, by the negligence of the Indemnitor otherwise.
2. **ACKNOWLEDGMENT.** The undersigned represents and warrants that the person executing this Release on its behalf is fully authorized to execute this Release and to bind the undersigned and its successors and assigns.
3. **INDEMNIFICATION.** To the fullest extent permitted by applicable law, the undersigned shall at all times indemnify, protect, defend (with counsel approved by the MTA) and save harmless each from and against any and all losses (to property, materials, and equipment or otherwise), damages, detriments, suits, claims, fines, judgments, injuries, penalties, demands, costs, charges and expenses, including but not limited to reasonable attorneys’ fees and disbursements, and including but not limited to any claims or judgments under the Workers Compensation Law of the State of New York or the Federal Employees Liability Act or similar statutes for the protection of employees or any other judgments whatsoever, which any or all of the Indemnitees or any third party may directly or indirectly suffer, sustain or be subjected to arising in whole or in part, directly or indirectly, by reason of or in connection with the undersigned's or its contractors or subcontractors or its or their employees, agents, consultants, licensees or invitee’s, or other person acting on its or their behalf, entry upon, occupancy or use of the Property, or the activities or Work thereon, or the conduct thereon of the undersigned or its



contractors or subcontractors or its or their employees, agents, consultants, licensees or invitee's, or other person acting on its or their behalf, whether such loss or damage be suffered or sustained by any or all of the Indemnitees directly or by other persons (including employees of any or all of the Indemnitees or corporations who may seek to hold any or all of the Indemnitees liable therefor), and whether attributable, in whole or in part, directly or indirectly, to the fault, failure or negligence of any or all of the Indemniteesor any third party.

Dated: \_\_\_\_\_, 202[ ]  
New York, New York

PRINT NAME OF LICENSEE:

\_\_\_\_\_

LICENSEE SIGNATURE:

\_\_\_\_\_

LICENSEE'S ADDRESS:

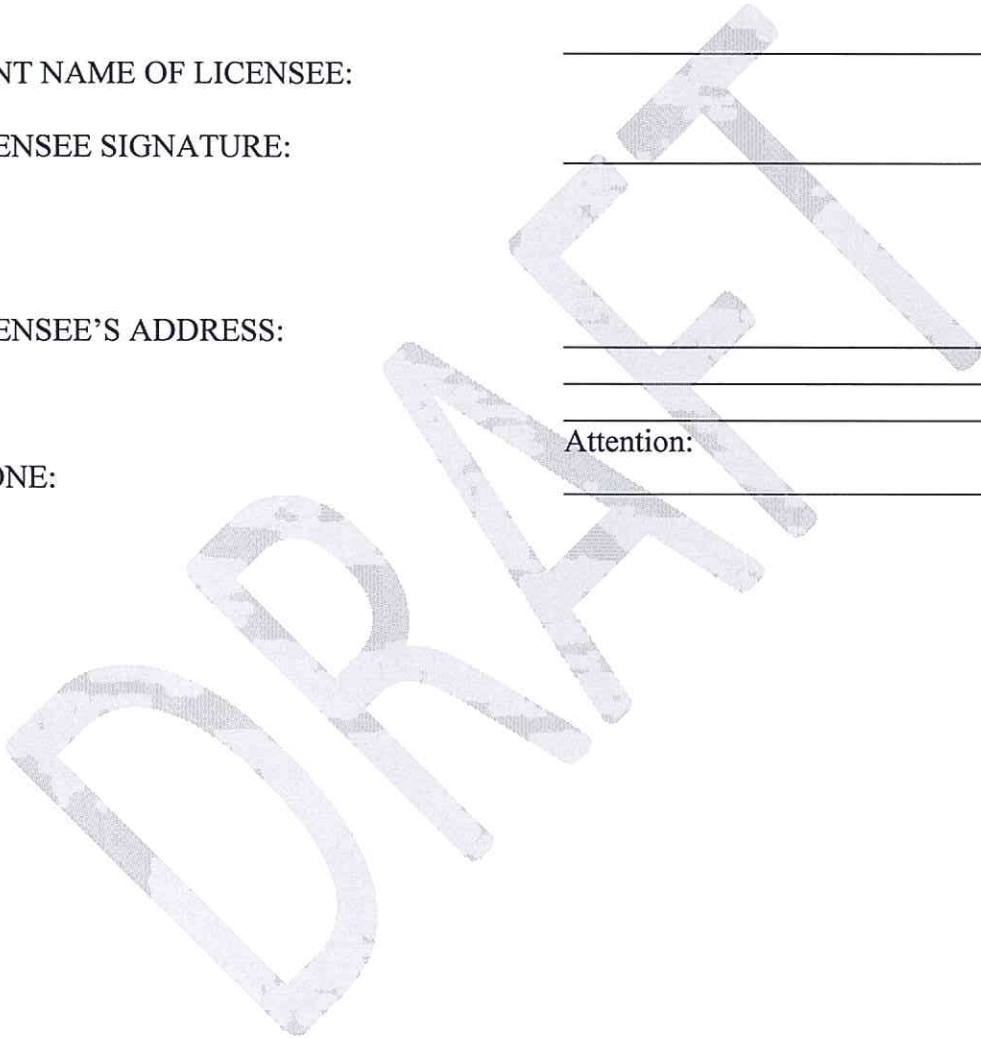
\_\_\_\_\_

\_\_\_\_\_

Attention:

PHONE:

\_\_\_\_\_



**ATTACHMENT E**  
**INSURANCE**<sup>8</sup>

**SECTION A. INSURANCE REQUIREMENTS:**

The Licensee, at its sole cost and expense, shall maintain at all times during the term of this Agreement, including any extension or warranty period if applicable, and for such longer period of time if specified, such policies of insurance as herein set forth. Licensee shall furnish to LIRR satisfactory proof that Licensee has in force continuously for the entire period the following classes of insurance in the form and with the limits specified below:

- i. Workers' Compensation Insurance** (including Employer's Liability Insurance with limits of not less than \$2,000,000.00, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of New York State. The policy shall be endorsed to include Longshore and Harbor Workers' Compensation and/or Maritime Coverage(s) when applicable.
  
- iii. Commercial General Liability ("CGL") Insurance** covering claims for personal and advertising injury, bodily injury and property damage arising out of the Work and in a form providing coverage no less broad than that of the current ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01). Such insurance shall be issued on an occurrence basis to provide coverage for all operations including the products-completed operations hazard, and shall be maintained for five (5) years after final completion of the Work. The limits of insurance shall renew annually and not less than:
  1. \$2,000,000 each Occurrence
  2. \$4,000,000 aggregate for products-completed operations, which shall apply on a per project basis; and
  3. \$4,000,000 general aggregate limit, which shall apply on a per project basis.
  4. Additionally:
    - Primary General Liability limits may **not** be satisfied by Umbrella / Excess insurance.
    - The policy shall not contain any contractual exclusion relative to Labor Laws or any other exclusions or limitations directed toward any types of projects, materials or processes involved in the Work.
    - The policy shall not contain any of the following exclusions: subcontractor's exclusion; construction defect exclusion; leased worker exclusion; cross liability exclusion; crane exclusion; and demolition exclusion or "explosion, collapse and underground" exclusion.
    - The policy shall include independent contractor and contractor liability coverages.

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<sup>8</sup> NTD: SUBJECT TO REVIEW BY MTA RIM.



- “XCU” coverage (Explosion, Collapse and Underground Hazards) where necessary.
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed where necessary.
- Coverage for claims for bodily injury asserted by a railroad employee of an additional insured and any Employer’s Liability Exclusion which may otherwise operate to exclude such coverage shall be removed, when applicable.
- Additional Insured Endorsement in the form as approved by LIRR naming:
  - Long Island Rail Road Company
  - Metropolitan Transportation Authority, including its subsidiaries and affiliates.

**iv. Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form approved by the LIRR), covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured’s own property and conforming to the following:

- The following are the “Named Insureds” for this coverage:
  - a. Long Island Rail Road Company
  - b. Metropolitan Transportation Authority, including its subsidiaries and affiliates.
- The limit of liability shall be at least \$2,000,000.00 each occurrence, subject to a \$6,000,000.00 annual aggregate.
- Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer’s Liability Act (FELA).
- Indicate the name of the Contractor to perform the work, the name of the LIRR, for whom the work is being performed, and the Contract description and number.
- Evidence of Railroad Protective Liability Insurance must be provided in the form of the Original Policy. A detailed **Insurance Binder (ACORD or Manuscript Form)** will be accepted pending issuance of the Original Policy, which must be provided within 30 days of the Binder Approval.

**v. Business Automobile Liability Insurance** covering all owned, non-owned, and hired vehicles on and off-site for claims arising out of the ownership, maintenance or use of any such vehicle. Such insurance shall provide coverage not less than the standard ISO Comprehensive Automobile Liability policy (CA 00 01, CA 00 05, CA 00 12, CA 0020), with limits not less than \$2,000,000 each accident. If the Work involves transportation of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Licensee shall provide pollution automobile coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48), and the

Motor Carrier Act endorsement (MCS 90). Any statutorily required “No-Fault” benefits and uninsured/underinsured motorist coverage shall be included.

- v. **Umbrella/Excess Liability Insurance** written on an occurrence basis with limits not less than \$9,000,000 in excess of the limits indicated for Commercial General Liability, Employer’s Liability, and Business Automobile Liability Insurance identified above, *and which is at least as broad as each and every one of the underlying policies*. The umbrella/excess liability policies shall be written on a “drop-down” and “following form” basis, with only such exceptions expressly approved in writing by LIRR. Such insurance shall be maintained for at least five (5) years after final completion of Work.
- vi. **Contractors Pollution Liability Insurance** with coverage for environmental damage resulting from pollution conditions that arise from the operations of the Licensee described under the scope of services of this Permit:
- a) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring;
  - b) Physical injury to or destruction of tangible property of Parties other than the Insured including the resulting loss of use and diminution in value thereof; Loss of use, but not diminution in value, of tangible property of Parties other than the Insured that has not been physically injured or destroyed;
  - c) Natural Resource Damages;
  - d) Cleanup Costs;
  - e) Transportation and Non-owned Disposal Site coverage (with no sunset clause/restricted coverage term) if contractor is disposing of contaminated material (s);
  - f) No exclusions for asbestos, lead paint, silica or mold/fungus/legionella.
  - g) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, silt or sediment into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations.

**Minimum Limits of Insurance**

Licensee shall maintain limits not less than \$5,000,000 per occurrence/\$5,000,000 aggregate for the term of the Agreement.

**Policy Term**

If meeting requirement with a Project Specific Policy: *Term of contract plus Completed Operations term of 10 years;*



If meeting requirement with Contractor's Practice Policy: *One year term maintained for at least ten (10) years after substantial completion and acceptance of the Project.*

**vii. Professional Liability Insurance** insuring against professional errors and omissions arising from the Work on the Project by the Licensee and by any partner, subcontractor or consultant of the Licensee providing construction management, architectural, engineering, and/or surveying services, and/or any party whose Work involves the preparation of plans or drawings, with limits not less than \$2,000,000 per claim and annual aggregate. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the Work. The retroactive date for coverage will be no later than the commencement of professional services on the project and be maintained for at least five (5) years after final completion of the Project. In the event of cancellation or non-renewal the discovery period for insurance claims will be at least five (5) years or otherwise as by agreement with LIRR. Coverage shall include, but not be limited to:

1. Insured's interest in joint ventures, if applicable;
2. Technology Services must be listed as a covered service with respect to Building Information Modeling (BIM) hosting and management responsibilities (for Projects utilizing BIM); and
3. Limited contractual liability and defense costs for the LIRR.

## **SECTION B. GENERAL INSURANCE REQUIREMENTS:**

The following requirements are applicable to all insurance coverages required under this Contract, except to the extent otherwise indicated.

- i. **Insurer Requirements.** All policies of insurance shall be placed with insurers acceptable to LIRR. The insurance underwriter(s) must be duly licensed or approved Surplus Lines insurer to do business in the state where the Work is to be performed and must have a financial ratings of A-/VII or better in the most recent edition of Best's Key Rating Guide or otherwise satisfactory to LIRR.
- ii. **Right to Request.** Additional Insurance. Licensee Further Agrees to Provide, At Licensee's sole cost and expense, such increased or expanded insurance coverage as LIRR may from time to time as deem appropriate.
- iii. **Additional Insureds.** *Except with regard to Workers' Compensation and Professional liability insurance (unless otherwise noted), all insurance required under Section B shall name the Parties listed in Section C as Additional Insureds, and shall include their respective subsidiary and affiliated companies, and their Boards of Directors, officers, employees, representatives, and agents (hereinafter, collectively the "Additional Insureds").* For the Commercial General Liability insurance, additional insured status must be provided on ISO forms or their equivalent at least as broad as CG 20 26 for non-construction agreements. However, for contracts involving construction, additional insured status must be provided on ISO forms or their equivalent at



least as broad as CG 20 10 and CG 20 37 – alternatively CG 20 38 and CG 20 37.

The following link provides general instructions and the lists of indemnitees which should be copied directly to the ACORD Certificate of Insurance and Additional Insured endorsements. Go to this Landing Page for further instructions: <http://www.mta.info/vendor-insurance>.

- iv. **Primary and Non-Contributory.** Each policy required in this Section, including primary, excess, and/or umbrella, shall provide that the insurance provided to the Additional Insureds is primary and non-contributory, such that no other insurance or self-insured retention carried or held by LIRR shall be called upon to contribute to a loss covered by insurance for the named insured.
- v. **Waiver of Subrogation.** To the fullest extent permitted by law, Licensee will require all insurance policies required by this Section to include clauses stating each insurer will waive all rights of recovery. All waivers provided herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, or (b) did not pay the insurance premium directly or indirectly, and whether or not such individual or entity has an insurable interest in any property damaged.
- vi. **Self-Insured Retentions.** None of the insurance required of this Section shall be subject to any self-insured retention greater than \$500,000 without LIRR written approval.
- vii. **Subcontract Agreements.** Licensee shall by appropriate written agreements flow down the requirements for i) the waiver of subrogation for all required insurance, and ii) additional insured coverage for all required insurance and iii) other requirements of this Section to all tiers of subcontractors, for all insurance required of such subcontractors by Licensee for the Work.
- viii. **No Limitation.** Nothing in this Section shall be construed as limiting in any way the extent to which Licensee may be held responsible for payment of damages resulting from their operations. Licensee's obligations to procure insurance are separate and independent of, and shall not limit, Licensee's contractual indemnity and defense obligations. LIRR does not represent that coverages and limits required in this Agreement will necessarily be adequate to protect Licensee.
- ix. **Notice of Cancellation or Non-Renewal.** The Licensee agrees to notify LIRR thirty days prior to any cancellation, non-renewal or change to any insurance policies required in Section B. Notice shall be sent electronically to the *contract-specific email address* provided to Licensee via MTA Certificate of Insurance Management System (CIMS), Complianz™.
- x. **Notice of Occurrence.** The Licensee shall immediately file with the LIRR's Law Department (with a copy to the Project Manager), 2 Broadway, 8<sup>th</sup> Floor, New York, New York 10004, a notice of any occurrence likely to result in a claim against LIRR and shall also file with LIRR's Law Department detailed



sworn proof of interest and loss with the claim. This paragraph shall survive the expiration or earlier termination of the Agreement.

- xi. **Insurance Not In Effect.** If, at any time during the period of this Agreement, insurance as required is not in effect, or proof thereof is not provided to the LIRR, the LIRR shall have the options to: (i) direct the Licensee to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an Event of Default.
- xii. **Conformance to Law.** If applicable law limits the enforceability of any of the foregoing requirements, then Licensee shall be required to comply with the foregoing requirements to the fullest extent of coverage and limits allowed by applicable law and the provisions of insurance shall be limited only to the extent required to conform to applicable law.
- xiii. **Certificates of Insurance.**
  1. Licensee shall furnish LIRR with Certificates of Insurance (“COI”) utilizing ACORD 25, and 101 and ACORD 855 (for NY Construction Projects only) completed by a duly authorized representative evidencing coverage required under **Section B**. Such Certificates of Insurance shall be delivered to LIRR before any Work hereunder is commenced by Licensee and annually thereafter on or before the policy effective dates of the Licensee’s policies based on the instructions stated herein. You may go to this Landing Page for guidelines for submission of insurance, samples and instructions for completing the ACORD certificate forms: <http://www.mta.info/vendor-insurance>.

Evidence of Railroad Protective Liability and/or Builder’s Risk Insurance requires submission of a policy and is not acceptable on a certificate of insurance. A binder is acceptable pending issuance of the policy. The binder must indicate the contract number, description and location of Work and the designated Licensee and must be signed by the authorized producer or insurance carrier.
  2. Insurance Confirmation. In addition to the foregoing certificates of insurance, the Licensee or its insurance broker shall submit a copy of the following endorsements with reference to: the contract number, description and location of Work and designated Licensee, where applicable.
    - a. Additional Insured endorsements specifically naming the LIRR per requirements of this Contract.
    - b. Primary and non-contributory endorsement(s) naming the LIRR per requirements of this Contract.
    - c. Waiver of Subrogation endorsements in favor of the LIRR per requirements of this Contract.

- d. Other coverage endorsements may be requested depending on the Scope of Work to be performed by the Licensee.
1. The Licensee shall submit evidence of compliance of all insurance requirements before any Work is started to the MTA Risk and Insurance Management Department within 30 days of the start of any Work.
2. After the Licensee's insurance has been approved, a "compliant message" verifying insurance compliance will be sent to the Licensee via the MTA Certificate of Insurance Management System (CIMS), Complianz™. It will also provide the email address for all insurance renewals, specific to this Contract. Do not bundle certificates as each contract is assigned a specific email address.

At least two (2) weeks prior to the expiration of the policies, Licensee shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies.

3. Failure of the LIRR to demand such COIs or other evidence of full compliance with these insurance requirements, or failure of the LIRR to identify a deficiency from evidence provided, will not be construed as a waiver of the Licensee's obligation to maintain such insurance. LIRR acceptance of any COI evidencing the required coverages and limits does not constitute approval or agreement by the LIRR that the insurance requirements have been met or that the insurance policies shown in the COI are in compliance with the requirements.
4. LIRR has the right, but not the obligation, of prohibiting Licensee from entering the Project Site until LIRR receives all COIs or other evidence that insurance has been placed in complete compliance with these requirements.

### **SECTION C. REQUIRED INDEMNITEES:**

Long Island Rail Road Company, the Metropolitan Transportation Authority, the State of New York, and each of the foregoing's respective subsidiaries and affiliates existing now or in the future, its or their successors and assigns, and its or their employees, members, officers, directors, contractors, subcontractors, agents, consultants, representatives, commissioners, and any other persons acting on their behalf.



**ATTACHMENT F**

**DESIGN PLANS**

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