

RESOLUTION NO. 2015240

RE: AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE AN AMENDMENT TO THE METRO-NORTH (MTA) LICENSE AGREEMENT WITH THE COUNTY TO ALLOW ADDITIONAL NON-PROFIT FUND RAISING ACTIVITIES ON LICENSED PROPERTY FOR THE HOPEWELL DEPOT RESTORATION CORPORATION, AND FOR OTHER COUNTY ACTIVITIES ON THE LICENSED PROPERTY

Legislators HUTCHINGS, FLESLAND, BOLNER, WEISS, SAGLIANO, MAC AVERY, STRAWINSKI, and PERKINS offer the following and move its adoption:

WHEREAS, the County of Dutchess maintains a License Agreement with the Metro-North (a subsidiary of the Metropolitan Transportation Authority – MTA) to license a portion of land adjacent to the WRS DRT Hopewell Trailhead and the Hopewell Depot, for access to and parking for the WRS DRT; and

WHEREAS, The Hopewell Depot Restoration Corporation has requested permission from the County to utilize portions of the land licensed by the County from Metro-North for various fund raising activities for their non-profit, historic organization; and

WHEREAS, in order for the County to grant permission for The Hopewell Depot Restoration Corporation to use the licensed property for its non-profit fund raising activities, the County and Metro-North must amend portions of the existing License Agreement, and,

WHEREAS, such amendment, a copy of which is annexed hereto, would also allow the County to hold various other activities at the licensed location; and

WHEREAS, no fiscal impact to the County is projected by the execution of such amendment; now therefore, be it

RESOLVED, that the Dutchess County Legislature does hereby authorize the County Executive to execute an amendment to the Metro-North (MTA) License Agreement with the County of Dutchess, in substantially the same form as annexed hereto, which amendment will allow non-profit fund raising activities for The Hopewell Depot Restoration Corporation on the licensed property, and, further, allow for other County activities at the licensed property.

CA-154-2015  
CAB/sjm/G-0188 09/11/15  
Fiscal Impact: None

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 13<sup>TH</sup> day of October 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 13<sup>th</sup> day of October 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

## FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

### APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ 0

Total Current Year Revenue \$ 0  
and Source

Source of County Funds *(check one)*:  Existing Appropriations,  Contingency,  
 Transfer of Existing Appropriations,  Additional Appropriations,  Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount \$ \_\_\_\_\_

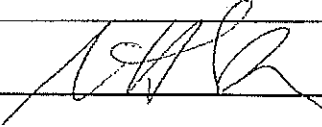
Nature/Reason:

Anticipated Savings to County: \$ 0

Net County Cost (this year): \$ 0  
Over Five Years: \_\_\_\_\_

#### Additional Comments/Explanation:

This Resolution Request is for the Legislature to authorize the County Executive to execute an amendment to the Metro-North (MTA) License Agreement with the County to allow for additional non-profit fund raising activities on the licensed property for The Hopewell Depot Restoration Corporation and for other County activities on the licensed property.

Prepared by: Noel Knille 

## FIRST AMENDMENT TO LICENSE AGREEMENT

This First Amendment to the License made as of \_\_\_\_\_, 2015, (this "First Amendment") by and between Metro-North Commuter Railroad Company ("Metro-North"), a New York State public benefit corporation and operating subsidiary of the Metropolitan Transportation Authority ("MTA"), a public authority with its principal office at 2 Broadway, New York, New York 10004 (Metro-North and MTA hereinafter collectively referred to as "Licensor") and Dutchess County, a municipal corporation duly organized and existing under the Laws of the State of New York, having a principal office and place of business at 22 Market Street, Poughkeepsie, New York 12601 (hereinafter referred to as "Licensee").

### RECITALS

**WHEREAS**, Licensor and Licensee entered into that certain License Agreement dated November 15, 2010 (hereinafter referred to as the "License Agreement") covering certain premises measuring approximately 1.8 acres and more particularly shown on Exhibit A annexed hereto (the "Licensed Location"); and

**WHEREAS**, there is a building located at and known as 36 Railroad Avenue, Hopewell Junction, New York (the "Hopewell Depot Station Building") which is near, but not within the Licensed Location; and

**WHEREAS**, the Hopewell Depot Restoration Corporation, a domestic not-for-profit corporation incorporated and existing under the laws of the State of New York (the "Corporation"), has undertaken an operation to restore, rehabilitate and maintain the Hopewell Depot Station Building; and

**WHEREAS**, the Corporation wishes to conduct fundraising activities to fund the restoration, rehabilitation and maintenance of the Hopewell Depot Station Building; and

**WHEREAS**, Licensee has requested permission to hold fundraising events at the Licensed Location from time to time; and

**WHEREAS**, Licensee has further requested permission to allow the Corporation to use the Licensed Location for its fundraising events from time to time pursuant to one-day permits in substantially the form attached hereto as Exhibit B; and

**WHEREAS**, Licensee, on behalf of itself and the Corporation, has requested Licensor to agree to certain modifications to the License Agreement to facilitate such fundraising, as hereinafter set forth; and

include each Events':

- i. Theme
- ii. Date and Time
- iii. Purpose
- iv. Duration
- v. Description of any other significant features of the Event(s)

Approval of the Events Plan by Licensor shall be in Licensor's sole discretion. If Licensee effects any change to the Events Plan, said changes are subject to the prior written approval of Licensor.

- b. Licensee shall notify Licensor or its designee of any upcoming Event at least 48 hours in advance of any Event and keep said designee fully advised of all activities.
  - c. If Licensee effects any change to any Event or the Events Plan, said changes are subject to prior written approval of Licensor.
4. Licensee shall use the Licensed Location for the Permitted Use and for no other purpose. Licensee shall be solely responsible for securing the Licensed Location during any Event. Licensor accepts no responsibility for Licensee's or any other parties, materials and equipment brought to or placed upon the Licensed Location and kept or used thereupon.
  5. Licensee shall indemnify and hold harmless Metro-North, MTA, Connecticut Department of Transportation (CDOT), State of New York and the Housatonic Railroad (the "Indemnitees") from any and all claims in connection with the License Agreement and First Amendment and shall require the same with all those with whom Licensee enters into any agreement, or permits access to, the Licensed Location in connection with the uses stated in this First Amendment, from and against any and all losses, damages (to property, materials and equipment or otherwise), detriments, suits, claims, demands, costs and charges which Indemnitees may directly or indirectly suffer, sustain or be subjected to by or on account of Licensee's entry upon, occupancy or use of the Licensed Location, or the conduct thereon of Licensee, its contractors, subcontractors, officers, employees, agents, or invitees, whether such loss or damage be suffered or sustained by Indemnitees directly or by other persons (including employees of Indemnitees or corporations who may seek to hold Indemnitees liable therefor), and whether attributable to the fault, failure or negligence of Indemnitees or otherwise.

**Licensor Acknowledgment**

STATE OF NEW YORK )

)ss.:

COUNTY )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2015 before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey B. Rosen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (s), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Licensee Acknowledgement**

STATE OF NEW YORK )

)ss.:

COUNTY )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2015 before me, the undersigned, a Notary Public in and for said State, personally appeared Marcus J. Molinaro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (s), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT B**

**PERMIT TO ENTER UPON PROPERTY**

THIS AGREEMENT (the "Permit"), dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between, Hopewell Depot Restoration Corporation, a not-for-profit corporation existing under the laws of the State of New York, with its principal place of business located at 36 Railroad Avenue, Hopewell Junction, NY 12533 (hereinafter referred to as "Permittee") and Dutchess County, a municipal corporation duly organized and existing under the Laws of the State of New York, having a principal office and place of business at 22 Market Street, Poughkeepsie, New York 12601 (hereinafter referred to as "Permitter")

**WITNESSETH:**

WHEREAS, Permitter controls certain property measuring approximately 1.8 acres within the County of Dutchess and State of New York, known as the Metro North parking lot for the Hopewell Junction Trailhead for the William R. Steinhaus Dutchess Rail Trail and shown on the plans attached hereto as Exhibit A (hereinafter referred to as the "Property"), a portion of which Permitter has a license agreement with the Metropolitan Transportation Authority ("MTA"); and

WHEREAS, Permittee has requested of Permitter (i) the use of the Property in the area known as (the "Permitted Area") for \_\_\_\_\_ on \_\_\_\_\_, 2015, (hereinafter, the "Event"), which Permitted Area is shown on the plans attached hereto as Exhibit A; and

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter stated, the parties hereto agree as follows:

1. LOCATION AND PERMITTED USE. Permitter hereby grants to Permittee permission for Permittee and its officers, employees, agents, guests and invitees to (i) enter upon and use the Permitted Area for the purposes of

\_\_\_\_\_  
\_\_\_\_\_  
(hereinafter referred to as the "Permitted Use").

Permittee shall be solely responsible to exercise its rights granted hereunder in a manner that will minimize interference with the access of Permitter's customers to the remainder of the Property. Permittee shall cause all drive aisles in and around the Permitted Area to remain open and unobstructed, . . . Permitter shall have no responsibility for (i) the property, materials, equipment or automobiles of Permittee or Permittee's guests or invitees brought to, parked in or placed upon the Permitted Area, or (ii) any loss or damage to the same. The provisions of this paragraph shall survive the expiration or earlier termination of the Term.

Area or the Property, or if the Permitted Area or the Property become contaminated in any manner during the Term, Permittee shall indemnify, defend (with counsel approved by Permitter), and hold harmless the Indemnitees from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the Permitted Area or the Property, damages because of adverse impact on marketing of any space, and any and all sums paid for settlement of claims and for attorneys', consultants', and experts' fees) arising during or after the Term and arising as a result of such contamination by Permittee or Permittee's agents, officers, employees, members, contractors, subcontractors, guests or invitees. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration required or requested by a federal, state or local agency or political subdivision or by any organized labor group, including, without limitation, any such costs associated with the contamination of adjacent property or ground water as a result of Permittee's activities (or the activities of Permittee's agents, officers, employees, members, contractors, subcontractors, guests or invitees) at the Permitted Area and/or the Property. In addition, if Permittee (or Permittee's agents, officers, employees, members, contractors, subcontractors, guests or invitees) causes or permits the presence of any Hazardous Substance on the Permitted Area and/or the Property and this results in contamination, Permittee shall promptly, at its sole expense, take any and all necessary actions to return the Permitted Area and/or the Property to the condition existing before the presence of any such Hazardous Substances on the Permitted Area and/or the Property, provided, however, that Permittee shall first obtain Permitter's approval for any such remedial action. The provisions of this paragraph shall survive the expiration or earlier termination of the Term.

B. As used herein, "Hazardous Substance" means (i) any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of New York or the United States government, (ii) any "hazardous waste," "extremely hazardous waste," "hazardous substance," "toxic substance," "hazardous material," "pollutant" or "contaminant," as defined in state, federal, or local governmental law, or (iii) any substance whose presence could be detrimental to the Permitted Area and/or the Property or hazardous to health or the environment, including but not limited to radioactive materials, including radon, natural gas, natural gas liquids (all of the foregoing gas called "Natural Gas Products"), liquefied natural gas, synthetic gas or mixtures of Natural Gas Products and synthetic gas, lead, asbestos containing materials, polychlorinated biphenyls ("PCBs), and petroleum products.

8. INTENTIONALLY OMITTED.

11. RESTORATION OF PREMISES. (a) Upon the expiration or earlier termination of the Term, Permittee shall restore the Permitted Area and/or the Property to a condition satisfactory to Permitter. This Permit shall upon the expiration or earlier termination of the Term become null and void, save and except only as to any liability accrued prior thereto and any provision hereof expressly stated herein to survive the expiration or earlier termination of the Term. If, upon the expiration or earlier termination of the Term, in the sole opinion of Permitter, the Permitted Area and/or the Property have not been satisfactorily cleared of all of Permittee's property (including, but not limited to, materials and equipment) and restored to a condition satisfactory to Permitter, then Permitter shall have the right, but not the obligation, to restore the Permitted Area and/or the Property, including the removal of any vehicles, materials, and/or equipment, to a satisfactory condition (in the sole opinion of Permitter) at Permittee's sole cost and expense. Permittee shall promptly pay any such amount(s) to the party(ies) entitled thereto upon submission of bills or invoices therefor or shall promptly reimburse Permitter for its prior payment of any

with a copy to:

Metropolitan Transportation Authority  
2 Broadway  
New York, New York 10004  
Attention: Director of Real Estate

If to Permittee:

Hopewell Depot Restoration Corporation  
36 Railroad Avenue  
P.O. Box 1044  
Hopewell Junction, New York 12533

All Notices hereunder shall be deemed received (and any time period measured by the giving of Notice shall commence) (i) upon delivery, if personally delivered, (ii) one business day after entrusting to overnight courier, if sent by overnight courier for next business day delivery, or (iii) three (3) days after mailing if given by registered or certified mail. The inability to make delivery because of changed address of which no Notice was given, or rejection or other refusal to accept any Notice, shall be deemed to be in receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept.

16. APPLICABLE LAWS. Permittee, at its sole expense, shall comply with all Federal, State and local Laws, regulations and ordinances applicable to the Permitted Area and the Permitted Use.

17. ROADBED SETTLEMENT. Permittee shall be obligated to remedy any settlement caused to the parking lot as a result of Permittee's entry on the Permitted Area; and should Permittee fail to do so, Permitter may so remedy at the sole expense of the Permittee. The provisions of this Section 17 shall survive the expiration or earlier termination of the Term.

19. ASSIGNMENT. Permittee shall make no assignment of this Permit. Any attempted assignment of this Permit by Permittee shall be void *ab initio*.



**PERMITTOR:**

**DUTCHESS COUNTY**

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

Noel H. S. Knille, AIA, ASLA,  
Commissioner of Public Works

**PERMITTEE:**

**HOPEWELL DEPOT RESTORATION CORPORATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_