

**52986**

October 20, 2016

TO: Board of Acquisition and Contract

FROM: Kathleen M. O'Connor, Commissioner  
Parks, Recreation and Conservation

RE: AUTHORITY TO AMEND A RESOLUTION THAT AUTHORIZED ENTERING INTO A LICENSE AGREEMENT WITH PEPSI COLA BOTTLING COMPANY OF NEW YORK, INC., 117-02 FIFTEENTH AVENUE, COLLEGE POINT, NEW YORK 11356 FOR PROMOTIONAL AND BEVERAGE AVAILABILITY RIGHTS ("POURING RIGHTS") OF PEPSI'S COMPLETE LINE OF SOFT DRINKS AT PLAYLAND PARK AND OTHER WESTCHESTER COUNTY PARKS, RECREATION AND CONSERVATION ("PRC") FACILITIES FOR A TERM COMMENCING ON JANUARY 1, 2016 AND TERMINATING ON DECEMBER 31, 2020 IN ORDER TO AUTHORIZE INDEMNIFICATION AND DEFENSE LANGUAGE.

Authority is requested of this Board to amend a Resolution adopted on March 24, 2016 which authorized the County of Westchester to enter into a license agreement with Pepsi Cola Bottling Company of New York, Inc. ("Pepsi"), 117-02 Fifteenth Avenue, College Point, New York 11356 for pouring rights of Pepsi's complete line of carbonated beverages, juices, iced tea and bottled water at Playland Park and other PRC facilities (the "Resolution") for a term commencing on January 1, 2016 and terminating on December 31, 2020 (the "Agreement") in order to authorize indemnification and defense language. This change is needed because the Agreement, as negotiated, requires the County to provide defense in some instances, rather than the County's standard language. The Agreement has not been executed.

The proposed indemnification and defense language follows:

"Advertiser agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Advertiser shall indemnify and hold harmless the County, its elected officials, officers, employees and agents from and against any and all liability, damage, claims, demands, costs,

judgments, fees, reasonable attorneys' fees or loss arising directly out of Advertiser's negligent conduct or breach of this agreement; and

(b) that except for the defense of claims, demands, or causes of action caused by or resulting from the negligence of the County, its elected officials, officers, employees and agents, to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action arising directly out of Advertiser's negligent conduct or breach of this agreement and to bear all other costs and reasonable expenses related thereto."

All other terms and conditions of the Resolution shall remain in full force and effect.

A Resolution is attached for your favorable consideration.

KMO/DI

APPROVED BOARD OF ACQUISITION & CONTRACTS 11/10/2016 - LISAPRIMA, SECRETARY

## RESOLUTION

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

**RESOLVED**, that the Resolution adopted on March 24, 2016 which authorized the County of Westchester to enter into a license agreement with Pepsi Cola Bottling Company of New York, Inc. ("Pepsi"), for the pouring rights of Pepsi's complete line of beverages at Playland Park and at other Westchester County Parks, Recreation and Conservation facilities for the term January 1, 2016 and terminating on December 31, 2020 (the "Resolution") is hereby amended to authorize that the following defense and indemnity provision be included in the license agreement:

"Advertiser agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Advertiser shall indemnify and hold harmless the County, its elected officials, officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys' fees or loss arising directly out of Advertiser's negligent conduct or breach of this agreement; and

(b) that except for the defense of claims, demands, or causes of action caused by or resulting from the negligence of the County, its elected officials, officers, employees and agents, to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action arising directly out of Advertiser's negligent conduct or breach of this agreement and to bear all other costs and reasonable expenses related thereto."

; and be it further

**RESOLVED**, that all other terms and conditions of the Resolution shall remain in full force and effect; and be it further

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

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

Budget Funding Year(s) Start Date **1/1/2016** End Date **12/31/2020**  
 (must match resolution)

Funding Source Tax Dollars \_\_\_\_\_

State Aid \_\_\_\_\_

\$ \_\_\_\_\_ Federal Aid \_\_\_\_\_

(must match resolution)

Other \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/10/2016 - LISAMBUJAJ, SECRETARY