

MTA JOINT PROMOTION AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on this 31st day of March, 2023 (the “Effective Date”), by and between the **Metropolitan Transportation Authority**, a public authority and benefit corporation organized and existing under the New York State Public Authorities Law, with principal offices at 2 Broadway, New York, New York 10004, acting on behalf of itself, its subsidiaries and affiliates (collectively, “MTA”) and **City of Long Beach** (“Joint Promotion Partner or “Partner”), a government entity organized under the laws of the state of New York with an address at 70 Magnolia Boulevard, Long Beach, New York 11561 (each individually a “Party” and together the “Parties”).

WITNESSETH

WHEREAS, MTA has a desire to enter into a joint promotion agreement with Joint Promotion Partner as summarized in Exhibit A annexed; and,

WHEREAS, in accordance with this Agreement, Partner and MTA agree to provide the Joint Promotion as specified in exhibit A.

NOW, THEREFORE, subject to the mutual covenants contained herein, MTA and Partner hereby agree as follows:

ARTICLE ONE – TERMS AND CONDITIONS

The recitals are incorporated into this Agreement as though set forth herein verbatim. MTA is not providing any endorsement to Partner by including the Joint Promotion.

ARTICLE TWO – DEFINITIONS

The Joint Promotions that are the subject of this Agreement can be further broken into the following:

An MTA Away Package (a “Package”) sold by MTA via an MTA ticket vending machine or full-service ticket window, consisting of: i) a round-trip railroad ticket as specified in Attachment A; and ii) admission to a Partner Event at a discount as specified in Attachment A.

ARTICLE THREE – PARTNER JOINT PROMOTION RESPONSIBILITIES

In furtherance of the Joint Promotion, Partner agrees to do the following:

- A. Provide discounted access to the Event to MTA, as more specifically detailed in Exhibit A (Details of Joint Promotion) attached hereto and made a part hereof.
- B. Accept the special event ticket issued by MTA (through MTA’s ticket vending machines and full-service ticket windows) as admission for the Event during the Term.

C. Promote the Joint promotion via Partner website, email blast(s), social media and press release(s) (as applicable), as itemized in exhibit A. Any other promotional material (collectively, “Promotional Material”) will be at the partner’s discretion.

D. Utilize any MTA-provided promotional copy relating to the Joint Promotion in Partner’s Promotional Material. Proof of inclusion must be provided in accordance with Attachment A in order for Partner to be considered for a renewal or new package in the future.

E. Make available in electronic media any Partner intellectual property and Partner-provided artwork and photographs that the Parties have agreed to include in the Promotional Material

F. Ensure that MTA is authorized to promote the Joint Promotion and utilize the Promotional Material as the MTA desires, including having any permissions/consents that might be required by the intellectual property owners of Partner-provided artwork and photographs and any content therein, utilized in the Promotional Material.

G. Comply with all applicable laws and regulations, including but not limited to those regarding accessibility for individuals with disabilities and prohibiting discrimination, and any subsequent amendments to those laws and regulations.

H. Submit forms and certifications as MTA may require, including an IRS W-9.

I. Not be reimbursed when an MTA customer complaint results in issuance of a refund to that MTA customer for the Event.

ARTICLE FOUR – MTA JOINT PROMOTION RESPONSIBILITIES

In furtherance of the Joint Promotion, MTA agrees to do the following:

A. Include the Joint Promotion on MTAaway.com in the Deals section and link to Partner’s information, including the website where Partner lists the Joint Promotion.

B. Promote visits to MTAaway.com in MTA’s digital ad screens, social media and newsletters.

C. At its sole discretion, promote the Joint Promotion in the MTA’s other promotional materials.

D. Create and produce Event specific tickets and provide them for sale through MTA’s ticket windows and ticket machines during the Term.

E. Provide Partner with electronic versions of MTA intellectual property for use in MTA-approved Promotional Materials created and used by Partner and MTA. Such approval shall not be unreasonably withheld or delayed.

F. Pay Partner on a monthly basis in accordance with the agreed to Joint Promotion prices and payment method, as detailed in Exhibit A.

ARTICLE FIVE – REPRESENTATIONS AND WARRANTIES

A. Partner represents and warrants that any artwork and photographs provided by Partner as part of the Joint Promotion are solely the result of the creative, artistic, photographic, and journalistic efforts of Partner.

B. Partner represents and warrants that: it is the owner of all title, rights, and interests in, to, and associated with any artwork and photographs provided as part of the Joint Promotion, including, but not limited to, copyright of the artwork and photographs, and has clear and unencumbered title to the material and medium constituting any artwork and photographs as delivered to MTA.

C. Partner further represents and warrants that there are no other agreements with, or rights held by any third party that may limit Partner's right to provide any artwork or photograph provided as part of the Joint Promotion to MTA and that it has the unrestricted authority to provide such artwork and photographs to MTA for publication in MTA Promotional Materials.

D. The artwork and photographs provided as part of the Joint Promotion and the exercise of the rights granted herein do not, and will not, infringe upon or violate any trademark, service mark, copyright, patent, privacy, or other intellectual property or other proprietary right of any third party.

E. Partner and MTA represent and warrant that each has and shall have the right to enter into this Agreement.

ARTICLE SIX – RELEASE AND INDEMNIFICATION

A. Partner shall indemnify, defend and hold harmless the MTA, its affiliated agencies, subsidiaries, directors, officers, and employees, the State of Connecticut and the Connecticut Department of Transportation, if applicable (collectively, the "Indemnified Parties") from and against any and all claims, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and witness fees (collectively, "Claims") arising out of, or connected with, any alleged act or omission by Partner, its directors, officers, employees, agents and contractors or any alleged breach of any of Partner's representations, warranties, or obligations under this Agreement. If so requested by the MTA, Partner shall defend any such claim in the name of the MTA but at Partner's expense. At its option, the MTA may participate in such defense at its own expense and approve any offers or agreements regarding terms of settlement.

B. MTA shall indemnify, defend and hold harmless the Partner, its affiliated agencies, subsidiaries, directors, officers, and employees, if applicable (collectively, the "Indemnified Parties") from and against any and all claims, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and witness fees (collectively, "Claims") arising out of, or connected with, any alleged act or omission by the MTA, its directors, officers, employees, agents and contractors or any alleged breach of any of the MTA's representations, warranties, or obligations under this Agreement. If so requested by the Partner, MTA shall defend any such claim in the name of the Partner but at MTA's expense. At its option, the Partner may participate in such defense at its own expense and approve any offers or agreements regarding terms of settlement.

C. The MTA shall not be liable to Partner for unauthorized use by any third party of any Partner-provided artwork or photographs.

ARTICLE SEVEN – INSURANCE

A. Partner shall procure and thereafter maintain in force until completion of the Joint Promotion or the earlier termination of this Agreement such insurance in such forms and such amounts as MTA may require. Partner shall secure compensation for the benefit of, and keep insured during the life of the Agreement, such employees as are required to be insured by the provisions of the Worker’s Compensation Law. Partner agrees to furnish MTA with a certificate of insurance certifying that the insurance coverage required by this Agreement is in full force and effect for the Term (as defined below) and naming the Indemnified Parties as additional insureds.

B. Partner shall: i) care for and protect all tangible and intangible property of the MTA that comes into the possession or custody of the Partner, and shall, at its own cost and expense, repair or restore any such property that is lost or damaged to any extent due to its negligence. ii) not make any oral or written statement about the MTA in connection with this Agreement, which is intended or reasonably likely to disparage the MTA, or otherwise degrade the MTA’s reputation.

C. MTA shall procure and thereafter maintain in force until completion of the Joint Promotion or the earlier termination of this Agreement such bonds and insurance in such forms and such amounts as City may require, and shall name the City of Long Beach as additional insureds as follows: “City of Long Beach, its employees, agents, legal counsel and elected officials”. MTA shall secure compensation for the benefit of, and keep insured during the life of the Agreement, such employees as are required to be insured by the provisions of the Worker’s Compensation Law.

D. MTA shall care for and protect all tangible and intangible property of the City that comes into the possession or custody of the MTA, and shall, at its own cost and expense, repair or restore any such property that is lost or damaged to any extent due to its negligence. MTA shall not make any oral or written statement about the City in connection with this Agreement, which is intended or reasonably likely to disparage the City, or otherwise degrade the City’s reputation.

ARTICLE EIGHT – FORCE MAJEURE

A. Neither Party shall be liable for delays or any failure to perform any portion of the Joint Promotion under this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, labor troubles and pandemics and other acts of God, fire, explosion, terrorism, flood or other natural catastrophe (each a “Force Majeure Event”), to the extent not occasioned by the fault or negligence of the delayed Party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed Party. However, the delayed Party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Such Party shall resume full performance of such obligations and responsibilities promptly upon removal of any such case.

B. If there is a Force Majeure Event or any other event that results in the postponement of any portion of a Joint Promotion, Partner shall immediately notify MTA in writing (the “Notice of Postponement”). MTA shall (1) promptly deactivate any Joint Promotion advertisements and related messaging that has been activated prior to the beginning of the Force Majeure Event; and (2) reserve any prorated media value unrealized prior to the Notice of Postponement for Partner’s use within one (1) year of the date that the Notice of Postponement is received by MTA, subject to media availability at the time the request to redeem any reserved media value is received.

ARTICLE NINE – TERM AND TERMINATION

A. The term of this Agreement shall commence on the Effective Date and continue until the termination date of the Joint Promotion as set forth in Exhibit A. The Term may be extended by written mutual agreement of the Parties.

B. MTA shall have the unconditional right, without consent and/or knowledge of the Partner, to in whole or in part remove any Joint Promotion from publication on MTA Away or mta.info, in its sole discretion.

C. City shall have the unconditional right, without consent and/or knowledge of the MTA, to remove any Joint Promotion from its publication on City’s media and/or website, in its sole discretion.

D. Both Parties have the right to terminate this Agreement during the Term (1) immediately for a material breach after providing the other Party with five (5) business days to cure the material breach and (2) for any other reason with thirty (30) days’ advance notice to the other Party. If the termination is for a material breach, then the Party alleging a material breach shall retain all rights in law and equity.

ARTICLE TEN – CONFIDENTIALITY

A. The Parties agree that they will not use any information identified in writing as “confidential” or that are orally designated as “confidential” if followed up in writing (collectively, “Confidential Information”) revealed to them by the other Party in any way for their own account or for the account of any third party, nor will they disclose any Confidential Information to any third party, except as required by law or regulation. Both Parties will take reasonable precautions to protect their own Confidential Information and the Confidential Information of the other Party.

B. The Parties shall not use Confidential Information for any purpose not expressly permitted in this Agreement (and in all cases such Confidential Information shall only be used for the MTA’s benefit), and, except as required by law, the Parties shall disclose such Confidential Information only to those employees, contractors, subcontractors, suppliers, and agents who have a need-to-know basis for access to such Confidential Information for the purpose of performing under the Agreement; provided, however, that such recipients are under a duty of confidentiality no less restrictive than the duties hereunder and by applicable law. The Parties shall protect all Confidential Information from unauthorized use, access, or disclosure in the same manner as such Party protects its own confidential or proprietary information but, shall in no event use less than a reasonable standard of care and diligence.

ARTICLE ELEVEN – MISCELLANEOUS

A. Anti-discrimination. Partner agrees that it shall not discriminate against any employee or employment applicant because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic. Partner shall ensure that any subconsultant it hires complies with this section.

B. Independent Contractor Status. Nothing in this Agreement shall create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity or, impose any obligation upon either Party to take any other action not expressly agreed to herein. Each Party will act as an independent contractor and not as an agent, employer, or employee of the other Party for any purpose.

C. Governing Law and Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its conflicts of laws principles, and any suit relating to a dispute under, about or in connection with this Agreement may be filed in any court of competent jurisdiction in the County of New York. The Parties consent to the jurisdiction of such courts, agree that venue will be proper in such courts, and waive any objections based upon *forum non conveniens*.

D. Assignment. This Agreement may not be assigned, in whole or in part, by the Partner.

E. Binding Nature. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the Parties.

F. Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, the remaining provisions hereof shall be unaffected and shall remain in full force and effect to the fullest extent permitted by law.

G. Waiver. Waiver by either Party of a breach of any provisions of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until the same shall be agreed to in writing by the party against whom the waiver is sought to be enforced.

H. No Personal Liability. No director, officer, employee, or agent of either party shall be liable personally under this Agreement for any reason.

I. Survival. The understandings contained in the following provisions shall survive the termination of this Agreement, even if such is occasioned by the Authority or the Authority's breach or wrongful termination of the Partner: delivery, payment, rights in work, display, warranties, indemnity and release, and any other provision which by its nature survives termination.

J. Future Work with the MTA. The execution of this Agreement or performance of the activities under this Agreement do not prohibit or exclude Partner from being eligible for consideration for future contracting opportunities or paid for future work with the MTA, pursuant to the MTA's normal procurement procedures.

K. No Third-Party Rights. This Agreement does not create any rights in third parties that did not exist prior to the execution hereof.

L. Counterparts. The Agreement may be executed in multiple counterparts each of which will be deemed an original. Any Party to the Agreement may deliver an executed copy of the Agreement by facsimile transmission, email or PDF to the other Party and any such delivery shall have the same force and effect as any other delivery of a manually signed copy hereof.

M. Certification of Compliance Executive Order No. 16. Pursuant to New York State Executive Order No. 16, effective March 17, 2022, the MTA and its Agencies are prohibited from contracting with entities conducting business in Russia. Prior to the execution of this Agreement, the Partner must complete the Executive Order No. 16 certification annexed hereto, and made part of this Agreement as Exhibit C.

N. Entire Agreement. This Agreement contains the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof, and shall be deemed to supersede all other negotiations, understandings and representations, whether written or oral, made by and between such parties. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, except by a writing signed by each of the Parties hereto which makes specific reference to this Agreement.


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

METROPOLITAN TRANSPORTATION AUTHORITY

By: 
Mark R Heavey (Apr 5, 2023 09:34 EDT)

Mark R. Heavey
Director, Business Development

CITY OF LONG BEACH

By: 
Ronald J Walsh Jr. (Apr 4, 2023 15:32 EDT)

Ronald J. Walsh Jr.
Acting City Manager, City of Long Beach

EXHIBIT A
DETAILS OF JOINT PROMOTION

The Joint Promotion shall be branded as follows: Discount rail/discount beach admission to Long Beach (“Brand”)

The Joint Promotion Package shall consist of discounted admission to the Joint Promotion Partner’s Event activity specified below and a round-trip rail ticket on the Long Island Rail Road to Long Beach Station. Additional components if any, are specified below.

The Joint Promotion Package shall be available for purchase only from the Railroad’s ticket vending machines and full-service ticket windows.

The Joint Promotion Package shall be available for purchase weekends from May 27, 2023 to June 25, then daily June 26, 2023 to September 4, 2023 and shall be valid for May 27, 2023 to June 25, then daily June 26, 2023 to September 4, 2023.

As between MTA and Joint Promotion Partner, the sales price shall be allocated as follows:

- To the Joint Promotion Partner: **\$12 for an adult, senior or child ticket**, a discount from the regular price of \$15 for an adult, senior or child ticket.
- Free City Bus admission within the City of Long Beach when customers show the MTA package admission ticket on the bus.

MTA Payments to Joint Promotion Partner: On a monthly basis in arrears, MTA shall, by the 15th of the following months, pay Joint Promotion Partner the applicable Event discounted prices specified above for each Joint Promotion Package sold during the month., net of any refunds, as documented in an included Railroad Sales Report for the previous month. MTA shall make the payment by check issued to the Joint Promotion Partner.

FUTURE JOINT PROMOTION ACTIVITIES:

In order to be considered for a new or renewed Joint Promotion Package in the future, MTA shall be satisfied that Joint Promotion Partner has performed its responsibilities under this Agreement. Partner must provide MTA, by the end of each month during the sale start date of the Event, an itemized list of the Promotional Activities undertaken by Joint Promotion Partner and copies of the content of such promotional activities. If available from Joint Promotion Partner’s record keeping system, Joint Promotion Partner should also provide statistical information covering the actual number of participants who used the Joint Promotion admission ticket.

MTA reserves the right (but not any obligation):

1. To monitor these activities such as by accessing the Joint Promotion Partner’s website and social media and including one or more persons on Joint Promotion Partner’s mailing lists.
2. To inform Joint Promotion Partner of any errors or omissions in the content of any promotional message and to request prompt correction of same.

EXHIBIT A (cont'd)

LINKS TO MTA AWAY PACKAGE URL MUST BE INCLUDED

For social:

Save on your visit to the City of Long Beach when you buy an MTA Away package, complete with discounted round-trip rail fare, discounted admission and a free city bus ride! See the link in our bio for more details.

You and your family can save up to 25% when you buy an MTA Away package, which includes discounted round-trip rail fare, discounted admission and a free city bus ride! See the link in our bio for more details.

For newsletter:

Did you realize that you can leave your car behind and save on admission to Long Beach by getting an MTA Away package? Check the details for discounted admission, free city bus ride and discounted round-trip rail fare [here!](#)

For website:

If you plan on taking the Long Island Rail Road to Long Beach Station and want to leave your car behind, you can save on discounted round-trip rail fare, discounted admission and free city bus ride by getting an MTA Away package. More details [here!](#)

Exhibit B - Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: City of Long Beach
(legal entity)
By: *Ronald J Walsh Jr.*
(signature) Ronald J Walsh Jr. (Apr 4, 2023 15:32 EDT)
Name: Ronald J. Walsh, Jr.
Title: Acting City Manager
Date: 3-31-2023






City of Long Beach agreement for signature

Final Audit Report

2023-04-04

Created:	2023-03-31
By:	Kamala Browne (browne@mnr.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAadvRiDhR2ZJCL03MuRd4OddBaAUtgVS7r

"City of Long Beach agreement for signature" History

-  Document created by Kamala Browne (browne@mnr.org)
2023-03-31 - 7:32:30 PM GMT- IP address: 136.226.60.114
-  Document emailed to rjwalsh@longbeachny.gov for signature
2023-03-31 - 7:33:06 PM GMT
-  Email viewed by rjwalsh@longbeachny.gov
2023-03-31 - 11:28:34 PM GMT- IP address: 3.238.44.255
-  Email viewed by rjwalsh@longbeachny.gov
2023-04-04 - 7:30:24 PM GMT- IP address: 3.237.199.191
-  Signer rjwalsh@longbeachny.gov entered name at signing as Rona Id J Walsh Jr.
2023-04-04 - 7:32:07 PM GMT- IP address: 96.246.148.237
-  Document e-signed by Rona Id J Walsh Jr. (rjwalsh@longbeachny.gov)
Signature Date: 2023-04-04 - 7:32:09 PM GMT - Time Source: server- IP address: 96.246.148.237
-  Agreement completed.
2023-04-04 - 7:32:09 PM GMT

Names and email addresses are entered into the Acrobat Sign service by Acrobat Sign users and are unverified unless otherwise noted.









City of Long Beach signed agreement

Final Audit Report

2023-04-05

Created:	2023-04-04
By:	Kamala Browne (browne@mnr.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuKV-vMCpzjqCcY2QAW4tCfNcpKR5PFd

"City of Long Beach signed agreement" History

-  Document created by Kamala Browne (browne@mnr.org)
2023-04-04 - 7:50:43 PM GMT- IP address: 136.226.60.114
-  Document emailed to mark.heavey@mtacd.org for signature
2023-04-04 - 7:51:10 PM GMT
-  Email viewed by mark.heavey@mtacd.org
2023-04-05 - 1:34:19 PM GMT- IP address: 90.82.48.206
-  Signer mark.heavey@mtacd.org entered name at signing as Mark R Heavey
2023-04-05 - 1:34:49 PM GMT- IP address: 90.82.48.206
-  Document e-signed by Mark R Heavey (mark.heavey@mtacd.org)
Signature Date: 2023-04-05 - 1:34:51 PM GMT - Time Source: server- IP address: 90.82.48.206
-  Agreement completed.
2023-04-05 - 1:34:51 PM GMT

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