

79933

TO: Board of Acquisition and Contract

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

DATE: October 6, 2020

SUBJECT: Authority to amend the revenue share license agreement with Zamperla, Inc., dated June 4, 2019, as amended by the first amendment to the revenue share license agreement, dated July 22, 2019, pursuant to which Zamperla agreed to provide the Disk'O 24, Park Model ride at Playland Park located in Rye, New York, in order to change the payment terms for the balance due Zamperla for the foundation work it performed for the ride, with all other terms and conditions of the Agreement remaining the same.

By a resolution approved on May 23, 2019, your Honorable Board authorized the County of Westchester (the "County") to enter into an 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 of 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 the County having the option to renew the agreement for a term of up to five (5) years on mutually agreed upon terms and conditions (the "Initial Agreement"). The resolution also provided that Zamperla would provide the foundation work necessary for the proper installation of the Ride ("Foundation Work") 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. It further provided that the cost associated with the Foundation Work would be reimbursed through the revenue share provided for in the Initial Agreement, which was based upon the parties splitting the gross receipts generated from the Ride on a fifty percent (50%) Zamperla and fifty percent (50%) County basis as provided for in the Initial Agreement. The County and Zamperla entered into the Initial Agreement on June 4, 2019.

By a resolution approved on July 18, 2019, your Honorable Board authorized the County to amend the Initial Agreement to authorize Zamperla to perform certain unforeseen additional infrastructure work needed to complete the Ride installation ("Additional Work") at the total cost of \$128,417.73 with the parties sharing in the total cost for the Additional Work by i) Zamperla incurring \$50,000 of the total cost, and ii) the County reimbursing Zamperla \$78,417.73 of the total cost, thereby increasing the total not to exceed amount for the Foundation Work for the

Ride, to \$383,417.73, with all other terms and conditions of the Initial Agreement remaining the same. The County and Zamperla entered into the First Amendment on July 22, 2019.

The Initial Agreement and the First Amendment are referred to as the “Agreement.”

The County has reimbursed Zamperla \$78,417.73 due under the First Amendment. It has reimbursed Zamperla \$70,048.69 of the \$305,000 due Zamperla for the Foundation Work, leaving a balance due Zamperla of \$234,951.31 (“Balance Due”) for the Foundation Work.

The County now seeks authority to amend the Agreement to change the payment terms for the Balance for the Foundation Work so that payment is made to Zamperla upon execution of a second amendment to the Agreement and within ten (10) days of submission of a properly executed payment voucher and not through the revenue share terms of the Initial Agreement.

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

KO/RAN
Attachment

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 amend the revenue share license agreement with Zamperla, Inc. (“Zamperla”), dated June 4, 2019, as amended by the first amendment to the revenue share license agreement, dated July 22, 2019, (collectively referred to as the “Agreement”) pursuant to which Zamperla agreed to provide and place the Disk’O 24, Park Model ride (the “Ride”) at Playland Park, and perform certain Foundation Work and certain additional infrastructure work needed to complete the Ride installation, for a total not to exceed amount of \$383,417.73 of which \$234,951.31 remains due Zamperla (the “Balance Due”) by changing the payment terms for the Balance Due so that payment is made to Zamperla upon execution of a second amendment to the Agreement and within ten (10) days of Zamperla’s submission of a properly executed payment voucher and not through the revenue share terms of the Agreement; and be it further

RESOLVED, except as modified herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect, 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.

Original Agreement \$1,027,500.00 (Revenue)
 First Amendment \$ 78,417.73 (Expense)
This Amendment \$ 234,951.31 (Expense)
 TOTAL \$1,340,869.04

Agreement # PRC-1221B

Account to be
 Charged/Credited

		Major Program, Program & Phase			
		Or Unit	Object/ Sub- Object	Trust Account	
Fund	Dept				Dollars
165	42	5520	4380		\$234,951.31

Budget Funding Year(s) **2020** Start Date **upon execution** End Date **90 days after end of 2023 operating season**

Funding Source Tax Dollars \$234,951.31
 State Aid _____
\$234,951.31 Federal Aid _____
 (must match resolution) Other _____