

**TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY**

Resolution # 15

**AUTHORIZES CDA TO ENTER INTO LICENSE AGREEMENT WITH
METRO TERMINALS**

Councilman Wooten offered the following resolution,

which was seconded by Councilman Gabrielsen

RESOLVED, that the Chairman be and hereby is authorized to enter into the license agreement attached hereto on behalf of the Riverhead Community Development Agency (CDA) with Metro Terminals of Long Island, LLC (Metro) upon the following terms and conditions which shall be incorporated into a binding agreement as follows:

1. Metro shall cause the construction of an extension to the existing rail spur which currently ends at lot 32 North over said lot 32 thence along the easterly side of lot 33 continuing on to lot 28 as such lots are depicted on the "Map of Calverton Camelot" filed in the office of the Clerk of Suffolk County on March 9, 2007 as Map No. 11500. Upon completion, before use, such spur shall be dedicated to the CDA, at no cost and expense of the CDA, to be incorporated into the "Subject Track" to be operated by the CDA through agreement with the entity authorized to operate the freight rail operations of the LIRR track to which the Subject Track connects at Connecticut Avenue, Calverton, New York ("Freight Entity).
2. Metro shall grant the CDA and the CDA shall accept an easement over and through said lots 32 and 28 of Metro to permit the operation and maintenance of the rail spur as the same is provided in the Easement and Declaration of Railroad Easement recorded Liber D00012498 at page 663 with the Clerk of Suffolk County.
3. The Easement granted by the Riverhead Water District to the CDA shall have been executed and recorded as contemplated by such resolutions presented herewith.
4. Metro in conjunction with the construction of the rail spur required herein shall at its sole cost and expense relocate the facilities of the Riverhead Water District on Lot 33 aforesaid and abide by all conditions of the Easement from the District to the CDA, and
5. Use of the rail spur over lots 32, 33 and 28 shall recognize the need of Metro to off load rail cars at the facilities constructed by Metro at lot 32, and such unloading shall be given a priority by the CDA through its agreement with the Freight Entity. However, Metro rail cars shall not be stored on lot 33.

6. All conditions required by Suffolk County Department of Health Services relating to operation of Plant 12 of the Riverhead Water District shall be required by the CDA agreement with the Freight Entity.

BE IT FURTHER RESOLVED, that the Chairman be and hereby is authorized to execute any documents necessary regarding Easement described in 3. above.

BE IT FURTHER RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

THE VOTE

Giglio Yes No Gabrielsen Yes No
Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted

LICENSE FOR USE OF TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

License between CDA and Metro Terminals of Long Island, LLC

THIS LICENSE TO USE THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY ("CDA") PROPERTY HEREIN DESCRIBED IS ISSUED BY THE CDA TO THE LICENSEE NAMED BELOW FOR THE PURPOSE HEREIN SPECIFIED UPON THE TERMS AND CONDITIONS FORTH BELOW AND THE GENERAL PROVISIONS SET FORTH IN ITEM 10. BY THE EXECUTION HEREOF THE LICENSEE AGREES TO COMPLY WITH ALL SUCH TERMS, CONDITIONS, AND GENERAL PROVISIONS

1. CDA PROPERTY (*Property location*)
 Riverhead Water District – P/O Plant 12 Calverton, NY
701 Scott Avenue, Calverton, New York 11901
SCTM # 0600-135.2-01.00-003.000

2. DATES COVERED (*Inclusive*)
FROM: 09/21/2011

TO: 10/31/2011

3. DESCRIPTION OF PROPERTY (*Include room and building numbers where appropriate*)
 As shown in Attachment A, which is made a part hereof, the Licensed Premises consist of approximately 50 foot wide by 625 linear feet to construct rail track at the RWD Property.

4. PURPOSE OF LICENSE
 Temporarily provide an area for the LICENSEE to commence work on a rail construction project while an agreement is drafted and executed by and between the Town of Riverhead Community Development Agency and Licensee for transfer of rail and railroad easements from Licensee to CDA.

5. LICENSOR
TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT
AGENCY

5a. LOCAL REPRESENTATIVE, RWD OFFICIAL (*Title and Address*)
 Sean M. Walter, Chairman
 200 Howell Avenue
 Riverhead, New York 11901

6. LICENSEE (*Name and address*)
 Metro Terminals of Long Island, LLC
 500 Kingsland Avenue
 Brooklyn, New York 11222

6a. LOCAL REPRESENTATIVE (*Name and address*)
 Mr. Gene V. Pullo
 801 Scott Avenue
 Calverton, New York 11933
 (718) 389-5800

7. CASH PAYMENT BY LICENSEE (*Payable in advance*) (*If no cash payment is required, enter "None" under item 7a "Amount"*)

a. AMOUNT (<i>Each payment</i>) None	b. FREQUENCY PAYMENTS DUE N/A	c. FIRST DUE DATE N/A	d. TO (<i>Title and address of local representative of the CDA</i>) N/A
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8. DEPOSIT FOR UTILITIES AND SERVICES (*Payable in advance*) (*If no cash payment is required, enter "None" under item 8a "Amount"*)

a. AMOUNT (<i>Each payment</i>) None	b. FREQUENCY PAYMENTS DUE N/A	c. FIRST DUE DATE N/A	d. TO (<i>Title and address of local representative of the CDA</i>) N/A
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9. Insurance Required at Expense of LICENSEE

Type	Minimum Amount	Type	Minimum Amount
a. Fire and Extended Coverage	\$2,000,000	c. Third Party Personal Injury per Person	\$2,000,000
b. Third Party Property Damage	\$2,000,000	d. Third Party Personal Injury per Accident	\$2,000,000

10. GENERAL PROVISIONS (*See Following Page*)

In accordance with Resolutions _____, adopted on September 20, 2011, the LICENSEE is exempt from the requirement to make Cash Payments.
 Addendum No. 1, containing General Provisions 10.n. through 10.ad., was added prior to the execution of this License, and is herefore made a part of this License.

11. EXECUTION OF LICENSE BY

FOR	NAME AND TITLE <i>(Typed)</i>	SIGNATURE	DATE
LICENSOR	SEAN M. WALTER Chairman Town of Riverhead Community Development Agency		
LICENSEE	GENE V. PULLO Member Metro Terminals of Long Island, LLC		

If LICENSEE is a Corporation, Certification of signature is attached

10. GENERAL PROVISIONS

a. The Licensor hereby grants to the LICENSEE, its employees, agents, and contractors the right to use the premises or facilities described in Item 3, together with the necessary rights of ingress and egress.

b. This License shall be effective for the period stated in Item 2 and is revocable at any time without notice at the option and discretion of the Licensor or its duly authorized representative.

c. The use shall be limited to the purposes specified herein.

d. This License shall be neither assignable nor transferable by the LICENSEE.

e. If utilities and services are furnished the LICENSEE for its use of the premises, the LICENSEE shall reimburse the Licensor for the cost thereof as determined by the Licensor in accordance with applicable statutes and regulations.

f. The LICENSEE, at its own cost and expense, shall protect, maintain, and keep in good order, the premises or facilities licensed hereby. At the discretion of the Licensor this obligation shall include, but not be limited to, contribution toward the expense of long-term maintenance of the premises or facilities, the necessity for which accrued during the period of LICENSEE's use. The amount of expense to be borne by the LICENSEE shall be determined by prorating the total expense of the item of long-term maintenance on the basis of fractional use by the LICENSEE. This fractional part of the total expense shall be prorated further if the item of long-term maintenance did not accrue in its entirety during the LICENSEE's use. Upon a determination by the CDA that the necessity exists for an expenditure of funds for maintenance, protection, preservation or repair, the LICENSEE shall pay to the CDA its proportionate share, on demand.

g. No additions to, or alternations of, the premises or facilities shall be made without the prior consent of the CDA. With exception of the rail construction project shown on Attachment A, upon revocation or surrender of this License, to the extent directed by the CDA, the LICENSEE shall remove all alterations, additions, betterments and improvements made, or installed, and restore the premises or facilities to the same or as good condition as existed on the date of entry under this license, reasonable wear and tear excepted.

h. The LICENSEE shall be liable for any loss of or damage to, the premises or facilities incurred as a result of its use and shall make such restoration or repair, or monetary compensation as may be directed by the CDA. The LICENSEE's liability for loss or damage to the premises resulting from risks expressly required to be insured hereunder shall not exceed the amount of insurance so required. The LICENSEE shall not be liable for loss of or damage to, the premises arising from causes beyond the control of the LICENSEE and occasioned by a risk not in fact covered by insurance and not customarily covered by insurance in the locality in which the premises are situated. Nothing contained herein, however, shall relieve the LICENSEE of liability with respect to any loss or damage to the premises, not fully compensated for by insurance, which results from willful misconduct, lack of good faith, or failure to exercise due diligence, on the part of the LICENSEE. All insurance required of the LICENSEE on the premises shall be for the protection of the CDA and the LICENSEE against their respective risks and liabilities in connection with the premises. Each policy of insurance against loss or damage to CDA property shall name the LICENSEE and the Town of Riverhead Community Development Agency, as the insured and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Name of LICENSEE) and the proceeds, at the direction of the CDA, shall be payable to (Name of LICENSEE), and proceeds not paid to (Name of LICENSEE) shall be payable to the "Town of Riverhead Community Development Agency."

In the event that any item or part of the premises or facilities shall require repair, rebuilding or replacement resulting from loss or damage, the risk of which is assumed under this paragraph h, the LICENSEE shall promptly give notice thereof to the CDA and, to the extent of its liability as provided in this paragraph, shall, upon demand, either compensate the CDA for such loss or damage, or rebuild, replace or repair the item or items of the

premises or facilities so lost or damaged, as the CDA may elect. If the cost of such repair, rebuilding, or replacement exceeds the liability of the LICENSEE for such loss or damage, the LICENSEE shall effect such repair, rebuilding or replacement if required so to do by the CDA, and such excess of cost shall be reimbursed to the LICENSEE by the CDA. In the event the LICENSEE shall have effected any repair, rebuilding or replacement which the LICENSEE is required to effect pursuant to this paragraph, the CDA shall direct payment to the LICENSEE of so much of the proceeds of any insurance carried by the LICENSEE and made available to the CDA on account of loss of or damage to any item or part of the premises or facilities as may be necessary to enable the LICENSEE to effect such repair, rebuilding or replacement. In the event the LICENSEE shall not have been required to effect such repair, rebuilding, or replacement, and the insurance proceeds allocable to the loss or damage which has created the need for such repair, rebuilding or replacement have been paid to the LICENSEE, the LICENSEE shall promptly refund to the CDA the amount of such proceeds.

i. The LICENSEE shall indemnify and save harmless the CDA, its officers, agents, servants and employees from all liability under the Federal Tort Claims Act (62 Stat. 869, 982; 28 U.S.C. Sec 2671, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from the use of the premises by the LICENSEE, and shall furnish the insurance specified in Item 9. Each policy of insurance required in Item 9 covering bodily injuries and third party property damage shall contain an endorsement reading substantially as follows:

"The insurer waives any right to subrogation against the United States of America which might arise by reason of any payment made under this policy."

j. All insurance required by this License shall be in such form, for such periods of time, and with such insurers as the CDA may require or approve. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited with the CDA's local representative prior to use of the premises and facilities. The LICENSEE agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will deliver to the CDA's local representative a certificate of insurance or a certified copy of each renewal policy to cover the same risks.

k. The LICENSEE warrants that it has not employed any person to solicit or secure this License upon any agreement of a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the CDA the right to annul this License or in its discretion to recover from the LICENSEE the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the LICENSEE upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the LICENSEE for the purpose of securing business.

l. In connection with the performance of work under this License, the LICENSEE agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The LICENSEE agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by the CDA setting forth the provisions of the nondiscrimination clause. The LICENSEE further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

m. All activities authorized hereunder shall be subject to such rules and regulations as regards supervision or otherwise, as may, from time to time, be prescribed by the local representative of the CDA as designed in Item 5a.

**ADDENDUM NUMBER 1 TO TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY
LICENSE FOR PLANT 12
GENERAL PROVISIONS**

10.n. INDEMNIFICATION: LICENSEE accepts responsibility for all liability related to, or arising under, LICENSEE's use of the property. Further, LICENSEE shall release and hold harmless the CDA, its officers, agents, and employees from all liability, suits, claims, actions, or demands in any way related to, or arising under, LICENSEE's use of the property. This includes, but is not limited to, all environmental suits, claims, and enforcement actions, arising during LICENSEE's construction on, or use of, the property, or after such construction, or use, has ended. Further, LICENSEE shall reimburse the CDA for all expenditures incurred if the CDA voluntarily chooses to undertake any remedial action to address contamination on the premises or facilities resulting from the acts or omissions of LICENSEE.

10.o. GRATUITIES: The CDA, by written notice to the LICENSEE, may terminate the rights of the LICENSEE under this License if it is found, after notice and hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the LICENSEE, or any agent or representative of the LICENSEE, to any officer or employee of the CDA with a view toward securing a license or securing favorable treatment with respect to the awarding or amendment, or the making of any determination with respect to the performing of such license; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court. In the event this License is so terminated, the CDA shall be entitled (1) to pursue the same remedies against the LICENSEE as it could pursue in the event of a breach of the contract by the LICENSEE; and (2) as a penalty in addition to damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the LICENSEE in providing such gratuities to any such officer or employee. The rights and remedies of the CDA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this License.

10.p. LICENSEE shall not unduly interfere or inhibit the CDA's mission at the former NWIRP Calverton, NY.

10.q. As consideration for this License, LICENSEE shall provide, or cause to be provided, protection and maintenance for the Licensed property. It is understood and agreed that LICENSEE shall, at its own expense, protect and maintain the Licensed Property. During the term of this License, CDA shall have no responsibility except as otherwise described herein, financial or otherwise, with respect to maintenance of the Licensed Property.

10.r. The CDA and Riverhead Water District shall be allowed access to the Licensed Property at all reasonable times through the term of this License.

10.s. Any cost, expense, or liability connected with or in any manner incident to the LICENSEE's performance of this License shall be assumed and discharged by the LICENSEE.

10.t. Insurance requirements shall be applied to all LICENSEE representatives performing work or service under the License.

10.u. Upon completion of the term of this License, LICENSEE guarantees that the Licensed Property will be free from Debris and any other undesirable materials and the LICENSEE shall restore the premises to the same or as good condition as existed prior to the initiation of this license with exception of the rail construction project shown on Attachment A.

10.v. The LICENSEE's rights under this license shall be subject to rules and regulations prescribed by the CDA to ensure that the exercise of these rights will not unduly interfere with CDA activities.

10.w. In accordance with 10 U.S.C. §2692, the LICENSEE may not allow the treatment, storage or disposal of any Toxic or Hazardous materials on the PREMISES.

10.x. The LICENSEE will reimburse the CDA for all expenditures incurred if the CDA undertakes any Remedial Action to address Contamination on the PREMISES resulting from the acts or omissions of the LICENSEE or its contractors.

10.y. During the term of this license, if the LICENSEE becomes aware that a Release of Toxic or Hazardous Materials has occurred due to acts or omissions of the GRANTEE, its agents, or contractors, whether or not such Release results in Contamination of the PREMISES, the GRANTEE will give verbal notice to the CDA within 24 hours of becoming aware of the Release, providing all relevant facts and circumstances. The CDA may direct the GRANTEE to make a detailed written report of these facts and circumstances within a time certain.

10.z. The LICENSEE will promptly take all actions, necessary to comply with Applicable Environmental Laws pertaining to a Release described in subparagraph 10.x, including but not limited to: (1) report the occurrence to appropriate Federal, State, or local regulatory authorities, if so directed by the CDA; (2) take timely and effective steps to minimize the Release and its impact on human health and the environment; and (3) take Remedial Action. The CDA may direct the GRANTEE to provide all information requested by the CDA regarding such actions within a time certain.

10.aa. During the term of this license, the LICENSEE will ensure that all activities conducted by the LICENSEE or its contractors on the PREMISES are carried out in compliance with Applicable Environmental Laws. The LICENSEE will provide oral notice to the CDA within 24 hours of receiving any complaint, order, directive, claim, citation, or notice by any CDA authority or any other person or entity with respect to a violation of Applicable Environmental Laws resulting from the activities of the LICENSEE or its contractors on the PREMISES. The LICENSEE will promptly take all actions, at its sole expense, as are necessary to comply with all Applicable Environmental Laws as directed by any Federal, State, or local regulatory authority of competent jurisdiction to achieve or regain compliance with Applicable Environmental Laws. The CDA may request a more detailed written description of the events or circumstances leading to this event within a time specified by the CDA. Without limitation of the foregoing, the CDA, in response to acts or omissions of the LICENSEE, its agents, or contractors may, in its discretion, take Remedial Action to remedy Contamination on the PREMISES or to achieve or regain compliance with Applicable Environmental Laws.

10.ab. The CDA may at any time inspect the PREMISES or cause the PREMISES to be inspected, to assess whether the operations of the GRANTEE, its agents, or contractors are in compliance with Applicable Environmental Laws. To assist in this evaluation, the GRANTEE, its agents, and contractors will provide to the CDA, or another entity, as the CDA may direct, for examination and copying, all relevant books, records, documents, and other material in their possession.

**ADDENDUM NUMBER 1 TO TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY
LICENSE FOR PLANT 12
GENERAL PROVISIONS**

10.ac. The CDA, with good cause, may from time-to-time require the GRANTEE to conduct tests and analyses to assess whether the PREMISES are in compliance with Applicable Environmental Laws, and based on the results thereof, to so certify to the CDA. Such tests and analyses shall be conducted in a manner satisfactory to the CDA by recognized professionals approved by the CDA. If the CDA and the GRANTEE cannot reach agreement as to what tests and analyses shall be conducted, by whom, and when, the CDA may perform such tests and analyses or cause such tests and analyses to be performed.

10.ad. For the purposes of this provision, the terms used above are defined as follows:

“Toxic or Hazardous Materials” means all manner of substances, pollutants, contaminants, and waste to which Applicable Environmental Laws pertain, expressly including petroleum, petroleum products, and materials defined in 48 C.F.R. § 252.223-7006 (a)(ii) and (iii).

“Contamination” means a level of Toxic or Hazardous Materials in the air, soil, or water (surface water or ground water) that exceeds levels allowed by Applicable Environmental Laws.

“Applicable Environmental Laws” means

- (a) Federal, State, and local statutes, laws, ordinances, rules, and regulations, to which the CDA is made subject by Federal law and to which the LICENSEE is made subject by Federal and State law;
- (b) Executive Orders of the President of the United States;
- (c) Decisions of courts and administrative tribunals of competent jurisdiction;
- (d) Administrative orders of regulatory agencies of competent jurisdiction (involuntary or on consent); and

(e) Regulations and directives of the Town of Riverhead, Town of Riverhead Community Development Agency, the Water Department of the Town of Riverhead and the Town of Riverhead Water District, which pertain to the human environment (as defined in the National Environmental Policy Act of 1969); transportation of hazardous material; and human health and safety (including occupational safety).

Applicable Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651, et seq.), and 10 U.S.C. § 2692, as amended.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, leaching, or migration into the environment, accidental or otherwise, or introduction into the environment by any other means or method.

“Remedial Action” means (1) investigating or monitoring the environmental condition of the PREMISES; and (2) clean-up, removal, response (including emergency response), and restoration of the PREMISES, as per Applicable Environmental Laws, due to the presence or suspected presence of Contamination or a Release or suspected Release of Toxic or Hazardous Materials.