

Exhibit

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THIS PLAYLAND MANAGEMENT AGREEMENT ("Agreement") made the _____ day of _____ 2015, by and between

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601, acting by and through the Department of Parks, Recreation and Conservation, and/or the Department of Public Works and Transportation and/or the County Executive, as appropriate (hereinafter the "County"),

and

STANDARD AMUSEMENTS, LLC a for profit Delaware limited liability corporation having an office for the transaction of business at 767 Fifth Avenue, New York, New York 10153 (hereinafter referred to as "Manager").

The County and Manager hereinafter referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, Playland Park is a public park located within the County of Westchester, in Rye, New York (hereinafter referred to as "Playland Park", "Playland" or the "Park"); and

WHEREAS, since 1928, the focal point of the property has been an Amusement Park, which today has 50 major rides and attractions. Playland also includes long stretches of scenic vistas of Long Island Sound, a beach, Olympic-sized pool, waterfront boardwalk, fishing piers, boating, dining and picnic areas, and indoor ice skating rinks; and

WHEREAS, there has been a downturn in attendance which has translated directly into greater County subsidies going to support the budget to operate Playland Park; and

WHEREAS, due to the current financial challenges facing local government now and for the foreseeable future, it has become necessary to develop creative solutions to continue the public's ability to enjoy the full potential of park resources; and

WHEREAS, in August 2010, in an effort to reverse the current financial conditions of Playland Park, the County issued a Request for Proposals ("RFP") seeking proposals for the management and operation of the existing Playland Amusement Park, in whole, in part, or some variation thereof; and

WHEREAS, the County's goal in seeking proposals to reinvent Playland Park was to maximize the potential for this valuable County resource, reduce Park expenses and to enter into a public/private partnership, similar to what other jurisdictions throughout New York State and the Country have done in agreements with not-for-profit and private corporations to take over management of a public park and raise private funds to operate the park and make improvements that the public owner cannot afford to do; and

WHEREAS, the County received 12 proposals in response to the RFP including a proposal from the Manager; and

WHEREAS, the County, by an agreement dated July 23, 2013, engaged Sustainable Playland, Inc. to manage and operate all of Playland Park, however, that agreement was terminated prior to its

intended commencement date Sustainable Playland, Inc. never took over the management and operation of Playland Park and the agreement was terminated; and

WHEREAS, the County by an agreement dated August 21, 2014 engaged Playland Ice Casino, LLC to manage and operate the Playland Ice Casino ("Ice Casino"); and

WHEREAS, the County desires to engage Manager to manage and operate Playland Park.

NOW, THEREFORE, the Parties hereto in consideration of the terms and conditions herein contained do agree as follows:

SECTION 1: Term; Co-Management Period; Initial Payments; Commencement of Full Management of Playland Park

This Agreement shall take effect upon the date that it is fully executed by the County and Manager ("Agreement Commencement Date"). There shall be a period of co-management of Playland Park by the Parties which shall begin on the Agreement Commencement Date and shall end on the Management Commencement Date ("Co-Management Period"). The respective duties and responsibilities of the Parties during the Co-Management Period are described below.

Playland Park and the areas of Playland Park described herein, including, but not limited to, the amusement park, beach, pool, fountain plaza and boardwalk, are delineated in the attached drawing which is incorporated herein as Schedule "A" and in the attached survey which is incorporated herein as Schedule A-1.

The Manager shall commence full management and operation of Playland Park on October 31, 2015 ("Management Commencement Date"). The term of this Agreement shall be for a period consisting of the Co-Management Period and fifteen (15) years from the Management Commencement Date ("Term"), with a mutual option to renew the Agreement for an additional fifteen (15) years upon the agreement of the Parties. Assuming satisfactory performance of the Agreement by the Manager during the Term, it is the expectation of the Parties that the Agreement will be renewed for the additional fifteen (15) year term, subject to necessary legal approvals. In the event the County chooses not to renew this Agreement, then it shall be required to provide written notice to the Manager of such intent not to renew, not less than two (2) years before the expiration of the Term. If the Manager has performed satisfactorily and the County determines not to renew this Agreement, then the Manager shall be entitled to be reimbursed by the County for the unamortized portion of any capital improvements actually made by the Manager by the date of receipt of the notice of termination, as determined on a straight-line depreciation basis over the original term of this Agreement.

The Parties have entered into a separate escrow agreement which provides that the County Executive shall submit legislation (the "Legislation") to the Westchester County Board of Legislators ("BOL") seeking approval of this Agreement. The Legislation shall be reasonably acceptable to the Manager. The terms of that escrow agreement include, but are not limited to, the following:

The Manager shall place \$250,000 into escrow upon the execution of the escrow agreement. The escrow will be held by an independent escrow agent acceptable to the County and the Manager.

If the BOL does not approve and adopt the Legislation within sixty (60) days of its submission to the BOL, then the Manager shall direct the escrow agent to pay the County \$50,000 from the escrow, direct the escrow agent to pay the Manager \$200,000 from the escrow, terminate the escrow agreement and terminate its offer to the County to enter into this Agreement.

If the BOL approves the Legislation within sixty (60) days of its submission to the BOL, then the Manager shall place an additional \$250,000 into escrow, for a total amount of \$500,000 to be held by the escrow agent and upon the delivery to the escrow agent of (i) a copy of the resolution of the Board of Acquisition and Contract of the County authorizing the County to enter into this Agreement and (ii) a copy of this Agreement (with any modifications accepted by the Manager and the County), fully executed by the Manager and the County, the escrow agent shall pay the \$500,000 held in escrow to the County on the Agreement Commencement Date (the "First Initial Payment").

Not less than ten (10) business days prior to the Management Commencement Date, the Manager may opt to terminate this Agreement by notifying the County in writing. If the Manager exercises its option to terminate, the County shall retain all of the First Initial Payment.

Should the Management Commencement Date occur, the Manager shall make an additional payment to the County ("Second Initial Payment") in the amount of One Million Seven Hundred and Fifty Thousand (\$1,750,000.00) Dollars. The Second Initial Payment shall be made the day after the Management Commencement Date.

~~During the Co-Management Period, the County shall be the sole decision maker and continue to manage, operate, repair, maintain, make improvements to and have financial responsibility for costs and liabilities for Playland.~~ During the Co-Management Period, the Manager shall assign the requisite number of personnel and/or consultants hired by the Manager to monitor County personnel, study Playland's operations, and take all steps necessary to complete its due diligence to prepare to take over the full management and operation of Playland Park with the Manager's personnel on the Management Commencement Date. The Parties agree to make commercially reasonable efforts to cooperate with each other during this Co-Management Period to ensure the continuity of operations at Playland.

During the Co-Management Period, the Parties shall create a schedule of items to be completed in order to transition full management and operation of Playland Park to the Manager. The items shall include, but are not limited to:

- (i) examination of the existing infrastructure and equipment, including the County's Point of Sale system;
- (ii) the County shall prepare a list of all contracts, licenses and other agreements that it currently has, which are used in the operation of Playland Park and present same to the Manager within thirty (30) days after the Agreement Commencement Date for the Parties to review to determine which, if any, such contracts including, but not limited to, software licenses, will, if possible, either be assigned to the Manager for the remaining term of such contract or terminated by the County upon its terms and conditions. If a contract is assigned, the Manager shall be responsible to carry out the terms of that contract until it terminates. Upon the expiration or termination of any County contract, the Manager shall perform such services or will be responsible to enter into agreements for the same or similar purposes at its cost and expense. The following are exceptions to this provision:
 - a. The license with 181 New England Seafood Corporation-Tiki Bar/Pier Restaurant shall continue until it expires on December 31, 2019. Prior to expiration, the County will conduct a request for proposal process with respect to this license and the Manager shall be permitted to submit a proposal in response to this request for proposal;

- b. The license with New York SMSA Limited Partnership d/b/a Verizon Wireless, its successors or assigns, for microcell, rerad, or other similar or comparable in-building radio-distribution devices will not be assigned or terminated and will continue as a County contract unless otherwise agreed to by the Parties in writing in an amendment to this Agreement;
 - c. The County and the Manager shall specifically negotiate the assignment of the County's contract with Playland Ice Casino LLC, to ensure a smooth transition;
 - d. The Manager agrees that it shall be subject to the existing and future County Parks contract for soda/water pouring rights and that any of its subcontractors shall also remain subject to such agreement(s). Commencing in 2016, the County shall include in future pouring rights contracts that include Playland the following language: "Pricing shall be uniform among all County park facilities".
 - e. The County's existing contract for automated teller machines ("ATMs") at Playland Park and other parks expires on April 17, 2017. The Manager agrees that it shall be subject to the existing ATM contract until it expires and upon expiration, the Manager, at its cost and expense, shall have an affirmative obligation to enter into an agreement for these purposes and to retain any fees; and
 - f. The Parties agree, except as noted above, that the County shall have the right to retain all fees paid to the County pursuant to any such contracts, and to maintain these contracts and any successor contracts for the Term of this Agreement, at no cost to Manager;
- (iii) develop all plans, rules and regulations as required by Section 5 below; and
 - (iv) create a list of County-owned items of personal property and equipment located at Playland Park to be transferred to the Manager for its use solely for Playland Park operations, which shall be attached hereto as **Schedule "B"** prior to the Management Commencement Date and if it is later determined that any item is not required for its use, the Manager shall return same to the County.

During the Co Management Period, the County shall provide the Manager with appropriate office space necessary to carry out its duties.

SECTION 2: Management of Playland Park

Starting on the Management Commencement Date:

A. In accordance with the terms and conditions of this Agreement, Manager, at its sole cost and expense, shall manage, operate, improve, maintain and repair Playland Park in accordance with standard industry practices and shall in due course of daily management make all repairs to the grounds, walkways, paved areas, facilities, buildings, structures, equipment, rides and other infrastructure at Playland Park, except for the County's responsibilities set forth in Sections 2-a and 12 below; and to also make restorations, renovations and improvements to Playland Park as outlined in **Schedule "C"**, which is attached hereto and made a part hereof, and any other work more particularly set forth in this Agreement (collectively the "Work").

In addition, the Manager shall be responsible to obtain and/or acquire all supplies, materials, accessories and equipment necessary to operate Playland Park. Notwithstanding the above, the Manager shall not be responsible to manage and operate the Ice Casino (except to the extent required if the County's license with the Ice Casino Manager is assigned to the Manager hereunder), the Tiki Bar, or the Westchester Children's Museum.

The County hereby grants to Manager the exclusive right and privilege to undertake the Work during the term of this Agreement. The Manager recognizes and understands that it must manage and operate Playland Park consistent with its current recreational uses and as a public park facility. The Manager shall complete all of the items identified in **Schedule "C"** within five (5) years of the Management Commencement Date.

B. During normal business hours the County, its employees, agents and independent contractors shall have access to all of Playland Park at all reasonable times during the Term of this Agreement to carry out the County's responsibilities under this Agreement without materially disturbing Manager's business operations, in accordance with agreed to protocols for ordinary day-to-day activities and with reasonable notice and cooperative planning for major repairs or capital improvements, except if an emergency situation requires immediate action by the County, whether during business hours or not, then the Manager shall be notified within a reasonable time after the emergency occurs, if the Manager did not notify the County of the emergency. Manager shall provide a set of keys or access codes for any locks to the County for these purposes.

C. The Manager, either by itself or through an approved subcontractor, shall ensure that Playland Park shall be operational during the period commencing with the Management Commencement Date and ending on the expiration or earlier termination of this Agreement. It is also recognized and understood by the Parties that the operation of an amusement park, the beach and the pool areas, are material elements of this Agreement. Notwithstanding the immediately preceding sentence, the Manager shall have the ability to repurpose the pool area as long as any future use includes a water theme. In addition, the Manager shall keep all currently non-gated public spaces at Playland Park maintained and open to the public which are described below with "in-season" defined as the time period when the amusement park, the beach and pool areas are operational (as determined by the Manager's operating schedules approved pursuant to the annual Operating Plan described in Section 4 below), and "off-season" as the time period when the amusement park, the beach and pool areas are not in operation (as determined by the Manager's operating schedules approved pursuant to the annual Operating Plan described in Section 4 below):

All public areas beginning immediately east of Forest Avenue, including:

- East of Forest Avenue through the top circle, inclusive of all property down to the entrance circle (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- Employee Parking Lot/Bus Depot (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- Main Parking Lot (year-round during any hours for Ice Casino and Children's Museum operation or dawn to dusk off-season; dawn to park closing in-season);
- Beach/Pool Parking Lot (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);

- Fountain Plaza (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- Main Boardwalk from Rye Town Park to Tiki Bar area and Seaside Walk entrance (dawn to dusk off-season; dawn to park closing in-season);
- Beach (dawn to dusk off-season for dog walkers with off-leash dogs; beach operations 10 a.m./beach closing in-season);
- Pier (dawn to dusk off-season; dawn to park closing in-season);
- Tiki Bar/Restaurant (10 a.m. up to 2 a.m. April through October);
- Seaside Walk from the back of the Ice Casino including the to be reconstructed North Boardwalk (dawn to dusk off-season; dawn to park closing in-season);
- Public Picnic Area/Lake Perimeter/Boathouse (dawn to dusk off-season; dawn to park closing in-season); and
- Roadway/property and additional parking past the Music Tower leading to Edith Read Sanctuary entrance (dawn to dusk off-season; dawn to park closing in-season).

The duty of the Manager to keep the public areas open shall be subject to Force Majeure as defined in Section 39.

In accordance with the RFP, it is recognized and understood by the Manager that the public must be guaranteed free access to Edith G. Read Natural Wildlife Park and Sanctuary and to the boardwalk and pier. The Manager shall also guarantee public access to the beach, provided that the Manager may establish fees for such public access as is presently required consistent with the fees set pursuant to Section 4 herein and with the policies adopted pursuant to Section 5 herein.

D. All of the Work shall be carried out in conformity with all applicable federal, state and local laws, rules and regulations, orders and ordinances and other legal requirements, including, but not limited to, all applicable rules and regulations of the Department of Parks, Recreation and Conservation.

E. The Manager shall perform all the Work in a good and workmanlike manner in order to keep Playland Park in a clean, orderly, safe and operational condition. The Manager shall keep all grounds, sidewalks, streets, curbs, parking areas, access roads and roadways free of snow, ice, dirt, rubbish and other obstacles.

F. In furtherance of Operating Plan required by Section 4 below and the Rules and Regulations and Plans required by Section 5 below, the Manager shall expeditiously develop policies and procedures for the operation and management of Playland Park.

G. In order to carry out the Security and Emergency and Contingency Plan required by Section 5 below, the Manager shall ensure that there are appropriate safety, security, emergency and fire response systems, including equipment and personnel, necessary to protect both persons and property prior to the Management Commencement Date.

H. The Manager shall not create, nor suffer to be created, any nuisance in, around or about Playland Park.

I. The Manager shall provide such other facilities, services and activities as necessary to undertake the Work.

J. The County Executive, and the departments under the administrative jurisdiction of the County Executive, and the Manager agree that they shall use best efforts to cooperate with each other to permit the Manager to carry out the Work.

K. The Manager shall use commercially reasonable efforts, in the exercise of the Manager's best judgment, to carry out the Work in a manner, which is compatible with the interests of the County and the Manager, Playland Park as a public park, the community surrounding Playland and the users of Playland Park.

L. The Manager shall have no liability for failure to perform its obligations under this Agreement to the extent, but only to the extent, that it is unable to perform by reason of either:

- (i) the failure of the County to provide any approval required under this Agreement and reasonably requested by the Manager as set forth in subparagraph W below, or
- (ii) the failure or refusal of the County to approve budgetary appropriations (or obtain funding from other sources) required by this Agreement, or
- (iii) the default by a third party not under the direction or control of the Manager, or
- (iv) Force Majeure as defined in Section 39.

M. The Manager or its designee shall attend quarterly meetings with County personnel at mutually agreeable times and locations.

N. The Manager shall cooperate and assist the County in dealing with all federal, state and local agencies in all matters relating to the Work.

O. The Manager shall provide technical advice within the knowledge of Manager to the County on Playland Park operations, maintenance and marketing programs and projects. The prior sentence notwithstanding, the Manager shall have no obligation to seek such advice from outside experts or consultants when the advice requested by the County is outside the knowledge of Manager.

P. The Manager shall provide written documentation of all accidents that take place at Playland Park where such accidents result in the occurrence of any of the following: (i) administration of first aid by the Manager; (ii) require a response by public safety services (Police/EMS/Fire); (iii) require a response by Manager's internal security service; or (iv) where such accidents are reported by a third party to the Manager. The Manager shall notify the County's Director of Risk Management within 24 hours of such accident by providing written documentation in a format acceptable to the Director of Risk Management.

Q. The County shall have the option to select and use appropriate space in the Administration Building and/or at one or more other buildings within Playland Park for use as office space, police facilities, information technology, filing and storage of documents or other purposes deemed necessary or desirable to the County, such space shall be in a location that is mutually acceptable to both Parties.

R. The Manager may maintain its own designated website for Playland Park. If the Commissioner finds any website content to be clearly defamatory or offensive to the reasonable standards of the community, then the Commissioner shall request a modification to the website which request shall not be unreasonably withheld, conditioned or delayed by the Manager. The County's website shall include a link to the Manager's website.

S. ~~The Manager shall consider incorporating a water dependent boating component with docks and moorings (a "Marina") into the vision for the future of Playland in accordance with the resolution dated December 19, 2012 adopted by the City Council of the City of Rye provided the operation of a Marina is determined to be reasonably feasible, financially viable and a net revenue generator on a continuing basis.~~

T. The Manager shall provide evidence to the County that the Amusement Park within Playland Park is in compliance with ASTM F-24 standards.

U. The Manager, if necessary, shall comply with the provisions of Section 765.351 et seq. of the Laws of Westchester County ("the County Tree Law").

V. The Manager shall use its commercially reasonable efforts, in the Manager's sole judgment reasonably exercised, to attract subcontractors desirable and consistent with the Manager's response to the County's RFP.

W. ~~Each approval pursuant to or necessitated by the terms of this Agreement, of the Commissioner, or any other County commissioner or department under the administrative jurisdiction of the County Executive, shall not be unreasonably withheld, conditioned, or delayed.~~

X. The Manager may utilize a portion of the parking lot during the off-season for a temporary sports field or other attractions, provided that it does not interfere with the general operations of Playland Park, the operations of the Ice Casino and/or the operations of the Children's Museum.

Y. The Manager shall use commercially reasonable efforts, consistent with the proper maintenance and operation of the Playland Park, availability of funds and the safety of the public, to conserve water and electricity and to implement commercially reasonable conservation programs and to otherwise follow commercially reasonable practices for energy conservation to the extent practicable.

Z. It is a material element of this Agreement that the Manager utilize professional management in operating Playland Park, in particular the services of Jacob T. "Jack" Falfas who shall be deemed one of the Key Personnel under this Agreement. The Manager shall provide the County with a list of Key Personnel prior to the Management Commencement Date, which shall be attached hereto as Schedule "D". No replacements shall be made to Key Personnel until the Manager notifies to the Commissioner in writing that the replacement has the same or better qualifications than the incumbent.

SECTION 2-a: County's Duties for Maintenance and Repairs and Improvements

The County as owner of Playland Park shall remain responsible for extraordinary maintenance, repairs and improvements, which are those that occur infrequently, are substantial and increase the economic life of the asset. For example: maintenance, repair, or replacement of sewer mains, electrical feeders, major structural components of buildings, re-pavement of parking lot when necessary; except for those restorations, renovations and improvements to Playland Park as outlined in Schedule "C" which the Manager shall be responsible for and also for any new restorations, renovations and improvements to Playland Park to be undertaken by the Manager in the future.

SECTION 3: Compensation

A. **Initial Payments:** Initial Payments are those payments defined in Section 1 above which total Two Million Two Hundred and Fifty Thousand (\$2,250,000) Dollars.

B. **Annual Management Fee:** Beginning on the Management Commencement Date, the Manager shall pay the County an annual management fee payable in two equal installments due on or before January 1st and July 1st of each year. The amount of the annual management fee shall be Three Hundred Thousand (\$300,000.00) Dollars. Starting on the first anniversary of the Management Commencement Date, and for each year thereafter, the amount of the annual management fee shall increase by the greater of (i) two (2%) percent or (ii) the change in the Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northeastern New Jersey during the preceding twelve (12) month period ending September 30th. In the event that the Bureau of Labor Statistics revises the standard reference base period or if a change occurs in the structure of the index, the Parties agree to use the applicable conversion factors supplied by the Bureau of Labor Statistics to convert the changed CPI-U index to reflect the standard reference base period and structure of the CPI-U index that was in effect at the time of the execution of this Agreement. Verification of the calculation for the increase in the Annual Management Fee must be submitted to the Commissioner thirty (30) days prior to January 1st installment date.

C. **Profit Share:** The Manager shall pay the County annually seven and a half percent (7.5%) of net profits generated from Playland Park ("Profit Share") provided, however, that the Manager shall not pay any Profit Share to the County until the Manager has recouped its Initial Payment and Manager's Investment.

The annual Profit Share payment shall be payable within ninety (90) days at the end of each calendar year and for the final year of the Term within ninety (90) days of the last day of the Term. The Manager shall provide the Commissioner and the Commissioner of Finance with Certified Public Accountant ("CPA") reviewed and corporate officer certified statements, including but not limited all of the details necessary to make the above calculation in support of the Profit Share, within ninety (90) days of the end of each calendar year in order to calculate the Profit Share. The County reserves the right at its own cost to have a CPA conduct an independent audit of the calculation of the Profit Share. In the event the County's auditor disputes the Manager's calculation, the Parties shall mutually select a nationally recognized accounting firm ("Third Party Auditor") to review the calculation and supporting details. The Parties shall equally share in the cost of this review. The Parties agree to accept the conclusions of this Third Party Auditor.

D. **Manager's Investment:** The Manager shall undertake each item outlined in Schedule "C" at its sole cost and expense and shall make an investment of Twenty-Two Million Seven Hundred Fifty Thousand Dollars (\$22,750,000.00) ("Manager's Investment"). It is anticipated that the investment contained in Schedule "C" will be made within the first two (2) years following the Management Commencement Date, but the Schedule "C" improvements must be completed not later than five (5) years from the Management Commencement Date. In the event that the Schedule "C" improvements is less than Twenty-Two Million Seven Hundred and Fifty Thousand (\$22,750,000.00), the Manager shall pay the County the difference in addition to any other fees payable to the County set forth herein. Any such difference shall be payable within thirty (30) days of completion of the Schedule "C" items.

E. **County Debt:** The Parties recognize that the Playland Park has significant debt that the County is obligated to repay. The Manager shall not have any obligation of any kind with respect to the County's existing debt relating to Playland Park or any other County debt.

F. **Late Payments:** Any and all payments due from the Manager shall be timely made. In the event of a late payment, the Manager shall be assessed a late fee equal to one and one half percent (1.5%) of the fee for any payments made more than seven (7) business days past due.

G. **Real Property Taxes:** It is the County's position that the Playland Park and operations by the Manager at Playland are not subject to property taxes. If, however, all or part of Playland, excluding the Tiki Bar and the Ice Casino, is subject to real property taxes, the Manager shall pay the first Fifty Thousand (\$50,000.00) Dollars of such taxes annually. The County shall be responsible to pay real property taxes in excess of Fifty Thousand (\$50,000.00) Dollars per annum. However, should real property taxes be assessed in excess of One Hundred Thousand (\$100,000.00) Dollars per annum, the County shall have the right to terminate this Agreement immediately and Section 23B shall apply.

SECTION 4: Operating Plan

The Manager shall, not less than sixty (60) days prior to the Management Commencement Date and by March 1st of each year thereafter, prepare and submit to the Commissioner for the Commissioner's review and approval, a written annual operating plan ("Manager's Operating Plan"). Notwithstanding any inconsistent provision of this Agreement, the Commissioner shall not deny a proposed operating plan unless he/she believes approval of such plan will result in material adverse impact to the operation of Playland. If the Commissioner does not provide within thirty (30) days a detailed response enumerating the reasons the proposed operating plan materially adversely impacts the operation of Playland, then said plan shall be deemed approved. If the Commissioner does not approve the proposed operating plan, then the Manager's Operating Plan for the prior year shall continue in force and effect until a new plan is approved. In such event, it is understood that the Manager may adjust the dollar amounts contained in the prior year's plan by up to 5% up or down until a new plan takes effect.

The Manager's Operating Plan shall include, but not be limited to: a maintenance and repair schedule; a schedule of proposed changes to Playland's fee structure; a schedule of all new agreements to be entered into; recommendations, if any, for revisions to any of the Plans, Rules and Regulations required under Section 5 below; schedules, if any, for new non-capital and capital improvements of Playland facilities and acquisition of equipment; schedule of proposed changes to staffing levels; proposed changes to the advertising and promotional programs; daily operating schedule including changes to the length of season, hours of operation, and any other relevant factors which may affect Playland's operations and management.

SECTION 5: Plans, Rules and Regulations

The Manager shall prepare, as part of Manager's Operating Plan, the below described plans, rules and regulations for Playland Park, and any amendments thereto, as follows:

- (i) Prepare in consultation with the Commissioner a set of written Rules and Regulations governing public use of, and behavior in Playland Park, including, but not limited to: visitor conduct, public hours and rules to ensure the well-being and safety of the public, the enjoyment of Playland Park by the public for its intended purposes, and the safe and efficient conduct of activities in Playland Park. In addition, the Manager may from time to time propose modifications of the Rules and Regulations. Such approval shall not be unreasonably withheld. All Rules and Regulations shall be promulgated in accordance with applicable law, and thereafter enforced by the Manager.
- (ii) Prepare in consultation with the Commissioner and the Commissioner-Sheriff of the County Department of Public Safety, and the Commissioner of the Department of

Emergency Services, a written Security and Emergency Contingency Plan, in conformity with applicable federal, state and local laws, rules and regulations. Such Security and Emergency Contingency Plan shall be designed to protect the safety and security of the general public, the Parties' personnel and property on a daily basis.

SECTION 6: Playland Park Improvements.

A. **Material Improvements.** "Material Improvement" shall mean any renovations, construction or demolition to the land, buildings and infrastructure at Playland Park that materially changes the size, location, and character of the existing land, buildings and infrastructure at Playland Park. Should it be determined by the County that a Material Improvement has been proposed by the Manager all requirements of law shall apply. ~~Notwithstanding the foregoing, the addition, removal or modification of rides, except historic rides, games concessions, restaurants, or retail shops, shall not be subject to this paragraph.~~

B. **County Review of Plans and Specifications.** ~~Notwithstanding anything herein to the contrary, during the Term of this Agreement, the Manager shall provide the Commissioner and the Commissioner of the Department of Public Works and Transportation or his designee ("DPW&T Commissioner"), for their review and comment, with record copies of plans and specifications at various stages of design and construction for any improvements to Playland Park that would require the preparation of plans and specifications ("Plans and Specifications"). The Commissioner and the DPW&T Commissioner, shall furnish a written statement as to whether or not the Plans and Specifications meet the applicable terms and conditions of this Agreement within ten business days not including County holidays from the date of receipt of such Plans and Specifications from the Manager. The Manager, if necessary, shall prepare and submit revised Plans and Specifications for the Commissioner and the DPW&T Commissioner's review and comment. Notwithstanding the above, if the Commissioner and the DPW&T Commissioner does not respond within said ten (10) business day period, approval shall be deemed granted.~~

C. **Approvals for Improvements.** ~~The Manager will procure all required permits and approvals for any improvement by any and all governmental authorities having jurisdiction thereof, and, if necessary, the County shall cooperate with Manager to procure same.~~

At the request of the Manager, the Commissioner will use commercially reasonable efforts to cooperate with the Manager to obtain all non-County approvals, and the Manager is hereby authorized to submit applications in the name and stead of the Commissioner to obtain such approvals, but without expense to the County in procuring any such permits and approvals.

~~To the extent that any County approvals can only legally be issued during implementation or upon completion of the improvements, any approval of the Commissioner or any other County commissioner or department under the administrative jurisdiction of the County Executive shall be subject to the provisions of Section 2(W) above.~~

D. **Closures.** During the implementation of any improvement, portions of Playland Park may be closed and the Manager shall not be required to provide any services to the public with respect to the closed area during such periods of demolition, construction, renovation, repairs and equipping until such portion of Playland Park is reopened to the public.

E. **Unexpected Capital Expenditures.** Unexpected and unplanned capital expenditures including, but not limited to, damage to property, buildings or equipment due to Force Majeure as defined in Section 39 shall be paid for by the County only to the extent that the County obtains insurance

proceeds and/or disaster recovery funding or similar sources of funds payable to the County. The County shall provide funding for such expenditures consistent with Section 13. However, nothing contained herein shall limit the Manager's rights consistent with Section 23A and 23B below.

F. **Performance Bonds.** No capital improvements, material or otherwise, or changes, alterations or non-recurring maintenance to existing or future improvements, estimated to cost more than Two Hundred and Fifty Thousand (\$250,000.00) Dollars, shall be commenced unless at the time thereof the Manager shall have obtained a performance and payment bond, for or from each prime contractor performing construction work, guaranteeing the full and faithful performance and completion of construction and the payment of the entire cost thereof, and having as a surety thereon a surety company of recognized responsibility and duly authorized to do business in the State of New York in a penal sum equal to 100% of the estimated cost of construction.

G. **Reasonable Diligence.** The Manager shall implement any improvements with commercially reasonable diligence.

H. **Standards and Criteria.** In the event Manager determines to renovate or build one or more improvements, each such improvement shall, except as otherwise agreed to in writing, meet the following:

- (i) Be consistent with industry standard design, character and appearance.
- (ii) Be consistent with Playland Park's unique status, including but not limited to, Playland's listing on the national register of historic places as a National Historic Landmark, and Playland's art deco style.
- (iii) ~~Be constructed in accordance with all applicable laws, ordinances, regulations or orders of any federal, state, municipal or other public authority affecting the same, including but not limited to, the New York State Uniform Fire Prevention and Building Code Act.~~ In addition, all improvements shall be constructed in accordance with all requirements of the New York Board of Fire Underwriters or other similar body having jurisdiction thereof and the National Electrical Code.
- (iv) Be free of liens and encumbrances for labor and materials supplied in connection with such work.
- (v) Be of a character that, when completed and evaluated in the totality, will not decrease the overall value of Playland Park.

I. **Final Plans and As Built Drawings.** Copies of all final plans, "as built" drawings (which shall be deemed to include final plans with field notations thereon) and equipment and building system operating and maintenance manuals, for any improvement, shall be delivered by the Manager to the Commissioner and the DPW&T Commissioner to complete the County's files.

J. **Improvement Insurance.** No improvements shall be commenced unless the Manager or an approved subcontractor shall first have procured, at its own cost and expense, and delivered to the Commissioner proof of insurance coverages as required by **Schedule "E"** which is attached hereto and made a part hereof, including copies of policies if requested by the County Director of Risk Management. In particular, the insurance certificate shall identify the specific improvement and the policy shall be endorsed to cover such improvement and the endorsement provided to the County Director of Risk Management.

In addition, the Manager shall ensure that its contracts with any and all third parties that are engaged to perform any work, or otherwise enter upon or occupy any portion of Playland Park, shall include a written requirement that said third parties shall procure and maintain insurance naming the County of Westchester as an additional insured as its interest may appear, and that such third parties shall, at its own cost and expense, procure and deliver to the County proof of the above insurance coverages, including copies of policies if requested by the County Director of Risk Management.

Each party hereto shall cause each insurance policy obtained by it to provide, to the extent available, that the insurer waives all right of recovery by way of subrogation against the other party in connection with any damage and/or liability covered by said insurance.

K. **Certificates.** Manager shall obtain and deliver to the Commissioner and DPW&T Commissioner copies of all proper certificates from the County Department of Health, the Board of Fire Underwriters, or such other certificates as are customarily obtained from any department or bureau having jurisdiction. Unless a certificate of occupancy shall hereafter be held to be legally required, Manager shall deliver to the County a certificate of completion, signed by Manager's engineer or architect.

L. **Inspection.** During implementation of any improvement, the Commissioner or the DPW&T Commissioner, or his/her designees, may, from time to time, and at reasonable times upon reasonable prior notice, inspect such improvement provided that conduct of such inspection shall not interfere with Manager's construction activities or operation as an amusement park.

In the event that, during the implementation of any improvement and prior to the completion of same, the Commissioner and/or DPW&T Commissioner, or his/her designees, shall reasonably determine that the improvement is not being constructed substantially in accordance with the Plans and Specifications and/or the applicable terms and conditions of this Agreement, then the Commissioner and/or the DPW&T Commissioner shall give prompt notice in writing to the Manager, specifying in detail the particular deficiency or omission in which the Commissioner and/or the DPW&T Commissioner claims construction does not accord with the above requirements. Manager shall respond within thirty (30) days notifying the Commissioner and/or the DPW&T Commissioner that Manager will remedy the deficiency and provide a Timetable within which to do so. It shall be the responsibility of the DPW&T Commissioner to schedule inspections at times he deems reasonably necessary and the Manager has no obligation to stop or delay construction because the DPW&T Commissioner is unable to inspect at the appropriate time during the construction cycle.

M. **Document Ownership Upon Default.** In the event this Agreement shall be terminated by reason of the default of the Manager as provided in this Agreement, prior to the completion of any improvement any and all Plans and Specifications, reports, estimates and models which shall have been prepared or made in connection with any improvement and which shall be in the possession of, and owned by, the Manager and any approved subcontractors, shall become the property of the County.

SECTION 7: Utilities.

As the owner of Playland Park, the County shall remain responsible to continue to provide or cause to be provided all utility connections, including water and electricity, cable/fiber optics, sanitary sewer facilities and the like serving Playland Park on the Management Commencement Date (including those intended to be provided and necessary for the operation of Playland Park even though they may be temporarily out of service or seasonally discontinued on the Management Commencement Date). The County shall provide any and all utilities that are currently provided in Playland including but not limited to, electric, water, fuel oil, propane and gasoline ("Utility(ies)"). Any other utilities that are not included within this definition are the Manager's responsibility to obtain and pay for separately.

The Manager shall be responsible for the payment of all charges for Utilities, within thirty (30) days of receipt of a bill from the County.

The Manager shall not seek damages from the County and not hold the County liable for an interruption of any Utility service that is not due to the County's actions or omissions.

The County shall cooperate with the Manager should the Manager, at its sole cost and expense, desire to install sub-meters at Playland Park after the Management Commencement Date. If the Manager installs a sub-meter, it shall still have the option to purchase Utilities through the County and reimburse the County for all charges for Utilities on a monthly basis.

The County will be responsible for the costs of maintaining or improving the utility distribution systems at Playland Park at levels necessary to support attendance of up to one million visitors annually at Playland Park. Any and all costs necessary to maintain and improve the utility distribution systems at Playland Park above the levels necessary to support attendance of over one million visitors annually, shall be borne by the Manager.

Notwithstanding the above, to the extent the Manager or any approved subcontractors make any improvement which would necessitate: (i) a new connection to any existing utility distribution system(s) at Playland maintained by the County (e.g. electricity, telephone, sewer and water); or (ii) increase the demand for such utility distribution systems; or (iii) otherwise materially affect the capacity or efficiency of such utility distribution systems, the prior review and approval of the DPW&T Commissioner shall be required, not to be unreasonably withheld, conditioned or delayed.

Manager, at its sole cost and expense, for any improvement requiring review under this Section, shall cause building mechanical schematics and site plans and specifications showing the method and location of all utility connections, normal and peak load demands for such services and such other information reasonably required by the DPW&T Commissioner to determine the effect, if any, of such increase in service on the capability, reliability and efficiency of the existing utility distribution systems at Playland.

SECTION 8: Temporary Closing of Playland Park or selected areas.

After the Management Commencement Date, the Commissioner shall notify the Manager of any closing by the County (County department or instrumentality acting on behalf, at the request of, or for the benefit of, the County) of the Park, or any portion thereof, due to an emergency or disaster declared by any federal, state or local government in accordance with applicable law. Such notice to the Manager shall be provided at the earliest possible time considering all of the facts and circumstances surrounding the emergency.

Manager shall not be obligated to pay the full Annual Management Fee for any period when Playland Park is closed per this Section 8, if Playland Park is closed for more than ten (10) business days during an operating season within a twelve (12) month period. In such circumstance, the Annual Management Fee will be prorated for the appropriate period of time that Playland Park is closed.

SECTION 9: Permits and Sponsorships.

A. Sponsorships. After the Management Commencement Date, the Manager shall manage the application and processing of corporate sponsorships relating to Playland Park ("Sponsorship Agreement(s)"), except for those contracts, licenses and lease delineated in Section 1 above (e.g. Ice Casino, pouring rights, Children's Museum) which the Manager has no rights to. Applications for

Sponsorship Agreements shall be made to the Manager, who shall make the determination whether the requested Sponsorship Agreement is appropriate for a family park considering all of the available facts and circumstances.

The Manager agrees that it will not enter into any Sponsorship Agreement with any person or entity that engages in activities that are clearly defamatory or engages in activities that are offensive to the reasonable standards of the community.

B. Permits.

- (i) Other than normal operational uses of Playland Park, the Manager shall give the Commissioner reasonable notice of any public programs, events, meetings or other public functions of any kind to be held by the Manager or an approved subcontractor, in Playland Park, unless the Commissioner shall within seventy-two (72) hours of receipt of such notice notify the Manager that such activity may not be conducted, the Manager may conduct such activity, except for those routine performances approved by the Commissioner as part of the Annual Operating Plan.
- (ii) During the Term, except as specifically provided in sub-paragraph (i) above, the Commissioner shall grant or withhold permits in Playland Park for assemblies, meetings, exhibits and or other activities in accordance with the rules and regulations of the Department of Parks, Recreation and Conservation. Application for a permit for any such assembly, meeting, exhibit and or other activity shall be made to the Manager, which shall recommend to the Commissioner that the permit be granted or denied, except for those which are specifically approved by the Commissioner in the Annual Operating Plan.
- (iii) Notice of each application for a permit under sub-section (ii) above, and of the Manager's recommendation as to such application, shall be sent to the Commissioner at least thirty (30) days before the commencement of any assembly, meeting, exhibit and or other activity for which permission is sought (or such shorter time as is practicable, if the Manager notifies the Commissioner that time is of the essence). Unless the Commissioner shall give notice to the Manager, no later than fifteen (15) days prior to the commencement of the proposed permitted activity (or if it the Commissioner has received less than thirty (30) days' notice, as soon as practicable), that the Manager's recommendation is disapproved, with reasons therefore, the Manager's recommendation as to such application shall be deemed approved.

C. Advertising. Except for those existing agreements that cannot be assigned to the Manager (e.g. County-wide bus and bus stop advertising agreement) or will not be assigned under this Agreement (e.g. automated teller machine agreement), the Manager shall have the right to sell signage and/or advertising for use inside Playland Park. If the Commissioner finds any of the content to be clearly defamatory or offensive to the reasonable standards of the community then the Commissioner shall request a modification to the signage and/or advertising which modification will not be unreasonably withheld or delayed by the Manager. It is understood and agreed that nothing in this Agreement grants authority to the Manager for the naming rights of Playland Park, or any facility, building or area in Playland Park, such naming rights rest solely with the County. The County retains the right to advertise in Playland Park for other County programs or events, provided that the quantity and location of such advertisements shall be mutually agreed upon by the Parties.

SECTION 10: Assignment and Subcontracting.

The Manager shall not delegate any duties or assign any of its rights under this Agreement, or subcontract any part of the Work, without the prior express written consent of the County, which consent will not be unreasonably withheld, conditioned or delayed. The County shall consider only the following criteria when determining whether to consent to a subcontract proposed by the Manager: subcontractor's integrity; subcontractor's prior performance of a County contract(s), and subcontractor's compliance with Federal, State, and Local Laws and Regulations. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without such prior express written consent is void.

All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Manager that for the purposes of this Agreement, all Work performed by County-approved subcontractors shall be deemed Work performed by the Manager and the Manager shall ensure that such subcontracted work is subject to the material terms and conditions of this Agreement. All subcontracts for the Work shall expressly reference the subcontractor's duty to comply with the material terms and conditions of this Agreement and shall attach a copy of the County's contract with the Manager. The Manager shall obtain a written acknowledgement from the owner and/or chief executive of subcontractors or his/her duly authorized representative that the subcontractors has received a copy of the County's contract, read it and is familiar with the material terms and conditions thereof. The Manager shall include provisions in its subcontracts designed to ensure that the Manager and/or its auditor has the right to examine all relevant books, records, documents or electronic data of the subcontractors necessary to review the subcontractor's compliance with the material terms and conditions of this Agreement. For each and every year for which this Agreement continues, the Manager shall submit to the Commissioner a letter signed by the owner and/or chief executive officer of the Manager or his/her duly authorized representative certifying that each and every approved subcontractor is in compliance with the material terms and conditions of the Agreement.

SECTION 11: Employees.

The Manager shall, as of the Management Commencement Date, have the sole and exclusive right and power to select, appoint, employ, direct, supervise, control, remove, discipline and discharge all persons employed by the Manager in Playland Park. The Manager's rights in this respect shall include, but not be limited to, the right to establish all terms and conditions of employment, to fix compensation, and to make promotions on the basis of fitness and ability. The Manager shall ultimately be responsible to the County for the employees of any approved subcontractors who carry out its duties under this Agreement, as the County shall have no contractual privity with such subcontractors.

All employees who carry out the Manager's duties under this Agreement shall be the employees of Manager or of approved subcontractors and not of the County. All matters pertaining to the employment of such employees shall be the sole responsibility of Manager or of its approved subcontractors and the County shall bear absolutely no responsibility or liability therefore.

The County shall make available certain Playland Park employees with specialized skills to train Manager's employees during the first year after the Management Commencement Date, as agreed to by the Parties in a separate writing.

All County employees who work in any capacity at Playland Park or who have responsibilities of any kind with respect to Playland Park prior to the Management Commencement Date and who are not hired by the Manager or an approved subcontractor as of the Management Commencement Date shall remain the sole responsibility of the County.

Manager, and its approved subcontractors, shall establish, administer, and maintain the payroll procedure and systems for Manager's employees at the Park and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Manager, and its approved subcontractors, shall fully comply with all applicable laws and regulations concerning workers' compensation, social security, unemployment, tax withholding and reporting, hours of labor, wages, working conditions and all other laws affecting or respecting the employment of such employees or independent contractors. All employees of Manager and all approved subcontractors shall be a citizen of the United States or an alien who has been lawfully admitted to the United States for permanent residence as evidenced by an alien registration receipt card. The Manager shall use commercially reasonable efforts to hire employees who are residents of Westchester County. The Manager, and its approved subcontractors, shall supervise and train its staff to perform their duties and to conduct themselves in an orderly and professional manner at all times. Each employee must thoroughly understand the need to exercise and display a courteous and polite demeanor when dealing with the public. The Manager, and its approved subcontractors, shall be required to remove from Playland Park any employee whose conduct, demeanor or appearance is objectionable to the Commissioner (which objection is based on Department of Parks, Recreation and Conservation standards and is in compliance with all laws) after consultation with the Manager. The Manager, and its approved subcontractors, shall have no authority to enter into any employment contract which purports to be on behalf of the County, or which otherwise obligates the County in any respect. The Manager, and its approved subcontractors, shall comply with federal and state labor and/or employment laws.

SECTION 12: Equipment and Amusement Park Rides.

A. Equipment.

The Manager shall, as of the Management Commencement Date, assume the use of all equipment which is the property of the County and has not been removed by the County in accordance with Section 1(iv) of this Agreement and a list of such equipment shall be created and attached hereto as **Schedule "B"** prior to the Management Commencement Date. The equipment shall be in good working order as of the Management Commencement Date.

The Manager will procure additional equipment that it deems necessary for the proper execution of its responsibilities as set forth herein and shall supply equipment reasonably deemed necessary for the proper operation of Playland Park after the Management Commencement Date, and make full payment for the same.

"Fixed Equipment" shall be defined as items or fixtures that are permanently or structurally attached to the County's premises. Fixed Equipment shall not include items or fixtures that can be removed without damage or partial destruction to the adjacent area within or upon the County's premises ("Removable Personal Property"). Removable Personal Property will be limited to property acquired by the Manager and will not include any property that belongs to the County. Any Removable Property procured by the Manager in order to fulfill its obligations herein will remain the property of the Manager, except that if the Manager removes such personal property upon the early Termination of this Agreement, it cannot seek recovery of the unamortized cost of such equipment in the event of such early Termination pursuant to Section 23(B) below.

Any Equipment will be replaced as follows:

- (i) The Manager shall be responsible if the Equipment is required to perform the Work as defined herein (e.g.: lawn mower); and

- (ii) The County shall be responsible if the Equipment is structurally necessary for the Manager to perform the Work as defined herein (e.g. HVAC system equipment).

Title to Fixed Equipment purchased by the Manager or an approved subcontractor for use at Playland Park shall vest in the County at such time as the Fixed Equipment is affixed to the County's property at Playland Park. To the extent permitted by law, the Manager, and/or its approved subcontractors, shall have the right, for tax purposes under the Internal Revenue Code, to immediately expense such Fixed Equipment.

B. Amusement Park Rides.

The Manager shall, as of the Management Commencement Date, assume the use of all amusement park rides that are owned or licensed by the County. There are seven (7) historic rides owned by the County, thirty five (35) non-historic rides owned by the County, and five (5) non-historic rides that the County does not own, but licenses from third parties. Such licensed non-historic rides shall be treated in accordance with Section 1(ii) of this Agreement. With respect to County-owned rides (historic and non-historic) the Manager has the discretion to replace any one or more of such rides in accordance with the terms set forth herein. For a list of all amusement park rides see Schedule "F" which is attached hereto and made a part hereof.

The Manager shall maintain, repair and operate the historic rides listed in Schedule "F" in accordance with the following: the National Historic Preservation Act and its applicable regulations, standards and guidelines; current industry standards; operating and maintenance manuals applicable to such historic rides; and, other applicable laws, rules, regulations and requirements, including but not limited to, operating permit conditions promulgated by the New York State Department of Labor.

The Manager shall maintain, repair and operate the non-historic rides, including those listed in Schedule "F" as well as any such rides that Manager brings into the Park whether owned, leased or licensed by the Manager, in accordance with the following: the manufacturer's standards, as set forth in applicable manuals, guidelines and bulletins; any other operating and maintenance manuals applicable to such non-historic rides; current industry standards; and, applicable laws, rules and regulations, including but not limited to, operating permit conditions promulgated by the New York State Department of Labor.

In addition to the rides that Manager has committed to procure in accordance with Schedule "C", the Manager shall procure such additional rides that it deems necessary for the proper execution of its responsibilities as set forth herein after the Management Commencement Date, and make full payment for the same.

"Fixed Amusement Park Rides" shall be defined as amusement park rides that are permanently or structurally attached to the County's premises. Fixed Amusement Park Rides shall not include amusement park rides that can be removed without damage or partial destruction to the adjacent area within or upon the County's premises ("Removable Amusement Park Rides"). Removable Amusement Park Rides will be limited to property acquired by the Manager and will not include any property that belongs to the County. Any Removable Amusement Park Rides procured by the Manager in order to fulfill its obligations herein will remain the property of the Manager, except that if the Manager removes such Removable Amusement Park Rides upon the early Termination of this Agreement, it cannot seek recovery of the unamortized cost of such Removable Amusement Park Rides in the event of such early Termination pursuant to Section 23(B) below.

Title to Fixed Amusement Park Rides purchased by the Manager or an approved subcontractor for use at Playland Park shall vest in the County at such time as the Fixed Amusement Park Rides are

affixed to the County's property at Playland Park. To the extent permitted by law, the Manager, and/or its approved subcontractors, shall have the right, for tax purposes under the Internal Revenue Code, to immediately expense such Fixed Amusement Park Rides.

C. Prohibition against sale or disposal of County property.

It is recognized and understood by the Parties that the Manager does not have the right to sell or dispose of any County property which the Manager has the right to use to carry out the terms of this Agreement. Such property may only be sold or disposed of by the County in accordance with Section 836.31 of the Laws of Westchester County.

SECTION 13: Subject to Appropriations.

The Parties recognize and acknowledge that the obligations of the County to pay amounts or incur any expense or financial liability under this Agreement are subject to annual appropriations by the BOL. ~~Therefore, the payment obligations of the County under this Agreement shall be deemed executory only to the extent of the monies appropriated and available for payment. In the event that the County is obligated to pay amounts to the Manager under this Agreement including amounts due under Section 23B hereof, the County Executive hereby covenants and agrees to:~~

- (i) include in the next annual County budget (operating or capital) that it submits to the BOL after any such amounts due to the Manager under this Agreement shall become due and owing by the County, a request for appropriation (including executive authorization for payment) of funds sufficient to pay all such amounts due and owing from the County under this Agreement and if such appropriation is not made by the BOL, include a request for appropriation for such amounts due and owing to the Manager in each annual County budget thereafter until such amounts have been paid by the County;
- (ii) use its best efforts to cause the BOL to appropriate amounts that will be sufficient to enable the County to pay all such amounts due and owing under this Agreement, including exhausting all available reviews and appeals if such amounts are not appropriated; and
- (iii) if appropriated and available for payment, pay to the Manager all amounts due and owing to the Manager under this Agreement.

The Parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. To the extent any funds due from the County under this Agreement are insufficient in any year, the Manager shall have no obligation to fund such deficiency except as may be specifically set forth herein.

Notwithstanding anything herein to the contrary, the failure of the BOL to appropriate amounts due under this Agreement in any one fiscal year of the County will not result in a termination or expiration of this Agreement and in the event an appropriation is not made by the BOL, the obligations of the County Executive set forth in (i), (ii) and (iii) immediately above shall continue in each subsequent fiscal year until amounts due the Manager under this Agreement are appropriated by the BOL and the Manager is paid in full.

SECTION 14: Inspection.

The Commissioner, or his/her designee, and the County Director of Risk Management, or his/her designee shall be entitled to enter any space assigned to Manager hereunder for the purpose of inspecting, observing and monitoring any aspect of the Manager's operations. Manager shall also permit inspection, observation and monitoring of same by any federal, state, county or municipal officer having jurisdiction, at reasonable times upon reasonable prior notice to Manager. The Manager, at its sole cost and expense, shall promptly, and within a reasonable timeframe, remedy any and all violations issued as a result of such inspection.

SECTION 15: Eminent Domain.

In the event that the space assigned to Manager hereunder, or such a substantial part thereof so as to render impossible the operation of this Agreement, is taken by eminent domain, this Agreement shall terminate on the date upon which title vests in the condemnor and neither party shall have any liability to the other on account of such. If the Agreement is terminated pursuant to this Section 15, the County in accordance with Section 13, will reimburse Manager in accordance with the provisions of Section 23B.

SECTION 16: Condition of Playland Park.

The Manager acknowledges that the County has not made any representation as to the condition of Playland Park or any structures, improvements, equipment (except that equipment transferred from the County to the Manager under Section 12 above shall be in good working order), rides, vehicles, machinery and tools situated at Playland Park and accepts same in "as is" condition. The Manager further acknowledges, that as of the Management Commencement Date, that it has inspected Playland Park and the structures, improvements, equipment, rides, vehicles, machinery and tools and that it relies solely upon such inspection. Nothing contained in this section will affect either Parties' responsibility for maintenance and repairs outlined in this Agreement.

SECTION 17: Bankruptcy.

If at any time during the Term of this Agreement, any petition in bankruptcy shall be filed by or against Manager and if filed against the Manager, remains uncontested by the Manager or if Manager shall be adjudicated as bankrupt; or if a Receiver shall be appointed to take possession of Manager's property; or if Manager shall make any assignment for the benefit of creditors, this Agreement shall, at the option of the Board of Acquisition & Contract immediately cease, terminate or expire. Nothing hereunder shall relieve Manager from any liability incurred under this Agreement except as same may be discharged in bankruptcy.

SECTION 18: Audit Provisions.

A. Upon request by the County, no more than once a year and not to extend beyond the prior year, Manager shall complete annual financial reviews at its own cost and expense. The agreements with the approved subcontractors of Playland Park shall include the right to conduct annual financial reviews of the approved subcontractors' operations at Playland Park in accordance with generally accepted auditing standards, consistently applied. Without limiting the County's rights below, copies of such reviews shall be promptly submitted to the County Commissioner of Finance and Budget Director when issued. In addition, the County Commissioner of Finance, or his/her designee, may, at his/her option and at the County's sole cost and expense, annually conduct its own financial review of such books and records of the Manager for the prior calendar year. The County Commissioner of Finance reserves the

right to conduct such annual financial review up to one year after the expiration or termination of this Agreement.

B. The Commissioner also reserves the right to annually audit the Manager's, and its approved subcontractors', performance under this Agreement at the County's sole cost and expense. Such audit may include requests for documentation or other information which the Commissioner may deem necessary and appropriate to verify the information provided by the Manager under the terms of this Agreement. The County may also make site visits to the location(s) where the services to be provided under this Agreement are performed, upon reasonable prior written notice to Manager, in order to review Manager's or approved subcontractor's records and to observe the performance of services, and/or to conduct interviews of staff and patrons, where appropriate and not otherwise prohibited by law. In exercising this right to audit performance hereunder, the Commissioner may not intrude upon or disrupt in any manner the business and activities being conducted by the Manager or an approved subcontractor and any dissatisfaction on the part of the Commissioner observed on site at Playland Park shall be conveyed to the Manager or an approved subcontractor in private and out of earshot of any member of the public or any employee working in the Park. If the Commissioner's dissatisfaction warrants it, any verbal discussion shall be followed up by a written report delivered to the Manager or an approved subcontractor.

SECTION 19: Property Insurance, Damage or Destruction.

To safeguard the interests and property of the County, the County in its own name as the insured, will procure, maintain and pay for, throughout the Term of this Agreement, all risk insurance policies covering County-owned structures, County-owned boiler and machinery, County-owned contents, Fixed Equipment, and improvements at Playland Park that the County owns or obtains title to pursuant to this Agreement. Such policies shall cover one hundred percent (100%) of the insurable replacement value thereof, reserving the right to increase such coverage as and when the replacement values increase. Insurance proceeds, if any, shall be paid to the County.

After the Management Commencement Date, the Manager shall provide the Director of Risk Management with a list, to be updated as necessary during the Term of this Agreement, of any and all improvements upon their completion and any and all Fixed Equipment upon its attachment to the County's property.

The County shall not be responsible to insure non-County property that the Manager and/or its approved subcontractors bring into Playland Park, including but not limited to, Removable Personal Property which the Manager and/or its approved subcontractors shall identify in writing to the Director of Risk Management. It is recognized and understood by the Parties that the Manager and/or its approved subcontractors shall at their sole cost and expense procure insurance for all of their Removable Personal Property and provide evidence of same to the County's Director of Risk Management and that the insurance be for one hundred percent (100%) of the insurable replacement value thereof. To the extent that any loss is recouped by actual payment of the proceeds of any insurance to the Manager and/or its approved subcontractors, all such proceeds must first be used to replace such Removable Personal Property.

In the event any Fixed Equipment installed or improvements made by the Manager at Playland Park, insurable or uninsurable, are damaged or destroyed (except damage or destruction caused by the Manager as set forth below) to the extent that they are unusable by the Manager for the purposes for which they were used prior to such damage, or same are destroyed, the County shall be required to repair, replace or reconstruct such Fixed Equipment and improvements substantially as they were immediately

prior to such casualty. The funds for such repair, replacement or reconstruction shall be paid from insurance proceeds, to the extent available.

In the event any portion of Playland Park is damaged or destroyed by fire or other causes, by reason of any act or omission of the Manager, and/or its approved subcontractors, their respective officers, employees or agents, which constitutes negligence or willful misconduct, this Agreement shall continue in full force and effect, and the Manager and/or its approved subcontractors, shall be responsible to pay for the cost to repair or rebuild Playland Park or any portion thereof, so damaged or destroyed, and unless otherwise reimbursable by insurance hereunder, same shall be at their own cost and expense. Manager and/or its approved subcontractors shall be responsible for any deductible under these circumstances. The failure of the Manager and/or its approved subcontractors to pay for the cost to repair or rebuild within a reasonable period of time, shall be construed as a material breach of this Agreement.

SECTION 20: Standard Insurance and Indemnity.

A. The Manager agrees to procure and maintain insurance naming the County as additional insured, as provided and described in **Schedule "E"**, which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in **Schedule "E"**, the Manager agrees:

- (i) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligent acts or omissions or willful misconduct of the County, its officers, elected officials, employees, contractors or agents, the Manager shall indemnify and hold harmless the County, its officers, elected officials, employees, contractors and agents, from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorney's fees or loss arising out of the negligent acts or omissions or the reckless or willful misconduct of the Manager, its officers, employees, contractors or agents; and
- (ii) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action relating to this Agreement and arising out of the negligent acts or omissions or willful misconduct of the Manager, its officers, employees, contractors or agents and to bear all other reasonable costs and expenses related thereto.

B. The County shall indemnify and hold the Manager harmless for any act/occurrence prior to the Agreement Commencement Date, and the County shall defend any action arising out of said prior act/occurrence and be responsible for all costs and expenses relating thereto, including but not limited to Manager's reasonable attorney fees should it become necessary for the Manager to retain counsel.

SECTION 21: Events of Default.

Any of the following shall be an event of default, the continuation of which beyond the expiration of any time permitted herein to cure shall thereupon be deemed an "Event of Default" under this Agreement:

A. With respect to the Manager:

- (i) the Manager shall fail to perform or observe any material obligation of the Manager under any provision of this Agreement, and such failure shall continue and shall not be remedied within thirty (30) days after notice from the Commissioner specifying the nature of the default. Notwithstanding the immediately preceding sentence, it shall not

be an Event of Default if, for causes beyond the reasonable control of the Manager, such failure cannot be cured within thirty (30) days, as long as the Manager immediately takes steps necessary to remedy same and duly institutes and diligently prosecutes same to completion. For tasks in this Agreement which requires performance within less than thirty (30) days, e.g., filing an accident report within 24 hours, then the Manager shall only have an equivalent time period from the time of notice within which to cure; or

- (ii) the Manager shall fail to procure and maintain the insurance policies required by this Agreement and such failure shall continue for fifteen (15) days after notice from the County Director of Risk Management specifying the same; provided, however, that should the Manager fail to procure and maintain Commercial General Liability insurance for the operation of Playland Park after the Management Commencement Date, as required by Section 19 and **Schedule "E"**, then this Agreement shall terminate immediately, there shall be no opportunity to cure and the provisions of Section 22 below shall not apply; or
- (iii) the Manager abandons Playland Park after the Management Commencement Date, or ceases to manage Playland Park after the Management Commencement Date; or
- (iv) any or all of the Manager's interest in this Agreement or Playland Park or any part thereof shall be taken upon execution or by other process of law directed against the Manager, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against the Manager, and said attachment shall not be bonded, discharged or disposed of within ninety (90) days after levy thereof.

B. With respect to the County:

If the County shall fail to perform or observe any material obligation of the County under any provision of this Agreement, and such failure shall continue and shall not be remedied within thirty (30) days after notice from the Manager specifying the nature of the default.

Notwithstanding the immediately preceding sentence, it shall not be an Event of Default if, for causes beyond the reasonable control of the County, such failure cannot be cured within thirty (30) days, as long as the County immediately takes steps necessary to remedy same and duly institutes and diligently prosecutes same to completion. For tasks in this Agreement which requires performance by the County within less than thirty (30) days, the County shall only have an equivalent time period from the time of notice within which to cure.

SECTION 22: Remedies for Default.

A. After a material Event of Default on the part of the Manager, the Commissioner shall have the right to elect to terminate this Agreement by notice to the Manager as provided in Section 23 below, subject to all necessary legal approvals.

B. After a material Event of Default on the part of the County, the Manager shall have the right to elect to terminate this Agreement by notice to the Commissioner as provided in Section 23 below.

C. The failure of either the County or the Manager to seek redress for any Event of Default, or to insist upon the strict performance of any provision of this Agreement, shall not prevent a subsequent act, which would have originally constituted an Event of Default from having all the force and effect of an original Event of Default.

SECTION 23: Termination.

A. If the Commissioner elects to terminate this Agreement pursuant to Section 22 above, the Manager shall be given a thirty (30) day written notice of the election to so terminate, specifying in such notice a termination date and on such date this Agreement shall terminate in all respects, provided that (except as otherwise provided in this Agreement) no party hereto shall be relieved of any obligation or liability which accrued prior to such date. After the receipt of such notice and on or before such termination date, unless the Event of Default (if applicable) giving rise to such termination notice has been theretofore cured, the Manager shall vacate Playland Park in accordance with the provisions of this Agreement.

B. If the Manager elects to terminate this Agreement pursuant to Section 22 above, it shall give the Commissioner a thirty (30) day written notice of its election so to terminate, specifying in such notice a termination date (except as otherwise provided in this Agreement), and on such date this Agreement shall terminate in all respects, provided that (except as otherwise provided in this Agreement) no party hereto shall be relieved of any obligation or liability which accrued prior to such date. After the giving of such notice and on or before such termination date, unless the Event of Default (if applicable) giving rise to such termination notice has been theretofore cured, the Manager shall vacate Playland Park in accordance with the provisions of this Agreement.

The date upon which either the Commissioner pursuant to subsection A above, or the Manager pursuant to subsection B above, may terminate this Agreement shall be called the "Termination Date".

C. Unless earlier terminated upon an Event of Default, this Agreement shall expire on the Expiration Date, and on or before such day the Manager shall vacate Playland Park, unless a new agreement for the purposes herein is entered into by the Parties.

D. Upon termination or expiration of this Agreement, the Manager shall assign to the County, at the County's option, any contracts with third parties that shall then be in effect.

E. Upon termination or expiration of this Agreement, all rights of the Manager under this Agreement shall revert to the County or its designee, and the County and the Manager shall have no further responsibility or liability under or with respect to this Agreement, except as provided in section 23B below and except that within thirty (30) days of the Termination Date or of the Expiration Date, as the case may be, the Manager shall deliver to the Commissioner an accounting for the year prior to the Termination Date or Expiration Date and Manager shall be obligated to pay the County any sums due and owing under this Agreement as a result of that accounting. Such accounting shall be performed by a certified public accountant licensed in New York State in accordance with generally accepted accounting principles.

SECTION 23A: Termination Due to Unexpected Risk Event.

The Manager shall have the right to terminate this Agreement if:

- (i) the County fails to appropriate sufficient funds to carry out its responsibilities under this Agreement which in turn materially impacts the ability of the Manager to carry out its duties under this Agreement; or
- (ii) in the event that damage to the property, buildings and equipment of Playland Park due to Force Majeure is so severe that the material revenue generating operations of the Park cannot be resumed within a period of: three (3) months when the Playland Park is "in-

season:" and six (6) months when Playland Park is "off-season" as those terms are defined in Section 2 C above; or

- (iii) a lawsuit or administrative proceeding brought by a third party successfully invalidates this Agreement or as a result of a decision in a lawsuit or an administrative proceeding brought by a third party, the rights of the Manager under this Agreement are modified in whole or in part and as a result of such modification the economic value to the Manager of this Agreement has been substantially reduced; or
- (iv) in the event a law is adopted by the BOL or a county regulation is adopted or modified which specifically relates to Rye Playland the result of which substantially reduces the economic value to the manager of this Agreement (each an "Unexpected Risk Event").

SECTION 23B: Recovery of Manager's Investment.

It is recognized and understood by the Parties that the Manager is making a large investment in Playland Park. If the Agreement is terminated due to a default by the County as defined in Section 21 B above, or by the Manager due to an Unexpected Risk Event as set forth in Section 23A above, as a result of a taking under eminent domain pursuant to Section 15, or by the County pursuant to Section 3 G above, then the County, consistent with Section 13, shall reimburse the Manager in accordance with the following schedule: (i) if the Agreement is terminated within the first twenty-four (24) months from the Management Commencement Date, the County shall reimburse the Manager for the entire amount of the Manager's Investment actually made by the date of termination; and (ii) subsequent to the first twenty-four (24) months from the Management Commencement Date, the County shall reimburse the Manager for the unamortized portion of the Manager's Investment actually made by the date of termination as determined on a straight-line depreciation basis over the term remaining after the first twenty-four (24) months of this Agreement, net of any insurance proceeds that the Manager is entitled to recover.

SECTION 24: Non-Discrimination.

The Manager expressly agrees that neither it nor any approved subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the Term of this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Manager acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

SECTION 25: Compliance with Laws.

A. The Manager, and all approved subcontractors, shall comply, at their own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, orders and ordinances and other legal requirements ("Law or Laws").

B. Subject to any necessary legal approvals, the Manager may appeal or contest the validity or application of any Law upon the following conditions:

- (i) the Manager shall appeal or contest the same in good faith and by appropriate proceedings;

- (ii) such appeal or contest (or any resulting delay in compliance with any Law) shall not subject the County to any criminal or civil sanction, fine or penalty, or to any other financial obligation or liability, unless the Manager furnishes the County with a written undertaking, in form acceptable to the County Attorney in his/her reasonable discretion, to indemnify the County against the same; and
- (iii) the Manager from time to time shall advise the County Attorney, upon written request of the County Attorney, as to the status of any such appeal or contest.

SECTION 26: MBE/WBE.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as **Schedule "G"** is a questionnaire entitled "Business Enterprises Owned and Controlled by Persons of Color or Women" which the Manager agrees to complete.

SECTION 27: Records and Intellectual Property.

All records or recorded data of any kind compiled by the Manager in completing the Work described in this Agreement and relating specifically and exclusively to the Work, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Manager may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County, subject to any third party restrictions.

Notwithstanding the foregoing, all deliverables that contain or constitute intellectual property (e.g. advertising, or signs) created under this Agreement by the Manager specifically and exclusively relating to the Work are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Manager hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Manager agrees to assist the County, if required, in perfecting these rights, at the County's sole cost and expense. The Manager shall provide the Commissioner with at least one copy of each deliverable.

Notwithstanding the foregoing, any and all intellectual property, including but not limited to the Manager trademarks, copyrights and protected property related to the Manager's general company operations shall remain the property of the Manager.

The Manager agrees to obtain from any approved subcontractor or other third party engaged by the Manager to deliver Work product containing intellectual property, a representation and warranty to defend, indemnify and hold harmless the County and the Manager for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Manager agrees to require approved subcontractor or other third party to provide documentation that will enable the County's continued use of the deliverable, or to modify or replace it. If the Commissioner determines that none of these alternatives is reasonably available, the deliverable shall be returned, to the extent the deliverable can be returned.

The Manager shall not claim ownership to or use of any County intellectual property such as trademarks, copyrights and other such protected property without written permission from the County.

The Manager shall not use any County intellectual property such as trademarks, copyrights and other such projected property except to run its operations in accordance with this Agreement.

SECTION 28: Independent Contractors.

The Manager and the County agree that the Manager, and its approved subcontractors, and their respective officers, employees, agents, and any third parties acting on their behalf, are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Manager covenants and agrees that neither the Manager, nor its approved subcontractors, and their respective officers, employees, agents, and any third parties acting on their behalf, will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

SECTION 29: Criminal Background Disclosure.

The Manager agrees to complete the Criminal Background Disclosure as required by Executive Order No. 1-2008 and attached hereto as **Schedule "H"**, which is hereby incorporated by reference.

SECTION 30: MacBride.

Pursuant to Act No. 56-1999, as codified in Chapter 310 of the Laws of Westchester County, no County procuring officer may award or recommend for award any contract not subject to competitive bidding to a party that does not execute a certification in substantially the form attached hereto and forming a part hereof as **Schedule "I"**. Therefore, the Manager agrees, as part of this Agreement, to complete the form attached hereto as **Schedule "I"**.

SECTION 31: Required Disclosure.

Attached hereto and forming a part hereof as **Schedule "J"** is a questionnaire entitled "Required Disclosure of Relationships to County." The Manager agrees to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the Term of this Agreement, Manager agrees to notify Commissioner in writing within ten (10) business days of such event. The Manager shall also have each approved subcontractor complete this questionnaire and shall advise each approved subcontractor of the duty to report any changes to the information contained therein to the Manager within ten (10) business days of such event and such information shall be forwarded by the Manager to the Commissioner.

SECTION 32: No Waiver.

Failure of either party hereto to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by either party of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver under such circumstances by a party of any provision hereof shall be implied.

SECTION 33: No Lease.

Neither Playland Park, nor any land, building, space, improvement or equipment is being sold or leased hereunder, nor is any interest in real property being granted, or any possessory right with respect to the Playland Park or any part thereof being granted, to the Manager and/or its approved subcontractors; but the Manager shall manage and operate Playland Park at all times on behalf of the County. Under no circumstances shall this Agreement be construed as granting the Manager, or its approved subcontractors, any real property rights, nor any title or interest of any kind or character in, on, or about Playland Park.

SECTION 34: Notices.

All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), or email (with a copy of the notice also sent by overnight, registered or certified mail postage pre-paid) as set forth below or to such other addresses as the respective Parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

County Executive
County of Westchester
Michaelian Office Building, 9th Floor
148 Martine Avenue
White Plains, NY 10601

With a copies to:

Commissioner
Westchester County Department of Parks, Recreation & Conservation
450 Saw Mill River Road
Ardsley, NY 10502

Commissioner
Westchester County Department of Public Works and Transportation
Michaelian Office Building, Room 518
148 Martine Avenue
White Plains, New York 10601

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Manager:

Standard Amusements, LLC
767 Fifth Avenue
New York, New York 10153

With copies to:

Winston & Strawn LLP
200 Park Avenue
New York NY 10166
Attn.: James S. Normile, Esq. and William F. Dudine, Esq.

SECTION 35: Definition of Commissioner.

Notwithstanding anything contained herein to the contrary, it is agreed by the Parties that if it were to be concluded or determined that it has been and now is inappropriate for the Department of Parks, Recreation and Conservation and its Commissioner to manage and operate Playland Park based upon the definitional provisions in Chapter 134 and 249 of the Laws of Westchester County ("LWC"), then the day to day management and operations of Playland Park would fall to the DPW&T Commissioner who is "in charge of the preservation and maintenance of all buildings and grounds owned by the county for county purposes, except the lands and buildings under the jurisdiction of the Department of Parks, Recreation and Conservation..." (LWC Section 241.261) or, alternatively, the day to day management and operations of Playland Park would fall to the County Executive pursuant to Chapter 110 of the LWC which provides among other things, that the County Executive "shall be the chief executive and administrative officer of the county government. It shall be the duty of the County Executive: (1) to supervise, direct and control, subject to law and the provisions of this act and local laws, the administrative services and departments of the county." (LWC Section 110.11).

SECTION 36: Entire Agreement.

This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

SECTION 37: No Third Party Rights.

Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

SECTION 38: Conflict of Interest.

The Manager shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the Commissioner in the event of a conflict of interest. The Manager shall also use all reasonable means to avoid any appearance of impropriety.

SECTION 39: Force Majeure

Neither the County nor the Manager, as the case may be, shall be deemed in breach hereof if it is prevented from or materially delayed in performing any of the obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any other similar circumstances not within its reasonable control.

SECTION 40: Authority.

The County Board of Legislators has duly authorized this Agreement by Act No. 2015-____ approved by the Westchester County Board of Legislators at a meeting duly held on ____ - day of _____, 2015.

The County Board of Acquisition and Contract has duly authorized this Agreement by Resolution approved at its meeting held on the _____ day of _____, 2015.

SECTION 41: Enforceability.

This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the Parties hereby agree that for any cause of action arising out of this Agreement, any such action shall be brought in the County of Westchester, New York.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

SECTION 42: County Attorney Opinion.

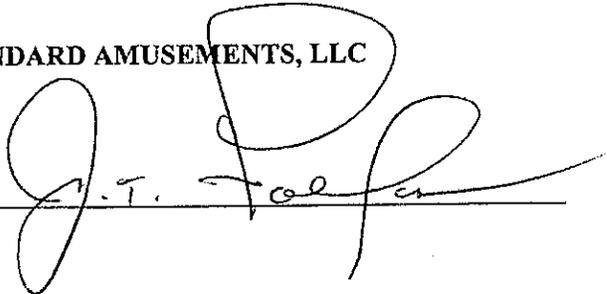
It is recognized and understood by the Parties that, in addition to all other rights of termination set forth herein, the Manager has the option to terminate this Agreement if a separate opinion from the Westchester County Attorney addressed to the Manager is not given stating that when this Agreement has been duly authorized by the BOL and the Westchester County Board of Acquisition and Contract and has been fully executed by the Parties, that it will be a valid, binding and enforceable agreement. Said form of opinion shall be reasonably acceptable to the Manager and shall be delivered simultaneously with the execution of this Agreement by the parties hereto. In the event said opinion is not delivered and the Manager terminates this Agreement, then all amounts held in escrow as described in Section 1 shall be paid to the Manager.

IN WITNESS WHEREOF, The County of Westchester and the Manager have caused this Agreement to be executed on the day and year first above written.

THE COUNTY OF WESTCHESTER

By: _____

STANDARD AMUSEMENTS, LLC

By:  _____

Approved by the Westchester County Board of Legislators at a meeting duly held on ____ - day of _____, 2015 by Act No. 2015-_____.

Approved by the Board of Acquisition and Contract of the County of Westchester on the __ day of _____, 2015.

Approved as to form
and manner of execution

Associate County Attorney
County of Westchester

s/a/PRC/Playland RFP/ SA Management Agreement 4.13.15F.docx

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF Westchester) ss.:

On the 13th day of April in the year 2015 before me, the undersigned, personally appeared Jacob Falgas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies) as member, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

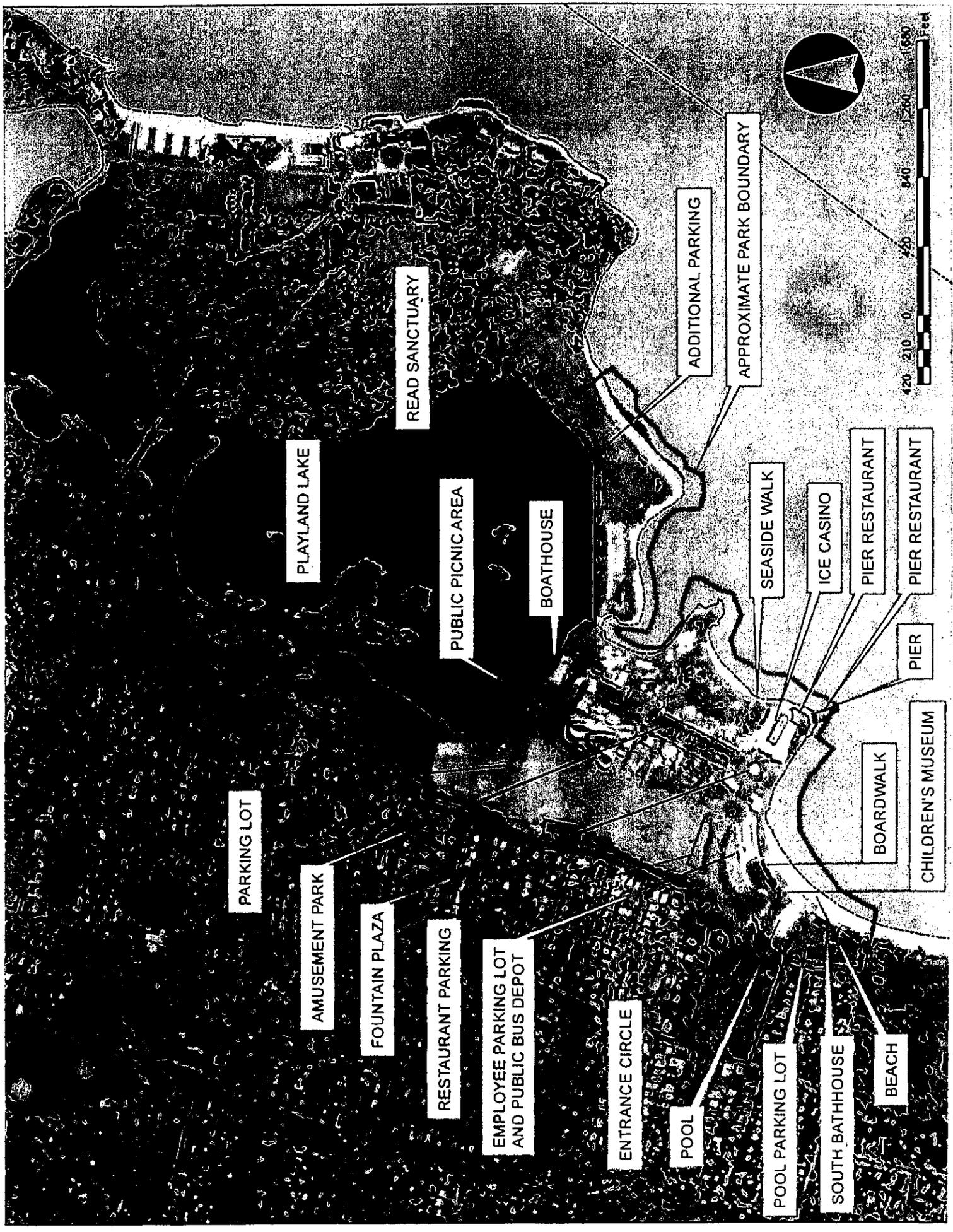
Date: 4/13/15


Notary Public

TAMI S. ALTSCHILLER
Notary Public, State of New York
OZAL No 31 4889131
Qualified In New York County of Westchester
Commission Expires December 2, 2017

SCHEDULE "A"
DRAWING OF PLAYLAND PARK

To be attached



PARKING LOT

AMUSEMENT PARK

FOUNTAIN PLAZA

RESTAURANT PARKING

EMPLOYEE PARKING LOT
AND PUBLIC BUS DEPOT

ENTRANCE CIRCLE

POOL

POOL PARKING LOT

SOUTH BATHHOUSE

BEACH

PLAYLAND LAKE

READ SANCTUARY

PUBLIC PICNIC AREA

BOATHOUSE

ADDITIONAL PARKING

APPROXIMATE PARK BOUNDARY

PIER RESTAURANT

PIER RESTAURANT

PIER

ICE CASINO

SEASIDE WALK

BOARDWALK

CHILDREN'S MUSEUM



SCHEDULE "A-1"
SURVEY OF PLAYLAND PARK

To be attached

SCHEDULE "B"

To be attached at conclusion of Co-Management Period

List of County owned items of personal property and equipment
located at Playland Park to be transferred to the Manager

SCHEDULE "C"

	3-Year Capital Plan (X1,000)			Total
	2016	2017	2018	
Painting	375	100	100	575
Wood Replacement	350	100	100	550
Pavement Work	100	50	50	200
Study Parking Lot/Entrance Reconfiguration	-	400	-	400
Landscaping	200	100	100	400
Signage	200	25	25	250
Food Stands/Equipment	2,000	100	100	2,200
Lawn and Fields	4,000	-	-	4,000
Bathhouse Renovation	-	500	500	1,000
Picnic Area	150	50	25	225
Pool/Fountain Improvements	250	225	30	505
Restoration of Historic Rides	400	400	500	1,300
Interactive Children's Water Elements	2,200	50	50	2,300
Double Aqua Loop Slide	-	1,500	25	1,525
Unicoaster	-	1,200	-	1,200
Other New Rides/Attractions	-	-	1,000	1,000
3-Point Challenge Basketball Game	75	-	-	75
Contingency	500	500	250	1,250
Total Capital and Maintenance	10,800	5,300	2,855	18,955
Working Capital	3,795	-	-	3,795
Total	14,595	5,300	2,855	22,750

SCHEDULE "D"

List of Key Personnel

Jacob T. "Jack" Falfas

SCHEDULE "E"

INSURANCE PROVISIONS
(Contractor)

1. Prior to commencing work, the Contractor shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Contractor and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Contractor shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Contractor shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 (9/07) or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: www.wcb.state.ny.us (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

If the employer is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$10,000,000* for bodily injury and \$1,000,000 for property damage or a combined single limit of \$10,000,000 (c.s.1), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-Contractor.
- (iv) Products and Completed Operations
- (v) Liquor Liability
- (vi) Food Products Liability

*Any combination of primary and/or umbrella/excess coverage shall satisfy the 10,00,00,00 limit of liability as set forth herein.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

(e) Owners Protective Liability Policy naming the County as insured, with a minimum limit of liability per occurrence of \$3,000,000. A copy of which shall be delivered to the County prior to the commencement of any capital improvements.

(f) For the construction of any capital improvement or the alteration, addition or improvement of any existing building encompassing any structural change Builder All Risk Insurance in the amount of one hundred (100%) percent of the estimated completion cost of the project shall be required. This policy shall be written on a completed value form. Any proceeds from the Builder All Risk Insurance policy must be used to complete the insured capital improvement.

3. All policies of the Contractor shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor.

SCHEDULE "F"
LIST OF AMUSEMENT PARK RIDES

7 Historic Rides (County-owned)

Kiddyland Rides:

Kiddy Carousel
Kiddy Coaster

Major Rides:

Derby Racer
Dragon Coaster
Grand Carousel
The Whip
Ye Old Mill

35 Non-Historic Rides (County-owned)

Kiddyland Rides:

Antique Cars
Boat Ride
Convoy
Crazy Submarine
Flying Dragons
Fun Slide
Himalaya
Jolly Caterpillar
Jump 'N' Bean
Jungle Jammin'
Kiddy Whip
Mini Scrambler
Motorcycle Jump
Playland Express
Red Baron
Slime Buckets
Sun & Moon
Swing Around
Up, Up and Away

Major Rides:

Bumper Cars
Catch-A-Wave
Crazy Mouse
Double Shot
Family Flyer
Go-Karts
Gondola Wheel
House of Mirrors
Kite Flyer
Log Flume
Music Express
Playland Plunge

Playland Yo-Yo
Sky Skater
Superflight
Wipeout

5 Non-Historic (County-Concession License)

Major Rides:

Flying Witch
Sky Flyer
Starship 2000
Thunderbolt
Zombie Castle

SCHEDULE "G"

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES
OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (*please check off below all that apply*)

- _____ Black persons having origins in any of the Black African racial groups
- _____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race
- _____ Native American or Alaskan native persons having origins in any of the original peoples of North America
- _____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

Name and Title of person completing questionnaire: _____

Signature: _____

Notary Public

Date

SCHEDULE "H"

CRIMINAL BACKGROUND DISCLOSURE INSTRUCTIONS

Pursuant to Executive Order 1-2008, the County is required to maintain a record of criminal background disclosure from all persons providing work or services in connection with any County contract, including leases of County-owned real property and licenses:

- a.) If any of the persons providing work or services to the County in relation to a County contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County contract; and
- b.) If any of the persons providing work or services to the County in relation to a County contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure ("Persons Subject to Disclosure") include the following:

- a.) Consultants, Contractors, Licensees, Lessees of County-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, subcontractors, Sublessess, or Sublicensees who are providing services to the County, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

Under Executive Order 1-2008, it is the duty of every County Consultant, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.¹ Accordingly, you are required to complete the attached Criminal Background Disclosure Form and Certification.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from the disclosure requirements of Executive Order 1-2008. If translation services are required by the Consultant, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Consultant, Contractor, Licensee, or Lessee.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal charge(s) will not automatically result in a denial of a person's right to work on a County contract, right to be on County property, or license, but may, if the County determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any part of his/her conviction history or any pending criminal charge(s) for any reason, he/she may be prohibited from working or being on County property without any risk assessment. If it is later determined that a Person Subject to

¹ For these disclosures, a "crime" or "pending criminal charge" includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.

Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a County contract, be on County property, or license may be terminated at any time.

Please further note that, pursuant to Executive Order 1-2008, and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County has the right to bar a Person Subject to Disclosure from providing work or services to the County or from being on County property if any such person has:

- a.) A conviction of a crime(s);
- b.) A pending criminal proceeding for a crime(s); or
- c.) Refused to answer questions concerning his/her criminal background

Please finally note that any failure by a County Consultant, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1-2008 may be considered by the County to be a material breach and shall be grounds for immediate termination by the County of the related County contract.

Exemptions

Executive Order 1-2008 exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a County contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify the Procuring Officer². The Procuring Officer will then determine whether the Person(s) Subject to Disclosure are actually exempt, and provide written notification of his/her determination. If the Procuring Officer determines that a Person Subject to Disclosure is not exempt, the Procuring Officer will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

Subconsultants, Subcontractors, Sublessees, or Sublicensees

Under Executive Order 1-2008, it is your duty to ensure that any and all approved subconsultants, subcontractors, sublessees, or sublicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subconsultant, subcontractor, sublessees, or sublicensees can be approved to perform work on a contract.

New Persons Subject to Disclosure

² Procuring Officer" shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(a) of the Laws of Westchester County, the Purchasing Agent.

Under Executive Order 1-2008, you have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the County with any other updates that may be necessary to comply with the disclosures required by Executive Order 1-2008.

PLEASE CONTINUE TO THE

Criminal Background Disclosure Form and Certification

BEGINNING ON THE NEXT PAGE

CRIMINAL BACKGROUND DISCLOSURE
FORM AND CERTIFICATION

If this form is being completed by a subconsultant, subcontractor, sublessee, or sublicensee, please consider all references in this form to "consultant, contractor, lessee, or licensee" to mean "subconsultant, subcontractor, sublessee, or sublicensee" and check here: _____

I, _____, certify that I am a principal or a _____ (Name of Person Signing Below)

representative of the Consultant, Contractor, Lessee, or Licensee and I am authorized to complete and execute this Criminal Background Disclosure Form and Certification. I certify that I have asked each Person Subject to Disclosure the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**

- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer **either** of the questions above are:

1. _____
2. _____
3. _____
4. _____
5. _____

(If more space is needed, please attach separate pages labeled "REFUSED to Answer - Continued.")

I certify that the names and titles of Persons Subject to Disclosure who answered "Yes" to **either** of the questions above are:

1. _____
2. _____
3. _____
4. _____

5. _____

(If more space is needed, please attach separate pages labeled "YES Answers - Continued.")

Each Person Subject to Disclosure listed above who has either been convicted of a crime(s) and/or is subject to a pending criminal charge(s) must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has been convicted of a crime(s) must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

A Person Subject to Disclosure who is subject to a pending criminal charge(s) must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By my signature below, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto County property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into County property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.

It is further understood and agreed that the consultant, contractor, lessee, or licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the County as necessary to comply with the requirements of Executive Order 1-2008.

Name:

Title:

Date:

Notary Public

Date

SCHEDULE "P"

CERTIFICATION REGARDING BUSINESS DEALINGS
WITH NORTHERN IRELAND

A. The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.

B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including Managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.

D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Contractor is in violation of paragraph "A," the County shall review such information and give the Contractor opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Contractor in default,

and/or terminate this Agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the County the difference between the contract price for the uncompleted portion of this Agreement and the cost to the County of completing performance of this Agreement either by itself or by engaging another contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Contractor plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

Agreed:

Name of Contractor _____

By: (Authorized Representative) _____

Title: _____ Date _____

SCHEDULE "J"

REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

A potential County contractor must complete this form as part of the proposed County contract.

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

3.) Do any County officers or employees have an **interest** in the Contractor or in any approved subcontractor that will be used for this contract?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

Name: _____

Title: _____

Date: _____