MEMORANDUM OF UNDERSTANDING
BETWEEN NEW YORK CITY DEPARTMENT OF PARKS & RECREATION AND
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
FOR THE QUEENSWAY MET HUB PROJECT
BETWEEN METROPOLITAN BOULEVARD AND UNION TURNPIKE IN QUEENS

THIS Memorandum of Understanding agreement ("**Agreement**") dated as of February 5, 2024, confirms an understanding between the City of New York ("**City**"), a municipal Corporation in the State of New York, acting by and through, the New York City Department of Parks & Recreation ("**NYC Parks**"), having its business office at The Arsenal-Central Park, 830 Fifth Avenue, New York, NY 10065, and the New York City Economic Development Corporation ("**NYCEDC**"), a New York State not-for-profit corporation, located at One Liberty Plaza, New York, NY 10006 (NYC Parks and NYCEDC collectively, the "**Parties**" and each a "**Party**").

WHEREAS, pursuant to the New York City Charter, Section 533, the Commissioner of NYC Parks is charged with the responsibility for the management, maintenance and operation of public parks and recreational facilities under the City's jurisdiction, and has the authority to plan, develop, conduct and enter into arrangements with public or private organizations to ensure the beneficial use thereof for the people in the City; and

WHEREAS, NYCEDC is a corporation organized under the Not-for-Profit Corporation Law of the State of New York that renders a variety of services and administers certain economic development programs on behalf of the City pursuant to the Amended and Restated Master Contract, dated as of June 30, 2021, and the Amended and Restated Maritime Contract, dated as of June 30, 2021, as both are amended from time to time (the "**City Contracts**"); and

WHEREAS, NYC Parks has undertaken a project to reconstruct portions of the QueensWay, the former Long Island Railroad Rockaway Beach Branch, as a passive recreation and alternative transportation corridor in Queens; and

WHEREAS, the QueensWay Phase 1 Metropolitan Hub ("Met Hub") is 0.7 mile portion of the QueensWay that will be reconstructed to provide passive recreation and alternative transportation through the Forest Hills section of Queens from Metropolitan Avenue to Union Turnpike, just east of Woodhaven Boulevard (the "**Project**") on property primarily under New York City Department of Citywide Administrative Services ("DCAS") jurisdiction and on small portions of property under New York City Department of Education ("DOE") and New York City Department of Transportation ("DOT") jurisdiction, as more particularly shown in **Exhibit A**; and

WHEREAS, NYC Parks wishes to engage NYCEDC to procure, oversee and administer the design, construction, and other related services (the "**Services**") to implement the Project; and

WHEREAS, NYCEDC has agreed to provide the Services pursuant to the City Contracts; and

WHEREAS, the Parties desire to set forth their respective responsibilities in connection with the Project.

NOW, THEREFORE, the Parties hereby agree as follows:

I. NYCEDC'S RESPONSIBILITIES

A. Subject to approval by the Executive Committee of the NYCEDC Board of Directors, NYCEDC shall procure all contracts for the Services in accordance with its procurement guidelines and any applicable laws.

B. NYCEDC shall contract with a design consultant, one or more construction managers, resident engineers, or contractors (the "**Contractors**") for the requisite Services, to design, manage, and construct the Project, which may include, without limitation: landscaped areas, decorative pavements and walkways, site furnishings, lighting, drainage, water service, fencing, utility connections and park bridge(s) in accordance with this Agreement.

C. NYCEDC shall make payments to the Contractors for a portion of the Services, but only to the extent that the Contractors provide appropriate requisitions and to the extent that New York City Office of Management and Budget ("**OMB**") makes the Funding (as defined in Section III herein and more particularly described in **Exhibit B**) available to NYCEDC.

D. NYCEDC shall ensure that Contractors perform the Services in accordance with the Contractors' respective contracts.

E. NYCEDC shall meet and coordinate the Services with NYC Parks, the Public Design Commission, other relevant City agencies and/or other entities for design and construction approvals.

F. NYCEDC and the Contractors shall obtain any and all required permits and approvals from any required City, State, or federal agencies and utilities as required for the Project.

G. NYCEDC shall notify NYC Parks when the Project is completed and will also schedule the substantial completion inspection with NYC Parks in attendance before NYC Parks proceeds with accepting the site for its use and operation. For purposes of this Agreement, "Substantial Completion" or "Substantially Complete" shall mean that the Contractors have constructed the Project substantially in accordance with the designs that NYC Parks and NYCEDC developed and approved; and that the Project was completed to such an extent that all portions of the Project may be operated and made available for the public's use, notwithstanding that minor or insubstantial construction items, decorations or mechanical adjustments remain to be performed. NYCEDC shall not issue a notice

of Substantial Completion to its Contractors until NYC Parks has notified NYCEDC that it agrees that the Project is Substantially Complete.

H. NYCEDC shall provide NYC Parks with digital copies of the contract documents and as-built drawings in digital format, and any other formats that are consistent with NYC Parks' standards.

I. NYCEDC shall regularly update its cost estimates and expenditures and shall regularly apprise NYC Parks of the Project's total cost and the balance of the Funding during the progress of the Services.

J. Upon completion of the Project, NYCEDC shall not be responsible for any ongoing maintenance for the Project site. However, the Contractors shall repair and replace any damaged work during the period of maintenance and guaranty required by NYCEDC.

II. NYC PARKS' RESPONSIBILITIES

A. NYC Parks shall provide NYCEDC with comments related to the Project's design and construction in a prompt and timely manner.

B. NYC Parks shall reasonably provide NYCEDC with the necessary guidance to allow NYCEDC to ensure compliance with the Funding requirements. NYC Parks shall reasonably provide NYCEDC with requested information related to Funding requirements, including any applicable grant or loan agreements.

C. NYC Parks shall maintain the Project upon its completion and final acceptance, subject to available funding.

III. FUNDING

A. A total of $34,991,000 has been earmarked for this Project, with contributions from the City, as provided in **Exhibit B** (the "**Funding**"). As of the date of this Agreement, the City has contributed $34,991,000 under **Project ID 801 P-4QNSWAY**.

B. Prior to submitting a request to OMB for the construction Certificate to Proceed ("**CP**"), NYC Parks will ensure that the Project is fully funded, and, if additional funds are required, NYC Parks will then allocate sufficient City funds from other projects to render the Project fully funded. These funds will be scheduled in **801 P-4QNSWAY**. OMB understands that if this transaction results in a shortfall in the other projects from NYC Parks allocated funds, NYC Parks will request funding through a new needs request for those other project(s) at the appropriate time to cover these shortfalls. EDC shall provide support for the new needs request to its respective OMB task force, if needed.

C. Immediately upon receipt of any portion of the Funding, the Parties shall as necessary: (i) inform OMB; (ii) submit a request to amend the CP to reflect latest funding sources; (iii) update Plan and Budget funding sources in all relevant Project IDs and budget codes/structures; and (iv) if necessary, de-register amounts from City-funded lines and re-register against newly created State-funded lines.

D. NYC Parks shall reimburse NYCEDC for the value of the time that NYCEDC's personnel and staff expends on the Project, up to but not-to-exceed a sum of One Million Forty Nine Thousand Seven Hundred Thirty Dollars ($1,049,730), which represents three percent (3%) of the total Project cost funded by NYC Parks (the "**Staff Fees**"), as may be amended if additional funding is allocated to the Project. NYCEDC shall document its accrued Staff Fees on an hourly basis and will accordingly bill OMB and the Comptroller for reimbursement.

E. NYC Parks shall be responsible for providing the Funding, inclusive of the Staff Fees, for the Project. NYCEDC shall be under no obligation to commence the Services until NYC Parks makes the Funding available.

F. Unless the Parties otherwise mutually agree in writing, the Parties understand that the Services' total cost will not exceed the Funding. The Parties will work together to manage the budget with the intent to deliver the Project, within the Funding.

G. NYCEDC shall be under no obligation to complete any portion of the Project for which Funding is not provided. NYCEDC shall consult with NYC Parks if the Funding is estimated to be insufficient for the Project's completion and will work with NYC Parks to revise the Project scope to fit within the existing Funding.

H. If there is a need for an increase in the Funding, the Parties shall consult with the City's Mayor's Office and OMB to review the Project's budget and scope. NYCEDC shall cooperate in providing and explaining the Project information which may be relevant to justify an increase in the Funding.

IV. PROJECT COORDINATION

A. The Parties agree to work cooperatively to resolve any disputes arising from their respective responsibilities under this Agreement and the implementation of the Project.

B. The Parties may review and provide recommendations associated with the Services, particularly those relating to the costs of construction. In the event that either Party believes that the adoption of any such recommendations may not be appropriate, the Parties shall meet and confer thereon.

C. Should conditions arise that prevent the undertaking or completion of the Project, before acting to terminate the Agreement, NYCEDC shall immediately notify and jointly consult with NYC Parks for alternative solutions.

V. TERM AND TERMINATION

A. The Agreement shall take effect as of the date first written above and shall expire upon the later of either: (1) one year from final completion of the Project; or (2) the date all Contractors' contracts have been closed out by NYCEDC.

B. Either Party may each terminate the Agreement by giving ninety (90) days' written notice to the other Party.

VI. NOTICES

If to NYC Parks:
New York City Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10065
Attn: General Counsel

With a copy to:
New York City Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue, Room 3
New York, NY 10065
Attn: Jennifer Greenfeld, Deputy Commissioner, Environment and Planning

If to NYCEDC:
New York City Economic Development Corporation
One Liberty Plaza
New York, New York 10006
Attn: General Counsel

With a copy to:
New York City Economic Development Corporation
One Liberty Plaza
New York, New York 10006
Attn: Elizabeth T. Arnaiz, Executive Vice President, Capital Program

VII. APPLICABLE LAW

This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the City and State of New York.

VIII. MERGER CLAUSE

This Agreement constitutes the Parties' entire understanding and merges all prior discussions, agreements or understandings herein. No prior agreement, oral or otherwise, regarding this Agreement's subject matter shall be deemed to exist or to bind any of the Parties hereto.

IX. MODIFICATION

The Agreement may only be modified in writing signed by the Parties' authorized representatives. It may not be altered, modified, rescinded or extended orally.

X. NON-ASSIGNMENT CLAUSE

Each Party agrees that it shall not assign, transfer, convey or otherwise dispose of the Agreement except by operation of law, and without the other Party's prior written consent.

XI. SUCCESSORS AND ASSIGNS

The Agreement shall be binding upon and for the Parties' benefit hereto, each of their respective successors, and permitted assigns.

XII. RECORDKEEPING

The Parties shall for three (3) years from the termination of this Agreement, maintain any and all copies of all financial and work reports, and audits, which reflect the Services rendered hereunder and fiscal accountability of all monies appropriated and spent thereby, make copies thereof available and submit such copies to any other Party hereto upon request.

XIII. OWNERSHIP OF PROJECT DOCUMENTS AND MATERIALS

All reports, working papers, plans, studies, drawings documents, technical memoranda and other work products in the performance of the Services shall become property under NYC Parks' jurisdiction.

XIV. HEADINGS

The headings of the sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof. The use in this Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

XV. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall, when taken together, constitute one and the same instrument. Electronically scanned copies of signatures and electronic signatures shall have the same effect as an original signature.

XVI. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended or shall be construed to give any person, other than the Parties hereto, any legal or equitable right, remedy, or claim under or in respect to this Agreement.

[Remainder of Page Omitted]

[Signature Page Follows]

IN WITNESS, WHEREOF, the Parties hereto have duly executed the Agreement as of the day and year first written above.

NEW YORK CITY DEPARTMENT OF PARKS & RECREATION

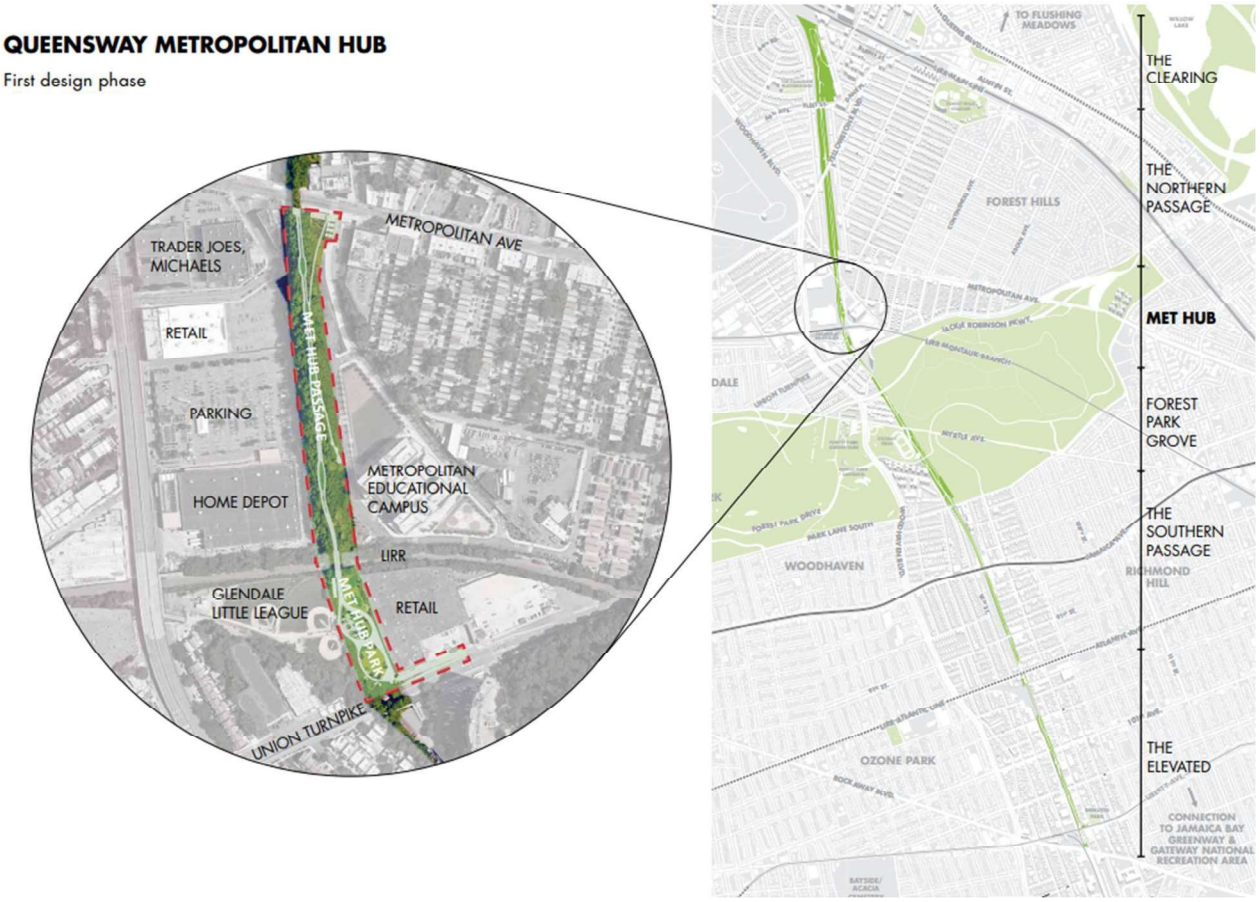
By: _____ **Date:** February 5, 2024
Jennifer Greenfeld
Deputy Commissioner, Environment and Planning

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By: _____ **Date:** 02/06/2024, 2024
Elizabeth T. Arnaiz
Executive Vice President

EXHIBIT A

PROJECT SCOPE AREA



OWNERSHIP

Adjacent Parcels



Legend

- Tax Lot
- Limit of Work
- 123 Lot Number
- DCAS
- Commercial & Office
- Public Facilities & Instituitions
- NYC DOE
- NYC DOT Jurisdiction

EXHIBIT B

FUNDING

QueensWay Phase 1 - Project Budget			
Last Updated	12/19/2022		
	Projected	**Contingency (10%)**	**Total**
Design (8%)	$ 2,799,280.00	$ 279,928.00	$ 3,079,208.00
CM Staffing (11%)	$ 3,849,010.00	$ 384,901.00	$ 4,233,911.00
CM Trades	$ 23,000,000.00	$ 2,300,000.00	$ 25,300,000.00
Special Inspections (1.5%)	$ 507,590.00	$ 50,759.00	$ 558,349.00
LIRR Force Account (2%)	$ 699,820.00	$ 69,982.00	$ 769,802.00
EDC Fee (3%)	$ 1,049,730.00	$ -	$ 1,049,730.00
		Total	$ 34,991,000.00
		Project Funding	$ 34,991,000.00