

**69757**

**TO:** Board of Acquisition and Contract

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

**DATE:** May 23, 2019

**SUBJECT:** Authority to enter into a revenue share license agreement with Zamperla, Inc. for it to provide and place the Disk'O 24, Park Model ride at Playland Park ("Playland") located in Rye, New York for a term commencing upon execution of the agreement and being for five (5) operating seasons beginning with the 2019 operating season and expiring ninety (90) days after the last day of the 2023 operating season, with a County option to renew the agreement for a term up to five (5) years on mutually agreed to terms and conditions.

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The attached Resolution requests authority for the County of Westchester (the "County") to enter into a revenue share license agreement (the "Agreement") with Zamperla, Inc. ("Zamperla") whereby Zamperla will provide and place the Disk'O 24, Park Model ride (the "Ride") at Playland. The term of the Agreement shall commence upon the execution of the Agreement and be for five (5) operating seasons, beginning with the 2019 operating season and expiring ninety (90) days after the last day of the 2023 operating season. The County will have the option to renew the Agreement for a term up to five (5) years on mutually agreed to terms and conditions.

Zamperla also will provide the foundation work necessary for the proper installation of the Ride at Playland ("Foundation Work"). The Foundation Work will be in an amount not to exceed \$305,000, comprised of up to \$280,000 for the foundation work and \$25,000 for a flat administration fee. The cost associated with the Foundation Work shall be reimbursed through the revenue share provided for in the proposed Agreement.

The revenue sharing payments will be based upon a percentage of gross receipts generated from the Ride and shared based upon a fifty percent (50%) Zamperla and fifty percent (50%) County basis as provided for in the Agreement. The County will pay Zamperla fifty percent (50%) of the gross receipts generated by the Ride and of the remaining fifty percent (50%) of the gross receipts generated by the Ride an amount not to exceed \$305,000 will be paid to Zamperla for the Foundation Work, and once the \$305,000 is satisfied, the County shall retain its revenue share of fifty percent (50%) of the gross receipts generated by the Ride, in accordance with the terms set forth in the Agreement.

If the County seeks to exercise its option to renew the Agreement for up to an additional five (5) year period, on mutually agreed to terms and conditions, such option will be subject to the prior approval of your Honorable Board.

Under the Agreement, Zamperla will provide a two (2) year warranty guaranteeing the Ride will be free from defects in structure, materials, parts, operation, workmanship and design (under normal maintenance, operation, installation and proper use). During the two (2) year warranty period, Zamperla will provide all required repairs and parts. In the event the any required repair can be performed by the County in eight (8) or less man-hours, all labor costs shall be at the County's expense. In the event the required repair cannot be completed in eight (8) or less man-hours, Zamperla shall provide, at the County's premises, all necessary assistance to correct said defect and all labor costs shall be Zamperla's responsibility. After the two (2) year warranty, in the event of a failure of any component part of the Ride, the County and Zamperla will share in the cost of any replacement parts and labor in excess of the eight (8) man-hours on an equal basis.

Also, under the Agreement, Zamperla will indemnify the County for, among other things, its performance and failure to perform under the Agreement and for defective design, engineering, ride erection and installation or manufacture associated with the Ride or from defective materials and workmanship incorporated into the Ride.

Authority is being requested for the County to indemnify Zamperla in substantially the following form:

The County will agree, (a) that except for the amount, if any, of damages contributed to, caused by, or resulting from the negligence of Zamperla, the County shall indemnify, defend and hold harmless Zamperla, its officers, employees 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 of the County, its officers, employees or agent's in connection with the operation or maintenance of the Ride and (b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action resulting from the negligence of the County arising out of this Agreement and to bear all other costs and expenses related thereto;

and

The County, at its sole expense, shall (i) keep the Ride free from all encumbrances, attachments, levies and executions caused by the actions of the County and filed by a third party against the Ride ("third party claim"); and (ii) give the Owner prompt written notice of any such third party claim against the Ride and indemnify, defend and hold harmless the Owner against any loss or liability caused by such third party claim.

Zamperla also seeks approval to use the following subcontractor to perform foundation work for the Ride: ELQ Industries, Inc.

The Department of Parks, Recreation and Conservation (the "Department") complied with the Westchester County Procurement Policy by soliciting proposals for the Ride. On February 13, 2019, the Department issued the following Request for Proposals ("RFP"):

REQUEST FOR PROPOSAL  
PROVIDE A NEW OR RECENTLY USE THRILL RIDE  
AT PLAYLAND AMUSEMENT PARK  
PLAYLAND PARKWAY  
RYE, NEW YORK 10580

Two (2) proposals were received as a result of the RFP. One from Zamperla and one from Ride Plus, Inc. The two (2) proposals were evaluated and Zamperla was the top ranked proposer. The County entered into negotiations with Zamperla and now wishes to enter into the Agreement with Zamperla to provide the Ride at Playland based upon the terms presented herein.

The goals and objectives shall be tracked and monitored by the staff of the Department.

Accordingly, I most respectfully recommend the adoption of the annexed proposed resolution.

KO/RAN/TSA  
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION  
2/22/2019 - LISA M. RISAJ, SECRETARY

## RESOLUTION

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

**RESOLVED**, that the County of Westchester (the "County") is hereby authorized to enter into a revenue share license agreement (the "Agreement") with Zamperla, Inc. ("Zamperla") for Zamperla to provide and place the Disk'O 24 Park Model ride (the "Ride") at Playland Park, for a term commencing upon the execution of the Agreement and being for five (5) operating seasons, beginning with the 2019 operating season and expiring ninety (90) days after the last day of the 2023 operating season, with a County option to renew the Agreement for a term up to five (5) years on mutually agreed to terms and conditions; and be it further

**RESOLVED**, that Zamperla also will provide the foundation work necessary for the proper installation of the Ride at Playland ("Foundation Work"). The Foundation Work will be in an amount not to exceed \$305,000, comprised of up to \$280,000 for the foundation work and \$25,000 for a flat administration fee. The cost associated with the Foundation Work shall be reimbursed through the revenue share provided for in the proposed Agreement; and be it further

**RESOLVED**, the revenue share will be based upon a percentage of gross receipts generated from the Ride and based upon a fifty percent (50%) Zamperla and fifty percent (50%) County basis as provided for in the proposed Agreement. The County will pay Zamperla fifty percent (50%) of the gross receipts generated by the Ride and of the remaining fifty percent (50%) of the gross receipts generated by the Ride an amount not to exceed \$305,000 will be paid to Zamperla for the Foundation Work, and once the \$305,000 is satisfied, the County shall retain its revenue share of fifty percent (50%) of the gross receipts generated by the Ride, in accordance with the terms set forth in the proposed Agreement; and be it further

**RESOLVED**, that if the County seeks to exercise its option to renew the Agreement for up to an additional five (5) year period, on mutually agreed to terms and conditions, such option will be subject to the prior approval of the Board of Acquisition and Contract; and be it further

**RESOLVED**, that the County is hereby authorized to indemnify Zamperla in substantially the following form:

The County agrees, (a) that except for the amount, if any, of damages contributed to, caused by, or resulting from the negligence of Zamperla, the County shall indemnify, defend and hold harmless Zamperla, its officers, employees 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 of the County, its officers, employees or agent's in connection with the operation or maintenance of the Ride and (b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action resulting from the negligence of the County arising out of the Agreement and to bear all other costs and expenses related thereto.

And

The County, at its sole expense, shall (i) keep the Ride free from all encumbrances, attachments, levies and executions caused by the actions of the County and filed by a third party against the Ride (“third party claim”); and (ii) give the Owner prompt written notice of any such third party claim against the Ride and indemnify, defend and hold harmless the Owner against any loss or liability caused by such third party claim.

and, be it further

**RESOLVED**, the following subcontractor is hereby approved as Zamperla’s subcontractor to provide the foundation work for the Ride under the Agreement:

ELQ Industries, Inc.

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.

APPROVED BOARD OF ACQUISITION & CONTRACTS - 05/23/2019 - LISA MRISA, SECRETARY

Original Agreement \$1,027,500  
 First Amendment \$  
**This Amendment \$ \_\_\_\_\_**  
 TOTAL \$1,027,500

Agreement # PRC-1221

Account to be  
 Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars	
165	42	5520	9218		\$245,000 est.	2019
165	42	5520	9218		\$300,000est.	2020
165	42	5520	9218		\$182,500 est.	2021
165	42	5520	9218		\$150,000 est.	2022
165	42	5520	9218		\$150,000 est.	2023

Budget Funding Year(s) **2019-2023** Start Date **upon execution** End Date **90 days after end of 2023 operating season**

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

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

**\$1,027,500** Federal Aid \_\_\_\_\_

(must match resolution) Other Playland Ride Revenues