

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Memorandum"), dated July 11, 2017 (Effective Date"), is by and between THE LONG ISLAND RAIL ROAD COMPANY, a public benefit corporation organized under the laws of the State of New York, and having its principal office at Jamaica Station, 93-02 Sutphin Boulevard, Jamaica, New York 11435 (the "LIRR"), and THE VILLAGE OF NEW HYDE PARK, a municipal corporation and a political subdivision of the State of New York, and having its principal office at 1420 Jericho Turnpike, New Hyde Park, New York 11040 (the "Village"). The LIRR and the Village may be referred to herein individually as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, the LIRR is progressing its Main Line Expansion Project (the "Project") which will, among other things, add a third main track line within the existing LIRR right of way along a 9.8 mile corridor between New Hyde Park Station and Hicksville Station; and

WHEREAS, the LIRR is currently engaged in a procurement to select a design-builder to design and construct the Project (the design-builder so selected being hereinafter referred to as the "Design-Builder"); and

WHEREAS, the LIRR and the Village have been discussing certain concerns raised by the Village with respect to possible impacts of the Project on residents of and businesses located within the Village; and

WHEREAS, in a spirit of cooperation, the LIRR and the Village have reached agreement on a series of commitments by the LIRR to address such concerns as the Project proceeds; and

WHEREAS, LIRR and the Village are entering into this Memorandum of Understanding to memorialize such commitments and confirm LIRR's agreement to observe and abide by such commitments going forward as the Project proceeds.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the parties hereto agree as follows:

A. Definitions. Terms defined preamble and recitals have their assigned meanings and each of the following terms has the meaning assigned to it.

"County" shall mean the County of Nassau, New York.

"Design-Builder" shall mean the design-builder selected by the LIRR to design and construct the Project.

"Design-Build Contract" means the contract to be entered into for design and construction of the Project between the LIRR and the Design-Builder.

“Proposers” shall mean persons, firms, or other entities submitting proposals in response to the LIRR’s RFP.

“RFP” shall mean LIRR’s request for proposals, for a Design-Builder for the Project.

“Substantial Completion Date” means the date that the LIRR substantially completes construction of the Project.

“Substantially complete” or similar phrases shall mean attaining the stage in the progress of the Work where the Work has been completed to a point that it can be used for its intended purposes, as evidenced by the issuance of a Certificate of Substantial Completion by the LIRR pursuant to and in accordance with the Design-Build Agreement. Substantially complete does not include punch-list type items which may need to be completed.

“Work” means the furnishing of all labor, materials, plant, equipment, tools, supervision and other incidentals required by the Design-Build Agreement and the performance of all duties and obligations imposed by the Design-Build Agreement, including work performed pursuant to the warranty provisions of the Design-Build Agreement and work necessary to reconstruct and restore all structures, appurtenances/connection thereto including, but not limited to all LIRR real property and any other real property as may be affected by the Design-Builder’s performance. The Work shall also include all planning, design, and architectural engineering services required for the proper design and construction of the Project, including but without limitation all drawings and specifications, all design clarifications and all construction phase design professional services that may be necessary or desirable for the Project.

B. Term. This Memorandum shall have a term (the “Term”) commencing on the Effective Date and expiring upon the Substantial Completion Date, except that the provisions of Section (C)(28) and (C)(29) below shall survive for two (2) years and five (5) years, respectively, after the Substantial Completion Date. In the event that the (i) the proposed Capital Program Amendment to the MTA 2015-2019 Capital Program incorporating funding for the Project is not approved by the Capital Program Review Board by July 31, 2017, or (ii) LIRR does not enter into a Design-Build Contract with a Design-Builder, or otherwise abandons the Project, then this Memorandum shall be of no force or effect.

C. LIRR Commitments.

Village Input on Selection of Design Builder; Village Input on Design of Project.

1. Technical Committee Level – One (1) technical representative, representing all five (5) Villages along the Project corridor (Villages of Floral Park, New Hyde Park, Garden City, Mineola and Westbury) (collectively, the “Project Villages”), will be invited to attend meetings of the technical committee(s) tasked with evaluating those quality of life aspects of Proposers’ submissions identified by the Villages as being of concern to them (e.g., community outreach plan, noise and vibration control, station and sound wall aesthetics). The representative shall be chosen by the five (5) Project Villages collectively and shall be reasonably satisfactory to LIRR. The technical representative’s reasonable fees and expenses will be paid for by LIRR.

The representative will restrict his/her discussion of the matters considered at such meetings solely to communicating his/her input to the members of the relevant technical committee(s) and will execute a Non-Disclosure Agreement (NDA) to that effect, in a form satisfactory to LIRR.

2. Final Selection Committee Level – The Final Selection Committee charged with selecting the Design-Builder will include an outside technical expert as well as a representative with knowledge of the Project corridor and technical expertise.

3. The final Design Build Contract will require regular consultation by the Design-Builder with the Village on the design of Project elements, excluding elements pertaining to rail operations such as track, switches, platforms and railroad systems (including power, signal, communications and life safety). This consultation by the Design-Builder includes review of aesthetics for finishes including sound attenuation walls, fences, underpass walls, landscaping and station elements. While the ultimate decision of Project elements will rest with LIRR, the LIRR will give due and careful consideration to any recommendations received from the Village on such matters and if LIRR chooses not to implement such recommendations, it will provide the Village with a written statement explaining the reasons for its decision.

Community Safety and Quality of Life.

4. The Design-Build Contract will require the Design-Builder to create an active program of construction security and maintenance to ensure community safety and quality of life in those areas of the Village where any Project Work is proceeding, including:

- a. Keeping construction sites clean and orderly.
- b. Safely storing construction materials in piles, and not haphazardly.
- c. Ensuring that construction fences are uniform and neat in material and appearance.
- d. Entirely fencing off all staging areas.
- e. Prohibiting littering and dispersion of personal debris (e.g., cups, cans, cigarettes) on the Project construction site.
- f. Providing covered trash receptacles that are emptied daily.
- g. Performing street cleaning as appropriate to ensure construction debris and dirt will not affect the local community.
- h. Installing onsite/portable bathroom facilities that are unobtrusive to local communities.
- i. Protecting access to existing businesses.
- j. Providing satellite parking for construction workers so as to keep personal construction worker vehicles off of residential streets.

- k. Scheduling construction deliveries outside of school and commuter traffic peak hours to the extent practicable while school is in session.

The Design Build Contract shall include a provision establishing a quarterly scoring of the Design-Builder's performance in respect of observing the provisions set out above in this Section (C)(4), during the period of construction of the Project. If the Design-Builder meets or exceeds a target score for a quarter, it shall be entitled to earn a \$250,000 incentive payment (up to a maximum of \$4 Million in the aggregate over the life of the Project). The minimum target score for achievement of the incentive shall be set by LIRR in consultation with the Project Villages. Scoring shall be done by utilizing a score sheet developed by LIRR and disseminated by the Project Villages to their residents who live within a to-be-agreed upon distance from the LIRR main line. The Project Villages shall be responsible for ensuring that the scoresheets are distributed fairly, that respondents identify themselves by name and address, and that a representative sampling of such residents' opinions, without duplication or manipulation, is obtained for each scoring effort. In the event the Design-Builder does not earn an incentive for any quarterly period as a result of the score it obtains, the amount of such unearned incentive shall be transferred by the LIRR, up to a maximum aggregate amount of \$4 Million, to a fund to be held by LIRR, to be used to reimburse a Project Village for additional expenses incurred by it to address any failure by the Design-Builder to observe such provisions within its jurisdiction, resulting in the Design-Builder not achieving the target score. A Project Village may apply for reimbursement by submitting a written requisition to LIRR, together with reasonable back-up documentation of the nature and purpose of the expenditure claimed. Payments from such fund shall not be unreasonably withheld or delayed by LIRR. If at any time, outstanding claims against this fund exceed the remaining monies therein, LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

Construction Duration

5. The Design-Build Contract will include schedule incentives to minimize community impacts. In the event the Design-Builder fails to meet certain contractual milestones under the Design- Build Contract identified in this Section (C)(5), and is thereby obligated to pay liquidated damages under such Contract to the LIRR, the LIRR shall make a payment to the Project Community Fund (see below) in accordance with the following conditions and limitations: (a) for a failure by the Builder to meet the milestone date for ending a road closure associated with a grade crossing elimination within the Village as it may be adjusted for force majeure or other causes not chargeable to the Design-Builder as per the Design Build Contract, the sum of \$3,000/week for each week of delay in reopening the road beyond such milestone date will be added to the amount allotted from such Fund specifically to the Village under section (C)(24)(B) below; (b) for a failure by the Design-Builder to meet the milestone date for Substantial Completion of the Project, as it may be adjusted for force majeure or other causes not chargeable to the Design-Builder as per the Design-Build Contract, the sum of \$5,000/week for each week Substantial Completion of the Project is delayed beyond such milestone date will be added to the amount allotted from such Fund specifically to the Village under Section

(C)(24)(B). The Village agrees that this Section (C)(5) shall in no way limit or condition the LIRR's ability to enforce, negotiate, waive or compromise any liquidated damages payable by the Design-Builder to LIRR under the Design-Build Contract. In the event LIRR becomes obligated, pursuant to this Section (C)(5), to add certain sums to the amount allotted from the Project Community Fund specifically to the Village under Section (C)(24)(B), such obligation shall in no way be affected by any waiver or compromise of any liquidated damages payable by the Design-Builder to the LIRR under the Design-Build Contract.

Communication Plan

6. Prior to the start of construction, the Design-Build Contract will require the Design-Builder to create a Communications and Public Outreach Plan including a protocol for addressing community complaints.
7. The Design-Builder will be required to give advance notification of any disruptive work or road closures to Village residents, municipalities, school districts and first-responders.
8. The Design-Builder shall provide regular updates to the public in the form of email blasts, automated phone calls, and online postings.
9. The Design-Builder shall staff a project office with on-site supervision, for the entire duration of the period when Work is being done in the Village.
10. The Design-Builder shall coordinate with local school districts to provide alternate transportation to schools where temporary or short-term road closures would either substantially increase walking distance to schools or make on-foot travel to schools substantially more problematic in terms of safety hazards.
11. The Design-Builder shall work with local schools to schedule nearby construction activity as unobtrusively as practicable, with sensitivity to the annual school calendar.
12. The Design-Builder shall coordinate with emergency service providers to ensure continuity of access to the community.
13. Prior to the start of construction of the Project, the LIRR shall establish regular meetings for LIRR, community representatives, and the Design-Builder to discuss construction activities and community concerns.
14. The Design-Builder shall provide and staff a 24/7 construction hotline to receive and respond to input and complaints from Village residents or businesses in accordance with the Communications and Public Outreach Plan. The Design-Builder will maintain a log of all calls received, and track follow up. Copies of such logs are to be provided to the Village upon request. If a call/complaint relates to a matter involving a significant imminent threat to human health or safety, the Design-Builder shall be required to respond immediately. In all other cases, the Design-Builder shall be required to respond within 24 hours.
15. LIRR shall furnish the Village with the name and telephone number of a governmental liaison for the Project, who may be contacted at any time (24 hours/7 days a week) on Project-related issues and problems.

Traffic

16. Prior to the start of construction of the Project, the Design-Builder shall establish and confirm acceptability of a proposed Work Zone Traffic Control Plan (WZTC) with the Village, residents, and affected police and emergency response jurisdictions to facilitate safe and effective enforcement.

17. The WZTC Plan shall recognize the need for Village approval of the use of Village public roads.

18. The Village agrees that approvals for the use of Village roads will not be unreasonably withheld by the Village.

19. The Design-Builder will restore roads damaged as a result of traffic diversion caused by the Project, or by construction vehicles using them in the course of constructing the Project. The degree of restoration required shall be determined by a committee consisting of an LIRR-designated highway engineer and a Village-designated highway engineer, based on the Village's standard of constructing roadways for a 30-year life under normal use, and giving due consideration to wear and tear that is de minimis and can be addressed with limited repairs, and wear and tear not reasonably attributable to traffic diverted due to the construction of the Project.

20. Traffic control shall be provided by the Design-Builder in consultation with Village to ensure safe and efficient routing of traffic.

Utilities

21. The RFP will recognize the preference of the Village not to have utilities mounted on poles alongside the LIRR right of way. The RFP will require the Design-Builder to bury such utilities where determined by LIRR to be feasible, based on consideration of cost, safety, operational need and the consent of the owner(s) of such utilities. LIRR will consult with the Village on this subject prior to making a final determination.

Drainage

22. Prior to the start of construction of the Project, the LIRR will work in good faith with the Village and the County to find the least intrusive drainage solutions for the Village that are economically feasible.

23. The Design- Build Contract will require the Design-Builder to restore roads disturbed by the drainage path, with restoration to be determined in the same manner as reflected in section (C)(19) above.

Project Community Fund

24. Prior to the start of construction of the Project, the LIRR will establish a Project Community Fund, to be held by LIRR, in the aggregate amount of \$20 million, as follows:

(A) \$4 million as a general reserve.

(B) \$16 Million to be allocated to the Project Villages, the Towns of North Hempstead and Oyster Bay (as representative for unincorporated areas along such corridor) and the County (8 recipients in total). The amount to be allocated to each recipient shall be based on a formula developed by LIRR that takes into account the relative amount of work to be done in each such Village and unincorporated area (based on geographic track work, grade crossing work, station work, bridge work, and substation work).

25. Each recipient may apply its allotment from the Fund under Section (C)(24)(B) above for reimbursement of Qualified Costs (as hereinafter defined), upon written requisition from the Fund, accompanied by reasonable back-up documentation of the nature and purpose of the expenditure claimed as a Qualified Cost and proof of it being paid by the recipient. Qualified Cost shall mean a cost or expense incurred and paid for by the recipient (a) the reimbursement of which would be legally payable out of the proceeds of bonds, notes or other evidences of indebtedness issued by the State of New York or by the Metropolitan Transportation Authority in respect of the Project, (b) is otherwise fully legal under the laws of New York State for the recipient to incur and pay, (c) is directly related to the Project either by way of being used by a recipient to (i) engage technical consultants to assist in its review of the implementation of the Project, or (ii) implement measures to mitigate an impact on the recipient caused by the Project, and (d) is not contrary to any State laws. LIRR shall determine whether a claimed cost is a Qualified Cost based on the above criteria. Provided they otherwise meet all of the criteria set out in this Section (C)(25), Qualified Costs may include (by way of example) fees payable to technical consultants to examine and review drainage or stormwater pollution prevention plans, costs of business district improvements to beautify downtown business districts and help offset loss of business resulting from any reduction in access due to Project construction, and costs of additional street sweeping/cleaning.

26. The amount of funds in the Project Community Fund may be augmented as provided as provided in section (C)(5) above. Monies deposited into the Fund pursuant to Section (C)(5) shall be used to defray Qualified Costs.

Moreover, in the event construction of the Project (other than minor, punch list-type items) extends beyond a period of four (4) years from the date of the Notice to Proceed under the Design-Build Contract, for every calendar quarter that construction of the Project continues beyond such 4-year period up to the Substantial Completion Date of the Project, the sum of \$250,000 shall be added to the Project Community Fund to be allocated by LIRR for the purpose of defraying Qualified Costs among the jurisdictions listed in Section (C)(24)(B), based on where the Project construction work occurring beyond such 4-year period is taking place, the nature of such work, and the nature of the impacts on the residents and businesses of the affected jurisdiction(s).

27. The general reserve under Section (C)(24)(A) above shall be used by LIRR to reimburse any of the Project Villages for Qualified Costs incurred during the period of construction of the Project, for which insufficient monies remain in such Village's individual allotment under Section (C)(24)(B).

28. The remaining funds in the Project Community Fund shall not be recaptured by LIRR upon Substantial Completion of the Project but shall remain open and available for application for a period of two (2) years following Substantial Completion of the Project. If at any time, outstanding claims against the reserve fund exceed the remaining monies therein, LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

Additional Reserve Fund

29. An additional reserve fund of \$10 Million shall be created by LIRR, to be held by LIRR, to be used to reimburse Project Villages for Qualified Costs associated with addressing Project-related impacts which arose after the Substantial Completion Date of the Project and which were unanticipated before such date. Such additional reserve fund shall remain open and available for application for a period of five (5) years following the Substantial Completion Date of the Project. Any unused funds remaining after such 5 year period shall revert to LIRR. If at any time, outstanding claims against the additional reserve fund exceed the remaining monies therein, LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

Pre-Construction Condition Survey

30. The Design-Builder shall conduct a pre-construction inspection and survey of the existing condition of all structures, roads and properties within the Village immediately adjacent to the LIRR Main Line Right of Way (ROW) and within other agreed-upon project construction areas for the purposes of generating photographic and video documentation of existing damage, leaks and cracks. The Village shall be entitled to accompany the Design-Builder or its consultant on such inspection and survey, if the Village so requests. The pre-construction condition survey shall form the basis against which all new cracks, existing progressive cracks, or damage will be measured. The Design-Builder shall pay, or reimburse the affected property owner, for all necessary repairs to address damage caused by construction of the Project in order to return the structure, road or property to its pre-construction condition, ordinary wear and tear excepted.

Pest Control

31. In consultation with the community the Design-Builder will employ rodent and pest control measures to ensure that pests and rodents are not a greater nuisance than in the pre-construction state.

Dust Control

32. The Design-Build Contract shall require the Design-Builder to control dust emanating from the Project on public roadways.

33. The Design-Builder will employ reasonable measures to minimize the possibility of vehicles leaving the construction site depositing no mud or dirt on public roadways in the Village. Gravel cover shall be applied to soil (unpaved) surfaces where they will be regularly traveled at egress and ingress routes from/to work sites.

34. Vehicle mud and dirt carryout, material spills, and soil washout onto public roadways and walkways and other paved areas in the Village shall be cleaned as necessary.

35. The Design-Builder is responsible for daily clean-up of public roadways and walkways in the Village affected by the Work. A wet spray power vacuum sweeper or similar equipment shall be used on paved roadways. Dry power sweeping is prohibited.

36. Prior to the start of construction of the Project, the Design-Builder shall provide the Village with a copy of all stormwater pollution prevention plans which the Design-Builder was required to prepare for the Project before construction begins.

Sound Attenuation Walls

37. Sound attenuation barrier surfaces in the Village shall have architecturally treated concrete; LIRR will consult with and seek input from the Village on the nature of the treatment.

38. The top of sound attenuation barriers in the Village shall be at least 8' above the lower proposed ground line adjacent to the barrier or 4' above top of rail, whichever is greater.

- a. South of LIRR ROW and east of Premier Blvd the wall will transition (continuous slope) down to 2' 0" above top of rail at Covert Avenue and remain at 2' 0" above top of rail to westerly edge of the NHP Station platform. Along this segment a decorative fence similar in height and appearance to the existing fence shall be provided on top of the wall.
- b. North of the LIRR ROW between S. 4th and the westerly edge of the NHP Station platform, the top of this barrier segment shall be 2'-0" above top of rail with a decorative fence similar in height and appearance to the existing fence.

39. In consultation with the Village and LIRR landscaping and irrigation (where feasible, including availability of a water source within a reasonable distance) will be added near the wall on the outside of the LIRR ROW where space is available. Maintenance and care of such landscaping (and irrigation system, where applicable) shall be the responsibility of the Village or a community organization approved by the Village. LIRR shall have no responsibility for maintaining such landscaping or irrigation systems for such landscaping.

Train Service

40. As per the analysis in the Final Environmental Impact Statement (FEIS) for the Project, the Project is projected to add 10 trains per day (combined off-peak and peak periods) serving the New Hyde Park Station, based on historic ridership data and estimated ridership growth, including growth attributable to additional reverse peak service. While LIRR is committed to adding train stops to service such ridership growth, if achieved, LIRR reserves the right to revise service levels based on customer demand, equipment availability, operating needs and agency budget.

Visual Impacts

41. The Design Build Contract will require the Design-Builder to consult with the Village on aesthetic finishes for stations, sound walls, substation and other Project elements, including the submission of the Design-Builder's plans for such aesthetic finishes for Village review. While final decision on aesthetic finishes rests with LIRR, LIRR shall, in a manner consistent with section (C)(3) above, give due and careful consideration to and respond (if applicable) to the Village's recommendations on such matters.

Environmental Measures:

The Design-Builder shall be required to do the following in connection with Project Work within the Village:

42. Provide environmental monitoring of Project Work consistent with a Construction Health and Safety Plan (CHASP).
43. Implement a Stormwater Pollution Prevention Plan (SWPPP) for Project Work in compliance with applicable law.
44. Use directional lighting at night to limit light pollution to residences
45. Implement an air quality control plan to include dust control measures, ultra-low sulfur diesel fuel, the use of best available tailpipe technologies such as diesel particulate filters, and the utilization of newer equipment.
46. Create and implement a community noise and vibration monitoring program.
47. Minimize noisy work during nighttime hours where practicable and feasible.

48. LIRR shall cause the Builder to conduct an additional soil test along the railroad right of way within the Village, at distance intervals to be agreed upon by LIRR and the Village.

Parking

49. The LIRR shall identify opportunities for additional parking along ROW and at the new surface lot in the Village through reconfiguring existing parking spaces, restriping, and providing narrower and/or compact car spaces that are at least equal to existing commuter parking available.
50. The Design-Builder shall provide additional parking to match the number of parking spaces in the Village lost to Project construction, in consultation with village
51. The LIRR will work to ensure no net loss in parking spaces in the Village as a result of construction of the Project
52. The LIRR will renegotiate the existing parking lease with Village, prior to construction of the Project, to modify rent if construction impacts parking. Existing lease to be replaced by new lease at \$1/year rent (see section 53 below).
53. LIRR and Village will enter into a new lease for parking on LIRR property including the proposed surface lot on New Hyde Park Road.
54. The Design-Builder shall provide parking near the station to offset parking lost during construction of the Project. All on street parking adjacent to the Village station and parking lots impacted by the Village station upgrade shall be reconfigured to allow for the maximum allowable parking spaces and the Design-Builder shall provide temporary parking at locations in close proximity to the station to substitute for any parking impacted during construction. The total number of spaces of reconfigured and temporary parking shall, at a minimum, match the number of the existing spaces.
55. The Design-Builder will consider the benefits of running a local jitney during construction in order to reduce the number of local vehicles in the Village station area in lieu of providing parking spaces lost to construction, in consultation with the Village.

Construction Schedule

56. The Design-Build Contract will limit the full closure of Covert Avenue to six months.
57. The Design-Build Contract will not permit full closure of Covert Avenue to start before January 1, 2019.
58. The Design-Build Contract will limit two lane closure at New Hyde Park Road to nine months.
59. The Design-Build Contract will not permit the two lane closure of New Hyde Park Road until Covert Avenue is grade separated.

D. Events of Default: Remedies.

(a) If either Party shall default in its representations, warranties, covenants and obligations to be performed under this Memorandum, and such default shall continue for thirty (30) days after notice to the defaulting Party, or if it is not reasonable to cure such default within a thirty (30) day period, then such longer period as may be reasonable under the circumstances, the sole remedies of the non-defaulting Party shall be to seek to enjoin actions or to bring an action for specific performance of the defaulting Party's obligation under this Memorandum, provided that any such remedies must be initiated not later than ninety (90) days after the expiration of the cure period hereunder. Time shall be of the essence as of the expiration of such ninety (90) day period.

(b) Legal actions instituted due to any default must be instituted in the court located in the State of New York. The rights and remedies of the parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Memorandum to be made, given or furnished to the other Party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

If to the Village:

Village of New Hyde Park
Village Hall
1420 Jericho Turnpike
New Hyde Park, New York 11040
Attention: Lawrence J. Montreuil, Mayor

With a copy to:

Benjamin J. Truncale, Jr., Esq.
Spellman, Rice, Gibbons, Polizzi & Truncale, LLP
229 Seventh Street, Suite 100
Garden City, New York 11530

If to the LIRR:

Long Island Rail Road Company
Jamaica Station
93-02 Sutphin Boulevard, 3rd Floor
Jamaica, New York 11435
Attention: Patrick A. Nowakowski, President

With a copy to:

Long Island Rail Road Company
Jamaica Station
93-02 Sutphin Boulevard, 4th Floor
Jamaica, New York 11435
Attention: Mark D. Hoffer, Esq.
Vice President-General Counsel & Secretary

F. Miscellaneous Provisions.

(a) No Waiver. No failure on the part of either Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

(b) No Third-Party Beneficiary. Nothing in this Memorandum shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a Party hereto, and this Memorandum shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(c) Severability. If any provision of this Memorandum shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.

(d) Headings. The headings contained in this Memorandum are for convenience only and shall not be interpreted to limit, control, or affect the meaning or construction of the provisions of this Memorandum.

(e) Joint Preparation. This Memorandum shall be deemed to have been jointly prepared by the Parties. This Memorandum has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

(f) Governing Law. This Memorandum shall be governed by and construed under the laws of the State of New York.

(g) No Recourse. No recourse shall be had by either Party for any claim against any officer, director, stockholder, employee or agent of any other Party alleging personal liability on the part of such person with respect to performance of the LIRR's or the Village's obligations under this Memorandum.

(h) Counterparts. This Memorandum may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when so executed and delivered will be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Memorandum by facsimile or electronic mail transmission shall be effective as delivery of a manually executed counterpart to this Memorandum.

(i) Previous MOU. This Memorandum replaces the previous Memorandum of Understanding between the Parties dated June 29, 2017 dealing with the same subject matter (the "Previous Memorandum"). The Previous Memorandum is null and void and of no force and effect.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their proper officials, pursuant to due and legal action authorizing the same, as of the day and year first written above.

THE LONG ISLAND RAIL ROAD COMPANY

By: Mark D. Hoffer

Name: MARK D. HOFFER

Title: VICE PRESIDENT - GENERAL COUNSEL
& SECRETARY

THE VILLAGE OF NEW HYDE PARK

By: _____

Name: _____

Title: _____

STATE OF NEW YORK)

) ss.:

COUNTY OF Queens)

On the 11th day of July in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Mark D. Heffer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lynette Jackson

Notary Public

Lynette Jackson
Notary Public, State of New York
No. 01JA6063324
Qualified in Suffolk County
Commission Expires August 27, 2017

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the _____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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(h) Counterparts. This Memorandum may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when so executed and delivered will be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Memorandum by facsimile or electronic mail transmission shall be effective as delivery of a manually executed counterpart to this Memorandum.

(i) Previous MOU. This Memorandum replaces the previous Memorandum of Understanding between the Parties dated June 29, 2017 dealing with the same subject matter (the "Previous Memorandum"). The Previous Memorandum is null and void and of no force and effect.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their proper officials, pursuant to due and legal action authorizing the same, as of the day and year first written above.

THE LONG ISLAND RAIL ROAD COMPANY

By: _____

Name: _____

Title: _____

THE VILLAGE OF NEW HYDE PARK

By: Lawrence J. Montreuil

Name: Lawrence J. Montreuil

Title: Mayor

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the _____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____ Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF Nassau)

On the 11th day of July in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Lawrence J. McPeterson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public