

46143

DATE: April 15, 2015

TO: Honorable Members of the Board of Acquisition & Contract

FROM: Robert P. Astorino
County Executive

Kathleen M. O'Connor
Commissioner, Department of Parks, Recreation and Conservation

RE: Resolution authorizing the County of Westchester (the "County") to enter into an escrow agreement with Standard Amusements, LLC ("Standard") and the Giachetti Law Firm ("Giachetti"), pursuant to which Giachetti will act as an escrow agent on behalf of the County and Standard with respect to certain provisions set forth in a proposed management agreement between the County and Standard for the management of Playland Park in Rye.

As your Honorable Board is aware legislation has been submitted to the Board of Legislators (the "BOL") seeking approval of an agreement between the County and Standard pursuant to which Standard would manage, operate, repair, maintain and make improvements to Playland (the "Playland Management Agreement"). One of the requirements of the Playland Management Agreement is for Standard to deposit certain funds in escrow pending approval of the Playland Management Agreement by the BOL and your Honorable Board. In order to comply with this requirement, the County and Standard wish to enter into a separate escrow agreement to engage an escrow agent to establish an escrow account and execute escrow instructions on their behalf. Accordingly, authority is hereby requested for the County to enter into a separate escrow agreement with Standard and Giachetti (the "Escrow Agreement") pursuant to which Giachetti will serve as an escrow agent, establish an escrow account and execute escrow instructions on behalf of the County and Standard with respect to the deposit of certain funds as required under proposed Playland Management Agreement. In consideration for escrow services rendered, Standard has agreed to compensate Giachetti an amount not-to-exceed \$2,000.00.

Pursuant to the terms of the Escrow Agreement, Standard has agreed to place \$250,000 in escrow upon execution of the Escrow Agreement. If the BOL approves the legislation authorizing the Playland Management Agreement not later than sixty (60) days after the date of submission, then Standard will place an additional \$250,000 into escrow, for a total amount of \$500,000 which Giachetti, as escrow agent, will pay to the County upon full execution of the Playland Management Agreement. If the BOL does not approve the Playland Management Agreement by the end of the

sixty (60) day period, then Standard will have the right to terminate its offer and take back all but \$50,000 of the \$250,000 being held in escrow. If the BOL approves the Playland Management Agreement and your Honorable Board does not, then the entire \$250,000 will be returned to Standard.

It should be noted that the Escrow Agreement will contain a provision that would require the County and Standard jointly and severally (with right of contribution) to defend (by attorneys selected by Giachetti), indemnify and hold Giachetti harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Giachetti's duties under the Escrow Agreement, except with respect to actions or omissions taken or suffered by Giachetti in bad faith or in willful disregard of this contract or involving gross negligence on the part of Giachetti.

The Escrow Agreement will also contain a provision whereby both the County and Standard will agree that any other amounts due Giachetti under the Escrow Agreement (including joint and several obligations of the County and Standard) shall be shared equally by the County and Standard.

For the foregoing reasons, I respectfully request the approval of the annexed proposed Resolution.

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APPROVED BOARD OF ACQUISITION & CONTRACTS 04/16/2019 DOMINIQUE NEIRA, SECRETARY

RESOLUTION

Upon a communication from the County Executive and the Commissioner of Parks, Recreation and Conservation, be it hereby

RESOLVED, that the County of Westchester (the "County") is hereby authorized to enter into an escrow agreement with Standard Amusements, LLC ("Standard") and the Giachetti Law Firm ("Giachetti"), pursuant to which Giachetti will act as an escrow agent, establish an escrow account and execute escrow instructions on behalf of the County and Standard with respect to certain provisions set forth in a proposed management agreement between the County and Standard for the management of Playland Park in Rye (the "Escrow Agreement"); and be it further

RESOLVED, that in consideration for escrow services rendered, Standard has agreed to pay Giachetti an amount not-to-exceed \$2,000.00; and be it further

RESOLVED, that the Escrow Agreement will contain a provision that would require the County and Standard jointly and severally (with right of contribution) to defend (by attorneys selected by Giachetti), indemnify and hold Giachetti harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Giachetti's duties under the Escrow Agreement, except with respect to actions or omissions taken or suffered by Giachetti in bad faith or in willful disregard of this contract or involving gross negligence on the part of Giachetti; and be it further.

RESOLVED, that the Escrow Agreement will also contain a provision whereby both the County and Standard will agree that any other amounts due Giachetti under the Escrow Agreement (including joint and several obligations of the County and Standard) shall be shared equally by the County and Standard; and be it further

RESOLVED, that the County Executive or his authorized designee is hereby empowered to execute any and all instruments and take such other actions as may be reasonably necessary to effectuate the purposes hereof.

Account to be Charged/Credited

	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars

Budget Funding Year(s): _____ Start Date: _____ End Date: _____
 (must match resolution)

Funding Source Tax Dollars _____
 State Aid _____
 \$ _____ Federal Aid _____
 (must match resolution) Other _____

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