

Introduced by Presiding Officer, on request of the County Executive and Legislator Browning

**RESOLUTION NO. 1200 -2012, AUTHORIZING A LICENSE AGREEMENT WITH THE LONG ISLAND LIVE STEAMERS, INC. AT SOUTHAVEN COUNTY PARK, YAPHANK**

**WHEREAS**, the Long Island Live Steamers, Inc., a large-scale model train club, is a not-for-profit corporation founded in 1966 to promote the fine art of precision model making, especially as applied to steam machinery; and

**WHEREAS**, the Long Island Live Steamers have operated a large scale model train and track system at Southaven County Park since approximately 1968 which has been a unique, rewarding and educational attraction at the Park for patrons of all ages; and

**WHEREAS**, in 2001, the Long Island Live Steamers and the County entered into a license agreement to promote the art of precision model train making, including offering train rides to the general public, at no cost to the County, in a designated area of Southaven County Park; and

**WHEREAS**, the Department of Parks, Recreation and Conservation has determined that the previous agreement has been sufficiently performed and desires to continue to allow Long Island Live Steamers to offer train rides to the general public in Southaven County Park; and

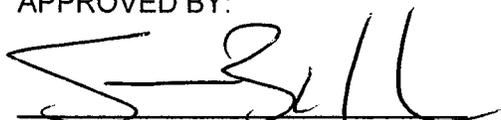
**WHEREAS**, the Long Island Live Steamers would like to enter into a license agreement for a term of ten (10) years with two (2) optional terms of an additional five (5) years each with the County of Suffolk to continue offering train rides in a designated area of Southaven County Park; now, therefore be it

**1<sup>st</sup>** **RESOLVED**, that this Legislature, being the lead agency under the State Environmental Quality Review Act ("SEQRA"), New York Environmental Conservation Law, Article 8, and Chapter 279 of the Suffolk County Code, hereby determines that this Resolution constitutes a Type II action pursuant to Volume 6 of New York Code of Rules and Regulations ("NYCRR") §617.5(c)(20), (26) and (27), since it deals with agency administration and management, and renewal of a license agreement, and, since this is a Type II action, the County Legislature has no further responsibilities under SEQRA; and be it further

**2<sup>nd</sup>** **RESOLVED**, that the Suffolk County Department of Parks, Recreation, and Conservation is hereby authorized, empowered, and directed, pursuant to Section 28-4(D) of the SUFFOLK COUNTY CHARTER, to enter into a License Agreement for a term of ten (10) years with two (2) optional terms of an additional five (5) years each with the Long Island Live Steamers, Inc. to continue offering train rides in a designated area of Southaven County Park in Yaphank and, in doing so, sharing the history, knowledge, experience, and enjoyment of steam machinery and railroads with the general public.

DATED: December 18, 2012

APPROVED BY:

  
County Executive of Suffolk County

Date: 12-31-12

**License Agreement**

This License Agreement ("Agreement") is between the County of Suffolk ("County"), a municipal corporation of the State of New York, acting through its duly constituted Department of Parks, Recreation, and Conservation ("Department") located at Montauk Highway, West Sayville, New York 11796 and its mailing address at P.O. Box 144, West Sayville, New York 11796; and

The Long Island Live Steamers, Inc. ("Licensee"), a New York not-for-profit corporation having its principal place of business at 520 Long Beach Road, St. James, New York 11780.

The parties hereto desire to continue their ongoing relationship and enter into a License Agreement for the purpose of sharing the history, knowledge, experience, and enjoyment of steam machinery and railroads by means of offering train rides to the general public in a designated area at Southaven County Park, Yaphank, New York as set forth herein.

**Term of License Agreement:** Shall be from January 1, 2011 through December 31, 2020, with two (2), five-year option periods to renew the License Agreement, from January 1, 2021 through December 31, 2025, and January 1, 2026 through December 31, 2030, at the sole discretion of the Commissioner of the Department ("Commissioner").

**Total Cost of License Agreement:** Revenue to County

**Terms and Conditions:** Shall be as set forth in Exhibits "A" through "H" attached hereto.

In Witness Whereof, the parties hereto have executed this Agreement as of the latest date written below.

**Long Island Live Steamers, Inc.**

By: [Signature]

Thomas Dunn  
President

Date: 8/9/12

**Approved as to Legality;**

**Dennis M. Cohen**  
**Suffolk County Attorney**

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

Marisa G. Marletti-Schifano  
Assistant County Attorney

Date: \_\_\_\_\_

**County of Suffolk**

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

Regina M. Calcaterra  
Chief Deputy County Executive

Date: \_\_\_\_\_

**Approved:**

**Suffolk County Department of  
Parks, Recreation & Conservation**

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

Greg Dawson  
Commissioner

Date: \_\_\_\_\_



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**List of Exhibits**

**Exhibit A**

**General Terms and Conditions**

1. License
2. Term and Termination of Agreement
3. Definition of Licensee
4. Indemnification and Defense
5. Insurance
6. County Property
7. Representation of Inspection
8. Risks of Licensee
9. Conduct of License Employees/Volunteers
10. Licenses and Permits
11. Preservation of Features; Soil and Vegetation Removal
12. Claims for Compensation; Licensee's Right to Terminate
13. Personal Property of Licensee
14. Compliance with Law
15. Liens
16. Insolvency
17. License/Not a Lease
18. Fire Safety Standards
19. Hazardous Substances and Waste
20. Inspection of Licensed Premises/Remediation of Unsatisfactory Conditions
21. Illegal or Objectionable Conduct
22. Not a Co-Partnership
23. County Representatives
24. County Monies
25. Change in Park Facilities
26. Change in the Department
27. Severability; No Implied Waiver
28. Independent Contractor
29. Assignment and Subcontracting
30. Not in Default/Arrears
31. Cooperation on Claims
32. Conflicts of Interest
33. Non-Discrimination in Services
34. Nonsectarian Declaration
35. Set-Off Rights
36. Publications
37. Copyrights and Patents
38. Certification as to Relationships
39. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction
40. All Rights Reserved

Term: 1/1/11-12/31/2020; 2-5 yr. options

Rev. 8/1/12

41. Governing Law
42. Confidentiality
43. No Intended Third Party Beneficiaries
44. No Oral Changes
45. Fundraising/Contribution
46. Public Access
47. Inconsistent Provisions
48. Entire Agreement

### **Exhibit B**

#### **Suffolk County Legislative Requirements for Contracts**

1. Contractor's/Vendor's Public Disclosure Statement
2. Living Wage Law
3. Use of County Resources to Interfere with Collective Bargaining Activities  
Local Law No. 26-2003
4. Lawful Hiring of Employees Law
5. Gratuities
6. Prohibition Against Contracting with Corporations that Reincorporate Overseas
7. Child Sexual Abuse Reporting Policy
8. Non Responsible Bidder
9. Use of Funds in Prosecution of Civil Actions Prohibited
10. Youth Sports
11. Suffolk County Local Laws Website

### **Exhibit C**

#### **Notices and Contact Persons**

1. Operational Notices
2. Notices Relating to Termination and/or Litigation
3. Changes in Contact Persons
4. Receipt of Notice
5. Litigation/Accidents

### **Exhibit D**

#### **Description of Services**

1. Operations and Use of Licensed Premises
2. Operational Plan; Operations Schedule
  - a. Operational Plan & Schedule
  - b. Concession Items
  - c. Special Events
3. Maintenance and Upkeep of Licensed Premises
4. Improvements to Facilities
5. Licensee Provided Services and Licensee Responsibilities
  - a. Day-to-Day Maintenance and Repair
  - b. Personnel

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- c. Sanitary Condition of Licensed Premises/Grounds
- d. Refuse and Garbage Costs
- e. Inspections
- f. Restrooms
- g. Responsible Principal
- h. Security
- i. Safety
- j. Authorized Food and Beverage Items for Sale
- k. Extermination

6. Utilities

**Exhibit E**

**Financial Terms and Conditions/Other Variable Terms and Conditions**

- 1. Accounting and Record Keeping; Inspection of Records; Reporting; N.Y.S. Sales Tax
- 2. Annual License Fee
- 3. Advertising
- 4. Payment Terms
- 5. Comptroller's Rules and Regulations for Consultant Agreements
- 6. License for Copyrighted Materials

**Exhibit F**

**Suffolk County Resolution Nos. 841-2000 and \_\_\_\_\_-2012**

**Exhibit G**

**Site Map of Licensed Premises**

**Exhibit H**

**Long Island Live Steamers Operations and Safety Manual**

**Exhibit A  
General Terms and Conditions**

**Whereas**, the County, acting by and through the Department, owns, operates and maintains a park system within the County of Suffolk and in connection with such ownership, operation and maintenance, the Commissioner of the Department ("Commissioner") supervises and manages the facilities as necessary, desirable and convenient for the use of the public for healthful recreation; and

**Whereas**, since 2001, pursuant to an agreement with the County, the Licensee, with its own staff and volunteers, has utilized a designated area within Southaven County Park, located in Yaphank, New York, to promote the art of precision model train making, especially as applied to steam machinery, and has offered train rides to the general public; and

**Whereas**, the Department and the Licensee wish to enter into this Agreement to continue these valuable services and activities to the general public at the Licensed Premises; and

**Whereas**, the Suffolk County Legislature, by Resolution Nos. 841-2000 and \_\_\_\_-2012 has authorized the Department to enter into a license agreement with the Licensee;

**Now, Therefore**, in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties hereto, as follows:

**1. License**

- a. The County grants to the Licensee, and the Licensee accepts from the County, a non-exclusive, non-transferable license ("License") to promote the science of steam operated equipment through exhibits and a scale model railroad track and for the purpose of offering rides to the general public within a designated area of Southaven County Park located in Yaphank, NY (the "Licensed Premises") subject to the terms and conditions as set forth in Exhibits A through H herein. The Licensee agrees to perform all of its obligations in accordance with the terms and conditions of this Agreement. The Licensee shall provide services "Services" as more particularly described in Exhibit D, entitled "Description of Services".
- b. The "Licensed Premises" as depicted in the site map included in Exhibit G, is bordered on the north by the access road to the stables of Southaven County Park, the south and east by a fire road, and on the west by Gerard Avenue, and shall include the food service and merchandise facility ("Food Service/Souvenir and Merchandise Facility"), ticket booth, metal railroad car storage container, maintenance shop, compressor shed, two car storage containers, pump house shed, round house facility, signal/switch tower and loader storage building and parking lot located within the perimeter therein. The Licensed Premises shall also include all mechanical systems, furniture, fixtures and articles of personal property now attached or appurtenant to and used in connection with the above structures, and all shrubbery, trees, plantings, grounds, and landscaping materials.

- c. The Licensee understands and agrees that this Agreement is for the express purpose of the Licensee fostering an appreciation of the art and tradition of precision model train making and providing train rides to the public at the Licensed Premises.
- d. The Licensee understands and agrees that this Agreement is of limited scope and duration and the Licensee understands and agrees to conduct and use the Licensed Premises for no purposes other than as herein stated. Any service or activity not described in this Agreement must be approved in advance, in writing, by the Commissioner.
- e. The Licensee shall comply with all applicable Federal, State, County and local laws, rules, regulations, codes, ordinances and requirements in effect on the date of execution of this Agreement and as may be adopted or amended from time to time.
- f. The Licensee shall not interfere with any other licensees of the Department or any employee of any other licensee.
- g. The Licensee shall comply with all applicable laws and regulations governing employee compensation and workplace safety. As applicable, the Licensee shall require contractors and subcontractors to comply with New York State Prevailing Wage Rate Laws and/or Suffolk County Living Wage Laws.
- h. **Qualifications, Licenses, and Professional Standards**

- i. **Qualifications**

The Licensee specifically represents and warrants that it has and shall continuously possess, and that, its employees, agents, and subcontractors have and shall continuously possess, the required education, knowledge, experience, and character necessary to qualify them individually for the particular duties they perform. Additionally, the Licensee has and shall continuously have, and its employees, agents, and subcontractors have and shall continuously have, all required authorization(s), certificate(s), certification(s), registration(s), license(s), permit(s), and other approval(s) required by the Federal, State, County, or local authorities for the services provided in accordance with this Agreement.

- ii. **Notifications**

The Licensee shall immediately notify the Department in writing of any disciplinary proceedings commenced or pending against the holder of any license required by the above qualifications by the Federal, State, County, or other local authorities, including, but not limited to, the New York State Department of Education or the New York State Department of Health. In the event that the Licensee or such other holder of a license required by the above qualifications is no longer licensed for any one or more of the Services,

the Licensee must immediately so notify the Department, but in no event should such notification be given more than 5 days after the license holder has lost his/her/its license. The Licensee shall not be reimbursed for any Services rendered after the effective date of termination of such license. The remainder of this Agreement, if any, or its application to persons or circumstances other than those as to which said license has been terminated, shall not be affected thereby, and every other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**iii. Documentation of Professional Standards**

The Licensee shall maintain on file in one location in Suffolk County, the address to be provided by Licensee to the Department, all records that demonstrate that it, and its employees, agents, and subcontractors, have complied with sub-paragraphs i. and ii. above. Such documentation shall be kept, maintained, and available for audit and inspection by the County upon 24 hours notice.

**iv. Submission of Employee Listing**

The Licensee shall forward to the Department annually, on or before July 1 of each year during the term of this Agreement, a complete list of its employees, agents and subcontractors providing Services, including names and areas of certification.

**2. Term and Termination of Agreement**

**a. Term**

This Agreement shall cover the period provided on the first page hereof, unless sooner terminated as provided herein.

**b. Option Periods**

It is agreed by the parties hereto that it is at the sole discretion of the Commissioner, acting in the best interests of the County, to grant permission to exercise option periods (if any) to extend the Agreement. Frequent failure to comply with contractual obligations (payments, providing required documentation, insurance, etc.) could have a negative impact on whether or not the Licensee's request to exercise option periods will be approved. Notification of the Licensee's desire to renew must be received by Commissioner no later than six months prior to the expiration of this Agreement. Each option period exercised must be by written amendment signed by all parties.

**c. Termination by County in the Public Interest**

Notwithstanding anything herein to the contrary, in the event that the Commissioner determines in his/her sole discretion that termination is in the public interest, the County reserves the right to terminate this Agreement. Such termination shall occur upon sixty (60) days notice of intent to terminate this Agreement. Upon such termination, the Licensee shall quit and surrender the premises to the Commissioner immediately.

**d. Default/Termination for Cause**

The County may terminate this Agreement based upon the following events which constitute a default:

- i. A failure on the part of the Licensee to pay any installment of the License Fee or other sums, charges, fees, expenses or other amounts to be paid by the Licensee pursuant to the provisions of this Agreement when due. Upon the expiration of five (5) days from the date a written notice to cure and notice of intent to terminate is given to the Licensee and the default has not been cured, the County may terminate this Agreement upon five (5) additional days written notice.
- ii. A failure by the Licensee to maintain the amounts and types of insurance required by this Agreement. In such event, the County may terminate this Agreement immediately, at the sole discretion of the Commissioner.
- iii. A failure by the Licensee to comply with any of the inspection requirements, including, without limitation: (i) the requirements to make the Licensed Premises available for inspection or to make the books and records available for inspection, or (ii) the removal or destruction of required records. Upon the expiration of one (1) day from the date a written notice to cure and notice of intent to terminate is given to the Licensee and the default has not been cured, the County may terminate this Agreement upon one (1) additional day written notice.
- iv. A failure by the Licensee to comply with Federal, State or local laws, rules, regulations, or County policies or directives, may result in immediate termination of this Agreement, at the sole discretion of the Commissioner.
- v. A failure by the Licensee to comply with any other provisions of this Agreement. Upon the expiration of five (5) days from the date a written notice to cure and notice of intent to terminate is given to the Licensee, and the default has not been cured, the County may terminate this Agreement upon five (5) additional days written notice.

e. **Termination for Emergency**

This Agreement may be terminated in the event of an emergency or other condition involving possible loss of life, threat to health and safety, destruction of property or other condition deemed to be dangerous, in the sole discretion of the Commissioner. In such event, the County may terminate this Agreement immediately, in the sole discretion of the Commissioner.

- f. All notices herein shall be in writing and shall comply with the Exhibit entitled, "Notices and Contact Persons." The notice to cure and notice of intent to terminate shall call attention to the existence of the failure and particularize the claimed failure in reasonable detail. The notice shall also state the intended date of termination.
- g. Upon due notice of termination of this Agreement, the Department may request, and in such event, the Licensee shall provide, the County with any information, records, or reports that are within the purview of this Agreement, subject to any applicable provisions of law or regulations. The Licensee shall also relinquish title and possession of any furniture, fixtures, equipment, materials or supplies as specified in this Agreement.
- h. If the term of this Agreement expires naturally, as provided herein; or if the Licensee shall abandon the Licensed Premises; or if the Licensee is dispossessed of its interest in this Agreement as a result of any determination against the Licensee in any legal or administrative proceeding in which the Licensee has no right to further appeal: the Commissioner may, without further notice, resorting to force, summary proceedings, or otherwise, reenter the Licensed Premises, and the Licensee hereby waives the service of any further notice of the Commissioner's intent to reenter or repossess the Licensed Premises, or to institute legal proceedings to that end.
- i. In the event this Agreement is terminated for any reason, the Licensee shall quit and surrender the Licensed Premises to the Commissioner and leave same in the condition as received by the Licensee, reasonable wear and tear excepted. It is further agreed, that upon termination, unless otherwise directed by the Commissioner, the Licensee shall have twenty-four (24) hours to remove all personal property of the Licensee and any personal property of the Licensee not so removed within twenty-four (24) hours of the effective date of termination, shall be considered as having been abandoned by the Licensee to the County, and title thereto shall vest in the County.
- j. Upon the repossession of the Licensed Premises by virtue of the termination or expiration of this Agreement, or any renewal hereof, the Licensee shall remain liable to the Commissioner and the County for:
- (1) All fees and other sums due and owing from the Licensee. The Licensee shall be deemed liable for all fees up to and including the next following installment or yearly fee, whatever the case may be, which may be prorated at the discretion of the Commissioner; and

- (2) The reasonable costs expended by the Commissioner and the County to place the Licensed Premises in the physical condition in which the Licensee is obligated to leave the Licensed Premises upon the expiration of the term, and to secure the Licensed Premises after termination; and
- (3) The costs incurred by the Commissioner and the County, whether by or without legal process: to remove the Licensee and any effects of the Licensee; the cost to expel, oust and remove all parties who may be present upon or occupy any part of the Licensed Premises and all personal property that may be thereon and therein contained. The Licensee hereby agrees that the County shall not be liable for prosecution, or for any damage or damages to, or loss of, any personal property belonging to any party upon or occupying the Licensed Premises, or any part thereof, from any cause whatsoever by reason of such removal and the Licensee hereby agrees to indemnify and hold the County, the Department and their officers, officials and employees harmless from any claims regarding such removal by any third party. The Licensee expressly waives any and all claims for damages and loss against the County and its officials, officers, employees, servants, contractors and agents for or on account of any act done or caused to be done in exercising this right; and the County shall have the right to sell any personal property so seized or removed, and may recover by such sale or legal process any and all sums due to the County under the terms of this Agreement, in addition to all other available remedies.

k. Upon the termination or expiration of this Agreement, in accordance with the foregoing paragraphs, the Licensee acknowledges and agrees that it shall not be entitled to, nor shall it make a claim for, lost profits or loss of anticipated earnings because of such termination or expiration.

l. As used herein, the words "reenter" and "reentry" are broadly used and are not intended to be restricted to their legal definitions.

### 3. Definition of Licensee

Throughout this Agreement, the term Licensee shall mean the signatory corporation or other business 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 under this Agreement.

### 4. Indemnification and Defense

- a. The Licensee shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence or any acts or omissions of the Licensee, including reimbursement of the cost of reasonable attorneys' fees incurred by the County, its

agents, servants, officials, and employees in any action or proceeding arising out of, or in connection with, the Agreement.

- b. The Licensee hereby represents and warrants that it will not infringe upon any copyright in performing the Services. The Licensee agrees that it shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses arising out of any claim asserted for infringement of copyright, including reimbursement of the costs of reasonable attorneys' fees incurred by the County, its agents, servants, officials, and employees in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.
- c. The Licensee shall defend the County, its agents, servants, officials, and employees in any proceeding or action, including appeals, arising out of, or in connection with, the Agreement and any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require the Licensee to pay reasonable attorneys' fees of salary costs of County employees of the Department of Law for the defense of any such suit.

## 5. Insurance

- a. The Licensee agrees to procure, pay the entire premium for and maintain throughout the term of this Agreement insurance coverage in amounts and types specified by the County and as may be mandated and increased from time to time. The Licensee agrees to require that all of its subcontractors, in connection with work performed for the Licensee related to this Agreement, procure, pay the entire premium for and maintain throughout the term of this Agreement insurance in amounts and types equal to that specified by the County for the Licensee. Unless otherwise specified by the County and agreed to by the Licensee, in writing, such insurance will be as follows:
  - i. **Commercial General Liability Insurance**, including contractual liability coverage and product liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage. The Licensee's general liability policy shall contain an endorsement extending coverage for bodily injury, property damage, and personal injury arising out of the ownership, operation, maintenance or use of any amusement devices. The Licensee shall furnish the County with a copy of said endorsement prior to commencement of this Agreement. Special events will require additional insurance as directed by the Department in consultation with the Suffolk County Division of Risk Management.
  - ii. **Automobile Liability Insurance** (if any vehicles are used in the performance of this 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.

- iii. **Workers' Compensation 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 Licensee shall furnish to the County, prior to its execution of this 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, this Agreement shall be void and of no effect unless the Licensee shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law; and
- b. All policies providing such coverage shall be issued by insurance companies authorized to do business in New York with an A.M. Best rating of A- or better.
- c. The Licensee shall furnish to the County, Declaration Pages for each such policy of insurance, and, upon request, 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 County of Suffolk shall be named as an additional insured and the Licensee shall furnish a Declaration Page and endorsement page evidencing the County's status as an additional insured on said policy.
- d. All such Declaration Pages, certificates, and other evidence of insurance shall provide for the County of Suffolk to be notified in writing thirty (30) days prior to any cancellation, nonrenewal, or material change in said policies. Such Declaration Pages, certificates, policies, and other evidence of insurance and notices shall be mailed to the Department at its address set forth in the Exhibit entitled "Notices and Contact Persons," or at such other address of which the County shall have given the Licensee notice in writing.
- e. In the event the Licensee shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Agreement, the County may, but shall not be required to, obtain such policies and charge the cost thereof to the Licensee, or deduct the cost thereof from payments due to the Licensee under this Agreement or any other agreement between the County and the Licensee.
- f. If any of the insurance policies required under the provisions of this Agreement are subject to deductibles and/or self-insurance retentions, such deductibles and self insurance retentions shall be the sole responsibility of the Licensee. Proof of ability to fund deductible or self-insurance retentions will be required to the sole satisfaction of the Commissioner.
- g. In the event the Licensee, its employees or contractors do anything in or on the Licensed Premises, or bring anything into or onto the Licensed Premises, or keep

anything at the Licensed Premises, which will in any way increase the rate of fire insurance on the Licensed Premises, the Licensee agrees to pay on demand any such increase. The Licensee agrees to notify the County concerning any requirements or recommendations made by any insurance company with respect to use, handling, storage, transport or disposal of hazardous materials as defined herein.

- h. The Licensee shall not use or occupy or permit the Licensed Premises to be used or occupied, nor do or permit anything to be done in, on or about the Licensed Premises, in whole or in part, in any manner that would in any way make void or voidable any insurance coverage required to be carried by the Licensee or the County hereunder with respect to the Licensed Premises, or that may make it impossible to obtain fire or other insurance coverage with respect to the Licensed Premises.
- i. If such policies expire without renewal or are terminated for any reason, the resulting failure to maintain the coverage may cause an immediate default of this Agreement without the necessity for any action on the part of the County.

## **6. County Property**

It is expressly understood and agreed that the Licensed Premises covered under this Agreement is and shall be the sole property of the County at all times during the term of this Agreement. Any newly constructed buildings and all improvements to the Licensed Premises, including all purchases of furnishings, equipment, fixtures and appliances shall immediately become the property of the County

## **7. Representation of Inspection**

The Licensee acknowledges that it has examined the Licensed Premises, location, facilities, buildings structures, area, spaces, and equipment to be used in connection with this Agreement. The Licensee acknowledges that the equipment on the Licensed Premises may or may not be in working order and agrees to accept same "as is" and the Licensee agrees to return the Licensed Premises and equipment in good working order at the expiration of this Agreement, subject to making all required repairs, replacements and improvements, reasonable wear and tear excepted.

## **8. Risks of Licensee**

- a. The Licensee, in addition to any terms contained herein, assumes all risks in the operation of this Agreement and shall be solely responsible and wholly answerable in damages for all injuries and accidents in person or property occurring on the Licensed Premises or due to actions of the Licensee in the operation of the Licensed Premises as contemplated in this Agreement.
- b. During the term of this Agreement, the risk of loss, damage or destruction from any peril to the furniture, fixtures, equipment or other personal property of the Licensee shall be borne by the Licensee. The Licensee waives any right to subrogation

against the County and Department for loss, damage or destruction from any peril to the furniture, fixtures, equipment or other personal property of the Licensee.

**9. Conduct of Licensee's Employees/Volunteers**

The Commissioner shall inform the Licensee, in writing, or if orally, a written confirmation shall be sent immediately, of any employee or volunteer of the Licensee whose conduct the Commissioner deems detrimental to the best interests of the Department or the public using the Licensed Premises. The Licensee shall immediately take any and all action necessary and appropriate to remedy the conduct. In the event the Licensee fails to remedy the conduct, within a reasonable period of time under the circumstances, this Agreement shall terminate five (5) days from receipt of written notice from the Commissioner of the Licensee's failure to cure, notwithstanding the provisions of the paragraph entitled "Term and Termination of Agreement."

**10. Licenses and Permits**

- a. Notwithstanding any other approval required to be obtained by the Licensee, the Licensee shall obtain and secure all permits, licenses and certifications necessary for the legal operation of the Licensed Premises pursuant to this Agreement and for the maintenance, repair, improvements, new construction or physical alterations of the Licensed Premises, at the Licensee's sole cost and expense. The Licensee shall at all times comply with the terms and conditions contained in any such permits, licenses, approvals and certifications.
- b. In the event that the Licensee is unable to secure the necessary permits and licenses as provided for in this paragraph within six (6) months from the execution hereof, or such extensions granted in writing by the Commissioner of the Department, or in the event that said permits are issued and during the term of this Agreement or renewal thereof, should the Licensee fail to maintain all permits necessary for the legal operation of the Licensed Premises, the County, may, at the sole option of the County, cancel this Agreement pursuant to subparagraph 2d. entitled "Default/Termination for Cause".
- c. **Engineering Certificate**

The Licensee shall submit, prior to or along with any plans, reports, specifications, permit or other applications, analyses or other engineering work required to be submitted to the Department for approval under this Agreement, the Certificate(s) of Authorization, issued pursuant to § 7210 of the New York Education Law, of its consultants, subconsultants, subcontractors, and/or any other entity (including, but not limited to, the Licensee and any of its subsidiaries, divisions, affiliates or an entity under the control of the Licensee) performing all or part of the engineering services necessary hereunder. Failure to file, submit or maintain said Certificate(s) shall be grounds for rejection of any plans, reports, specifications, permits or other applications, analyses or other engineering work submitted for approval under the terms of this Agreement.

- d. The Licensee shall be responsible for obtaining and paying for all necessary permits and approvals from all governmental agencies having jurisdiction over the Licensed Premises, including, but not limited to, the Suffolk County Department of Health Services, the Suffolk County Department of Fire, Rescue and Emergency Services, the Suffolk County Architect, the Suffolk County Council on Environmental Quality ("CEQ"), and the New York State Department of Environmental Conservation. The Licensee shall advise the Department in advance of all permits and approvals sought by the Licensee. The Department will assist the Licensee in obtaining said permits and approvals as it deems appropriate.
- e. All work at the Licensed Premises is subject to the New York State Fire Prevention and Building Code ("Building Code"), and all rules and regulations, as administered by the County of Suffolk, Department of Public Works, Buildings Division located at 335 Yaphank Avenue, Yaphank, New York 11980, is responsible for administration and enforcement of the Code on County owned land. As such the Licensee shall make application to Public Works for all work at the site. Upon plan approval and all required inspections, the County will issue a Certificate of Occupancy or Compliance as appropriate.

#### **11. Preservation of Features; Soil and Vegetation Removal**

In conducting its activities hereunder, the Licensee shall preserve and avoid damage to and destruction of natural, historic or cultural features, including, but not limited to, waterways, rare or endangered plants or animals, habitats, trees, shrubs and other vegetation. The Licensee shall not disturb soil or clear vegetation from the Licensed Premises without obtaining the prior written approval of the Commissioner.

#### **12. Claims For Compensation; Licensee's Right to Terminate**

- a. The Licensee hereby expressly waives any and all claims for compensation for any and all loss or damages sustained by reason of any interference by any public agency or official in the operation of this Agreement; any such interference shall not relieve the Licensee from any obligation hereunder.
- b. The Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the gas and electrical apparatus, heating equipment, water supply equipment, or wires furnished for the Licensed Premises hereby granted, or by reason of any loss or impairment of light, current, or water supply which may occur from time to time for any cause, or for any loss or damage sustained by the Licensee resulting from fire, water, storm, tornadoes, civil commotion, riots, acts of God or other disasters; and the Licensee hereby expressly waives all rights, claims, and demands and forever releases and discharges the people of the State of New York, the County, the Commissioner, the Department and their officers, employees and agents from any and all demands, claims, actions and causes of action arising from any of the enumerated causes whatsoever.

- c. The Licensee may terminate the Agreement upon thirty (30) days prior written notice. In the event of termination by the Licensee: such termination shall be deemed an abandonment of the Licensed Premises by the Licensee and the Licensee shall surrender and vacate the Licensed Premises within twenty-four (24) hours of such termination in serviceable and operable condition, subject to reasonable wear and tear; and the Licensee shall remain liable for all fees and other sums due and owing from the Licensee up to the time of termination.

### 13. Personal Property of Licensee

- a. During the term of this Agreement, unless personal property is required for the performance by the Licensee of its obligations hereunder, the Licensee shall have the right at any time, to remove same from the Licensed Premises, with the following exceptions.
  - i. Books, reports and records required to be kept by this Agreement shall be maintained on the Licensed Premises at all times and may not be removed; and
  - ii. Inventory maintained for sale on the Licensed Premises may be removed only with the consent of the Commissioner.
- b. Removal of personal property upon expiration and/or termination of this Agreement shall be governed by the paragraph entitled, "Term and Termination of Agreement".
- c. Notwithstanding anything to the contrary herein, upon the termination or expiration of this Agreement, the removal of the Licensee's equipment, including, but not limited to, model trains, train-related equipment, and train tracks, must be coordinated with County personnel and all park grounds shall be restored to a condition satisfactory to the Commissioner.

### 14. Compliance with Law

- a. The Licensee shall comply with, at the Licensee's sole cost and expense, all applicable Federal, State, County and local laws, rules, regulations, codes, ordinances, requirements and County policies in effect on the date of execution of this Agreement and as may be adopted or amended from time to time. Such laws, rules, regulations and policies include but are not limited to:

Suffolk County Code Chapter 647 (Pest Control)

Organic Parks Maintenance Plan and any other County policies relating to pesticides.

Suffolk County Code §643-4 (Prohibited Acts) regarding acts prohibited on County parkland.

Suffolk County Sanitary Code

- b. All chemicals, fungicides, herbicides and pesticides (if any) applied to the Licensed Premises shall be approved by the Commissioner prior to use. The Licensee shall comply with Suffolk County Code Chapter 647 (Pest Control), the Organic Parks Maintenance Plan and any other applicable Federal, State, and Local Laws. The Licensee shall apply for any necessary exemptions from Suffolk County Code Chapter 647. All notice and reporting requirements shall be adhered to.
- c. The Licensee is required to adhere to an Integrated Pest Management Program (IPM), which shall be approved by the Commissioner and which minimizes potential negative impact upon the environment or wildlife.
- d. The Licensee shall keep and maintain detailed records of all chemicals, pesticides, herbicides and fungicides stored and applied to the facilities throughout the term of this Agreement and shall comply with Resolution No. 719-2000 entitled "A Local Law to Adopt Countywide Pesticide Notice Provisions".

**15. Liens**

- a. It is expressly agreed that the County shall have a continuing lien, on all personal property of the Licensee used on the Licensed Premises in connection with this Agreement, for any and all sums which may from time to time become and be due to the County under the terms of this Agreement. If the Licensee requires a waiver of the lien for the purpose of financing personal property to be utilized in the operation of the Licensed Premises, the Commissioner may grant said waiver at his/her sole discretion. The County may waive the lien at any time.
- b. Upon default of payment by the Licensee of any fees or sums due hereunder beyond any applicable cure period, the County has the right, at its option, to take possession of and retain the inventory until the full amount is paid, or to sell the same at public auction and, after deducting the expenses of such sale, apply the balance of the proceeds to such payment, and if there should be any deficiency, to resort to any legal remedy.

**16. Insolvency**

If at any time during the term of this Agreement, or any renewal hereof (if applicable), there shall be filed by or against the Licensee, in any court pursuant to any statute, either of the United States or of any State, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the Licensee's property, and within thirty (30) days thereof the Licensee fails to secure a discharge thereof, or if the Licensee makes an assignment for the benefit of creditors, or if the Licensee petitions for or enters into such an arrangement, as may be permitted by law, this Agreement shall ipso facto be canceled and terminated and in which event, neither the Licensee nor any person claiming through or under the Licensee nor by virtue of any statute or of an order of any

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court shall be entitled to possession of the demised Licensed Premises, and the County, in addition to any other rights and remedies given hereby and by virtue of any other provision contained in this Agreement or by virtue of any statute or rule of law, may retain as liquidated damages any monies received from the Licensee or others on behalf of the Licensee.

#### **17. License /Not a Lease**

It is expressly understood and agreed that no interest in real or personal property is leased or granted to the Licensee; that this Agreement is a License and not a lease; that the Licensee's right to occupy and operate the Licensed Premises shall continue only so long as the Licensee shall comply strictly and promptly with each and all the undertakings, provisions, covenants, agreements, stipulations, and conditions contained herein; and that this License is not coupled with any interest in real property.

#### **18. Fire Safety Standards**

- a. The Licensee shall not use or permit the storage of any turpentine, benzene, naphtha or other similar substances or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies licensed to do business in the State of New York, in any buildings erected or to be erected on the Licensed Premises.
- b. In addition, the Licensee shall provide a list of all stored flammable materials necessary for its operation, subject to inspection and approval by the Suffolk County Fire Marshal. Storage shall be in a location and manner acceptable to the Commissioner and the Suffolk County Fire Marshal.
- c. The Licensee agrees to be responsible for the installation, replacement and/or maintenance of smoke alarms and detectors, fire suppression systems, fire extinguishers and exit signs in accordance with the rules and regulations of the Suffolk County Department of Fire, Rescue and Emergency Services, at the Licensee's sole cost and expense.

#### **19. Hazardous Substances and Waste**

- a. The Licensee shall not generate, treat, release, store, discharge, dispose of, transport, recycle, use, reuse, handle or permit hazardous substances or hazardous waste on the Licensed Premises without prior written permission of the Department and all such substances shall be handled in the manner required or recommended by any government or quasi-governmental authority.
- b. This section is not intended and shall not be construed to prohibit the reasonable, legal and proper use and storage of ordinary cleaning solutions and solvents in the ordinary course of the Licensee's operations and maintenance of the Licensed Premises.

- c. In the event the Licensee receives any notice, advice, summons or complaint from any governmental or quasi-governmental agency or any other person or entity with regard to health, safety, environment, and hazardous materials on, under or affecting the Licensed Premises, then the Licensee shall immediately notify the Department. The Licensee shall conduct, complete and pay for all investigations, studies, sampling, and testing and all remedial, removal, and actions necessary to clean and remove all hazardous material on, under, from or affecting the Licensed Premises arising from the Licensee's or the Licensee's agents', servants', contractors' employees' and invitees' acts or omissions in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies.
- d. In the event of any release of hazardous materials or hazardous substances, except releases in accordance with applicable permits and law, Licensee shall promptly report such release to the applicable governmental authorities and to the County and shall provide to the County copies of any reports required to be filed by any other governmental agency in connection with such release. Licensee shall exercise due care with respect to such release.
- e. The Licensee shall protect, indemnify, defend and save harmless the Department, the County and its officers, officials, members, employees, agents and invitees from and against all liabilities, obligations, claims, damages, penalties, causes of actions, costs and expenses (including reasonable attorneys' fees) whatsoever imposed upon or incurred by or asserted against the Department or County and its officers, officials, members, employees, agents and invitees arising from the Licensee's or the Licensee's agents', servants', contractors', and invitees' acts or omissions or negligence, by reason of:
  - i. the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any hazardous material on, under, from or affecting the Licensed Premises or any other property;
  - ii. any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials;
  - iii. any lawsuit brought or threatened or settlement reached, provided, however that the Licensee will be given the opportunity, if available with no adverse effect to the County, to contest any such settlement on the grounds therefore with the opposing person or entity, after paying same, or governmental order relating to such hazardous materials; or
  - iv. any violations of laws, ordinances, rules, orders, or regulations which are based upon or any way related to such hazardous materials, health, safety or environment including attorney or consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

This provision shall survive the termination or expiration of this Agreement.

**20. Inspection of Licensed Premises/Remediation of Unsatisfactory Conditions**

- a. It is agreed that the Licensed Premises may be inspected at any time by the Commissioner, by authorized representatives of the Commissioner, or representatives of the Suffolk County Department of Health Services or the Suffolk County Department of Fire, Rescue and Emergency Services.
- b. The Licensee agrees that upon written notification by the Commissioner that any part of the Licensed Premises or facilities thereof is unsatisfactory, the Licensee shall, where such condition is caused by the Licensee or is within the Licensee's control, remedy the same within a reasonable time, except in the event of dangerous health and/or safety conditions and/or safety conditions impacting upon persons, such condition shall be corrected immediately.
- c. In the event that the Licensee fails to remedy the unsatisfactory condition, the County may terminate this Agreement, in the sole discretion of the Commissioner, and termination of this Agreement shall be governed by the subparagraph 2d entitled "Default/Termination for Cause".

**21. Illegal or Objectionable Conduct**

- a. The Licensee agrees not to use, or suffer or permit any person to use in any manner whatsoever, the Licensed Premises or any part thereof or any building thereon for any illegal purpose, or for any purpose in violation of any Federal, State, County or municipal law, ordinance, rule, order or regulation now in effect or hereafter enacted, amended or adopted, and will protect, defend, indemnify and forever hold harmless the County of Suffolk, the Department and any individual members thereof and their agents, from and against any damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed, or incurred for any violation or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Licensee, or any employee, volunteer, person or invitee of the Licensed Premises; and in the event of any violation, the County shall have the right and power, and is hereby authorized by the Licensee, to immediately declare this Agreement terminated as if it had naturally expired, notwithstanding any other provision in this Agreement to the contrary.
- b. The Licensee agrees not to use, or suffer or permit any person to use in any manner whatsoever, the said Licensed Premises or any part thereof or any building thereon for any purpose in violation of any ordinance, rule or regulation of the Department now in effect or hereafter enacted, amended or adopted, and in the event of any violation, or in case the County or its representatives shall deem any conduct on the part of the Licensee, any employee, person, or invitee of the Licensed Premises, or the operation thereof to be objectionable or improper, the County shall have the right and power, and is hereby authorized by the Licensee, to immediately declare this Agreement terminated as if it had naturally expired, notwithstanding any other provision in this Agreement to the contrary.

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**22. Not a Co-Partnership**

Nothing herein contained shall create or be construed as creating a co-partnership between the Department and the Licensee, or between the County and the Licensee, or to constitute the Licensee or the Licensee's employees as agents or employees of the Department or of the County.

**23. County Representatives**

It is expressly understood and agreed by and between the parties hereto that the officers and agents of the County and the Department and its officers, employees, and agents are acting in a representative capacity for the County of Suffolk and not for their own benefit, and that neither the Licensee nor any occupant of the Licensed Premises shall have any claim against them or any of them as individuals in any event whatsoever.

**24. County Monies**

As to the obligation of the County under the provisions of this Agreement, the same shall be deemed executory only to the extent of the monies appropriated therefor by the Suffolk County Legislature, and no liability shall be incurred by the County beyond the monies available for that purpose.

**25. Change In Park Facilities**

It is understood that the County may from time to time make changes in the location and capacities of park facilities and methods of operations and may change the amount charged for the use of same or may discontinue certain park facilities or their use by the public during the term of this License Agreement. The Licensee shall not make any claims for loss of profits or anticipated earnings as a result of any changes in the park facilities, including the Licensed Premises.

**26. Change in Department**

In the event that during the term of this Agreement, the functions and duties of the Department are transferred to a new or other department of the County of Suffolk, then in that event the said new or other department will assume the functions and duties of the Department hereunder.

**27. Severability; No Implied Waiver**

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this 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 this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

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No waiver shall be inferred from any failure or forbearance of the County to enforce any provision of this Agreement in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

**28. Independent Contractor**

It is expressly agreed that the Licensee's status hereunder is that of an independent contractor. Neither the Licensee nor any person hired by the Licensee shall be considered employees of the County for any purpose.

**29. Assignment and Subcontracting**

- a. The Licensee shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement, or any of its right, title or interest therein, or its power to execute this Agreement, or assign all or any portion of the monies that may be due or become due hereunder, to any person or corporation, without the prior consent in writing of the County, and any attempt to do any of the foregoing without such consent shall be of no effect.
- b. The Licensee shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the Commissioner. Such subcontracts shall be subject to all of the provisions of this Agreement and to such other conditions and provisions as the Commissioner may deem necessary, provided, however, that notwithstanding the foregoing, unless otherwise provided in this Agreement, such prior written approval shall not be required for the purchase of articles, supplies, equipment and services which are incidental to, but necessary for, the performance of the work required under this Agreement. No approval by the Commissioner of any subcontract shall provide for the incurrence of any obligation by the County. The Licensee shall be responsible for the performance of any subcontractor for the delivery of service.
- c. Any contract agreed to between the Licensee and any subcontractor for the performance of any services required under this Agreement shall subject the subcontractor to the same insurance requirements, indemnification requirements, Suffolk County Legislative requirements, and any copyright or other music license requirements to which the Licensee is subject.

**30. Not in Default/Arrears**

The Licensee warrants that it is not, and shall not be during the term of this Agreement, in arrears to the County for taxes or upon debt or contract and is not, and shall not be during the term of this Agreement, in default as a surety, contractor or otherwise on any obligation to the County.

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### **31. Cooperation on Claims**

The Licensee agrees to render diligently to the County any and all cooperation, without additional compensation, that may be required to defend the County, its employees, and designated representatives, against any claims, demand, or action that may be brought against the County in connection with this Agreement.

### **32. Conflicts of Interest**

- a. The Licensee agrees that it will not during the term of this Agreement engage in any activity that is contrary to and/or in conflict with the goals and purposes of the County.
- b. The Licensee 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 so long as the Licensee is retained on behalf of the County. The Commissioner, upon consultation with the County Attorney, shall ultimately make the determination as to whether or when a conflict exists or may potentially exist after full disclosure is obtained.

### **33. Non-Discrimination in Services**

During the performance of this Agreement, the Licensee agrees he/she will not, on the grounds of race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, deny any individual any service(s) or other benefits provided in accordance with this Agreement or provide any service(s) or other benefits to an individual which are different, or are provided in a different manner from those provided to others in accordance with this Agreement.

### **34. Nonsectarian Declaration**

The Licensee agrees that all services performed under this Agreement are secular in nature, that no funds received pursuant to this Agreement will be used for sectarian purposes or to further the advancement of any religion, and that no services performed under this program will discriminate on the basis of religious belief. Furthermore, the Licensee agrees that all program services are and will be available to all eligible individuals regardless of religious belief or affiliation.

### **35. 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, for the purposes of set-off, any moneys due to the Licensee under this Agreement up to any amounts due and owing to the County with regard to this Agreement and/or any other contract with any County department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the County for any other reason including, without limitation, tax delinquencies, fee

delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the County agency, its representatives, or the County Comptroller, and only after legal consultation with the County Attorney.

### **36. Publications**

Any book, article, report, or other publication related to the Services provided pursuant to this Agreement shall contain the following statement in clear and legible print:

"This publication is fully or partially funded by the County of Suffolk."

### **37. Copyrights and Patents**

#### **a. Copyrights**

If the work of the Licensee under this Agreement should result in the production of original books, manuals, films or other materials for which a copyright may be granted, the Licensee may secure copyright protection. However, the County reserves, and the Licensee hereby gives to the County, and to any other municipality or government agency or body designated by the County, a royalty-free, nonexclusive license to produce, reproduce, publish, translate or otherwise use any such materials.

#### **b. Patents**

If the Licensee, under this Agreement, makes any discovery or invention in the course of or as a result of work performed under this Agreement, the Licensee may apply for and secure for itself patent protection. However, the County reserves, and the Licensee hereby gives to the County, and to any other municipality or government agency or body designated by the County, a royalty-free, nonexclusive license to produce or otherwise use any item so discovered or patented.

### **38. Certification as to Relationships**

The parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid agreements with the County, there is no known relationship within the third degree of consanguinity, spouse, life partner, or business, commercial, economic, or financial relationship between the parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Agreement.

### **39. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction**

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk, Suffolk County Code Chapter 234, as more fully set forth in the Exhibit entitled "Suffolk

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County Legislative Requirements." In accordance with this law, the Licensee or employer, as the case may be, and any subcontractor or owner, as the case may be, agree to maintain the documentation mandated to be kept by this law on the Construction Site at all times. The Licensee or employer, as the case may be, and any subcontractor or owner, as the case may be, further agree that employee sign-in sheets and register/log books shall be kept on the Construction Site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the Construction Site during such working hours.

#### **40. All Rights Reserved**

All rights not specifically granted in this Agreement are reserved to County.

#### **41. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venues shall be designated in Suffolk County, New York or the United States District Court for the Eastern District of New York.

#### **42. Confidentiality**

Any records, reports or other documents of the County or any of its agencies used by the Licensee pursuant to this Agreement or any documents created as a part of this Agreement shall remain the property of the County and shall be kept confidential in accordance with all applicable laws, rules and regulations.

#### **43. No Intended Third Party Beneficiaries**

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

#### **44. No Oral Changes**

No modification of this Agreement shall be valid unless written in the form of an Addendum or Amendment signed by both parties and approved by the Commissioner and the County Comptroller as to financial safeguards upon such terms and conditions as may be mutually agreed upon between the Licensee and the County but no such modification, termination, cancellation, or extension shall be effective until so executed and approved.

#### **45. Fundraising/Contribution**

- a. Any planned fundraising activities to occur on the Licensed Premises must first be presented in writing for authorization by the Commissioner at least thirty (30) days prior to the scheduled event.

- b. All proceeds generated by activities on the Licensed Premises shall be utilized to benefit the people of Suffolk County through maintenance and upkeep of the Licensed Premises as well as programs conducted for the public at the site.

**46. Public Access**

The Licensee acknowledges and agrees that public access to the Licensed Premises and surrounding grounds will not be restricted and shall be made available equally and at no cost to all residents of Suffolk County.

**47. Inconsistent Provisions**

The provisions of this Agreement shall prevail over inconsistent provisions of any other Exhibit of this Agreement and over any other document not specifically referred to in this Agreement or made part thereof by this Agreement or by subsequent amendment in writing and signed by both parties, except to the extent that such provisions of this Exhibit A are specifically referred to and amended or superseded by such Exhibit or Amendments.

**48. Entire Agreement**

It is expressly agreed that this instrument represents the entire agreement of the parties and that all previous understandings are merged in this Agreement.

**End of Text for Exhibit "A"**

**Exhibit B**  
**Suffolk County Legislative Requirements**

**1. Contractor's/Vendor's Public Disclosure Statement**

The Licensee represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration. The Licensee acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of this License Agreement, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of this Agreement.

**Required Form:** Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

**2. Living Wage Law**

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

The Licensee represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 575, Suffolk County Local Law No. 12-2001, the Living Wage Law.

**Required Forms:** Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)"

Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit"

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**3. Use of County Resources to Interfere with Collective Bargaining Activities**  
**Local Law No. 26-2003**

The Licensee represents and warrants that it has read and is familiar with the requirements of Chapter 803, Article 1 of the Suffolk County Local Laws, "Use of County Resources to Interfere with Collective Bargaining Activities". County Contractors (as defined) shall comply with all requirements of Local Law No. 26-2003 including the following prohibitions:

- a. The Licensee shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Licensee for any costs incurred to assist, promote, or deter union organizing.
- c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.
- d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If the Licensee services are performed on County property the Licensee must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, nonintimidation agreement and a majority authorization card agreement.

If the Licensee services are for the provision of human services and such services are not to be performed on County property, the Licensee must adopt, at the least, a neutrality agreement.

Under the provisions of Local Law No. 26-2003, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

**Required Form:** Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration – Subject to Audit"

**4. Lawful Hiring of Employees Law**

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk (Local Law 52-2006). It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to

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the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the contract, and whenever a new contractor or subcontractor is hired under the terms of the contract.

The Licensee acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of this Agreement.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate this Agreement for violations of this Law and to seek other remedies available under the law.

The Licensee represents and warrants that it has read, is in compliance with, and shall comply with the requirements of Suffolk County Code Chapter 353, Suffolk County Local Law No. 52-2006, the Lawful Hiring of Employees Law.

**Required Forms:** Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor –"Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. SECTION 1324a) With Respect To Lawful Hiring of Employees"

"Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees" Form LHE-2.

**5. Gratuities**

The Licensee represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York 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 an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 664 of the Suffolk County Code).

**6. Prohibition Against Contracting with Corporations that Reincorporate Overseas**

The Licensee represents that it is in compliance with Suffolk County Administrative Code Article IV, §§A4-13 and A4-14, found in Suffolk County Local Law No. 20-2004, entitled "A Local Law To Amend Local Law No. 5-1993, To Prohibit The County of Suffolk From Contracting With Corporations That Reincorporate Overseas." Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

**7. Child Sexual Abuse Reporting Policy**

The Licensee agrees to comply with Chapter 880, Article IV, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy", as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of this Agreement with regard to child sexual abuse reporting policy.

**8. Non Responsible Bidder**

The Licensee represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 189, Article II, §§189-5 through 189-9. Upon signing this License Agreement the Licensee certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 189-5 of the Suffolk County Code under "Nonresponsible Bidder."

**9. Use of Funds in Prosecution of Civil Actions Prohibited**

Pursuant to the Suffolk County Code Section §893-3, the Licensee represents that it shall not use any of the moneys received under this Agreement, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

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**10. Youth Sports**

In accordance with Local Law No. 44-2009, (Suffolk County Code Chapter 730), all contract agencies that conduct youth sports programs are required to develop and maintain a written plan or policy addressing incidents of possible or actual concussion or other head injuries among sports program participants. Such plan or policy must be submitted prior to the award of the County contract, grant or funding. Receipt of such plan or policy by the County does not represent approval or endorsement of any such plan or policy, nor shall the County be subject to any liability in connection with any such plan or policy.

**11. Suffolk County Local Laws Website**

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk](http://www.co.suffolk.ny.us)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

**End of Text for Exhibit "B"**

**Exhibit C**  
**Notices and Contact Persons**

**1. Notices**

Unless otherwise expressly provided, 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 Licensee 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 Licensee relating to a legal claim shall be immediately sent to the Department and also to the County Attorney at H. Lee Dennison Building, 100 Veterans Memorial Highway, P.O. Box 6100, (Sixth Floor), Hauppauge, New York, 11788-0099.

**2. Changes in Contact Persons**

Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s) or his or her designated successor(s).

**3. Receipt of Notice**

Notices shall be deemed to have been duly delivered (i) if by First Class Mail, on the date they are mailed or deposited with the United States Postal Service; or (ii) if mailed by Registered or Certified mail, upon the seventh business day after the mailing thereof; or (ii) if by Nationally Recognized Courier service, upon the first business day subsequent to the transmittal thereof; or (iii) if by Fax or Email, upon the transmittal thereof; or (iv) if personally, pursuant to New York Civil Practice Law and Rules Section 311. "Business Day" shall be defined as any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.

**4. Litigation/Accidents**

- a. In the event Licensee becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant, etc.) to a lawsuit or any legal proceeding, arising out of this Agreement or in connection with the Licensed Premises, the Licensee will immediately forward copies of all papers filed by or against the Licensee to the Department and the Suffolk County Department of Law at the addresses and in the manner listed above.
- b. The Licensee shall notify the County of any accidents and/or claims, or property damage, arising on or within the Licensed Premises. Notice of accidents and/or claims shall be given immediately (or as soon as possible) to the County by telephone, at (631) 854-4949 or Park Police at (631) 854-2677 (ask specifically for Park Police) or at such other number the County provides to the Licensee in writing.
- c. In addition, written notice, together with a report on the incident and all accompanying documentation, shall be provided in writing to the County as soon as practicable, however,

in any event within (1) business day, as defined above, of the Licensee's receipt of notice or of information regarding an accident or claim.

- d. In the event of any disturbance, emergency, criminal or illegal behavior, serious violations of the Department's rules and regulations and other circumstances that may warrant such action, the Licensee shall also immediately notify the Park Police at 911 (ask specifically for Park Police) and/or other emergency responders.
- e. All written notices to the County required under this section shall comply with this Exhibit.

**End of Text for Exhibit "C"**

**Exhibit D**  
**Description of Services**

**1. Operations and Use of Licensed Premises**

- a. The Licensee's use of the Licensed Premises is to be non-exclusive, with the Licensee being granted use of the Licensed Premises at the sole discretion of the Commissioner. The Licensee understands and agrees that the Commissioner, at his discretion, reserves the right to make changes from time to time as to the use of the facilities if it is in the best interest of the County to do so.
- b. The facility shall at all times be operated in a manner that meets the approval and is satisfactory to the Commissioner and shall conform to rules and directives of the Department.
- c. The Licensee understands and agrees that the Licensee's use of the Licensed Premises shall be limited in scope to the provision of promoting the art of precision model train making, especially as applied to steam machinery including offering train rides to the general public at no cost, however, the Licensee is permitted to accept donations for such rides. The Licensed Premises may be used for storage and repair of equipment and train-related materials. The Licensee is also permitted to store and sell prepackaged food, drinks, souvenirs and other memorabilia at the Food Service/Souvenir and Merchandise Facility.
- d. The Licensee agrees that in consideration of the provision of space and maintenance by the County, it will help preserve and foster public appreciation for the unique features of the Licensed Premises at its own cost and expense.
- e. The Licensee shall equip the Licensed Premises necessary for the operation of this Agreement at its own cost and expense, except for such equipment and facilities agreed in writing to be supplied by the Department, if any.

**2. Operational Plan; Operations Schedule**

- a. **Operational Plan.** The Licensee shall operate the Licensed Premises according to approved plans detailing all of the services, programs and activities offered by the Licensee at the Licensed Premises including, but not limited to, train rides, demonstrations of model trains, the sale of food, drinks and merchandise, and vending machines. A proposed plan shall be submitted in writing to the Department no later than January 30<sup>th</sup> of each year of this Agreement. Approval, in whole or in part, of the proposed operational plan shall be at the sole discretion of the Commissioner and no service, program or activity shall be commenced by the Licensee until such approval is received in writing. Once the operational plan has been approved in writing by the Department (the "Operational Plan"), including the approved services, programs and activities (hereinafter referred to as "Programs"), it shall be incorporated herein as if originally included. Prior to the commencement of the Operational Plan, or any Program therein, the Licensee shall procure at its own cost and expense, all federal, state and

local licenses, permits or approvals, as the case may be, necessary for the legal operation of said Program on the Licensed Premises or associated with this Agreement. Furthermore, the Licensee shall provide proof of all licenses, permits and approvals to the Department in writing. Any changes to the Operational Plan shall require the prior written approval of the Department.

b. **Operation Schedule.** The Licensee shall submit to the Department in writing a proposed operating schedule that includes dates and times the Licensed Premises will be open to the public, as well as a detailed time schedule of all proposed programs and activities to be held at the Licensed Premises, no later than January 30<sup>th</sup> of each year of the Agreement. Approval, in whole or in part, of the proposed operating schedule is at the sole discretion of the Commissioner. Once the operating schedule has been approved in writing by the Department ("the Operating Schedule"), it shall be incorporated herein as if originally included. Any changes to the Operating Schedule shall require the prior written approval of the Department, however, it is recognized that certain Programs and events are weather-dependent. The Commissioner shall be notified of schedule changes or closures caused by weather, emergency or other events.

c. **Food Service/Souvenir and Merchandise Facility Items.** The Licensee shall submit each year of this Agreement, along with the proposed plan in accordance with subparagraph a above, a proposed menu of food items and souvenirs and other memorabilia, and the proposed pricing thereof, of items to be sold at the Food Service/Souvenir and Merchandise Facility. Prior to the sale of any item, the proposed menu and schedule of costs thereof, shall be subject to the prior written approval of the Commissioner. Any changes to the menu or prices thereof during any year of this Agreement, shall be subject to the prior written approval of the Commissioner.

d. **Special Events.** The Licensee shall submit written plans for any special event or promotion to the Commissioner for written approval at least six (6) months in advance of such event. "Special event" shall mean any event not included within the Operational Plan. Approval of special events, and any additional terms and conditions required thereof, shall be at the sole discretion of the Commissioner.

### 3. **Maintenance and Upkeep of Licensed Premises**

a. The Licensee shall maintain the Licensed Premises, and all of its structures, appurtenances, improvements, fixtures, spaces, grounds, adjacent fences and gates, pathways, parking areas, and property in good and serviceable condition and repair, reasonable wear and tear and damage from the elements excepted, at its sole cost and expense, in a manner acceptable to the Department.

b. All costs associated with the maintenance, upkeep, renovations, alterations, and necessary repairs of the Licensed Premises shall be at the Licensee's cost unless otherwise agreed to in writing by the Commissioner and shall be thoroughly documented by the Licensee. The documentation shall be provided to the

Commissioner upon request and shall include signed contracts related to the work performed, paid invoices and cancelled checks.

- c. Upon execution of this Agreement, a detailed written Restoration, Maintenance, Management and Interpretative Plan outlining specific projects and work must be submitted to the Department for approval by January 30<sup>th</sup> of each year of this Agreement and reviewed by the Commissioner or his/her designee by February 15<sup>th</sup> of each year. Restoration and maintenance performed by the Licensee shall be subject to review and prior approval of the Department. Whether the Restoration, Maintenance, Management and Interpretative Plan for each year has been sufficiently accomplished will be reviewed annually by the Department at the close of that respective year.
- d. All space, equipment and furnishings covered by this Agreement and used by the Licensee shall be maintained, cleaned and operated safely by the Licensee at its own cost and expense as directed by the Commissioner and as otherwise in accordance with the provisions of this Agreement and any other recognized and accepted standards of operation.
- e. Other than ordinary routine maintenance, all repairs or alterations to the Licensed Premises must be approved in advance by the Commissioner. The Licensee is permitted to make such maintenance and repairs to the existing railroad track facilities, however the Licensee may not expand or change the current location of the existing railroad track facilities without the approval of: the Department via amendment to this Agreement and the Suffolk County Legislature via a duly adopted resolution. The Licensee may have access to the Licensed Premises during all hours of operation for the park for the purpose of maintenance, repair, testing, planning, cleaning and operation of the Licensed Premises.

#### **4. Improvements to Facilities:**

- a. The Licensee agrees to restore, improve, renovate, and construct, the Licensed Premises over the term of this Agreement, at its sole cost and expense, pursuant to a plan as agreed to by the parties in writing no later than the first of each year of this Agreement ("Improvement Plan"). In no event shall any improvements or new construction be removed by the Licensee upon the expiration or termination of this Agreement.
- b. All improvements, construction and renovations made to the Licensed Premises by the Licensee shall be in accordance with a survey and plans submitted in writing in advance to the Department and approved in writing in advance by the Commissioner and the Suffolk County Department of Public Works where applicable.
- c. The Licensee shall have all plans and specifications prepared professionally by a licensed architect or engineer, as required by the Commissioner, at its sole cost and expense.

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- d. **Competitive Bids.** The Licensee shall solicit and obtain competitive bids (or follow other competitive procurement procedures approved by the Commissioner) for all improvements, construction, and renovations, in accordance with the New York General Municipal Law,
- e. The Licensee shall properly document all capital improvement expenditures for the Licensed Premises and shall provide said documentation to the County. Documentation shall include signed contracts, paid invoices, and cancelled checks.
- f. All improvements, construction, and renovations are to be completed in accordance with the Commissioner's directives, and shall be supervised and may be inspected by County personnel. Where applicable, the Suffolk County Department of Public Works shall advise the Commissioner whether the structures have been completed in accordance with applicable laws, rules, regulations and codes. The Commissioner will issue a final written approval evidencing satisfactory completion upon the submission of the required documentation and after an inspection by the necessary County staff.
- g. The County may, at its election, assist the Licensee in fulfilling its obligations under this Agreement in obtaining necessary permits for any improvement, construction or renovation.
- h. It is expressly understood and agreed that the Licensed Premises is and shall be the sole property of the County. All improvements to the Licensed Premises, including the purchase of fixtures, appliances, furnishings, and equipment shall immediately become the property of the County and become part of the Licensed Premises and shall be lien and encumbrance free.
- i. While there are any ongoing improvements being made to the Licensed Premises by the Licensee, that portion of the Licensed Premises shall be secured by the Licensee in an appropriate manner as determined by the Commissioner, at the Licensee's own cost and expense. The Licensee shall also be responsible for the condition and appearance of the Licensed Premises during said improvements, and the Licensed Premises shall at all times be maintained in a clean and safe condition as determined by the Commissioner.
- j. All improvements, construction, and renovations approved by the Commissioner shall be constructed, installed, maintained, and operated in a good, safe, and workmanlike manner, and all work shall be performed in accordance with good, sound, and acceptable construction procedures. Immediately following the completion of any improvement, construction or renovation, the Licensee shall restore all areas affected to the conditions existing at the time of execution of the Agreement.

## 5. Licensee Provided Services and Licensee Responsibilities

- a. **Day-to-Day Maintenance and Repair.** The Licensee, in conjunction with the Department, shall, throughout the term of the License Agreement during and immediately after all scheduled events, including special events, maintain and keep

in serviceable condition the Licensed Premises at its own cost and expense. In the event this Agreement is terminated or expires naturally, the Licensee is responsible, and will remain liable, for all costs and expenses associated with returning facility improvements, equipment and furnishings to a serviceable condition.

- b. **Personnel.** The Licensee shall provide sufficient personnel to carry out the terms of this Agreement at the Licensee's own cost and expense, as deemed adequate for its operation and the nature of the event. Sufficient personnel shall be determined by the Commissioner.
- c. **Sanitary Condition of Licensed Premises/Grounds.** During and after all scheduled events, including special events, the Licensee is responsible for the appearance of all areas of the Licensed Premises and shall at all times keep the Licensed Premises in a clean, litter-free and sanitary condition to the satisfaction of the Commissioner. The Licensee shall, perform a thorough cleaning of the Food Service/Souvenir and Merchandise Facility within thirty (30) days of the end of each season. The Food Service/Souvenir and Merchandise Facility shall be inspected by Parks Department personnel before the building is closed down for the winter.
- d. **Refuse and Garbage; Costs.** The Licensee shall be responsible for all refuse and garbage removal costs. All refuse and garbage is to be collected and deposited in such locations and containers deemed satisfactory to the Commissioner.
- e. **Inspections.** In addition to the inspections authorized under paragraph 20 of Exhibit A herein, inspections by appropriate Suffolk County representatives will take place at least two times per year. One inspection shall be a pre-season inspection approximately three weeks prior to the first day the Licensed Premises is open to the public as per the Operating Schedule for each year of the Agreement.
- f. **Restrooms.** Public restrooms are presently provided for the Licensed Premises by the Licensee, at its own cost and expense, through the use of modern Port-A-Lav type containers. At all times under this Agreement, such Port-A-Lavs shall be: handicapped accessible; placed in an area as approved by the Commissioner; and cleaned in a timely fashion, but in no event less than after each weekend event. In the event permanent restroom facilities are constructed in the future, the Licensee may be required to clean these facilities, at its sole expense, at the discretion of the Commissioner.
- g. **Responsible Principal.** The Licensee undertakes and agrees that at least one (1) principal will be designated by the Licensee, who will be responsible for the daily operation of the Licensed Premises and who has the authority to act on behalf of the Licensee with regard to said operation thereof. If a manager is to be employed, the Licensee agrees to employ a manager who is satisfactory to the Commissioner, who shall be held accountable to the same minimum standard of participation as set forth above. Licensee agrees to furnish the name, home address and home and cell telephone numbers of the responsible principal or manager so that he/she can be reached at all times. The Licensee agrees that it shall furnish such information

for another responsible person to serve as a second contact person in the event that such principal or manager becomes unavailable or is unable to be reached.

- h. Security.** The Licensee shall be responsible for all security and safeguarding of the Licensed Premises and structures thereon throughout the term of this Agreement in a manner appropriate to the nature of the operation during its events as agreed to at the discretion of the Department. The County will provide regular park police patrols as available resources permit. The Licensee understands and agrees that it is solely responsible for the security of the Licensed Premises.
- i. Safety.** The Licensee shall conduct its operations safely in a manner to eliminate the possibility of injury or damage to life or property. The Licensee shall follow all applicable safety laws, regulations and County policies. The Licensee shall ensure that patrons comply with all applicable safety laws, rules, regulations and County policies. Licensee shall ensure that any volunteers and private citizens participating in activities sponsored and/or directed by Licensee or performing work on behalf of Licensee are made aware of the nature of work which is to be performed and shall follow all prescribed safety guidelines and procedures.
- j. Authorized Food and Beverage Items for Sale.** The Licensee is only permitted to offer for sale to the general public prepackaged foods and beverages that meet all of the rules, regulations, and requirements of the Suffolk County Department of Health Services. Under no circumstances shall any food or beverage items be sold by the Licensee except at the Food Service/Souvenir and Merchandise Facility.
- k. Extermination.** The Licensee shall provide exterminating services as needed, at its own cost and expense, as directed by the Commissioner in his/her sole determination and in accordance with County regulations.
- l. Operations and Safety Manual.** The Licensee shall, at all times under and during the operation this Agreement, abide by the Long Island Live Steamers Operations and Safety Manual attached to and incorporated into this Agreement in Exhibit H.

## 6. Utilities

The Licensee shall pay, at its sole cost and expense, for all utilities including (but not limited to) heat, gas, electric, water, sewer, and telephone service (if any) consumed in the operation of the Licensed Premises. The Licensee shall pay for all costs to provide such service. The County shall not be responsible for the installation of any water supply, sewers or sanitary systems, drainpipes or fixtures, or electric, fuel oil or gas lines or fixtures beyond those already in place prior to the granting of this Agreement, unless negotiated prior to the execution of this Agreement. If additional utility installations or meters within the Licensed Premises are required as a result of a capital project undertaken or proposed pursuant to this Agreement, the full cost of such installations shall be borne by the Licensee. In instances in which gas or electricity is utilized in common areas or shared equipment and building systems, or where the Licensee's utility service is billed by the provider to the Department, the Licensee shall be responsible for the payment of a portion

of the overall cost as determined by the Department. In the event of fluctuation or interruption of water supply, electricity, or other utility services to the Licensed Premises provided by the County, the County shall undertake to repair such interruption promptly; however, the County shall not be liable or in any manner responsible for any claim, loss or damage of any kind sustained by the Licensee or any third party as a result of such delay or interruption in utility service regardless of cause. Under all circumstances, the Licensee shall be solely responsible for the cost and provision of its own sources of temporary power as may be necessary.

**End of Text for Exhibit D**

**Exhibit E**  
**Financial Terms and Conditions/Other Variable Terms and Conditions**

**1. Accounting and Record Keeping; Inspection of Records; Reporting; N.Y.S. Sales Tax**

- a. The Licensee is authorized to accept voluntary donations from the public for participation in approved Programs and Special Events, held at, or related in any way to the Licensed Premises as set forth in paragraph 2 of Exhibit D.
- b. The Licensee agrees that all donations and revenue collected by the Licensee that are generated arising out of this Agreement, shall be utilized to benefit the people of Suffolk County through the maintenance and upkeep of the Licensed Premises, as well as for programs conducted for the public at the Licensed Premises.
- c. The Licensee shall keep separate books of account and records of all operations conducted under this Agreement, shall document all financial transactions conducted under this Agreement, and establish a system of bookkeeping and accounts which is acceptable to the County and which is in accordance with the accounting requirements for contracts issued by the Comptroller of Suffolk County.
- d. The Licensee shall complete, daily, a log of business activities in a form acceptable to the County ("daily reports"). All daily reports shall be submitted to the County by the 10<sup>th</sup> day of the month following the activities along with a monthly summary also in a form acceptable to the County. Daily cash register tapes and vending machine readings are to accompany all submissions.
- e. The Licensee shall permit inspection and audit of said books and records by the Commissioner and Comptroller of the County of Suffolk, or their representative, as often as, in the judgment of the Commissioner or the Comptroller, such inspection is deemed necessary. Such right of inspection and audit shall exist during the term of this Agreement and for a period of seven (7) years after its expiration or termination. The Licensee may be required to submit, as periodically required by the Commissioner or said Comptroller, a certified profit and loss statement of operations under this Agreement as prepared by a Certified Public Accountant.
- f. The Licensee shall retain all accounts, books, records and other documents relevant to the Agreement for seven (7) years after the Agreement expires or is terminated. Federal, State and/or County auditors and any persons duly authorized by the County, shall have full access and the right to examine any of said materials during said period. Such access is granted notwithstanding any exemption from disclosure that may be claimed for those records which are subject to nondisclosure agreements, trade secrets and commercial information or financial information that is privileged or confidential.
- g. The Licensee shall install and maintain a visual reading cash register with cumulative locked-in tape totals and automatic daily reset number or its equivalent for the Licensed

Premises. The Licensee shall permit no reset of cumulative cash register readings. A computerized point of sale system may take the place of a cash register, but any such system must be approved by the Commissioner. If a cash register or point of sale system must be repaired, or otherwise removed from the Licensed Premises, the readings shall be recorded and verified by County personnel before the equipment leaves and when it is returned to the Licensed Premises. The County reserves the right to audit cash register, vending machine or point of sale readings at any time during the term of this Agreement. All revenues collected by the Licensee shall be recorded daily, with a beginning and ending daily balance recorded for each cash register and included in the required daily reports. Vending machine sales, if any, require beginning and ending machine readings and must be recorded along with all other revenues, and shall be included in the required daily reports. The Licensee shall retain a copy of the daily sales report together with daily cash register tapes and vending machine readings as part of the permanent accounting record. All equipment must be inspected, calibrated and certified annually.

- h. The Licensee shall also preserve for examination and inspection by the Commissioner or the Comptroller all cash register tapes and all vending machine readings. Tickets or coupons representing payment of currency shall be used in such a manner as may be approved by the Comptroller prior to their use.
- i. The Licensee must obtain and display their New York State Sales Tax Authorization Certificate and indicate on its menus, price lists, and fee schedules, as the case may be, and whether or not the posted prices include tax or tax is to be added. Said tax must be properly recorded in the cash register referenced in subparagraph g above. Collection and payment of such tax to New York State shall be solely the responsibility of the Licensee.
- j. The Licensee shall submit to the Commissioner by not later than thirty (30) days following the end of each calendar quarter, a copy of the quarterly sales tax return required to be filed with the State of New York.
- k. The Licensee shall issue a numbered receipt for all revenues and fees received and shall retain a copy of each receipt. Receipt books shall be open for inspection by the County.

## 2. Annual License Fee

The County reserves the right to request annual license fees, as agreed to by the parties in writing.

## 3. Advertising

- a. It is in the best interests of the County and the Licensee to maximize participation in the activities at the Licensed Premises and it is agreed that all parties will use their best efforts to promote the operation and programs of "Long Island Live Steamers, Inc." at the Licensed Premises. The Licensee agrees to expend a minimum of

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\$250.00 for Commissioner-directed advertising each and every year of the Agreement, and any extension thereof, on advertising and promotions. This amount is to be paid each year to the County, only to be used for production and distribution of Department newsletters, brochures and fliers.

- b. All advertising and signage under this agreement is subject to prior review and approval by the Department and must reflect the County's ownership of the Licensed Premises. Said approval shall not be unreasonably withheld or delayed.
- c. All brochures, media advertisement, and similar copy to be released, disseminated to the public or distributed in any manner shall be in good taste, consistent with County's mission and policies, reflect the County's ownership of the Licensed Premises. Such materials shall be provided to the Commissioner no less than forty-eight (48) hours prior to the release, dissemination or distribution of the material. The Commissioner reserves the right to reasonably and promptly object to the form and content of any such material, and the Licensee agrees to discontinue or withhold the release, dissemination and distribution of any such material unless and until there has been resolution of the objection. In the event there is no resolution, the material may not be released.
- d. Requirements for Commissioner-directed advertising, as described in subparagraph a. above shall be complete no later than April 1<sup>st</sup> of each year of this Agreement, and any extension thereof.

#### 4. Payment Terms

- a. The Licensee shall pay any charges for services supplied and billed by the County as set forth in this Agreement. All remittances required under this Agreement shall be made payable to the "Suffolk County Department of Parks, Recreation and Conservation."
- b. The Licensee shall be liable for a penalty of one and one half percent (1 ½%) per month for any sum as set forth above at subparagraph a. that is not paid when due. Such penalty shall be compounded monthly until the outstanding balance is paid in full. For any payment which is less than thirty (30) days, the penalty shall be assessed at the rate of five one hundredths of one percent (.05%) per day.
- c. The obligations of this paragraph shall survive termination of this Agreement.

**5. Comptroller's Rules and Regulations for Consultant Agreements**

The Licensee shall comply with the "Comptroller's Rules and Regulations for Consultant Agreements" as promulgated by the Department of Audit and Control of Suffolk County and any amendments thereto during the term of this Agreement. The County shall provide the Licensee with a copy of any amendments to the "Comptroller's Rules and Regulations for Consultant Agreements" during the term of this Agreement.

**6. License for Copyrighted Materials**

The Licensee shall be required to procure a license from copyrighted artists' representatives, including, but not limited to, such organizations as SESAC, BMI, and ASCAP, that authorizes the reproduction of any copyrighted materials by the Licensee, its officers, officials, employees, subcontractors, sub-licensees, invitees, or agents on the Licensed Premises.

**End of Text for Exhibit "E"**

Exhibit F  
Suffolk County Resolution No. \_\_\_\_\_-2012

**Exhibit G**  
**Site Map of Licensed Premises**

SKEET RANGE 1912

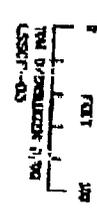
TO HORSE STABLE

ENTRANCE

FIRE ROAD

GROUND LEVEL TRACK  
7.25' GAUGE  
LONG ISLAND  
LIVE STEAMERS

ELEVATED TRACK  
3.5 AND 4.75' GAUGE



SEE ORINR. LSSCP-01 FOR DETAILS.

L.I.L.S. PARKING LOT

GERREARD AVE

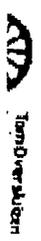
BOUNDARY  
(HEAVY LINE)

FIELD

FIRE ROAD



MAR 28 2018

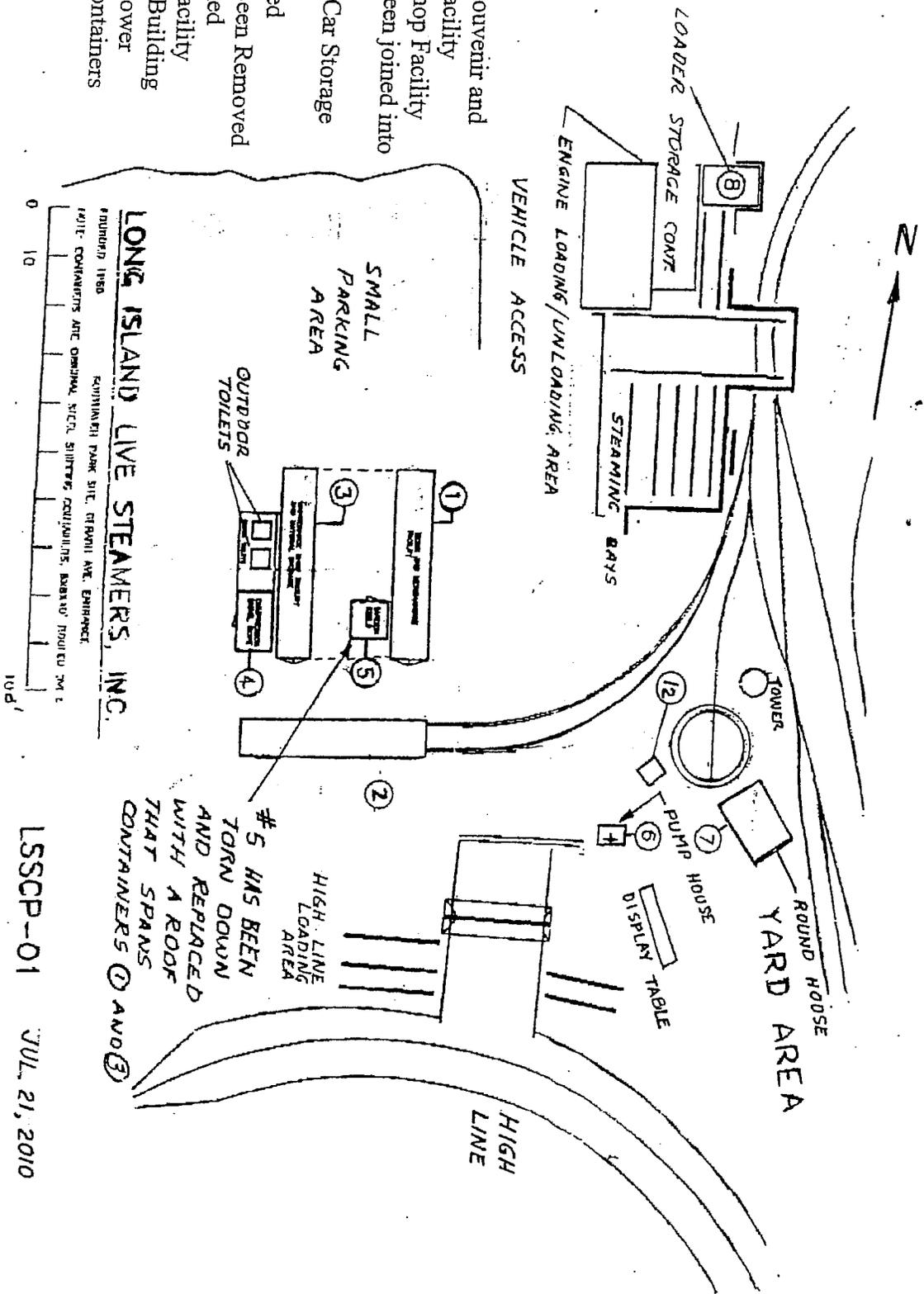


FROM : Lindemann

FAX NO. :

JUL 16 2012 03:18PM P1

- Food Service/Souvenir and Merchandise Facility
- Maintenance Shop Facility (1 and 3 have been joined into one building)
- Metal Railroad Car Storage Container
- Compressor Shed
- Tool shed has been Removed
- Pump House Shed
- Round House Facility
- Loader Storage Building
- Signal/Switch Tower
- 11 Car Storage Containers
- Ticket booth



LSSCP-01 JUL 21, 2010

Exhibit H

Long Island Live Steamers Operations and Safety Manual

**LONG ISLAND  
LIVE STEAMERS**

**OPERATIONS  
AND  
SAFETY  
MANUAL**

NOVEMBER 1997

LONG ISLAND LIVE STEAMERS  
SAFETY MANUAL

A PURPOSE

The purpose of this manual is to list the responsibilities and requirements for ensuring the safe operation of the LONG ISLAND LIVE STEAMERS facility.

B GENERAL RULES

All members have the responsibility to ensure that before running:

1 Fire buckets are placed next to each water barrel, for both the ground line and the high line, regardless if any steam engines are running. Fire barrels should be filled when required.

2 All necessary track switches are set to allow for normal operation.

3 All water hoses are attached at the water towers, stations, steaming bays, and inside loop siding.

4 All signals are connected and are in working order.

5 On public run days, the appropriate safety and control measures are to be instituted. This includes marking off areas for the steaming bays, service areas, roundhouse, and station waiting areas. Placing the appropriate safety and warning signs in position.

6 Fire extinguishers are placed at the station and steaming bays. Extinguishers should also be provided in the kitchen, machine shop, and in all containers permanently. They should be periodically inspected by the members of the safety committee.

7 Both tracks, ground line and high line, must be walked and switches checked for debris, damaged or any other irregularities. A "Deadhead" train must be run, without passengers, before starting operation. Any trouble must be reported to both the Stationmaster and/or a club officer.

8 No one under 18 years of age or younger shall operate a train on the mainline while public riding is in effect unless under the direct personal supervision of the engines owner.

9 All club members should be familiar with the table of LOCOMOTIVE WHISTLE SIGNALS.

The common signals are:

Proceed           =====

Backup           ===   ===   ===

Stop             ===

Warning          =====   ===

(approaching bridge, crossover, or blind spot)

Call for orders  ===   ===   ===   ===

Stop on main line	=====	===	===	===	
(flag man out to rear					
Call in flag man	===	===	===	===	
Someone on track	===	===	===	===	===
Need help	=====	===	===	===	===
Approaching station	=====				
Grade crossing	=====	=====	===	=====	

10 When using the electric loaders, a trained authorized member is present to operate.

11 Park only in authorized spaces, keeping the fire lanes open.

12 When using power equipment in the machine shop, safety equipment such as safety glasses shall be used. Another club member should be notified of a person using any power equipment.

13 Gasoline and other flammable material must be kept in approved containers and stored in appropriate areas.

During the course of the day, all members should check to see that:

1 No unauthorized persons are allowed within, or on top of, any container, or structure, walking in the track and storage areas; within the steaming bays, transfer table areas or on the roundhouse.

2 No running or roughhousing within the track and storage areas; and that good order is maintained.

#### C RESPONSIBILITIES - GROUNDLINE

##### STATIONMASTER:

The stationmaster is responsible for the safe and orderly loading and unloading of passengers and train operations. The stationmaster has the authority, if needed, to curtail or suspend train operations if there is a safety problem. If a problem does occur, he is authorized to take whatever action is necessary, to ensure safety. This includes pulling train or engineer out of service for safety violations or closing the track. He is then to consult with either the club president or the highest ranking officer present on further action. It is recommended the he has a minimum of one assistant to help him.

The stationmaster should check for the following:

1 Both tracks, ground line and high line, have been inspected prior to running and carrying passengers.

2 Both tracks, ground line and high line, have been inspected for any debris after any derailment, and reported that track is in satisfactory condition.

3 He should supervise the loading and unloading of passengers. He is to help the engineer on arranging the passengers for both car balance and weight. In particular, he must make mention of the rules to be observed by the passengers:

A Keeping the arms and legs inside the cars

B Keeping the feet up on the running boards at all times

to normal jogging speed.

10 Slow speeds are to be observed at the double crossover, bridge, entering and leaving the station, and yard areas.

11 He is to notify the stationmaster of any special requirements such as specific track assignments or loading requirements.

12 If necessary to make a stop on the mainline, he must send out a flagman to protect the end of the train, and instruct the passengers.

13 At no time are any trains, with passengers, to traverse the transfer table.

14 If the engineer desires to load special guests or family, other than at the station, he will load them at the groundline water tank or the siding after the transfer table leading to the mainline.

15 All engineers should be familiar with the table of locomotive whistle signals.

#### FLAGMAN.

The flagman is responsible for enforcing the safety rules of the club given by the stationmaster and protecting the end of the train in case of a stop. If he sees or finds any unsafe condition by either passengers or the equipment, he is to notify the engineer and the stationmaster.

1 He is to enforce the safety rules as given by the stationmaster and his engineer. This is true during signal or unscheduled stops.

2 He is to have a red flag and whistle for visual and/or sound warnings.

3 He is to protect the rear of the train for unscheduled stops. He is to go back about 50 feet to red flag any oncoming traffic.

#### SWITCHMAN.

The switchman is responsible for the flow and track assignments into the station. He is to coordinate the station traffic flow with the stationmaster on the track assignments. Priority will be given to using the 3 station tracks; # 2,3,4. Track 1 is the overflow track. This track will be used at the discretion of the stationmaster. The switchman, if unsure, will consult the stationmaster for any track assignments. THE DECISION OF THE STATIONMASTER IS FINAL ON TRACK ASSIGNMENTS. HIS DECISION CAN ONLY BE COUNTERMANDED BY THE CLUB PRESIDENT.

He is also to enforce the slow speed restrictions on the double crossover and entering the station.

#### YARDMASTER.

The yardmaster is responsible for coordination of all the siding and layover tracks with the train equipment on the line. Only Authorized persons are allowed in these areas, including the sidings, storage, rounghouse, and steaming bay areas. He is to

work closely with the stationmaster on the movement of equipment.

#### D RESPONSIBILITIES - HIGHLINE.

##### ENGINEER;

The engineer, on the highline has the responsibility for the safe operation of his train. He is to check:

- 1 That his train has a braking system, and whistle or horn. If he finds any abnormality or unsafe condition present, he is to immediately discharge his passengers and pull his train out of service.
- 2 That he is aware of his fuel status. For steamers; water level and pressure are within safety levels and fuel level is sufficient.
- 3 His engine and control car are "hard coupled" either by drawbar or chain.
- 4 Making a minimum of 1 test run around the track before taking on passengers.
- 5 All gasoline powered engines are prohibited from refueling in the station area or have any passengers on board at that time. Gasoline refueling shall be done in the servicing area
- 6 Minimum distance between trains should not be less than 50 feet or approximately 6 rail sections in length.
- 7 Operate at scale speeds. Scale speed is normal jogging speed.
- 8 All engineers should be familiar with the table of locomotive whistle signals.

All members shall have a copy of these rules for their information. If any further information or the need arises for an update or change to these rules, contact any member of the safety committee.

##### Safety Organization:

The recommendation and formatting for any change to these rules must be routed through the safety committee.

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 December 18, 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*

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Clerk of the Legislature

**Motion:**

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

**Co-Sponsors:**

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

**Second:**

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						
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	15	—		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 _____

Roll Call \_\_\_\_\_ Voice Vote

*Tim Laube*

Tim Laube, Clerk of the Legislature