

MTA JOINT PROMOTION AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on this 1st day of March, 2022 (the “Effective Date”), by and between the **Metropolitan Transportation Authority**, a public 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 the **City of Long Beach**, a Municipal Corporation, located at 1 West Chester Street, Long Beach, NY 11561 (the “City”) (each individually a “Party” and together the “Parties”).

WITNESSETH

WHEREAS, MTA has a desire to partner with City to provide MTA customers with discounted access to the City’s beach (the “Event”) that is accessible by the MTA transportation network, including subways, commuter railroads and buses (collectively, the “Joint Promotion”); and

WHEREAS, City agrees to provide the Joint Promotion in conjunction with the MTA as defined in Exhibit A.

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

ARTICLE ONE – TERMS AND CONDITIONS

A. The recitals and “WHEREAS” clauses are incorporated into this Agreement as though set forth herein verbatim. MTA is not providing any endorsement to City 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:

A. An MTA Away Package (a “Package”) which shall mean a discounted rail ticket and a discount from the City for MTA customers on admission to an Event.

ARTICLE THREE – CITY JOINT PROMOTION RESPONSIBILITIES

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

A. Provide discounted access to the Event to MTA adult customers and at other prices to other MTA customers, as more specifically detailed in Exhibit A (Details of Joint Promotion) attached hereto and made part hereof.

B. Accept the special event ticket issued by MTA (through MTA's ticket windows and full-service ticket machines) as admission for the Event during the Term.

C. Describe and promote the Joint Promotion on its website, in its advertising, marketing materials, press releases, point of purchase signage, online postings, social media, and any other promotional material (collectively, "Promotional Material"), including information about how to get to the Event using the MTA transportation network and an MTA-supplied URL.

D. Utilize any MTA-provided promotional copy relating to the Joint Promotion in City's Promotional Material. Proof of inclusion, to the extent possible, must be provided at least two (2) weeks prior to the event.

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

F. Ensure that MTA has the authority to promote the Joint Promotion and utilize the Promotional Material as the MTA desires, including acquiring any permissions that might be required by the owners of City-provided artwork and photographs utilized in the Promotional Material.

G. Comply with all relevant laws and regulations, including those regarding accessibility for individuals with disabilities, and any subsequent amendments to those laws and regulations. City shall submit forms and certifications as MTA may require, including a W-9.

H. Not be reimbursed when an MTA customer complaint results in an issuance of a refund to that MTA customer for the special event ticket.

ARTICLE FOUR – MTA JOINT PROMOTION RESPONSIBILITIES

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

A. Add the Joint Promotion to www.MTAaway.com in the deals section and link to City's information, including the website where City lists the Joint Promotion.

B. As opportunities arise, promote the Joint Promotion in the MTA's Promotional Materials.

C. Create and produce special event tickets, and provide them for sale through MTA's ticket windows and ticket machines during the Term.

D. Provide MTA intellectual property for use in, and approve, all Promotional Materials created by City. Such approval shall not be unreasonably withheld or delayed.

E. Pay City on a monthly basis in accordance with the agreed to Joint Promotion prices, as detailed in Exhibit A.

ARTICLE FIVE – REPRESENTATIONS AND WARRANTIES

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

B. City 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; or that it is properly licensed to use/distribute same to the MTA. City has clear and unencumbered title, or that it is properly licensed, to use/distribute the material and medium constituting any artwork and photographs as delivered to MTA.

C. City further represents and warrants that there are no other agreements with any third party that may limit City's right to provide any artwork and photographs 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. City and MTA represent and warrant that each has and shall have the right to enter into this Agreement.

ARTICLE SIX – RELEASE AND INDEMNIFICATION

A. City shall indemnify, defend and hold harmless the MTA, its affiliated agencies, subsidiaries, directors, officers, and employees, if applicable (collectively, the "MTA 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 City, its directors, officers, employees, agents and contractors or any alleged breach of any of City's representations, warranties, or obligations under this Agreement. If so requested by the MTA, City shall defend any such claim in the name of the MTA but at City'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. The MTA shall not be liable to City for unauthorized use of any City-provided artwork or photographs by third parties.

C. MTA shall indemnify, defend and hold harmless the City, its affiliated agencies, subsidiaries, directors, officers, and employees, if applicable (collectively, the "City Indemnified Parties") from and against any and all 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 MTA's representations, warranties, or obligations under this Agreement. If so requested by the City, MTA shall defend any such claim in the name of the City but at MTA's expense. At its

option, the City may participate in such defense at its own expense and approve any offers or agreements regarding terms of settlement.

ARTICLE SEVEN – INSURANCE

A. City 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 MTA may require, and shall name the MTA Indemnified Parties as additional insureds. MTA Indemnified Parties shall be named as additional insureds on such policy as follows: “Metropolitan Transportation Authority (“MTA”) and the respective affiliates and subsidiaries existing currently or in the future of and successors”. City 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.

B. City shall care for and protect all tangible and intangible property of the MTA that comes into the possession or custody of the City, 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. City shall 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 – TERM AND TERMINATION

A. The term of this Agreement shall commence on the Effective Date and continue until September 5, 2022 (the “Term”). 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 City, to 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 NINE – 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 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 TEN – MISCELLANEOUS

A. Anti-discrimination. The Parties agree that neither party shall discriminate against any employee or employment applicant because of race, color, creed, national origin, sex, age, or disability. The Parties shall ensure that any sub-consultant 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 either party.

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, elected official or agent of either Party shall be liable personally under this Agreement for any reason.

I. Survival. The understandings contained in the following ARTICLES shall survive the termination of this Agreement: delivery, payment, rights in work, display, warranties, indemnity and release, miscellaneous.

J. Future Work with the MTA. The execution of the activities under this Agreement do not prohibit or exclude City from being eligible for future RFPs 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. Force Majeure. Neither MTA nor City shall be liable or responsible for events beyond their control, including, but not limited to, labor actions, severe weather conditions, acts of God, staff availability, pandemics, and/or governmental or judicial actions which interfere with MTA's transportation services, or the City's ability to permit persons onto its beaches.

M. 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.

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.

EXHIBIT A
DETAILS OF JOINT PROMOTION

The Package shall include round-trip excursion transportation fare for the Event and dates for which this type of Joint Promotion will be valid to the City of Long Beach. The MTA's tariff regulations supersede any special pricing for children, students, persons with disabilities, persons receiving Medicare and senior citizens.

Provide discounted access to the Event to MTA adult/senior/child customers on weekends, May 28 through June 26, 2022 (including Memorial Day, May 30), then seven days per week, June 27 through Labor Day (September 5), all as weather permits.

City will charge MTA \$12 for adults, seniors and children's tickets for the Long Beach package, which includes discounted entry to the beach, round trip transportation on the trolley to/from Long Beach train station and the beach, discounts at participating vendors throughout Long Beach.

The non-discounted cost of access to the Event is \$15 for adults, seniors & children tickets. MTA shall pay City the discounted admission ticket fees solely for the verifiable and received sales of the Joint Promotion within twenty (20) days after the end of the month in which the Joint Promotion occurs. Monthly payments will be made individually by Long Island Rail Road. The amount remitted to City shall be the price of the discounted admission ticket fees multiplied by the tickets sold, broken down by type of ticket (adult and senior) minus any refunds provided.

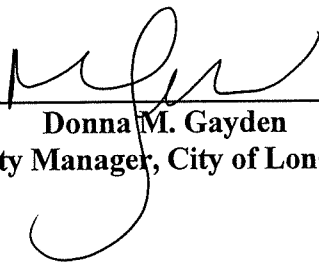
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

METROPOLITAN TRANSPORTATION AUTHORITY

BY: 
Lucy Zachman (Apr 21, 2022 15:21 EDT)

Lucy Zachman
Director, Advertising & Promotions

CITY OF LONG BEACH

BY: 

Donna M. Gayden
City Manager, City of Long Beach






City of Long Beach agreement

Final Audit Report

2022-04-21

Created:	2022-04-21
By:	Kamala Browne (browne@mnr.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAdKQRq3QyvN4LAuij7EbNX1Sm3RenTDP9

"City of Long Beach agreement" History

-  Document created by Kamala Browne (browne@mnr.org)
2022-04-21 - 5:58:52 PM GMT- IP address: 165.225.38.69
-  Document emailed to Lucy Zachman (lucy.zachman@mtacd.org) for signature
2022-04-21 - 5:59:10 PM GMT
-  Email viewed by Lucy Zachman (lucy.zachman@mtacd.org)
2022-04-21 - 7:20:54 PM GMT- IP address: 174.204.130.209
-  Document e-signed by Lucy Zachman (lucy.zachman@mtacd.org)
Signature Date: 2022-04-21 - 7:21:16 PM GMT - Time Source: server- IP address: 174.204.130.209
-  Agreement completed.
2022-04-21 - 7:21:16 PM GMT

