

77876

DATE: August 4, 2020

TO: Board of Acquisition and Contract

FROM: John M. Nonna
County Attorney

SUBJECT: Authority for the County of Westchester to amend an agreement with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, pursuant to the County retained the firm to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with the Chapter 11 bankruptcy petition and the adversary proceeding filed by Standard Amusements LLC in the United States Bankruptcy Court for the Southern District of New York, by increasing the authorized not-to-exceed amount of the agreement by \$3,000,000.00.

Authority is respectfully requested for the County of Westchester (the “County”) to amend an agreement (the “Agreement”) with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”). Pursuant to the Agreement, the County retained Paul, Weiss, at County expense, to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with the Chapter 11 bankruptcy petition and the adversary proceeding (the “Adversary Proceeding”) filed by Standard Amusements LLC (“Standard”) in the United States Bankruptcy Court for the Southern District of New York (the “Case”), for a term commencing on May 31, 2019 and continuing until the County no longer has an interest in the Case, as the County may determine in its sole discretion; the County determines, in its sole discretion, to cease participating in the Case; or the County otherwise terminates the agreement, for a total amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00), payable at various hourly rates for various personnel (the “Amended Agreement”). In the Adversary Proceeding, Standard claimed that the County breached the Amended and Restated Playland Management Agreement (the “Management Agreement”). The County asserted counterclaims for breach against Standard.

The proposed amendment would amend the Amended Agreement by increasing its authorized not-to-exceed amount (the “NTE Amount”) by Three Million Dollars (\$3,000,000.00), from an amount not-to-exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to a new amount not-to-exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00), which shall be payable at various hourly rates for various personnel (the “Second Amendment”). The County requested and obtained an additional discount of 5% off of the standard hourly rates from Paul, Weiss. The previously-negotiated hourly rates were already

discounted by 15%, meaning that the total discount from the firm's standard hourly rates is now 20% for the invoices subject to the proposed amendment and for future invoices.

The proposed Second Amendment covers services rendered during the period from December 2019 through May 2020. The principal amount of the outstanding invoices was incurred from December 2019 through February 2020. During this period, extensive discovery was conducted in the Adversary Proceeding. This discovery included document discovery and depositions. Seventeen depositions were taken of County and Standard personnel and non-party witnesses. There were numerous discovery issues resolved through negotiation. Discovery also involved the review and analysis of expert reports and the depositions of the County's and Standard's expert witnesses on the summary judgment motion issues and the issues of plan feasibility and adequate assurance of future performance, which are critical to Chapter 11 plan confirmation. The court imposed a tight schedule for the completion of discovery which resulted in higher costs. Following the completion of document discovery, Standard moved for summary judgment and extensive briefing took place on the summary judgment motion.

The bankruptcy court did not issue a formal ruling on Standard's summary judgment motion. The court urged the parties to negotiate their differences and reach an agreement on the matters in dispute. The County and Standard have engaged in extensive negotiations from March through the present. These negotiations were hindered by the COVID-19 pandemic and its impact on the County.

The following is a breakdown of fees and disbursements billed:

December 2019 through February 2020: \$2,563,903.83

March 2020 through May 2020: \$102,130.74

Following payment of the invoices for the above periods, \$648,190.78 will remain in the NTE Amount requested.

Except as described above, all terms and conditions of the Amended Agreement shall remain in full force and effect.

The proposed Second Amendment will serve a public purpose by enabling the County to pay for and to continue to receive from Paul, Weiss the specialized knowledge and expertise necessary to ensure the County's proper handling of the Case.

The goal and objective of the proposed Second Amendment is to enable the County to pay for and to continue to receive from Paul, Weiss the specialized knowledge and expertise necessary to ensure the County's proper handling of the Case.

The goal and objective of the proposed Second Amendment is in the best interests of the County in terms of fiscal responsibility, as ensuring the County's continued proper handling of the Case is expected to ultimately protect the financial interests of the County.

The goal and objective of the proposed Second Amendment will be tracked and monitored by the Office of the County Attorney.

I respectfully recommend the adoption of the attached Resolution.

JMN/bdm/nn

APPROVED BOARD OF ACQUISITION & CONTRACT - 08/06/2020 - LISA MRIJAJ, SECRETARY

RESOLUTION

Upon a communication from the County Attorney, be it hereby

RESOLVED, that the County of Westchester (the "County") is hereby authorized to amend an agreement with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss"), pursuant to which the County retained Paul, Weiss, at County expense, to serve in an "of counsel" capacity to the County Attorney, as needed, in connection with the Chapter 11 bankruptcy petition and the adversary proceeding filed by Standard Amusements LLC in the United States Bankruptcy Court for the Southern District of New York (the "Case"), for a term commencing on May 31, 2019 and continuing until the County no longer has an interest in the Case, as the County may determine in its sole discretion; the County determines, in its sole discretion, to cease participating in the Case; or the County otherwise terminates the agreement, for a total amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00), payable at various hourly rates for various personnel, (the "Amended Agreement") by increasing its authorized not-to-exceed amount by Three Million Dollars (\$3,000,000.00), from an amount not-to-exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to a new amount not-to-exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00), which shall be payable at various hourly rates for various personnel; and be it further

RESOLVED, that except as hereby authorized to be amended, all terms and conditions of the Amended Agreement 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 and deliver any and all documents and to take all action necessary and appropriate to effectuate the purposes hereof.

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	18	1000		4923	\$3,000,000.00

Budget Funding Year(s): _____ Start Date: 5/31/19 End Date: When the County no longer has an interest in the Case, as the County may determine in its sole discretion; the County determines, in its sole discretion, to cease participating in the Case; or the County otherwise terminates the Agreement.

Funding Source Tax Dollars: _____
 State Aid: _____
\$3,000,000.00 Federal Aid: _____
 (must match resolution) Other: _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 08/06/2020 - LISA MRJ/AJ SECRETARY