

ID 75889

April 7, 2020

TO: Board of Acquisition and Contract

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

RE: AUTHORITY TO AMEND THE RESOLUTION APPROVED ON FEBRUARY 27, 2020 WITH WESTCHESTER SEAFOOD CO., LLC DBA CHARLEY'S PIER RESTAURANT AND TIKI BAR, 26 LOEWEN COURT, RYE, NEW YORK 10580 FOR THE OPERATION OF THE PIER RESTAURANT AND TIKI BAR AT PLAYLAND PARK IN RYE, NEW YORK AS WELL AS FOR THE OPERATION OF A DAILY BOAT PARKING SERVICE UTILIZING THE SERVICE DOCK, RAMP AND MOORINGS LOCATED OFF THE PLAYLAND PIER INCLUDING THE OPERATION OF A BOAT SHUTTLE TO AND FROM THE MOORINGS TO A FLOATING DOCK, IN ORDER TO ALLOW FOR CONTINGINCIES RELATING TO THE IMPACT OF THE CORONAVIRUS (COVID-19) ON THE OPERATION OF THE PLAYLAND.

By resolution approved on February 27, 2020 (the "February 27th Resolution"), your Honorable Board authorized the County of Westchester (the "County"), acting by and through the Department of Parks, Recreation and Conservation (the "Department"), to enter into a license agreement with Westchester Seafood Co., LLC DBA Charley's Pier Restaurant and Tiki Bar ("Charley's"), 26 Loewen Court, Rye, New York 10580 for the operation of the Pier Restaurant and Tiki Bar at Playland Park in Rye, New York, as well as for the operation of a daily boat parking service utilizing the service dock, ramp and moorings located off the Playland Pier, including the operation of a boat shuttle to and from the moorings to a floating dock, for a term commencing February 28, 2020 and terminating December 31, 2021 (the "License Agreement") . The License Agreement has not been executed.

Following the passage of the February 27th Resolution and as a result of recent developments concerning the Coronavirus (COVID-19), Charley's expressed concern about the length of the operating season in light of the significant improvements to the

facility and requested certain changes to the proposed License Agreement to address the possible impact of COVID-19 on its business operations at Playland.

Charley's requested the, if the operating season is limited due to COVID-19, the annual minimum license fee be reduced by \$1,808 for each day during the operating season that it is closed. The percentage license fee would remain the same.

Charley's also requested that, in the event that Charley's Pier Restaurant and Tiki Bar is closed for the 2020 operating season, Charley's be relieved from paying the 2020 license fee and the term of the proposed License Agreement be extended for one additional year to December 31, 2022.

In addition, Charley's requested that, if Charley's Pier Restaurant and Tiki Bar is prevented from opening by July 4, 2020, the term of the proposed License Agreement be extended for one additional year to December 31, 2022.

Based upon the above, it is proposed that the February 27th Resolution be amended to include in the proposed License Agreement language similar to the following:

(a) In the event the Licensee is delayed or prevented by circumstances related to the pandemic of the Coronavirus, also referred to as COVID-19, or by any other name ("COVID-19"), from performing its obligations hereunder, including but not limited to, staffing, training of employees, purchasing and receipt of food and beverage inventory and any other business functions essential to the opening and operating of Charley's Pier Restaurant and Tiki Bar to the public, the Licensee shall be excused from any failure to perform its obligation to open and operate Charley's Pier Restaurant and Tiki Bar under this License and shall receive a credit in the amount of \$1,808.00 per day, for each day during the Amusement Park Season that it is closed due to COVID-19, as against the Minimum Annual Licensing Fee of Two Hundred Thirty-Five Thousand (\$235,000.00) Dollars and not against the percentage of gross sales set forth in Section 4 below, The Licensee must notify the County promptly if there will be a delay in performance under this subsection.

(b) In the further event Charley's Pier Restaurant and Tiki Bar is prevented from opening for the entire 2020 Amusement Park Season due to COVID-19 as set forth in (a) above, the Licensee shall be excused from any payments required to be made to the County for the 2020 Amusement Park Season.

(c) In addition, the Parties hereto agree that, in the event Charley's Pier and Tiki Bar is prevented from opening (i) by July 4, 2020 due to COVID-19, or (ii) for the entire 2020 Amusement Park Season due to COVID-19, the License shall be extended for one additional year commencing January 1, 2022 and terminating December 31, 2022, upon the same terms and conditions as set forth herein, including, but

not limited to, the obligation to pay the License Fee as set forth in Section 4 below. The Licensee must notify the County promptly if there will be an extension for an additional year under this subsection.

In addition, based upon (c) above, the February 27th Resolution must be amended to extend the term of the proposed License Agreement one additional year commencing January 1, 2022 and terminating December 31, 2022 if the provisions in (c) above occur, and, in such a case, Charley's will pay the County a minimum license fee or a percentage of the gross receipts, whichever is greater, for the 2022 operation season as follows:

<u>Period</u>	<u>Minimum License Fee</u>	<u>Percentage of Gross Sales License Fee</u>
1/1/22-12/31/22	\$235,000	9%; and be if further

In addition, the February 27th Resolution must be amended to change the value of the marketing and promotions provided by Charley's to \$35,000 per year during the term of the proposed License Agreement and change the value of the food and related services provided by Charley's to \$3,000 per year during the term of the proposed License Agreement.

Except as amended hereby, all other terms and conditions set forth in the February 27th Resolution shall remain the same.

Accordingly, a Resolution is attached for your favorable consideration.

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RESOLUTION

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

RESOLVED, that the resolution approved by your Honorable Board on February 27, 2020 (the "February 27th Resolution"), which authorized the County of Westchester (the "County") to enter into a license agreement with the Westchester Seafood Co., LLC DBA Charley's Pier Restaurant and Tiki Bar ("Charley's") for the operation of the Pier Restaurant and Tiki Bar at Playland Park in Rye, New York as well as for the operation of a daily boat parking service utilizing the service dock, ramp and moorings located off the Playland Pier including the operation of a boat shuttle to and from the moorings to a floating dock for a term commencing February 28, 2020 and terminating December 31, 2021 is hereby amended to include language similar to the following:

(a) In the event the Licensee is delayed or prevented by circumstances related to the pandemic of the Coronavirus, also referred to as COVID-19, or by any other name ("COVID-19"), from performing its obligations hereunder, including but not limited to, staffing, training of employees, purchasing and receipt of food and beverage inventory and any other business functions essential to the opening and operating of Charley's Pier Restaurant and Tiki Bar to the public, the Licensee shall be excused from any failure to perform its obligation to open and operate Charley's Pier Restaurant and Tiki Bar under this License and shall receive a credit in the amount of \$1,808.00 per day, for each day during the Amusement Park Season that it is closed due to COVID-19, as against the Minimum Annual Licensing Fee of Two Hundred Thirty-Five Thousand (\$235,000.00) Dollars and not against the percentage of gross sales set forth in Section 4 below. The Licensee must notify the County promptly if there will be a delay in performance under this subsection.

(b) In the further event Charley's Pier Restaurant and Tiki Bar is prevented from opening for the entire 2020 Amusement Park Season due to COVID-19 as set forth in (a) above, the Licensee shall be excused from any payments required to be made to the County for the 2020 Amusement Park Season.

(b) In addition, in the event Charley's Pier and Tiki Bar is prevented from opening (i) by July 4, 2020 due to COVID-19, or (ii) for the entire 2020 Amusement Park Season due to COVID-19, the License shall be extended for one additional year commencing January 1, 2022 and terminating December 31, 2022, upon the same terms and conditions as set forth herein, including, but not limited to, the obligation to pay the License Fee as set forth in Section 4 below. The Licensee must notify the County promptly if there will be an extension for an additional year under this subsection.

and be it further

RESOLVED, that the February 27th Resolution is amended so that, the term of the license agreement may be extended from January 1, 2022 to December 31, 2022 if the provisions of subsection (b) above occur, and, for that license privilege, Charley's will pay the County a minimum license fee or a percentage of the gross receipts, whichever is greater, for the 2022 operation season as follows:

<u>Period</u>	<u>Minimum License Fee</u>	<u>Percentage of Gross Sales License Fee</u>
1/1/22-12/31/22	\$235,000	9%; and be if further

RESOLVED, that the February 27th Resolution is amended to change the value of the marketing and promotions provided by Charley's to \$35,000 per year during the term of the agreement and change the value of the food and related services provided by Charley's to \$3,000 per year for during the term of the agreement; and be it further

RESOLVED, that except as specifically amended hereby, all remaining terms and conditions set forth in the February 27th Resolution shall remain the same; and be it further

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

APPROVED BOARD OF ACQUISITION & CONTRACTS 04/16/2022 - LISA M. PEARSON, SECRETARY

Original Agreement \$473,000
 First Amendment \$
 This Amendment \$236,500
 TOTAL \$709,500

Agreement #PRC-1244A

Account to be
 Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars	
165	42	5520	9205		235,000	2022
165	42	5520	9219		1,500	2022

Budget Funding Year(s) 2022-2022 Start Date 01/01/22 End Date 12/31/22

Funding Source Tax Dollars _____
 State Aid _____
 Federal Aid _____

\$ 236,500

(must match resolution)

Other Revenue

APPROVED BOARD OF ACQUISITION & CONTRACT MGRS/2020 - LISA MRIJAJ, SECRETARY