

ID66246

DATE: November 27, 2018

TO: Board of Acquisition and Contract

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

RE: AUTHORITY TO ENTER INTO A LICENSE AGREEMENT WITH WESTCHESTER LLC AND SIMON PROPERTY GROUP, INC. FOR THE USE OF THE WESTCHESTER MALL ON TUESDAY AND FRIDAY MORNINGS FOR THE TERM JANUARY 1, 2019 THROUGH DECEMBER 31, 2019 FOR THE OPERATION OF "MALL WALK AT THE WESTCHESTER" AT NO COST TO THE COUNTY AND FOR THE COUNTY TO DEFEND AND INDEMNIFY THE OWNER.

Authority is hereby requested from your Honorable Board for the County of Westchester ("County") acting by and through the Department of Parks, Recreation and Conservation ("PRC") to enter into a license agreement with Westchester LLC and Simon Property Group, Inc. (collectively the "Owner for the use of the Westchester Mall on Tuesday and Friday mornings between 8:00 a.m. and 10:00 a.m. for "Mall Walk at The Westchester" members to walk on site and to provide health talks and related programs in mall common areas for the term January 1, 2019 through December 31, 2019, and for the County to defend and indemnify the Owner, at no cost to the County.

The Owner requires the County to indemnify, defend and hold Owner harmless from and against any and all claims arising from the County's, or "Mall Walk at The Westchester" member's negligence, unless the claim is the result of the Owner's sole negligence. Additionally, the Owner requires that the County "release, discharge and acquit" the Owner from any and all claims of "damage or injury either to the person or property" of the County or participants, unless such claim or injury is "sustained by reason of any grossly negligent condition" of the Mall common area "or due to any grossly negligent act or omission" of the Owner.

The goals and objectives of the requested license are to provide recreational opportunities to Westchester residents. This will enable Westchester County residents to walk in the Westchester Mall, to improve their fitness and well-being. The operation of the proposed License will continually be monitored by PRC staff.

Accordingly, the attached resolution is submitted for your consideration.

RESOLUTION

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

RESOLVED, that the County of Westchester (“the County”), acting by and through its Department of Parks, Recreation and Conservation (“Department”) is authorized to enter into a license agreement with the Westchester LLC and Simon Property Group, Inc. (collectively the “Owner”) for the use of the common areas of the Westchester Mall on Tuesdays and Friday mornings from 8:00 a.m. to 10:00 a.m. for the Department to provide “Mall Walk at The Westchester” for Westchester residents to walk on site and to provide health talks and related programs, for the term January 1, 2019 through December 31, 2019, at no cost to the County; and be it further

RESOLVED, that the license agreement will contain language requiring the County to indemnify, defend and hold harmless the Owner from and against any and all claims arising from the County’s, or “Mall Walk at The Westchester” Member’s negligence, unless the claim is the result of the Owner’s sole negligence and requiring and that the County “release, discharge and acquit” the Owner from any and all claims of “damage or injury either to the person or property” of the County or participants, unless such claim or injury is “sustained by reason of any grossly negligent condition” of the Mall common area “or due to any grossly negligent act or omission” of the Owner; 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:

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

Budget Funding Year(s): _____ Start Date: January 1, 2019 End Date: December 31, 2019

Funding Source: Tax Dollars: _____

State Aid _____

\$ n/a Federal Aid: _____

(must match resolution)

Other: _____