

ID 84776

DATE May 4, 2021

TO: Board of Acquisition and Contract

FROM: Kathleen M. O'Connor
Commissioner

John M. Nonna
County Attorney

SUBJECT: Authority to enter into an agreement with Phillips ADR Enterprises, P.C. ("PhillipsADR") to appoint David M. Murphy as monitor pursuant to Section 43 of the Second Restated and Amended Playland Management Agreement between the County of Westchester and Standard Amusements LLC for a term that commences upon full execution of said agreement and continues until terminated, pursuant to an approved budget.

Pursuant to Section 43 of the Second Restated and Amended Playland Management Agreement ("Second Restated Agreement") between the County of Westchester ("County") and Standard Amusements LLC ("Standard Amusements"), which was approved by the County Board of Legislators on April 12, 2021 and also by your Honorable Board by Resolution adopted April 15, 2021, authorization is hereby requested to enter into an agreement with David M. Murphy, through Phillips ADR Enterprises, P.C. ("PhillipsADR"), to resolve disputes (other than those disputes earmarked for arbitration) that arise between the County and Standard Amusements and are not capable of being resolved by senior management.

Authority is hereby requested from your Honorable Board for the County to enter into an agreement with Standard Amusements and PhillipsADR for these purposes (the "Agreement"). The Agreement shall commence upon full execution of the Second Restated Agreement and continue until terminated upon 90 days written notice that the parties are jointly terminating the agreement.

Mr. Murphy's scope of authority and responsibilities as the Monitor will be as set forth in Section 43 of the Second Restated Agreement. In the event of any conflict between the agreement with PhillipsADR and the Second Restated Agreement with respect to Mr. Murphy's scope of authority and responsibilities as the Monitor, the Second Restated Agreement shall control. For the services rendered Mr. Murphy will be paid on an hourly basis at the rate of \$1,300 per hour. Each of the Parties shall be billed for, and shall be responsible for payment of,

50% of Mr. Murphy's time and reasonable expenses for this work. Mr. Murphy shall not bill the Parties for the time or expense associated with travel to or from such quarterly joint meetings, provided that the meetings are held in Rye, NY, White Plains, NY, or New York City. In the event there are *ex parte* communications which are consented to by the Parties, the hourly cost of the time incurred by Mr. Murphy for such communications shall be allocated 100% to the Party with which the *ex parte* communication was held.

The services provided under Agreement will be tracked and monitored by the Department of Parks, Recreation and Conservation.

Based upon the foregoing, your favorable action on the annexed Resolution is urged and recommended.

KMO/tsa

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/06/2021 - JOHN COCCUARDI, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is hereby authorized to enter into an agreement (the "Agreement") with Standard Amusements LLC and David M. Murphy, through Phillips ADR Enterprises, P.C. ("PhillipsADR"), to resolve disputes (other than those disputes earmarked for arbitration) that arise between the County and Standard Amusements LLC and are not capable of being resolved by senior management (the "Agreement") commencing upon full execution of the Second Restated and Amended Playland Management Agreement and continuing until terminated upon 90 days written notice that the parties are jointly terminating the agreement; and be it further

RESOLVED, that for the services rendered Mr. Murphy will be paid on an hourly basis at the rate of \$1,300 per hour. Each of the Parties shall be billed for, and shall be responsible for payment of, 50% of Mr. Murphy's time and reasonable expenses for this work. Mr. Murphy shall not bill the Parties for the time or expense associated with travel to or from such quarterly joint meetings, provided that the meetings are held in Rye, NY, White Plains, NY, or New York City. In the event there are *ex parte* communications which are consented to by the Parties, the hourly cost of the time incurred by Mr. Murphy for such communications shall be allocated 100% to the Party with which the *ex parte* communication was held; and be it further

RESOLVED, that this Agreement is subject to County appropriation; and be it further

RESOLVED, that this Agreement is subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of the Agreements. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate the Agreements or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice; and, be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute all documents and take any actions reasonably necessary and appropriate to effectuate the purposes of this Resolution.

Original Agreement \$75,000
 First Amendment \$
 This Amendment \$
 TOTAL \$ 75,000

Agreement # PRC-1311

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars	
101	18	1000	4420		15,000	2021
101	18	1000	4420		15,000	2022
101	18	1000	4420		15,000	2023
101	18	1000	4420		15,000	2024
101	18	1000	4420		15,000	2025

Budget Funding Year(s) 2021-2025 Start Date Upon Execution End Date Until Terminated
 (must match resolution)

Funding Source Tax Dollars X

State Aid _____

\$75,000 Federal Aid _____
 (must match resolution)

Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/09/2021 - JOAN COCCIARDI, SECRETARY