

45247

Date: March 17, 2015

To: The Honorable Board of Acquisition and Contract

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

Mary Mahon
Director of Real Estate

Re: **Authorization to enter into a Right of Entry Agreement with BMR-Ardsley Park LLC for use of a portion of a parking area for official County of Westchester vehicles.**

Authority is requested to enter into a Right of Entry Agreement with BMR-Ardsley Park LLC, ("BMR") a Delaware limited liability company, the owner of property located at 410-460 Saw Mill River Road in Ardsley, New York for the use of a portion of the parking lot adjacent to 450 Saw Mill River Road, Ardsley, New York for the sole purpose of utilizing parking spaces for official County of Westchester vehicles. The use of the parking area will allow additional spaces for the public conducting business and attending meetings at the Department of Parks, Recreation and Conservation office at 450 Saw Mill River Road. The Right of Entry Agreement is to be at no cost to the County and is scheduled to begin April 15, 2015 for a one-year period; however, BMR is requiring the County to indemnify and defend BMR in the event of damages arising from the use of the parking area. Specifically, the Right of Entry Agreement clause reads as follows;

"Licensee (County of Westchester) covenants and agrees that it shall indemnify and hold the Licensor Group harmless from and against any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages, suits or judgments, and all reasonable expenses (including reasonable attorneys' fees, charges and disbursements, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred in investigating or resisting the same to the extent resulting from, and will pay Licensor on demand the full amount of any sum that the Licensor becomes obligated to pay on account of all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages, suits or judgments, or encumbrances arising from acts, conduct, omissions, contracts, agreements or

commitments of all or any of the Licensee Group, plus all reasonable expenses (including reasonable attorney's fees, charges and disbursements, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred in investigating or resisting the same, in each case that are in any way related to or arising from the exercise of the Licensee Group of the Licensee Rights (collectively, "Claims") . Upon Licensor's notification to Licensee of any Claim made against Licensor for which Licensee is obligated to indemnify the Licensor Group pursuant to this Agreement, Licensee shall undertake to indemnify, defend, save and hold the Licensor Group harmless from such Claim. If Licensee shall fail to discharge or undertake to defend against such liability, upon receipt of written notice from Licensor of such failure, Licensee shall have ten (10) days (the "Defense Cure Period") to cure such failure by prosecuting such a defense. If Licensee fails to do so within the Defense Cure Period, then Licensor may settle the same and Licensee's liability to Licensor shall be conclusively established by such settlement consideration and the costs and expenses (including attorneys' fees, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred by Licensor in effecting such settlement."

The public purpose of the Right of Entry agreement is to allow the County to park official vehicles in an adjacent parking area to free up parking for the convenience and benefit of the visiting public. The goal of this agreement is to provide improved access for the public to the Department of Parks, Recreation and Conservation offices at 450 Saw Mill River Road. The objective of this agreement will be tracked and monitored using site visits by Department of Parks, Recreation and Conservation staff.

Accordingly, I respectfully request that your Honorable Board approve the attached Resolution.

KMO/MM/JC/dm
Attachment

RESOLUTION

Upon a communication from the County's Commissioner of Parks, Recreation and Conservation and the Director of Real Estate, be it hereby:

RESOLVED, that the County is authorized to enter into a Right of Entry Agreement with BMR-Ardsley Park LLC ("BMR") for the use of available parking spaces by County owned vehicles, at no cost to the County, on designated BMR property located at 410-460 Saw Mill River Road, Ardsley, New York for a one year period commencing April 15, 2015, which Right of Entry Agreement shall include the following indemnification terms:

"Licensee (County of Westchester) covenants and agrees that it shall indemnify and hold the Licensor Group harmless from and against any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages, suits or judgments, and all reasonable expenses (including reasonable attorneys' fees, charges and disbursements, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred in investigating or resisting the same to the extent resulting from, and will pay Licensor on demand the full amount of any sum that the Licensor becomes obligated to pay on account of all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages, suits or judgments, or encumbrances arising from acts, conduct, omissions, contracts, agreements or commitments of all or any of the Licensee Group, plus all reasonable expenses (including reasonable attorney's fees, charges and disbursements, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred in investigating or resisting the same, in each case that are in any way related to or arising from the exercise of the Licensee Group of the Licensee Rights (collectively, "Claims"). Upon Licensor's notification to Licensee of any Claim made against Licensor for which Licensee is obligated to indemnify the Licensor Group pursuant to this Agreement, Licensee shall undertake to indemnify, defend, save and hold the Licensor Group harmless from such Claim. If Licensee shall fail to discharge or undertake to defend against such liability, upon receipt of written notice from Licensor of such failure, Licensee shall have ten (10) days (the "Defense Cure Period") to cure such failure by prosecuting such a defense. If Licensee fails to do so within the Defense Cure Period, than Licensor may settle the same and Licensee's liability to Licensor shall be conclusively established by such settlement consideration and the costs and expenses (including attorneys' fees, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred by Licensor in effecting such settlement."; 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.

Original Agreement \$ n/a
 First Amendment \$
This Amendment \$ _____
 TOTAL \$

Agreement #

Account to be
 Charged/Credited

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

Budget Funding Year(s) n/a Start Date 04-15-15 End Date 4-14-16
 (must match resolution)

Funding Source Tax Dollars _____ n/a _____
 State Aid _____
 \$ _____ Federal Aid _____

(must match resolution)
 Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 04/16/2015 - JOMARY VIEIRA, SECRETARY