

RESOLUTION NO. 473 -2012, AUTHORIZING THE COUNTY EXECUTIVE TO REQUEST A PUBLIC HEARING FROM THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION AND EXECUTE AN AGREEMENT WITH THE METROPOLITAN TRANSPORTATION AUTHORITY (MTA)/LONG ISLAND RAILROAD (LIRR) FOR ENTRY UPON LANDS OWNED BY RAILROADS, IN CONNECTION WITH THE RECONSTRUCTION OF CR 3, PINELAWN ROAD IN THE VICINITY OF THE WELLWOOD AVENUE CROSSING, TOWN OF BABYLON, SUFFOLK COUNTY, NEW YORK (CP 5510)

WHEREAS, pursuant to Section 91 of the Railroad Law, a petition for a Public Hearing must be requested by the County Executive and the County Legislature of any County having jurisdiction, for any project that seeks to alter at-grade crossings of the street or highway in question; and

WHEREAS, a resolution must be in place prior to this hearing; and

WHEREAS, it is necessary for the County of Suffolk and the MTA/LIRR to enter into an agreement allowing entry onto lands owned by the railroad, and to allow the railroad to perform work requested by the County to accomplish this project (Exhibit "A"); now, therefore be it

1st **RESOLVED**, pursuant to the State Environmental Quality Review Act Environmental Conservation Law Article 8 (hereinafter "SEQRA"), adopted Resolution No. 981-2008 classified the action contemplated by this as an unlisted action which will not have a significant effect on the environment; and be it further

2nd **RESOLVED**, that it is hereby determined that this project, with a priority ranking of fifty-five (55) is eligible for approval in accordance with the provisions of Resolution No. 471-1994 as revised by Resolution No. 461-2006; and be it further

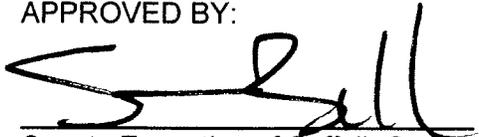
3rd **RESOLVED**, that the County Legislature hereby authorizes the County Executive, to request a Public Hearing from the New York State Department of Transportation; and be it further

4th **RESOLVED**, that the County Legislature hereby authorizes the County Executive, or his designee, subject to the approval of the County Attorney, to execute an Entry Agreement with the Metropolitan Transportation Authority (MTA)/Long Island Railroad (LIRR) for said project, and to execute any and all contract documents related to this project, on behalf of the County of Suffolk providing for Suffolk County's participation in the above referenced project; and be it further

5th **RESOLVED**, that the Entry Agreement and all other contract documents shall be subject to the approval of the County Attorney.

DATED: June 5, 2012

APPROVED BY:


County Executive of Suffolk County

Date: 6-13-2012

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PIN 075656, CP 5510
Law No >>-PW->>>

**SUFFOLK COUNTY DEPARTMENT OF PUBLIC WORKS
LONG ISLAND RAIL ROAD COMPANY WORK AGREEMENT
FOR REIMBURSABLE COSTS**

This Agreement made this >> day of >>, 2012 by and between Suffolk County Department of Public Works (SCDPW) (hereinafter called the "County"), whose office is at 335 Yaphank Avenue Yaphank, NY 11980 in the County of Suffolk, State of New York; and

The Long Island Rail Road Company (hereinafter called the "COMPANY," or "CONTRACTOR", or "MTA Agency"), a public benefit corporation organized under and existing by virtue of the laws of the State of New York and having an office at 93-59 183rd Street, Department 3146, Hollis, NY 11423.

TERM OF AGREEMENT: The term of this Agreement shall commence on the date of full execution and shall expire upon completion of the Work unless sooner terminated as provided in the Agreement.

TOTAL COST OF AGREEMENT: Shall not exceed \$to be determined after Public Hearing is held (TBD).

TERMS AND CONDITIONS: Shall be as set forth in Articles I through II and accompanying Exhibit A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date written below.

THE LONG ISLAND RAIL ROAD COMPANY

COUNTY OF SUFFOLK

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Fed. Tax ID #: _____

Date: _____

Date: _____

Recommended by:
Department of Public Works

By: _____

Name: _____

Title: _____

Date: _____

Approved As To Legality:
Dennis Cohen, County Attorney

By: _____

Basia Deren Braddish
Assistant County Attorney

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Article I
Specific Terms and Conditions

WHEREAS, the County has prepared plans for a project described as follows: Intersection Realignment of CR 3, Pinelawn Road/Wellwood Avenue with Conklin Street and Long Island Avenue, Town of Babylon, PIN 075656, CP 5510 (the "Project"); and

WHEREAS, the Project plans and specification provide for the Project to be carried across a right-of-way over which the COMPANY operates its railroad; and

WHEREAS, the County requires permission to access the COMPANY's right-of-way to progress the construction Project;

WHEREAS, the parties have agreed that the COMPANY shall perform certain work in connection with the Project which work relates to the operation of the railroad; and

WHEREAS, in accordance with the plans and specifications, the County has requested the COMPANY to consent to entry upon such lands so that the County may perform certain work which will be necessary for completion of the project; and

WHEREAS, the COMPANY and the County agree that the costs and expenses incurred in connection with this Project shall be paid in accordance with the terms of this Agreement, as outlined below.

NOW, THEREFORE, in consideration of the mutual obligations hereunder, the parties agree as follows:

1. Scope of Work to be Performed by the COMPANY

- A. Location of Work:
USDOT Crossing #338-159G, MP 32.46, Wellwood Avenue Crossing, Town of Babylon
- B. Description of Work:
To be determined after Public Hearing is held (hereinafter, the "Work"). The Work shall include, but not limited to, the following:
 - *To be determined after Public Hearing is held*
- C. County Project Manager's Name, Address, Telephone No., FAX No. and E-Mail Address:

Mr. Russell Mackey, P.E., Suffolk County Department of Public Works
335 Yaphank Avenue, Yaphank, New York 11980
Telephone (631) 852-4117, FAX (631) 852-4006,
e-mail: RussellMackey@suffolkcountyny.gov
- D. COMPANY Project Manager's Name, Address, Telephone No., Fax No. and E-mail Address:

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Mr. Steven W. Diana, Long Island Rail Road Company
93-59 183rd Street (HSF #3144)
Hollis, New York 11423
Telephone (718) 558-3581, FAX (718) 558-3551, Cell: (516) 805-0803
e-mail: swdiana@lirr.org

2. Right of Entry

SCDPW and County employees, contractors, subcontractors or agents of the County shall be permitted to enter and exit the COMPANY's right-of-way, with all necessary equipment, to progress the Project. SCDPW hereby agrees to use reasonable efforts in connection with its access of the COMPANY's right-of-way to cause minimal amount of interference with the COMPANY's railroad operations. SCDPW will coordinate with the COMPANY the schedule of the dates and times when work on the Project requiring access to the right-of-way will be performed. SCDPW and/or its contractors, subcontractors and agents will sign all entry permits, and will obtain all necessary flag protection, required by the COMPANY prior to entering the COMPANY'S right-of-way.

3. Financial Responsibility

- A. The COMPANY is not participating in the project cost. The COMPANY is to be reimbursed by the County in the amount not to exceed \$*To Be Determined after Public Hearing is Held (TBD)* specified in the estimate submitted to SCDPW by the COMPANY and made a part hereof except as such sum may hereafter be increased pursuant to an amended agreement or agreements.
- B. The COMPANY shall submit to the County evidence of fair and reasonable costs of the work performed, less the value of materials recovered, as evidenced by detailed invoices. All costs so submitted by the COMPANY shall be subject to the approval of the County and shall be subject to audit. Reimbursement therefore by the County shall be made as follows:
1. Any and all costs and expenses of performing the Work shall be paid in the first instance by the COMPANY. Upon completion of the Work (or a portion thereof), the COMPANY shall prepare and submit a Suffolk County Payment Voucher for payment by the County, with supporting documentation sufficient to enable the County to reimburse the COMPANY for its expenditures less the value of materials recovered. Such documentation may include, but is not limited to, copies of approved invoices from the COMPANY's subcontractor, or any other documentation necessary to enable the County to process and approve payment to the COMPANY. The COMPANY shall list on the Suffolk County Payment Voucher all information regarding the Work and other items for which expenditures have been or will be made in accordance with this Agreement. Either upon execution of the Agreement or not more than thirty (30) days after the expenditures are made, and in no event after the 31st day of January following the end of each year of the Agreement, the COMPANY shall furnish the County with detailed documentation in support of the payment for the Work or expenditures under this Agreement. All Suffolk County

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Payment Vouchers must bear a signature as that term is defined pursuant to New York State General Construction Law §46 by duly authorized persons, and certification of such authorization with certified specimen signatures thereon must be filed with the County by a COMPANY official empowered to sign the same.

2. All costs so submitted by the COMPANY shall be subject to the approval of the County and shall be subject to audit. Reimbursement therefore by the County to the COMPANY will be made for monthly periods as to the work performed or facilities provided by the COMPANY in accordance with approved Suffolk County Payment Vouchers showing the cost of the Work so performed or facilities provided up to and including the last day of the previous month. Payment by the County shall be made within thirty (30) days after approval of the Suffolk County Payment Voucher by the Comptroller.
 3. The charges payable to the COMPANY under this Agreement are exclusive of federal, state, and local taxes, the County being a municipality exempt from payment of such taxes.
 4. Upon the completion of all Work by the COMPANY pursuant to this Agreement, a final statement of costs shall be submitted to the County within one hundred eighty (180) days. Upon the receipt of the final statement of costs by the County, the County will conduct an audit of the COMPANY's project account records within one hundred (180) days to determine the resources applied or used by the COMPANY in fulfilling the terms of this Agreement. Upon completion of the audit and concurrence by the COMPANY, the final reimbursement payment will be made to the COMPANY.
 5. This Agreement shall be deemed executory only to the extent of money is available to the County for the performance of the terms of this Agreement and no liability on account thereof shall be incurred by the County or the COMPANY beyond moneys available for the purpose thereof.
- C. Whenever the Approved Cost Estimate together with any Supplemental Agreement(s) thereto has reached 75% of the total thereof as reflective of the costs being incurred by the COMPANY or at any point where the COMPANY reasonably anticipates that there will be a cost overrun, the COMPANY may request a Supplemental Agreement to cover such anticipated cost overrun.
4. Inspection of Work
 - A. Upon completion of all Work performed by the COMPANY, and prior to final reimbursement, the County and the NYS Department of Transportation shall have a reasonable opportunity to inspect the Work.
 - B. Within two (2) weeks after the inspection, a list of any deficiencies shall be presented the COMPANY. The Company shall advise the County of the time schedule for correction of the deficiencies.

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- C. Final reimbursement will be delayed until such time as the COMPANY corrects the deficiencies revealed by the inspection.

5. Company Records.

The COMPANY will develop and keep a record of costs in accordance with COMPANY procedures. On projects financed in whole or in part with Federal funds, and in recognition of the participation by the Federal government in the costs to the County of this Project, the COMPANY shall keep and retain cost records and accounts so that they will be available for audit by authorized representatives of the Federal government and/or the State of New York. The COMPANY does further agree that on or before the date of final billing pursuant to this Agreement, it will notify the County in writing of the location where such cost records and accounts will be available for audit by the Federal government, all in accordance with the U.S. Department of Transportation Federal-Aid Policy Guide.

6. Work Method

The actual work will be performed by the following methods: (Check and answer each category that applies):

- A. ____ Contract let by County
- B. ____ Contract let by COMPANY
- C. X By the COMPANY's Forces

Description: _____

7. Division of Maintenance

Upon the completion and acceptance by the County of the Work as indicated on the plans, responsibility for maintenance, as between the County and the COMPANY shall be as follows:

In accordance with all applicable laws, rules and regulations.

- A. ____ Contract let by County
- B. ____ Contract let by COMPANY
- C. X By the COMPANY's Forces

8. Indemnification.

- A. To the greatest extent permitted by law, the County agrees to protect, indemnify and hold harmless (including for reasonable defense costs) the COMPANY and its parents, subsidiaries, affiliated entities, officers, officials, employees, contractors, and agents ("Company Indemnified Parties") from and against all liabilities, fines, penalties, actions, damages, claims (including claims for bodily

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and personal injury and property damage), demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, arising out of the acts, omissions, or the negligence of the County, or its employees, contractors, agents, under this Agreement. The County shall defend the Company Indemnified Parties in any suit, including appeals, or at the Company's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of the County, its officers, officials, employees, contractors, subcontractors, or agents, if any, in connection with the services described or referred to in this Agreement. The County also agrees to indemnify the COMPANY for damage to its property resulting directly from the Work. This agreement to indemnify and hold harmless is intended to apply to any injury or damage caused by an act of omission of the County, or by an employee, contractor or agent of the County (an agent of the County includes an officer, employee or agent of the COMPANY while engaged in work directly related to the project and under the County's direct supervision or acting in accordance with the County's specific direction). Without diminishing the scope and meaning of the foregoing, the County shall not be responsible for the negligence or torts of the COMPANY, their officers, agents, employees, contractors, passengers or any other persons not acting as agent for or without the control of the County or its contractors.

- B. To the greatest extent permitted by law, the COMPANY agrees to protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, and agents ("County Indemnified Parties") from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of the COMPANY, or its employees, contractors, agents, or passengers in connections with the Work described or referred to in this Agreement. The COMPANY shall defend the County Indemnified Parties in any suit, including appeals, or at the County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of the COMPANY, its officers, officials, employees, contractors, subcontractors, agents, or passengers, if any, in connection with the services described or referred to in this Agreement.

9. Insurance. The COMPANY shall procure and maintain, until the work covered by this Agreement has been completed to the satisfaction of the County and the COMPANY, insurance for liability and damages imposed by law or otherwise of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do such business in the State of New York, covering all work under this Agreement. Before commencing the work, the COMPANY shall furnish to the County a certificate or certificates of insurance in a form satisfactory to the County, showing that the COMPANY has complied with this Article, which certificates shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the County. The kinds and amounts of insurance, subject to agreement that different coverage or higher limits shall apply, are as follows:

- A. Force Account Insurance: The policy will provide a combined single limit of \$5,000,000 per occurrence covering the liability of the COMPANY under the Federal Employers Liability Act and similar statutes for the protection of

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employers for injuries to or death of employees engaged in the work. The policy will include the following coverage:

1. Contractor Liability Insurance covering both bodily injury and property damage liability for damages imposed by the law on the COMPANY with respect to work performed under this Agreement.
 2. Contractor's Liability Insurance covering liability for damages imposed by law upon the COMPANY with respect to all work performed by the COMPANY under this Agreement, with an endorsement providing coverage for damages arising out of the Project or property owned by the COMPANY or in its care, custody and control;
 3. Protective Liability Insurance issued to and covering liability for damages imposed by law upon the COMPANY with respect to all work, performed for the COMPANY by any contractor(s) under this Agreement;
 4. Protective Liability Insurance issued to and covering liability for damages imposed by law upon the County and employees of the County both officially and personally, with respect to all Work performed under this Agreement by the COMPANY, or by its contractors, including omissions and supervisory acts of the County.
- B. In case the COMPANY shall, with the consent of the County, make contracts for any part of the work or facilities covered by this Agreement, it is hereby agreed that said contractor, at no cost to the County or the COMPANY shall procure and maintain until the work covered by said contract has been completed to the satisfaction of the County and COMPANY, the following insurance:
1. Worker's Compensation Insurance and Employer's Liability insurance in compliance with all applicable New York State laws and regulations and Disability Benefits insurance, if required by law. The contractor shall furnish to the County, prior to its execution of the Agreement, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, the Agreement shall be void and of no effect unless the Contractor shall provide and maintain coverage during the Term for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
 2. Commercial General Liability providing limits of \$2,000,000 per occurrence and including coverage for bodily injury, property damage and independent contractor coverage. The County shall be named an additional insured.
 3. Automobile Liability insurance (if any vehicles are used by the contractor in the performance of the Agreement) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage per occurrence.

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5. Professional Liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) on either a per-occurrence or claims-made coverage basis.
6. Protective Liability Policy, with limits of not less than \$2,000,000 per occurrence.

The County may mandate an increase in the liability limits set forth above in the immediate preceding paragraphs.

- C. All policies providing such coverage shall be issued by insurance companies with an A.M. Best rating of A- or better.
- D. The COMPANY shall furnish to the County, prior to the execution of the Agreement, declaration pages for each policy of insurance, other than a policy for commercial general liability insurance, and upon demand, a true and certified original copy of each such policy evidencing compliance with the aforesaid insurance requirements. In the case of commercial general liability insurance, the COMPANY shall furnish to the County, prior to the execution of the Agreement, a declaration page or insuring agreement and endorsement page evidencing the County's status as an additional insured on said policy, and upon demand, a true and certified original copy of such policy evidencing compliance with the aforesaid insurance requirements.
- E. All evidence of insurance shall provide for the County to be notified in writing thirty (30) days prior to any cancellation, nonrenewal, or material change in the policy to which such evidence relates. It shall be the duty of the COMPANY to notify the County immediately of any cancellation, nonrenewal, or material change in any insurance policy.
- F. In the event the COMPANY shall fail to provide evidence of insurance, the County may provide the insurance required in such manner as the County deems appropriate and deduct the cost thereof from any payments due the COMPANY under this Agreement or any other agreement between the County and the COMPANY.
- G. If the COMPANY has a self-insurance program under which it acts as a self-insurer for any of such required coverage, it may provide self-funded coverage and certificates or other evidence of such self-insurance in lieu of insurance issued by insurance companies.

END OF TEXT

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Article II

County Terms and Conditions

1. Elements of Interpretation

As used throughout the Agreement:

a. Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons, and shall include successors and assigns.

b. Capitalized terms used, but not otherwise defined herein, shall have the meanings assigned to them in the Agreement.

2. Meanings of Terms

As used in the Agreement:

“**Agreement**” means all terms and conditions herein forming all rights and obligations of the Contractor and the County.

“**Comptroller**” means the Comptroller of the County of Suffolk.

“**Contractor**” means the Long Island Rail-Road, MTA Agency, signatory person, partnership, corporation, association or other entity, its officers, officials, employees, agents, servants, sub-contractors and any successor or assign of any one or more of the foregoing performing the Services.

“**County**” means the County of Suffolk, its departments, agents, servants, officials, and employees.

“**County Attorney**” means the County Attorney of the County of Suffolk.

“**Department**” means the signatory department approving the Agreement.

“**Event of Default**” means

- a. The Contractor’s failure to maintain the amount and types of insurance required by the Agreement; or
- b. The Contractor’s failure to comply with any Federal, or State law, rule, or regulation; or
- c. The Contractor’s bankruptcy or insolvency; or
- d. The Contractor’s failure to cooperate in an Audit, or

e. The Contractor’s falsification of records or reports, misuse of funds, or malfeasance or nonfeasance in financial record keeping arising out of, or in connection with, any agreement with the County; or

f. The Contractor’s failure to submit, or failure to timely submit, documentation to obtain Federal or State funds; or

g. The inability of the County or the Contractor to obtain Federal or State funds due to any act or omission of the Contractor;

“**Federal Government**” means the United States government, its departments and agencies.

“**Fund Source**” means any direct or indirect sum payable to the Contractor by the County pursuant to any lawful obligation.

“**Legislature**” means the Legislature of the County of Suffolk

“**State**” means the State of New York.

“**Suffolk County Payment Voucher**” means the document authorized and required by the Comptroller for release of payment.

“**Term**” means the time period set forth on page one of the Agreement unless sooner terminated as set forth in this Agreement.

“**Work**” means all that which the Contractor must do and any part thereof arising out of, or in connection with this Agreement .

3. Contractor Responsibilities

a. It shall be the duty of the Contractor to discharge, or cause to be discharged, all of its responsibilities in accordance with the provisions of the Agreement.

b. The Contractor shall promptly take all action as may be necessary to perform the Work.

c. The Contractor shall not take any action that is inconsistent with the provisions of the Agreement.

4. Qualifications, Licenses, and Professional Standards

a. The Contractor represents and warrants that it has, and shall continuously possess, during the Term, the required licensing, education, knowledge, experience, and character necessary to qualify it to perform the Work.

b. The Contractor shall continuously have during the Term all required authorizations, certificates, certifications, registrations, licenses, permits, and other approvals required by Federal, or State authorities necessary to qualify it to perform the Work.

5. Termination

a. **Event of Default; Termination on Notice**

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i.) The County may immediately terminate the Agreement, for cause, upon such terms and conditions it deems appropriate, in the Event of Default.

ii.) If the Contractor defaults under any other provision of the Agreement, the County may terminate the Agreement, on not less than five (5) days' notice, upon such terms and conditions it deems appropriate.

iii.) The parties to this Agreement may agree to terminate this Agreement at any time, according to mutually agreed upon terms and conditions which are set forth in writing and executed by both the County and the MTA Agency.

iv.) If the Contractor, before completion, discontinues the project, the County, by written notice to the Contractor, may terminate any or all of the County's obligations under this Agreement or may suspend any or all of its obligations under this Agreement until the event or condition resulting in such suspension has ceased or been corrected.

v.) Upon receipt of a notice of termination or suspension, the Contractor shall promptly carry out the actions required by such notice which may include furnishing a status report on the progress of the work.

b. Duties upon Termination

i.) The Contractor shall discontinue the Services as directed in the termination notice

ii.) The County shall pay the Contractor for the Services rendered through the date of termination.

iii.) The County shall be released from any and all liability under the Agreement, effective as of the date of the termination notice.

iv.) Upon termination, the Contractor shall reimburse the County the balance of any funds advanced to the Contractor by the County no later than thirty (30) days after termination of the Agreement. The provisions of this subparagraph shall survive the expiration or termination of the Agreement.

v.) Nothing contained in this paragraph shall be construed as a limitation on the County's legal or equitable remedies, or other rights available to it as set forth in the Agreement.

6. Independent Contractor

The Contractor is not, and shall never be, considered an employee of the County for any purpose. Notwithstanding anything herein, the Agreement shall not be construed as creating a principal-agent relationship between the County and the Contractor or the Contractor and the County, as the case may be.

7. Severability

It is expressly agreed that if any term or provision of the Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of the Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of the Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

8. Merger; No Oral Changes

It is expressly agreed that the Agreement represents the entire agreement of the parties and that all previous understandings are herein merged in the Agreement. No modification of the Agreement shall be valid unless in written form and executed by both parties.

9. Set-Off Rights

The County shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold from a Fund Source an amount no greater than any moneys due and owing to the County for any reason. The County shall exercise its set-off rights subject to approval by the County Attorney. In cases of set-off pursuant to a Comptroller's audit, the County shall only exercise such right after the finalization thereof, and only after consultation with the County Attorney.

10. Nonsectarian Declaration

The Services performed under the Agreement are secular in nature. No funds received pursuant to the Agreement shall be used for sectarian purposes or to further the advancement of any religion. The Services will be available to all eligible individuals regardless of religious belief or affiliation.

11. Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venue shall be designated in the Supreme Court, Suffolk County, the United States District Court for the Eastern District of New York, or, if appropriate, a court of inferior jurisdiction in Suffolk County.

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12. No Waiver

It shall not be construed that any failure or forbearance of the County or Contractor to enforce any provision of the Agreement in any particular instance or instances is a waiver of that provision. Such provision shall otherwise remain in full force and effect, notwithstanding any such failure or forbearance.

13. Conflicts of Interest

The Contractor shall not, during the Term, pursue a course of conduct which would cause a reasonable person to believe that he or she is likely to be engaged in acts that create a substantial conflict between its obligations under the Agreement and its private interests. The Contractor is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue as long as the Term.

14. Cooperation on Claims

The Contractor and the County shall render diligently to each other, without compensation, any and all cooperation that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives arising out of or in connection with the Agreement.

15. Confidentiality

Any document of the County, or any document created by the Contractor and used in performing the Work, shall remain the property of the County and shall be kept confidential in accordance with applicable laws, rules, and regulations.

16. Assignment and Transfer

a. The Contractor shall not delegate its duties under the Agreement, or assign, transfer, convey, or otherwise dispose of the Agreement, or any of its right, title or interest therein, or its power to execute the Agreement, or assign all or any portion of the monies that may be due or

become due hereunder, (collectively referred to in this paragraph 23 as "Assignment"), to any other person, entity or thing without the prior written consent of the County, and any attempt to do any of the foregoing without such consent shall be a material default by the Contractor.

17. No Intended Third Party Beneficiaries

The Agreement is entered into solely for the benefit of the County and the Contractor. No third party shall be deemed a beneficiary of the Agreement and no third party shall have the right to make any claim or assert any right under the Agreement.

18. Notice

Unless otherwise expressly provided herein, all notices shall be in writing and shall be deemed sufficiently given if sent by regular first class mail and certified mail, or personally delivered during business hours as follows: 1.) to the Contractor at the address on page 1 of the Agreement and 2.) to the County at the Department, or as to either of the foregoing, to such other address as the addressee shall have indicated by prior written notice to the addressor. All notices received by the County relating to a legal claim shall be immediately sent to the Department and also to the County Attorney at 100 Veterans Memorial Highway, P.O. Box 6100, (Sixth Floor), Hauppauge, New York, 11788. The County shall report to the Contractor in writing within ten (10) days of the initiation by or against it of any legal action or proceeding in connection with or relating to The Agreement.

19. Gratuities

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of the County or the State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of this Agreement.

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EXHIBIT A (ESTIMATE SUMMARY FROM LIRR)
TO BE DETERMINED AFTER HEARING IS HELD

COUNTY OF SUFFOLK



STEVEN BELLONE
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PUBLIC WORKS

GILBERT ANDERSON, P.E.
COMMISSIONER

PHILIP A. BERDOLT
DEPUTY COMMISSIONER



MEMORANDUM

TO: Jon Schneider, Deputy County Executive

FROM: Gilbert Anderson, P.E. Commissioner

DATE: April 13, 2012

RE: **Authorizing the County Executive to Request a Public Hearing from the New York State Department of Transportation and Execute an Agreement with the Metropolitan Transportation Authority (MTA)/Long Island Railroad (LIRR) for Entry Upon Lands owned by Railroads, in Connection with the Reconstruction of CR 3, Pinelawn Road in the Vicinity of the Wellwood Avenue Crossing, Town of Babylon (CP 5510)**

Attached is a draft resolution and duplicate copy authorizing the County Executive to request a Public Hearing from the New York State Department of Transportation and to enter into an agreement with the MTA/LIRR to allow entry and at-grade railroad crossing improvements in connection with the above referenced project.

An authorizing resolution must be in place prior to the public hearing being held.

An e-mail version of this resolution was sent to CE RESO REVIEW saved under the title "Reso-DPW-CP5510-CR3 LIRR Hearing.doc".

GA/WH/td
attach.

cc: Regina M. Calcaterra, Chief Deputy County Executive
Ben Zwirn, Director of Intergovernmental Relations
Tom Vaughn, County Executive Assistant
Nick Paglia, Assistant Executive Analyst
William Hillman, P.E., Chief Engineer
Laura Conway, CPA, Chief Accountant
Kathy LaGuardia, Capital Accounting

SUFFOLK COUNTY IS AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

REQUEST FOR THE INTRODUCTION OF SUFFOLK COUNTY LEGISLATION
OFFICE OF THE COUNTY EXECUTIVE
County of Suffolk

- (1) Please limit this suggestion form to ONE proposal.
- (2) Describe in detail.
- (3) Attach all pertinent material.

Submitting Department
(Dept. Name & Location)

Public Works
335 Yaphank Avenue
Yaphank, NY 11980

Department Contact Person
(Name & Phone No.):

William Hillman, P.E.
Chief Engineer
852-4002

Suggestion Involves:

Amendment

New Program

Grant Award

Contract (New Rev.)

Summary of Problem: (Explanation of why this legislation is needed.)

This resolution authorizes the County Executive to request a public hearing and execute an agreement with the MTA/LIRR for entry upon railroad lands in connection with the Reconstruction of CR 3, Pinelawn Road in the Vicinity of the Wellwood Avenue Crossing

Proposed Changes in Present Statute: (Please specify section when possible.)

Not Applicable

PLEASE FILL IN REVERSE SIDE OF FORM

SCIN FORM 175a (10/95) Prior editions of this form are obsolete.

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on June 5, 2012 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res.

1506

Res. No.

473

June 5, 2012

Motion:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

Second:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Thomas MURATORE					
5	Kara HAHN					
6	Sarah S. ANKER					
7	Rob CALARCO					
9	Ricardo MONTANO					
10	Thomas CILMI					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
15	DuWayne GREGORY					
16	Steven H. STERN				/	
17	Lou D'AMARO				/	
18	William SPENCER					
14	Wayne R. HORSLEY, D.P.O.					
8	William J. LINDSAY, P.O.				/	
	Totals	16	-		2	-

MOTION
<input checked="" type="checkbox"/> Approve
___ Table: _____
___ Send To Committee
___ Table Subject To Call
___ Lay On The Table
___ Discharge
___ Take Out of Order
___ Reconsider
___ Waive Rule ___
___ Override Veto
___ Close
___ Recess
APPROVED <input checked="" type="checkbox"/> FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
___ NOT ADOPTED

Tim Laube

Tim Laube, Clerk of the Legislature

Roll Call ___ Voice Vote