

## MAINTENANCE AGREEMENT FOR STREET SEATS

THIS AGREEMENT, dated and effective as of [REDACTED], 20[REDACTED], between and among the City of New York (the “City”) acting by and through the New York City Department of Transportation (“DOT”) with offices at 55 Water Street, New York, NY 10041, and [REDACTED] (“MAINTENANCE ENTITY”), a [REDACTED] with offices located at [REDACTED].

### WITNESSETH

**WHEREAS**, MAINTENANCE ENTITY or its agents, employees, contractors installed a pre-approved temporary Street Seats (the “Street Seats” or “Amenities”) as more fully described in **Exhibit A**, and located at [REDACTED] in the Borough of [REDACTED] (the “Project Area”), as more fully described in **Exhibit B**; and

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

### PART A. TERMS AND CONDITIONS

#### ARTICLE A.1. TERM

- A.1.1. This Agreement shall be for a term of eleven (11) months from the execution date of this Agreement (the “Term”), unless earlier terminated.
- A.1.2. Upon expiration or termination of this Agreement, DOT, or a contractor acting at DOT's request, may remove the Amenities and restore the Project Area to a condition acceptable to DOT. MAINTENANCE ENTITY shall pay for the actual cost of removal and restoration of the Project Area.

#### ARTICLE A.2. MAINTENANCE AND USAGE

- A.2.1. MAINTENANCE ENTITY shall provide, maintain, repair and/or replace the Street Seats located in the Project Area as set forth below:
  - A.2.1.1. All maintenance, repair and/or replacement shall be performed in a safe, good and workmanlike manner to the reasonable satisfaction of DOT.
  - A.2.1.2. Dirt, litter and obstructions shall be removed so as to maintain the Project Area (including the surface of drains and catch basins) in a clean, neat and good condition.
  - A.2.1.3. Graffiti shall be regularly painted over or removed, within a reasonable timely manner after its appearance on the Street Seats.

- A.2.1.4. Any folding tables, chairs and umbrellas (“Moveable Street Furniture”) shall be cleaned and maintained as reasonably necessary.
- A.2.1.5. Snow and ice shall be removed from all walkways within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage. If necessary, Moveable Street Furniture shall be removed or protected and secured from the Project Area due to snow and/or ice conditions. Sand or snow melting agents shall be spread on all walkways, as needed, to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice. Signs shall be posted cautioning users of dangerous conditions due to snow and/or ice.
- A.2.1.6. Any planters and planting beds shall be kept reasonably free of litter and debris.
- A.2.1.7. Any plants shall be kept in planted areas at all times and they shall be watered and maintained in a reasonably clean and attractive condition.
- A.2.1.8. To the extent that MAINTENANCE ENTITY, or its agents, employees, contractors, applies pesticides to any plants, it shall comply with Chapter 12 of the New York City Administrative Code.
- A.2.1.9. All required repairs and/or replacement will, in all respects, conform to the original installation of the Street Seats, unless prior written approval is obtained from DOT.
- A.2.1.10. Any and all required repairs and/or replacements will be performed promptly and all costs thereof shall be borne by MAINTENANCE ENTITY.
- A.2.1.11. In the event that any material originally installed is no longer available at the time of such repairs and/or replacement, MAINTENANCE ENTITY may substitute comparable material provided prior written approval is obtained from DOT.
- A.2.2. In the event that DOT determines, at its sole discretion, that an emergency condition for which MAINTENANCE ENTITY is responsible under the terms of this Agreement, MAINTENANCE ENTITY shall promptly take all steps necessary to alleviate the emergency condition as may be directed by DOT, which may include but not be limited to performing repair and/or replacement work on the Street Seats.
- A.2.3. The MAINTENANCE ENTITY shall solely purchase and retain ownership of the Street Seats platform, if any.

- A.2.4. The MAINTENANCE ENTITY shall install the Street Seats platform, if any, in a safe, appropriate manner and in full compliance with the approved design illustrated in Exhibit A.
- A.2.5. The MAINTENANCE ENTITY shall oversee and ensure pedestrian traffic is appropriately managed during the installation and operation of the Street Seats.
- A.2.6. The MAINTENANCE ENTITY shall oversee and ensure that the installation and removal of the Street Seats platform, if any, shall be completed in a safe and appropriate manner.
- A.2.7. The MAINTENANCE ENTITY shall provide and maintain, throughout the term of this Agreement, a twenty-four (24) hour, seven (7) days a week emergency contact telephone number on file with DOT.
- A.2.8. The MAINTENANCE ENTITY shall, on or before the termination of the initial installation period, remove the Street Seats platform, if any, from the Project Area.
- A.2.9. The maximum seating the Street Seats shall accommodate at any one time is [REDACTED] adults. Moveable Street Furniture may include both chairs and benches. In addition, the MAINTENANCE ENTITY may provide an appropriate amount of shade structures and tables for the Street Seats. Moveable Street Furniture shall be of a safe, sturdy construction and be pre-approved by DOT.
- A.2.10. The MAINTENANCE ENTITY shall remove or secure on a daily basis the Moveable Street Furniture from the Street Seats at the end of the hours of operation specified in Article 2.15, below.
- A.2.11. The MAINTENANCE ENTITY expressly acknowledges and agrees that the Street Seats is a public space and is solely maintained for the benefit of the public and not for the benefit of any business including the MAINTENANCE ENTITY. Accordingly, the MAINTENANCE ENTITY acknowledges that it cannot and will not assert any claims or commence any actions against any party including, but not limited to, the City, DOT its agents, employees, officers, or directors by reason of, either directly or indirectly, interruption to business or loss of business.
- A.2.12. As the Street Seats is a public space, the MAINTENANCE ENTITY shall not prevent or restrict, in anyway, the general public from utilizing the Street Seats during hours of operation specified in Article 2.15, below.
- A.2.13. The MAINTENANCE ENTITY shall not provide waiting service, take orders, provide any services, or sales on the Street Seats or at the chairs, benches and tables thereon. Employees of MAINTENANCE ENTITY shall be permitted to bring pre-paid food or beverages to the Street Seats. Such pre-paid transactions shall be wholly performed within the MAINTENANCE ENTITY'S establishment.

A.2.14. The sale of alcohol or tobacco products on the Street Seats shall be strictly prohibited and result in the immediate termination of this Agreement. Smoking shall be strictly prohibited on the Street Seats during hours of operation specified in Article 2.15, below.

A.2.15. The MAINTENANCE ENTITY shall strictly adhere to the following maximum hours of operation:

- A.2.15.1. Monday - TBD as per location;
- A.2.15.2. Tuesday - TBD as per location;
- A.2.15.3. Wednesday - TBD as per location;
- A.2.15.4. Thursday - TBD as per location;
- A.2.15.5. Friday - TBD as per location;
- A.2.15.6. Saturday - TBD as per location; and
- A.2.15.7. Sunday - TBD as per location.

A.2.16. Upon prior written approval of DOT, the MAINTENANCE ENTITY may reduce the maximum hours of operation.

A.2.17. The MAINTENANCE ENTITY shall clean the Street Seats on a daily basis. Such cleaning shall include, but not be limited to, chewing gum removal.

A.2.18. DOT retains the unequivocal and exclusive right to immediately suspend, for a period of time and without prior notice, the Street Seats usage at the Project Area for any reason whatsoever and at any time whatsoever.

A.2.19. The MAINTENANCE ENTITY, at its sole cost and expense, shall provide appropriate signage for the Street Seats. Such signage shall be affixed in prominent locations and read: "This Street Seats is public space and is not restricted to patrons of any particular business. Smoking is prohibited on this Street Seats." The MAINTENANCE ENTITY shall not, at any time, alter or remove such signage from the Street Seats. In addition, DOT reserves the exclusive right, at its sole discretion, to add further signage to the Street Seats at any time throughout the term of this Agreement.

A.2.20. Upon review and approval of the Street Seats platform design, if any, by DOT and its Traffic Division, the design and proposed installation methodology of the Street Seats platform, if any, shall be subject to an engineering review and certification by a New York State licensed engineer paid for by the MAINTENANCE ENTITY.

### **ARTICLE A.3. INSTALLATION PERIOD**

A.3.1. The Street Seats shall be installed for \_\_\_\_\_ days on \_\_\_\_\_, 20\_\_ to \_\_\_\_\_, 20\_\_, and between the hours of \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m.

A.3.2. Upon expiration or termination of this Agreement, DOT, or a contractor acting at DOT's request, may remove the Street Seats platform, if any, and restore the Project Area to a

condition acceptable to DOT. The MAINTENANCE ENTITY shall pay for the actual cost of removal and restoration of the Project Area.

#### **ARTICLE A.4. COSTS**

A.4.1. In consideration, DOT shall pay the MAINTENANCE ENTITY an amount of [REDACTED] thousand dollars (\$ [REDACTED]) towards the cost of all services listed in Article A.2 herein. All other costs associated with the Street Seats shall be the sole responsibility of the MAINTENANCE ENTITY.

#### **ARTICLE A.5. NOTICES**

A.5.1. Each written notice, demand, request or other communication in connection with this Agreement shall be either served in person, with delivery of service acknowledged in writing by the party receiving the same, or by registered mail, return receipt requested to:

To DOT:

Shari R. Glickman  
Senior Manager  
New York City Department of Transportation  
55 Water Street, 6<sup>th</sup> Floor  
New York, NY 10041  
sglickman@dot.nyc.gov

cc: General Counsel  
New York City Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

To MAINTENANCE ENTITY:

NAME  
TITLE  
ADDRESS  
ADDRESS  
EMAIL

Or to such other address as may be specified by written notice sent in accordance herewith.

A.5.2. Every notice, demand, request or other communication hereunder shall be deemed to have been given at the time of mailing of the aforesaid.

#### **ARTICLE A.6. ENTIRE AGREEMENT**

A.6.1. This Agreement, including Part B, Exhibit A and Exhibit B, contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise,

regarding the subject matter of this Agreement shall be deemed to exist, or to bind any of the parties hereto, or to vary any of the terms contained herein.

IN WITNESS WHEREOF, the City, acting by and through the Commissioner of the Department of Transportation, and the MAINTENANCE ENTITY, acting by and through its \_\_\_\_\_, have executed this Agreement as of the date and year first above written.

NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

MAINTENANCE ENTITY

\_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**EXHIBIT A**

**[Description of Amenities/ Final Approved Design]**

**EXHIBIT B**

**[Map of Project Area/ Site Photographs]**