

## **CITY OF RYE**

### **NOTICE**

There will be a regular meeting of the City Council of the City of Rye on Wednesday, April 22, 2015, at 7:30 p.m. in Council Chambers at City Hall.

### **AGENDA**

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Consideration of the election of the Chiefs of the Rye Fire Department.
5. Draft unapproved minutes of the regular meeting of the City Council held April 8, 2015 and the informal minutes of the Joint Meeting of the City Council and Board of Education held April 11, 2015.
6. Issues Update/Old Business.
7. Report of the Rye Playland Advisory Committee with regard to the Westchester County proposal for Standard Amusements to take over management of Playland.
8. Residents may be heard on the Westchester County proposal for Playland.
9. Continuation of Public Hearing to amend local law Chapter 165 , “Signs”, of the Rye City Code by adding Section §165-10, “Regulation of banners”, to establish regulations for banners on utility poles on City property.
10. Public Hearing to amend local law Chapter 177, “Taxation”, Article XII, “Exemption for Historic Districts” by adding Section §177-82, “Historic Districts”, to designate portions of downtown Rye as one historic district to allow property owners to apply for the real property tax exemption.
11. Presentation and discussion of proposed design changes for sidewalk and street improvements in the Central Business District.
12. Residents may be heard on matters for Council consideration that do not appear on the agenda.
13. Resolution to appoint an Interim City Manager effective May 1, 2015.
14. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #118.1, “Department Records”.

15. Miscellaneous communications and reports.
16. New Business.
17. Adjournment.

\* \* \* \* \*

The next regular meeting of the City Council will be held on Wednesday, May 7, 2014 at the **Square House** at 7:30 p.m.

\*\* City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at [www.ryeny.gov](http://www.ryeny.gov) under “RyeTV Live”.

\* Office Hours of the Mayor by appointment by emailing [jsack@ryeny.gov](mailto:jsack@ryeny.gov) or contacting the City Manager’s Office at (914) 967-7404.



# CITY COUNCIL AGENDA

NO. 4

DEPT.: Fire Department

DATE: April 22, 2015

CONTACT: Fire Department

**AGENDA ITEM:** Consideration of the election of the Chiefs of the Rye Fire Department.

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** Approve the election of Michael Billington as 1<sup>st</sup> Assistant Chief, and Michael Taylor as 2<sup>nd</sup> Assistant Chief.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** At the April 9, 2015 Rye Fire Department Annual Meeting the following Chiefs were elected: Michael Billington 1<sup>st</sup> Assistant Chief, and Michael Taylor 2<sup>nd</sup> Assistant Chief, subject to the approval of the City Council in accordance with Article 13, Section 2 of the Rye City Charter.



# CITY COUNCIL AGENDA

NO. 5

DEPT.: City Clerk

DATE: April 22, 2015

CONTACT: Dawn Nodarse

**AGENDA ITEM** Draft unapproved minutes of the regular meeting of the City Council held April 8, 2015 and the informal minutes of the Joint Meeting of the City Council and Board of Education held April 11, 2015.

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council approve the draft minutes.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Approve the minutes of the regular Meeting of the City Council held April 8, 2015 and the informal minutes of the Joint Meeting of the City Council and Board of Education held April 11, 2015, as attached.

***DRAFT UNAPPROVED MINUTES*** of the  
Regular Meeting of the City Council of the City of  
Rye held in City Hall on April 8, 2015 at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor  
LAURA BRETT  
KIRSTIN BUCCI  
JULIE KILLIAN  
RICHARD MECCA  
RICHARD SLACK  
Councilmembers

ABSENT:     TERRENCE McCARTNEY, Councilmember

The Council convened at 7:11 p.m. Councilman Mecca made a motion, seconded by Councilwoman Brett and unanimously carried, to immediately adjourn into executive session to discuss collective bargaining. Councilman Mecca made a motion, seconded by Councilman Slack and unanimously carried, to adjourn the executive session at 7:30 p.m.

1.     Pledge of Allegiance

Mayor Sack called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2.     Roll Call

Mayor Sack asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3.     General Announcements by the Council

Announcements were made regarding various topics, events and meetings that may be of interest to residents. Mayor Sack noted the passing of Nicholas J. Groglio, Sr., the father of Rye Police Sergeant Nick Groglio. He offered condolences to the family and asked for a moment of silence.

4.     Draft unapproved minutes of the regular meeting of the City Council held March 25, 2015

Councilwoman Brett made a motion, seconded by Councilman Mecca and unanimously carried, to approve the minutes of the regular meeting of the City Council held on March 25, 2015.

5. Issues Update/Old Business

Councilwoman Brett reported on two issues before the Planning Commission:

Theodore Fremd Avenue Affordable Housing Project: The applicant is refining his plans for the senior housing. The project is moving forward and City staff is working very hard to ensure that the sewer improvements that will be done in conjunction with the project are moving forward.

Rezoning Request for 120 Old Post Road: The Planning Commission is not ready to send a recommendation to the City Council but they have reached a consensus regarding the use as being something the community can support. The Commission is addressing density issues regarding the proposed zoning, and setbacks and F.A.R. on the site. City Planner Miller has been asked to forward traffic studies to the Traffic and Pedestrian Safety Committee.

6. Continuation of Public Hearing to amend local law Chapter 165, "Signs", of the Rye City Code by adding Section §165-10, "Regulation of banners", to establish regulations for banners on utility poles on City property

Corporation Counsel Wilson summarized the changes made to the proposed legislation since the last meeting, which now only deals with banners on City-owned utility poles. The approval authority is the City Council, not the Board of Architectural Review. Additionally, language has been added that limits how often a license can be granted in order to allow for change over. Members of the Council suggested language changes in order to indicate that approval of banners on poles would not be permitted unless they received Council approval and that approval would only be for special events. The Corporation Counsel was asked to circulate the proposed changes to the Council for comment prior to their going into the packet.

Councilwoman Brett made a motion, seconded by Councilman Mecca and unanimously carried to adjourn the public hearing until the April 22, 2014 meeting.

7. Resolution requesting that properties from the High Street/Maple Avenue/Central Avenue neighborhood be transferred from the Blind Brook Sewer District to the Mamaroneck Valley Sewer District in connection with the installation of a new sewer line from Nursery Lane to North Street

Mayor Sack said that the reason for the change is because the County promised to move the sewer line in connection with the approval for the Affordable Housing project on Theodore Fremd Avenue and North Street. As a result of this change, several properties will be moved into a different sewer district. City Manager Culross said the Resolution before the Council will request the County Board of Legislators to revise the boundaries of the County sewer districts.

Councilman Mecca disclosed that he owns a property in the district.

Councilwoman Brett made a motion, seconded by Councilman Slack, to adopt the following Resolution:

**RESOLUTION**

**Requesting that Properties from the High Street/Maple Avenue/Central Avenue Neighborhood be Transferred From the Blind Brook Sewer District to the Mamaroneck Valley Sewer District In Connection With the Installation of a New Sewer Line From Nursery Lane to North Street.**

**WHEREAS**, on January 28, 2015, the Rye City Council adopted a resolution requesting Westchester County funding for the design, construction, construction inspection and other related costs associated with the implementation of a new approximately 950-foot sewer line from Nursery Lane to existing manhole in North Street; and

**WHEREAS**, the sewer project requires the transfer of properties from the Blind Brook Sewer District to the Mamaroneck Valley Sewer District;

**NOW, THEREFORE, BE IT RESOLVED**, that the Rye City Council authorizes the City Engineering Department to provide a letter requesting Westchester County Board of Legislators approval to transfer of the following 113 properties from the Blind Brook Sewer District to the Mamaroneck Valley Sewer District:

<b>Parcel ID (S/B/L)</b>	<b>Address</b>
146-10-1-1	71 MAPLE AVE
146-10-1-10	23 HIGH ST
146-10-1-11	17 HIGH ST
146-10-1-12	31 HIGH ST
146-10-1-13	81 MAPLE AVE
146-10-1-14	87 MAPLE AVE
146-10-1-15	9 NURSERY LN
146-10-1-16	95 MAPLE AVE
146-10-1-17	99 MAPLE AVE
146-10-1-18	82 MAPLE AVE
146-10-1-2	73 MAPLE AVE
146-10-1-27	204 NORTH ST
146-10-1-28	150 MAPLE AVE
146-10-1-29	144 MAPLE AVE
146-10-1-3	75 MAPLE AVE
146-10-1-30	142 MAPLE AVE
146-10-1-31	140 MAPLE AVE
146-10-1-32	138 MAPLE AVE
146-10-1-33	134 MAPLE AVE
146-10-1-34	130 MAPLE AVE
146-10-1-35	124 MAPLE AVE

146-10-1-36	118 MAPLE AVE
146-10-1-37	112 MAPLE AVE
146-10-1-38	104 MAPLE AVE
146-10-1-39	102 MAPLE AVE
146-10-1-4	49 HIGH ST
146-10-1-40	107 MAPLE AVE
146-10-1-41	6 NURSERY LN
146-10-1-42	8 NURSERY LN
146-10-1-43	16 NURSERY LN
146-10-1-45	22 NURSERY LN
146-10-1-46	21 NURSERY LN
146-10-1-47	23 NURSERY LN
146-10-1-48	24-28 NURSERY LN
146-10-1-49	115 MAPLE AVE
146-10-1-5	47 HIGH ST
146-10-1-50	127 MAPLE AVE
146-10-1-51-1	135 MAPLE AVE
146-10-1-51-2	131 MAPLE AVE
146-10-1-52	30 NURSERY LN
146-10-1-53	25 NURSERY LN
146-10-1-54	170 NORTH ST
146-10-1-55	27 NURSERY LN
146-10-1-56	182 NORTH ST
146-10-1-57	139 MAPLE AVE
146-10-1-58-1	200 NORTH ST
146-10-1-58-2	196 NORTH ST
146-10-1-6	41 HIGH ST
146-10-1-60	197 NORTH ST
146-10-1-61	193 NORTH ST
146-10-1-7	39 HIGH ST
146-10-1-8 35-	37 HIGH ST
146-10-1-9	27 HIGH ST
146-6-1-41	260 LOCUST AVE
146-6-1-51	40 SUMMIT AVE
146-6-1-52	60 SUMMIT AVE
146-6-2-1	249 LOCUST AVE
146-6-2-10	25 SUMMIT AVE
146-6-2-11	246 CENTRAL AVE
146-6-2-12	236 CENTRAL AVE
146-6-2-13	232 CENTRAL AVE
146-6-2-14	35 MAPLE AVE
146-6-2-15	31 MAPLE AVE
146-6-2-16	25 MAPLE AVE
146-6-2-17	15 MAPLE AVE
146-6-2-2	235 LOCUST AVE
146-6-2-3	9 SUMMIT AVE
146-6-2-52	200 CENTRAL AVE



146-6-2-53	210 CENTRAL AVE
146-6-2-54	214 CENTRAL AVE
146-6-2-55	224 CENTRAL AVE
146-6-2-56	228 CENTRAL AVE
146-6-2-57	49 MAPLE AVE
146-6-2-58	57 MAPLE AVE
146-6-2-59	59 MAPLE AVE
146-6-2-6	14 MAPLE AVE
146-6-2-60	227 CENTRAL AVE
146-6-2-61	219 CENTRAL AVE
146-6-2-62	211 CENTRAL AVE
146-6-2-63	209 CENTRAL AVE
146-6-2-64	203 CENTRAL AVE
146-6-2-68	2 CLINTON AVE
146-6-2-69	12 HIGH ST
146-6-2-7	24 MAPLE AVE
146-6-2-70	18 HIGH ST
146-6-2-71	28 HIGH ST
146-6-2-72	30 HIGH ST
146-6-2-73	38 HIGH ST
146-6-2-74	46 HIGH ST
146-6-2-75	48 HIGH ST
146-6-2-76 67-	69 MAPLE AVE
146-6-2-77	58 MAPLE AVE
146-6-2-77-1	66 HIGH ST
146-6-2-78	56 MAPLE AVE
146-6-2-79-1	46 MAPLE & 241 CEN AVE
146-6-2-79-2	245 CENTRAL AVE
146-6-2-79-3	249 CENTRAL AVE
146-6-2-79-4	255 CENTRAL AVE
146-6-2-8	34 MAPLE AVE
146-6-2-80	31 SUMMIT AVE
146-6-2-81	33 SUMMIT AVE
146-6-2-82	35 SUMMIT AVE
146-6-2-83	72 HIGH ST
146-6-2-84	70 HIGH ST
146-6-2-85	70 MAPLE AVE
146-6-2-86	80 MAPLE AVE
146-6-2-87	65 HIGH ST
146-6-2-88	71 HIGH ST
146-6-2-89	77 HIGH ST
146-6-2-9	17 SUMMIT AVE
146-6-2-90	81 HIGH ST
146-6-2-92	SUMMIT AVE
146-9-1-1	203 NORTH ST

ROLL CALL:

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, Mecca and Slack  
NAYS: None  
ABSENT: Councilman McCartney

The Resolution was adopted by a 6-0 vote.

8. Residents may be heard on matters for Council consideration that do not appear on the agenda

*Joseph Murphy*, Chair of the Rye Senior Advocacy Committee, presented the Council with copies of the Committee's Annual Report and reported that Det. John Wood had made a presentation to the Rye Senior's Organization regarding scams. He added that work on updating the Senior Directory is almost finished.

*Meg Cameron, 5 Martin Butler Court*, asked about an outstanding FOIL request that she had submitted and not yet received a response to.

9. Resolution to transfer funds from the Contingent Account to the Public Works Department for expenses incurred for the purchase of salt and overtime for the 2015 winter season

Roll Call.

City Manager Culross said staff is recommending this transfer to reimburse the department for overtime expended this year and for salt used, as well as to allow the refilling of the salt bins so there will be salt available for next fall

Councilwoman Brett made a motion, seconded by Councilman Mecca, to adopt the following Resolution:

**WHEREAS**, City staff has determined that the amounts expended for sale for storm coverage in fiscal 2015 exceeded the amounts provided for in the adopted 2015 budget by \$160,000, and the amounts expended for overtime related to storms and snow removal in fiscal 2015 exceeded the amounts provided for in the adopted 2015 budget by \$90,000; and

**WHEREAS**, that the Deputy City Comptroller is authorized to transfer \$250,000 from the General Fund Contingent Account to the Public Works Department.

ROLL CALL:

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, Mecca and Slack  
NAYS: None  
ABSENT: Councilman McCartney

The Resolution was adopted by a 6-0 vote.

10. One appointment to the Board of Assessment Review for a five-year term expiring on September 30, 2020, by the Mayor with Council approval

Mayor Sack made a motion, unanimously approved by the Council, to appoint Caroline Mosher Gadaleta to the Board of Assessment Review for a five-year term expiring on September 30, 2015.

- 10A. Five appointments to the Finance Committee for three-year terms expiring on January 1, 2018, by the Mayor with Council Approval

Mayor Sack made a motion, unanimously approved by the Council, to appoint Evan Bernardi, Diane Ball Brendel, Dave Desmond, Mark Doran and Tatiana Shestova to the Finance Committee for three-year terms expiring on January 1, 2018.

11. Miscellaneous Communications and Reports

Councilwoman Brett reported that the Landmarks Committee does not agree with the location originally suggested by the Ceres Garden Club for the placement of the Blue Star Memorial Markers and after consultation with the City Manager's office has suggested a site located near City Hall. This location has also been vetted with the American Legion.

Councilwoman Killian asked who was responsible for maintaining the property on Midland Avenue near the entrance to 287. City Manager Culross said it was probably either the New York State Thruway Authority or the Department of Transportation.

Mayor Sack reported that prior to this meeting he and Councilwoman Killian met with two residents regarding the issue of new building, tear downs and reconstruction in the City. The residents believe there should be greater restrictions on construction of new homes. Mayor Sack said it was a conversation that will continue as the City looks toward updating its Master Plan.

12. New Business

There was nothing reported under this Agenda item.

13. Adjournment

There being no further business to discuss Mayor Sack made a motion, seconded by Councilman Mecca and unanimously carried, to adjourn into executive session to discuss the search for a new City Manager and not return to the regular meeting at 8:50 p.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk

***DRAFT UNAPPROVED MINUTES*** of the  
Joint Meeting of the City Council of the City of Rye  
and the Rye City School Board held in City Hall on  
April 11, 2015 at 9:00 A.M.

PRESENT:

JOSEPH A. SACK Mayor  
LAURA BRETT  
KIRSTIN BUCCI  
JULIE KILLIAN  
TERRENCE McCARTNEY  
RICHARD MECCA  
RICHARD SLACK  
Councilmembers

LAURA SLACK, President  
KAREN BELANGER  
KATY KEOHANE GLASSBERG  
BLAKE JINES-STOREY  
NANCY PASQUALE  
CHRIS REPETTO  
NICOLE WEBER (Arrived at 9:45 a.m.)  
School Board Members

FRANK CULROSS, City Manager  
FRANK ALVAREZ, Superintendent of Schools  
ELEANOR MILITANA, Assistant City Manager  
GABRIELLA O'CONNOR, Assistant Superintendent for Business  
BRIAN DEMPSEY, Chair of Traffic & Transportation Committee

ABSENT: None

The City Council and the School Board convened at 9:00 a.m. Councilman McCartney made a motion, seconded by Councilman Mecca and unanimously carried, to immediately adjourn into executive session to discuss attorney/client matters. Councilman Mecca made a motion, seconded by Councilman McCartney and unanimously carried, to adjourn the executive session at 9:33 a.m. The joint meeting convened at 9:45 a.m.

1. Pledge of Allegiance

Board President Slack called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Board President Slack asked the City Clerk to call the roll; a quorum of both boards was present to conduct official business.

3. Progress of 2014 Joint Meeting

Board President Slack reported on the opening of the new addition of science classrooms at the High School and thanked the, City, the Mayor and City Council for their help during the construction and for the use of the City snowfield. She also reported on safety drills by the Police Department that are ongoing in all five schools on an annual basis.

Mayor Sack reported on the increased cooperation and communication between the two boards, who now meet twice a year, and the formation of a Joint Task Force regarding the location of the Cable TV Studio.

4. State of the School's Report

Dr. Alvarez reported on various topics including: the new science wing and the district's focus on science and technology including programs that have been introduced in the High School and Middle School; literacy programs in the elementary schools; summer institutes for teachers; a mentoring program for new teachers; the focus on Common Core; goals for community service participation by High School Seniors; updating technology infrastructure; new security measures in the schools; and, issues related to the proposed budget, which was presented with the desire to continue the programs in effect; support new initiatives; and to address enrollment issues. There was also a brief discussion regarding the need for Assistant Principals in the schools. Assistant Superintendent O'Connor reported on the financial aspects of the budget, including how it would be funded, and what the average taxpayer could expect as an increase in their property taxes.

5. State of the City of Rye Report

Mayor Sack outlined what he believes are four main issues facing the City:

- The search for a new City Manager, who the Council hopes to hire by June.
- The search for a new Police Commissioner, which will be started after the new City Manager is in place.
- Golf Club issues including the open insurance claim for employee theft and a Class Action suit under the Fair Labor Standards Act (FLSA) filed by former workers regarding withholding of tips.
- Fire Department issues related to a hybrid department which is made up of paid staff and volunteers including the need to recruit more volunteers and settlement of outstanding labor contracts.

The Mayor added that the present Council has focused on restoring civility but needs to transition from “putting out fires” to long-range planning. Members of the Council added that the Council was also focused on quality of life issues in the community; pointed out that the future of the Golf Club is looking positive; and, that there are special requirements for those volunteering in the Fire Department.

6. Discussion of Pedestrian Safety Initiative: Safe Routes to School Projects

Brian Dempsey, the Chair of the Traffic and Pedestrian Safety Committee (TPS), reported on the Safe Routes to School Projects. The City has resubmitted the study back to the State and approval is being held up due to State and Federal review of endangered species. Hopefully the projects can go out to bid and be completed before school starts in the fall. The projects are: (1) Rapid Rectangular Flashing Beacons (RRFBs) which will be installed near unmanned crosswalks at Forest and Apawamis Avenues, Hewlett and Forest Avenues, and near the High School at Old Post Road; (2) Improvement of the drop off zone at Milton School; and (3) Reducing the crossing distance at Theall Road and Osborn Road and upgrading the curbs and ramps. Additionally, Mr. Dempsey reported that he and City Engineer Ryan Coyne have been meeting with the Principal of Midland School regarding moving a crosswalk and that TPS has been approached regarding a crossing at Sonn Drive. There was a discussion of traffic issues around Osborn School.

7. Discussion of RCDS Student Enrollment

Board President Slack reported that enrollment in the City of Rye has grown 18% in the School District in the last 10 years with the High School growing 35% in nine years and that the district has grown 27% in the County since 2002/2003, while the average growth in enrollment in schools in Westchester has been 2%. She said that there are two main issues for schools: (1) there is no more space in the schools and no more room to build; and (2) increased building in the City has an effect on enrollment and the taxes received from these homes who now have children living in them does not offset the cost per pupil to the school district to educate the additional children in the district. Board Member Belanger said the only choice for the School District was to increase class sizes. Mayor Sack suggested that the increase in building may not be the only reason for the increase in enrollment and said the School District may be a victim of its own success. He said that new children are coming into the system because older families that no longer have children in the system are moving out and new families are moving in. He added that the City is sensitive to quality of life issues relative to size of homes and will be discussing this issue as part of reevaluating the Master Plan.

8. Discussion of Revaluation

Board President Slack said that the School has been asked to bring the issue of doing a revaluation to the City and added that if the City does a revaluation it could help the School District in Tax Certiorari cases. Mayor Sack said there were three areas to look at in connection with revaluation: (1) Unintended consequences such as more families with children moving in

because people without children move out as a result of increased taxes; (2) Equity - people are angry because they pay more taxes than their neighbors; and (3) Dollars and cents - the cost of doing a revaluation, which will be \$800,000 to \$1 million against what it will accomplish for the City. Councilman Slack pointed out that a revaluation would not increase the tax base but may bring an element of fairness. The Mayor added that the City must understand what is involved and what the consequences will be before it moves forward with a revaluation. Councilwoman Brett added that the strongest driver for a revaluation was the difference between residential property values and commercial property values.

9. Resolution on Exemptions

Board President Slack referred to a Resolution proposed by the School District and suggested that both boards could work on proposals for exemptions to the Tax Cap legislation. It was the consensus that both boards would work on a Resolution, limiting the focus to about four areas. Mayor Sack said he and Board President Slack would work on something to be presented to the boards at their respective meetings.

10. Adjournment

There being no further business for the two boards to discuss Board Member Repetto made a motion, seconded by Board Member Pasquale and unanimously carried, to adjourn the joint meeting at 11:15 a.m. Councilwoman Brett made a motion, seconded by Councilman Mecca and unanimously carried, for the City Council to immediately adjourn into executive session to discuss issues related to the City Manager search and not return to regular session.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk





# CITY COUNCIL AGENDA

NO. 6

DEPT.: City Council

DATE: April 22, 2015

CONTACT: Mayor Joseph A. Sack

**AGENDA ITEM:** Issues Update/Old Business

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That an update be provided on outstanding issues or Old Business.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**



# CITY COUNCIL AGENDA

NO. 7

DEPT.: City Council

DATE: April 22, 2015

CONTACT: Mayor Joseph A. Sack

**AGENDA ITEM:** Report of the Rye Playland Advisory Committee with regard to the Westchester County proposal for Standard Amusements to take over management of Playland.

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** A presentation will be made by members of the Playland Advisory Committee on a proposed agreement between Westchester County and Standard Amusements, an amusement-park operator led by investor Nicholas Singer, to run the County-owned amusement park for 15 years, with an option to renew for another 15 years. The agreement is subject to approval from the County Board of Legislators, which has 60 days to decide. Standard Amusements would pay the County \$2.25 million for the park and invest another \$22.7 million into improving the facility over the next five years. The County would also receive annual payments of at least \$300,000 and a 7.5 percent portion of the profits after the company recoups its investment. Standard Amusements intends to retain the park's Art Deco architecture, restore the historic rides and add new attractions like mini-water parks.

See attached:

- \* Report entitled "Improving Playland: Attracting More Visitors and Enhancing Revenues in the Short and Long-Term" prepared by Biederman Redevelopment Ventures for Westchester County
- \* Proposed Agreement between Westchester County and Standard Amusements

# Improving Playland: Attracting More Visitors and Enhancing Revenues in the Short and Long-Term

Prepared for the Westchester County Executive

April 13, 2015

by



Attachment: Improving Playland - Biederman Report (8080 : Improving Playland - Biederman Report)

## Table of Contents

Principles for Making Playland Park a Great Public Space \_\_\_\_\_ 2

Recommendations to Improve Playland Park \_\_\_\_\_ 10

Appendix A: Illustrative Maps and Diagrams \_\_\_\_\_ 29

Appendix B: Impact of Recommendations on Playland Profit and Loss Statement \_\_\_\_\_ 37

Appendix C: Index of Free Public Programming \_\_\_\_\_ 40

## Principles for Making Playland Park a Great Public Space

The vast majority of the hundreds of thousands of public spaces in the United States – urban and suburban parks, corporate plazas, courtyards and atria, gardens – do not work well. Most are vastly underused, many are filthy and in bad repair, and almost none boasts activities or amenities that draw and retain users from surrounding neighborhoods and towns.

An emerging art of improving and revitalizing such lackluster or downright dangerous spaces has been refined in the last two decades, inspired partly by the work of the late urban analyst William H. Whyte, Jr. BRV Corp. has played a key role in this movement, turning around three neighborhoods and five tawdry parks in New York City that used to be detriments to their neighborhoods. In addition, we have created transformative parks and public spaces in cities like Dallas, Pittsburgh, Buffalo, and Newark, consulted on suburban environments like Princeton and Silver Spring, and advised major universities and professional sports teams on their campuses.

Our company’s core principles in creating and managing these turnarounds form a template for our recommendations for Playland:

1. Public spaces must fight hard for each visitor, and the more visitors a space draws and retains, the more other potential users see it as safe and inviting.
2. To draw these visitors, a space manager must pay attention to minute details.
3. Above all, owners or managers must insist on high standards. The great football coach, Don Shula, used to tell his troops to “strive for perfection, settle for excellence,” as good a watchword as any we’ve heard for public space management.
4. To achieve those standards, public spaces should be privately financed and privately managed. Managers of city services often are forced to reply to the “squeaky wheel,” providing competent service in places where it is demanded, until the money runs out.
5. To finance a great space, its manager must have access to multiple revenue sources. Exhibit A shows the various sources that contribute to Bryant Park’s



*Flowers in Bryant Park’s restroom signify care and attention to detail.*

revenues. This avoids periods when short funds lead to deferred maintenance, which sends a subtle visual cue that the park is not well-managed.

- Managers must continuously survey their results and adjust their offerings and management tools. Among the best survey techniques are frequent visitor counts, with special attention paid to female/male ratios. Women are acutely aware of disorder, and throng to spaces that seem completely safe. Female/male ratios of 1:1 indicate great success; dangerous, unpopular spaces tend to yield 1:3 or even 1:4 female/male counts.

## The Context for Our Recommendations for Playland

Playland Park is distinctive and unusual in many ways. Most importantly, it has a combination of uses unlike any public park we've encountered. Within its bounds, there is an amusement park with rare, historic rides; an ice rink that operates year-round; a public swimming pool and beach; multiple food concessions, including one full-service restaurant; and a boardwalk affording some of the best views of the Long Island Sound. A children's museum is planned for the future. Second, Playland has beautiful Art Deco buildings and other structures, lending an aesthetic that other amusement parks can only hope to replicate.

But Playland is also unusual in another way that needs to be addressed: it contains the only government-run amusement park in the United States. As one would expect, other government services—ranging from police to road maintenance to many other public services—have (rightly) taken priority over running an amusement park. This has resulted in years of deferred maintenance, outdated facilities, and an overall park environment that has led to a long-term decline in park visitors. The park now runs at a loss and is a drain on the County budget.

This has in turn created a “chicken and egg” situation: Playland won't draw more visitors and generate more revenue without a major capital investment, and the County is reluctant to make that



*Playland's mix of uses and Art Deco details make it very distinctive.*

investment while Playland runs at a deficit that generally grows worse each year. Nor does the County have the in-house expertise to take measures that would generate revenues and cut expenses so the park operation, at the least, breaks even.

The County responded to this situation by issuing a Request for Proposals from interested amusement park operators in 2010. Though many parties expressed interest initially, at the end of the process there were only three viable contenders: Standard Amusements, Central Amusements International, and Sustainable Playland. The County selected Sustainable Playland, believing it was the right mix of commercial and civic uses for Playland Park, led by a cross-section of county residents. For various reasons, Sustainable Playland ultimately had to withdraw from the project.

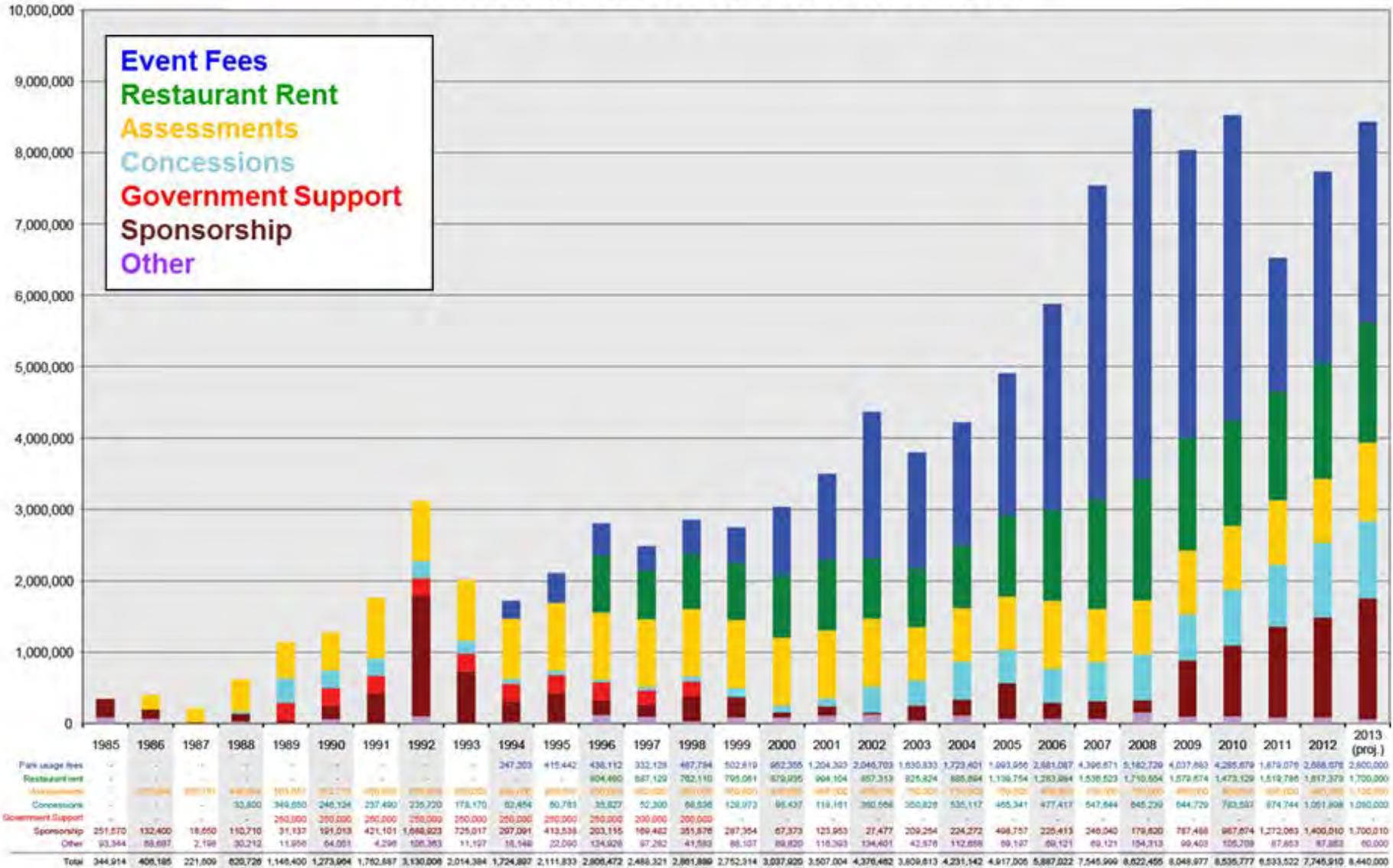
Meanwhile, Playland continues to deteriorate, though it was helped by a 2014 season that saw better attendance due to outstanding weather (especially in comparison with a rainy, hot, and muggy 2013). Recognizing that the situation was still urgent, the County (both the Executive and the legislature) returned to talks with the other two finalists, each of whom has its own perspective on Playland's problems and the solutions to them.

Despite the political controversy over some of its ideas, Sustainable Playland's plan did two things very well that neither of the other two finalists focused on: (1) making Playland into a year-round destination and (2) diversifying its revenue streams to make the park more financially stable. The primary aim of our engagement was to employ these two principles so the County can immediately improve Playland's financial health, and also determine how these two goals can be achieved by a new amusement park operator who would take on the County's financial risk, so Playland is accretive to the overall County budget.



*Playland's rich history and historic structures are one of its greatest attractions, but come with substantial maintenance obligations. The County needs a major investment to repair and restore historic rides and the park's colonnade.*

### Exhibit A: Bryant Park Revenues Over Time



Attachment: Improving Playland - Biederman Report (8080 : Improving Playland - Biederman Report)



## Playland vs. a Checklist of Requirements for Great Public Spaces

Every public space that works well – and there are precious few of them – has certain services, improvements, and offerings that are totally absent in the world’s underused and neglected spaces. Playland does well on a few of these, but needs improvement in most. These are:

- Cultural, recreational, and informational programs, which can be a very important tool to introduce new users to a newly improved facility. A choice of dance, music (Dixieland jazz and salsa seem to be particular favorites, as well as classical, depending on the nature of the visitors), and spoken word presentations can draw different audiences who might never otherwise discover the space. Major outside funding can sometimes be arranged, avoiding stress on the park or management entity’s operating budget. In New York’s Bryant Park, sponsors pay a sizable fee for the use of the space and pay full costs of the talent and set-up to boot. In less high-profile locations, such a goal may be achievable once the park becomes a success. While Playland has a nice selection of family entertainment in the amusement park, it should offer dozens of other programs. These are discussed in more detail in the recommendations section of this report, and a full list can be found in Appendix C.
- A user-friendly design, which pays homage to place-making principles like honoring pedestrian “desire lines,” preferring “softscape” (lawns and flowers) over “hardscape” (asphalt, concrete, or stonework), avoiding blank walls and dead ends, avoiding needless grade changes, and providing sufficient complexity (but through programmed activity, not fussy and expensive design detail). Playland scores highly in this area.



*Broadway in Bryant Park (top) draws large and diverse crowds; smaller programs like ping pong at Klyde Warren Park (middle) and historical information at Canalside Buffalo (bottom) draw consistent use.*

- Seating. None of our other techniques so quickly restores activity to an underused space. Benches or sitting ledges along a main concourse provide entertainment for everyone on the thoroughfare. Bench users enjoy the parade of those walking by, while the walkers are entertained by a space filled with people as opposed to a void. The boardwalk is the best place for benches in Playland. In potential public gathering spaces, like the fountain plaza, movable chairs are far better, with their capacity to be relocated to meet the number and type of visitors, adjust to weather conditions (sun vs. shade, hot vs. cold days), and permit conversational, face-to-face groupings. Movable seating is also needed near Playland’s food concessions, the boathouse area, and at other strategic locations throughout the park.



*Concessions are critical to Playland, and they need to be improved.*

- First-class concessions, which can enliven public space with added visitors at expanded hours, and help remedy any design flaws that are too expensive to correct with full brick and mortar redesign work. Eating facilities are a particular draw, especially at Playland. There need to be a variety of them at different price points, offering different fare. While Playland has plenty of traditional amusement park food, there are a lack of more interesting and innovative options (whether that’s barbecue or Thai). There also need to be more full-service options.

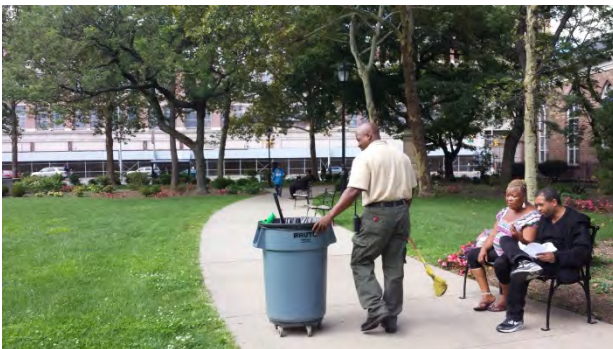


*Lush flower beds (left), colorful planters, such as those at Greeley Square (center), and allees of trees, as in Bryant Park (right), attract more park visitors than sophisticated stonework.*



*Bryant Park's renovated restroom (left) is in a landmarked building; restrooms don't need to be fancy, but they do need to be clean, as in Newark's Military Park (right).*

- Stunning flowers, trees, and lawns, all too often forgotten as landscape architects lean toward expensive hardscape, elaborate fountains, and inaccessible public art that fail to draw dedicated visitors. A great park should include all three of these horticultural elements, with color displays and the lushness necessary to out-compete any nearby gardens. Playland has a picturesque entry drive with great trees and gardens—these horticultural elements should be better integrated into the rest of the park.
- A well-designed white lighting scheme using LED or metal halide bulbs, providing a warmer, healthy white light. This is a vast improvement over the yellow, sodium vapor lights found in most parks, which casts a sickly glow across their plants and plazas. Active nighttime use, like at Playland, requires such lighting; currently, there's a mix of different lighting types at Playland. Lampposts should be architecturally interesting, adding a bit of detail to the park, and most of Playland's lights meet this standard. For a family-friendly entertainment destination, the criterion for an adequate light level, rather than the customary "footcandle" reading, should be a more common-sense evaluation, like the brightness necessary to make an elderly woman feel totally comfortable at night.
- Clean and attractive restrooms, for Playland's swarms of visitors require them. The existing



*Sanitation workers (left) should aim to pick up litter as soon as it falls; security officers should promote public safety and provide general assistance to the public, and avoid long social conversations with each other.*

bathrooms are not dirty, just run down and tired. The park may need additional restrooms in the future, as the number of visitors increases.

- A first-rate sanitation and maintenance program, eliminating eyesores like litter, graffiti, stickers, placards, and sidewalk stains, and attending promptly to necessary minor repairs. Playland does well in this area, for the most part.



- A strong sense of security, characterized by the constant presence of devoted users of the space, and enforced, when necessary and affordable, by well-trained private and/or public security officers, employing the “broken windows” philosophy of policing. Visitors to Playland do feel safe, in general.



- An attractive perimeter and entryway will “sell” the park for later visitation to passersby and make a strong first impression. For Playland, we recommend flashy plantings as well as carefully designed information and historical signs and inviting-looking pathways. While the automobile entrance for Playland is good, the parking lot is an eyesore, and the entry gates and plaza need repairs and upgrades. We would, however, replace the standard County Parks welcome sign with something more festive and decorative.



Attractive flower beds line Playland’s entryway (top) but could be enhanced and extended. The entry signage is either inappropriate (middle) or tired (bottom).

Attachment: Improving Playland - Biederman Report (8080 : Improving Playland - Biederman Report)

## Recommendations to Improve Playland Park

Playland, while much diminished from its golden years, still provides joy to hundreds of thousands of visitors each year. But it costs Westchester County taxpayers millions of dollars a year in deficits, and has been passing up several opportunities on both the revenue and expense side to close that budget gap. Those changes could also yield a much more exciting and attractive environment for Playland visitors.

While the Request for Proposals for operating Playland issued in 2010 was well written, and free of excessive government boilerplate, and the process was fairly administered by the County, the outcome has yet to ultimately advance the County Executive's sensible aims for the park. This is unfortunate, but not surprising. Ambitious changeovers like one to the private management and financing of Playland normally take years to achieve. The new business model for Bryant Park, first proposed in 1980, took almost a decade to gain public acceptance. The results were well worth it, as they will be at Playland, for County residents and taxpayers.

The recommendations in this report deal with both short-term (2015) and longer-term (2016 and beyond) changes to the park's layout, offerings, operations, and management structure. Even if the more ambitious recommendations—like those involving private operation of the amusement area—are not fully executed within the next 12-24 months, the County should be able to move closer to a balanced operating budget through a combination of enhanced revenues (from upgraded concessions, a new experiential marketing effort, a better parking rights deal, a new field facility) and lower expenses (from changes to the parking lot operation, reduction of point-of-sale system costs, modest cuts in full-time personnel, and a reorganized security effort).

After carefully studying Playland's layout, staffing, capital plant, operations, and operating budget during the second half of the 2014 season, we conclude:

### **1. Amusement Park Operation**

The daily operation of the amusement park and parking lot sections of Playland should be transferred to Standard Amusements, led by Nick Singer, in a deal to be negotiated this winter by the County Executive without any prior announcement. Press announcements of designations, without signed agreements backed by earnest money, do nothing but remove the public agencies' negotiating leverage.

We came to this conclusion after extensive outreach to and conversations with potential amusement park operators, including some who did not respond to the County's RFP. There is a limited pool of competent, multisite amusement park operators in the United States (we did not consider any companies that did not have at least one US-based operation already, for various reasons), and an even smaller number who take on amusement parks the size of Playland. The most prominent multisite

amusement park operator of parks like Playland, Palace Entertainment, declined to submit an informal proposal after initial conversations, citing the challenging political environment, continued County ownership of the property, and the combination of the park's declining attendance and need for a large capital investment as reasons not to get involved. An executive at the investment firm that owns Six Flags told us the park was too small to interest them; however, he also praised Jack Falfas (the experienced park operator who is a key man in the Standard Amusements team) extensively and without our prompting, saying we should reach out to Jack and see if he is interested.

We met and spoke multiple times with both Standard Amusements and Central Amusements International. Each of the operators brought specific strengths to the table. Nick Singer and Jack Falfas discussed their thoughts on how to improve each section of Playland in a comprehensive walking tour of the park, focusing on improving and updating the rides, making midway games more appealing, and completely rethinking the park's food concessions. They also stressed that an immediate infusion of capital is necessary to make needed repairs, restore historic architectural features, and most importantly, make a major visual impact on the park's appearance to communicate to park-goers that this is a "new" Playland.

This upfront investment in Playland is the most important difference between the proposals of Standard Amusements and Central Amusements International. One of the strengths of CAI is its expertise in rides and commitment to upgrading the rides at Playland, but this singular focus leads CAI to pay less attention to other needed improvements; CAI's commitment to repairing Playland's overall aesthetic and non-ride amenities is minimal. In addition, Standard Amusements is willing to guarantee a much larger total investment as well as larger first-year investment; CAI's investment is not guaranteed after the first year, and most of that money is spent on rides (presumably with CAI's parent company, Zamperla).



*Replacing outdated and carnival-like rides (top) is important, but Playland's games (middle) and food (bottom) also need dramatic upgrades. Standard Amusements had a more balanced approach than Central Amusements International.*

The agreement should include a commitment by Standard to invest at least \$25 million into Playland. The County should also be assured of the involvement of Jack Falfas, whose vision for the upgrading of the amusement park is critical to the County’s success in the attempted upgrade of Playland.

The agreement with Standard Amusements must include a restriction on transfer of operating control over the next decade, and transfers after that period should be subject to approval by the County Executive (not to be unreasonably withheld).

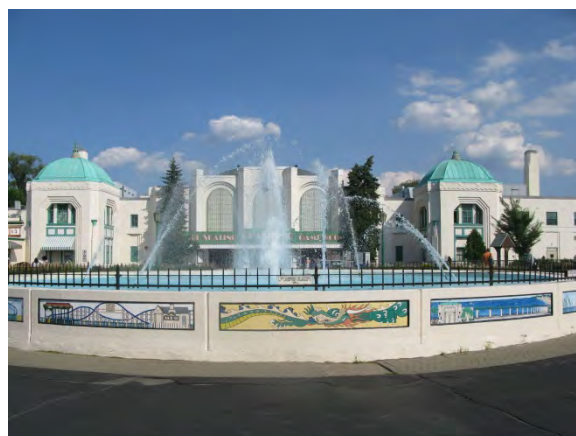
There needs to be a clear plan in place to fully transition operating control of the amusement and swimming portions of Playland to the private operator by the summer of 2016, with a county operation over the summer of 2015 that benefits from the new operator’s strong guidance. This guidance should focus on potential savings in staffing costs, vendor contracts, and other areas that are detailed below, in recommendation number 9.

**2. Upgrades to the Fountain Plaza**

The entry area to the amusement park, adjacent to the Ice Casino and the boardwalk, should be redesigned as a spectacular “fountain plaza” with at least three new restaurants of various sizes installed at the plaza’s corners, using the current administration building, the area of the ice casino used for seasonal employee check-in, and the area now occupied by a closed-down Burger King franchise. A fourth, seasonal restaurant (probably in the style of a German beer garden) could be installed in the area currently occupied by miniature golf, which should be demolished for a more productive and aesthetically pleasing use, even if it’s just seating and umbrellas. A fifth may be possible as well.

The plaza should be improved by spectacular plantings and lighting. The County should seek funding for an upgrade of the fountain from philanthropic donors, the investors/owners of the adjoining new restaurants, or the amusement area operator.

We don’t believe it’s necessary at this point to completely resurface the fountain plaza, but it does need



*The fountain plaza has a decent fountain (top) but is otherwise a windswept, empty plaza with no amenities (bottom).*

Attachment: Improving Playland - Biederman Report (8080 : Improving Playland - Biederman Report)

some refurbishment. Eventually, it should be repaved with decorative, dyed and stamped concrete. This would be a good substitute for a more expensive material like granite or bluestone. In the meantime, new planters of various sizes, as well as plenty of new furnishings and amenities (discussed in detail in another section) will also dramatically improve the look of the existing plaza.

### 3. Upgrades to Food Service

As to food service at Playland in general, we believe that the quality of the park's offerings could be greatly improved, and the rental revenues doubled, in short order. We recommend that:

- The County renegotiate or reoffer each and every food service agreement upon its expiration. The County should also approach American Skating Entertainment Centers about outsourcing its food service in the Ice Casino (we believe they are open to it).
- Browse both the local residential and corporate communities in the search for more attractive and healthful restaurant options.
- Expand the footprint for full-service dining facilities by converting several spaces abutting the fountain plaza into restaurants, as described above.
- To make sure that all attractive alternatives are explored, retain on a commission basis a restaurant retail specialist. We recommend John Harding who has performed exactly this function for our projects in New York and Newark.
- Allow that consultant to operate under more flexible rules than the normal County procedures for such offerings, including negotiated deals, negotiations with multiple



*The miniature golf (top) should be removed. Food concessions (middle) need to be upgraded and more diverse. Food kiosks (bottom) aren't located correctly. In general, food needs to be more appealing to visitors to become a bigger revenue source.*



proposers simultaneously, and agreements that read like traditional restaurant leases instead of park concession contracts.

The South Bathhouse should also be considered as a food service facility. There is demand for another large catering and event venue for corporate entertaining as well as weddings in this part of Westchester County. The South Bathhouse could be retrofitted to become that venue, and its sweeping views of the beach and Long Island Sound, coupled with the small pool parking lot adjacent to the building, will make it very attractive. In the event that the Westchester Children’s Museum never completes its build-out, the catering facility could be expanded to both bathhouses, enabling it to handle the largest events, or two events simultaneously. Eventually, a catering hall like this would be very remunerative to the County, assuming the County receives a fair market rent (typically at least ten percent of gross catering revenues).

Another idea given to us for the bathhouses is to fill each bay facing the beach with a small, hip, upscale quick-service food kiosk, similar to New York’s Smorgasburg permanent and seasonal installations, or the “Broadway Bites” pop-up offerings in Herald Square. It will take some work to combine this concept with the catering concept above, but some combination of the two may be feasible; the restaurant consultant mentioned above should try to put it together.



Figure 1: Removable turf fields can be installed unobtrusively at the back of the parking lot, as not to interfere with special amusement park events, like Halloween or Christmas-themed attractions.

#### 4. Seasonal Outdoor Turf Fields

At the back of the current parking lot, seasonal soccer and lacrosse fields should be installed by the same team that previously proposed building an indoor athletic activity building, Playland Sports, owned by Rye residents John Abate and Eric DeGraw. While public opposition among neighbors to a new building in Playland was strong, there is a large unmet demand for indoor and outdoor sports fields, primarily from private youth leagues and adult recreational leagues. The back of Playland's parking lot sits empty most of the fall, winter, and spring, and could easily fit two large turf fields in its narrowest section, to be built (and removable) without permanent structures.

Expanding recreational sports at Playland will advance the goals of bringing more people to Playland and expanding the season. Playland is already used for competitive swimming and various types of passive recreation; turf fields used by youth and adult leagues will expose different groups of people to Playland, as well as introduce them, over time, to its dramatic improvements. By virtue of these sporting events happening in the spring, fall, and winter, more people will be aware of offseason events at the amusement park and visit its new restaurants at the Fountain Plaza.

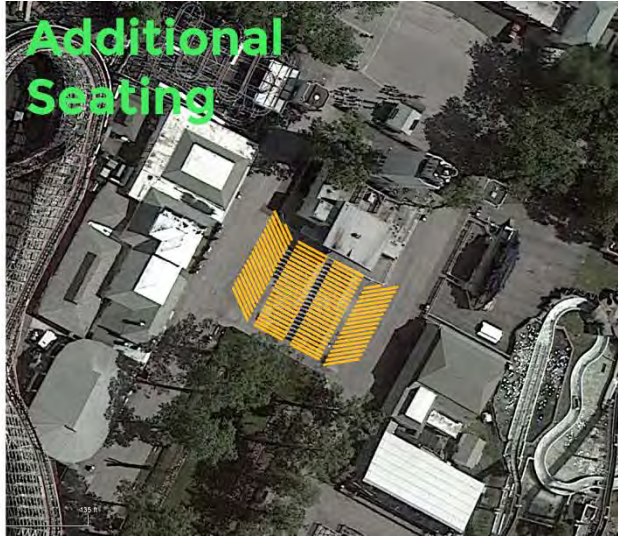


Figure 2: The Music Tower seating area needs to be expanded. The option shown is the easiest, but perhaps not as ideal as going further back into the existing lawn, or relocating/replacing rides on either side.

The annual rental for this field facility should be negotiated between the amusement park operator and Playland Sports prior to any public announcement of the award

The County should negotiate a sporadic use clause for these outdoor fields as overflow parking on special occasions like the July 4<sup>th</sup> holiday/fireworks.

**5. The Music Tower Theater**

The Music Tower Theater is underutilized, too small, and could be more attractive. The event stage should be enlarged and updated, to accommodate up to 1,500 patrons, versus the current 500 or so. This would allow promoters to bring in bigger names and likely result in more entertainment for Playland visitors. This could be done with bleachers or other temporary seating. Removing one or two of the non-County-owned rides (which generate very little revenue and contribute nothing aesthetically) will provide more than enough room. Figure 2 above shows an easy way to expand seating immediately; the new amusement park operator may choose to make additional changes to provide more seating than shown on the diagram (about 1,000 seats).



The seating area for the Music Tower Theater is too small for promoters to bring in more appealing acts and needs to be expanded.

Attachment: Improving Playland - Biederman Report (8080 : Improving Playland - Biederman Report)

In addition, the County should seek proposals for 2015 bookings and promotion from outside entertainment promoters, as well as begin negotiation with one of the existing promoters, Barry Sullivan. It is important that the promoter is given much more control, if not exclusive control, over stage programming if the County wants to improve the quality of the entertainment and generate more revenue from the Music Tower programming. The policy of event dates being approved one or a few at a time, without providing flexibility in case of a change to the performer’s schedule, combined with response times that are too slow, has resulted in a lot of acts not coming to Playland over the years. Giving the concert promoter a large number of guaranteed and pre-approved dates and the right to a flexible schedule on those dates to operate and program the stage will solve this immediately, and generate more money for the County.

Furthermore, the County should not allow anyone into Playland for free in the two to three hours leading up to ticketed concerts. Any Westchester resident who knows that Playland is free to enter will not buy a ticket for a concert—the concerts can be seen and heard perfectly outside the paid seating area, and there’s even a comfortable lawn on which families can relax and picnic while listening and watching the concert. While those who enter Playland earlier in the day could stay to see the concert for free, ending free admission a few hours before a ticketed concert will end the practice of people showing up specifically for the concert with no intention of paying for it. This will in turn boost ticket revenues and improve the County’s bottom line.

**6. Seasonal Amphitheater**

The County should propose, and negotiate toward a joint arrangement with, the New York Philharmonic and Live Nation for an inexpensive, temporary concert stage to be placed facing southwest, in the current “overflow parking” area



*A temporary, seasonal stage will work well for pop concerts (top) and orchestral concerts (middle). The permanent pavilion at Klyde Warren Park was relatively inexpensive.*

beyond the existing vehicle storage and trash dumpster area. This facility would be used initially for a few summer concerts of the Philharmonic, and also the site of pop acoustic concerts only (i.e. concerts with reduced noise levels), to be promoted by LiveNation.

The Philharmonic is looking for a summer home, but has other summer commitments outside the New York City area. So while the orchestra does not want a “residency” like the Boston Pops has at Tanglewood, they would like an outdoor venue where they could perform a few concerts (perhaps by summer 2016) that’s within an hour or so of Manhattan, with the option of increasing the number of performances in future years.

In addition, LiveNation wants to build an outdoor amphitheater to fill a hole in the New York City market: while there are outdoor concert venues on Long Island (Jones Beach and Westbury), in central New Jersey (the PNC Bank Arts Center in Holmdel), and upstate (Bethel Woods), there isn’t one in Westchester County. In conversations, LiveNation has said it is willing to restrict the volume of the acts it would bring to Playland and make sure that noise levels are appropriate to Playland’s setting. In addition, they are open to scheduling concerts for weeknights (when the parking lot is mostly empty).

The temporary stage for these events would likely be funded and named for a philanthropic donor. An elaborate permanent stage we have been involved with in our recently opened Dallas park (Klyde Warren Park, pictured above) cost \$2 million to build in 2012. We believe a naming rights adoption of the stage and associated site preparation costs would be highly likely, without, as the



Figure 3: A conceptual site plan for a seasonal performance stage.

Philharmonic requests, poaching on their base of existing donors. We believe the potential sponsor of this improvement could be either corporate or an individual.

By paying for the capital cost of the seasonal stage, the County would increase any payments from concert promoters. Figure 3, above, shows a hypothetical site plan.

## 7. Experiential Marketing

The County should begin an ambitious effort to take advantage of the new opportunities available to attractive venues in “experiential marketing”: product sampling, product introductions and re-brandings, and other forms of direct, in-person marketing by consumer brands. The agents who have access to these deals can work on a commissioned basis, so there is no County outlay unless it comes from a shot of incremental revenue, and bring substantial revenue to the County for service and capital improvements to Playland Park. These events would be rare but remunerative and sometimes bring with them entertainment that would engage Playland visitors.

Counter to the perceptions of park advocates in some jurisdictions, the sponsors of these events usually do understand that commercial messaging in public parks must be toned down. At the same time, they are promoting a new or relabeled product. Playland has long had major brands (like Pepsi, Burger King, Nathan’s, and Carvel) integrated into the overall park experience, so experiential marketing will feel fairly natural to the visiting public, as long as it’s in the high-traffic areas like the amusement park and the Fountain Plaza (which is where brands will want to be located anyway).

The funds that flow from these deals can be substantial: Bryant Park, obviously in the heart of Manhattan, has hosted many brands who paid “site fees” in the \$250,000-\$750,000 range. One other virtue of such events is that the event producer generally brings in a very competent event production crew, who can set up the staging and make it disappear within a one to two-day window.



*Experiential marketing from well-known brands like Pokemon (top) and Nordstrom (bottom) could bring in new revenues to Playland.*

More common than big concerts with internationally-known performers are smaller product “experiences,” like a pop-up shop or interactive display. These can also be done tastefully, and are sometimes part of sponsorship deals. For example, the Playland ATM contract should be re-bid immediately with deal terms that provide activation opportunities to the relevant bank. The revenue the County receives from the current deal is too low. Re-bidding the contract and offering more value for the sponsor—probably some combination of tables to get people to sign up for accounts, signage, and association with some new program or amenity (discussed in detail below)—will boost the County’s bottom line substantially.

The new revenues from experiential marketing will be significant as soon as 2015 and have enormous long-term potential. However, once the amusement park operation is privatized, there will be potential conflicts between the County and the operator that will allow event producers to play the County and the operator against each other. It’s critical to coordinate experiential marketing across the entire site and address how it will be coordinated (as well as how revenue will be apportioned) in the management agreement with the amusement park operator. For example, if a sunscreen company is quoted a price of \$30,000 for setting up a marketing display on the Fountain Plaza, and then approaches the amusement park operator and gets a price of \$25,000 for the same display in the amusement park, it could initiate a “race to the bottom,” where each party makes far less money from experiential marketing than it would if both parties worked together.



Figure 4: Proposed boundaries for areas with a charge for entry and those with no admission fee.

## 8. Re-Drawing the Paid and Free Areas

During the County’s RFP process, all of the finalists expressed a willingness to “take down the gate” and admit all visitors into the amusement park free of charge. However, in candid conversations, all of the potential amusement park operators we met with (including those who did not respond to the County’s RFP) said that a gate that charged admission to everyone and included unlimited rides was their preferred business model. We recommend that the County consider this option, and weigh the increased rent payments from the amusement park operator against the politics of no longer allowing Westchester County residents into the amusement park for free.

While the new amusement park operator will probably want to institute a flat fee for entry (again, including all rides), the County should encourage use of the natural and park-like portions of Playland by permitting free entry to all to the Fountain Plaza, boardwalk, and beach areas (removing the fence that prevents free movement between the boardwalk and beach).

In addition, the current group picnic area in the amusement park should be completely redesigned into a more attractive and flexible green space that can continue to function as a reserved picnic area but also work as a passive green park space when it’s not being used for group picnics. This area should also be free to the public, and amusement park guests should enter and exit through a separate entrance, to be designed in detail in upcoming months, and opened in the spring of 2016. This



will enhance the appearance of the portions of the park adjacent to Long Island Sound and south of the amusement park rides. The County should remove the cage-like private party barriers and also add a large lawn, plantings of specimen trees, and great flower beds, using a portion of the capital provided by the proposed amusement operator.

The map in Figure 4 above (included at a larger size in Appendix A) shows the new boundaries of the free and paid areas.

## **9. Expense Reductions**

To move Playland toward self-sufficiency or even profitability, the County should take the following steps on the expense side of the ledger:

### *Security*

The security operation of the County Police inside Playland is heavy on “rangers” and very lean on the more expensive uniformed officers. When uniformed officers do routine patrol work, it’s often on bicycles, and the rangers, like many uniformed security people all across the nation, tend to cluster in groups of two or three, defeating the whole purpose of their presence. The rangers are alert and polite with visitors, but not as visible as they could be if better allocated across several different posts.

While all are confident that the County’s aim in placing a Police command center at Playland is to assure very quick response to major incidents--and there have been several of those in the past decade – the departmental charge of \$600,000 is very high because it must account for the County’s labor contracts, which include benefit packages that are very generous compared to the private sector. We believe a top-notch private security firm could provide the appropriate level of service for far less money.

### *Sanitation*

We believe that litter collection and restroom-cleaning employees might possibly be more flexibly assigned in the park’s frequent slack hours, saving some expense by cutting unnecessary maintenance employees from the payroll.

Currently, the roles of sweepers, garbage runners (who empty cans and take full trash bags to dumpsters), and bathroom attendants are almost completely segregated. Creating more hybrid roles will allow these employees to work more efficiently, as well as raise the overall level of cleanliness at the park, by allowing employees to react to messes more quickly and with a greater level of expertise. This change would also require less staff.

### *Ride Operators*

All of the ride operators we observed were competent and focused on their jobs. However, many of the rides seem to be overstaffed. Managers confirmed that because so many employees call in sick or fail to show up, they intentionally overstaff ride operations so that all of the rides will have enough staff to run, and there are enough “floaters” to provide breaks to employees. While we understand the thinking, the current practice clearly inflates staffing costs. We recommend gradually reducing the staffing level by implementing more stringent “no call/no show” rules (such as a zero tolerance policy) and other policies to reduce absences and tardiness.

### *Skilled Trades*

On the full-time trades side, while we know that one of the purposes of the 6 am – 1 pm schedule of such employees is to get critical ride maintenance performed before the park opens, we’re skeptical this schedule is the most efficient for the expense side of Playland’s profit and loss statement. Unionized employees who perform physical work generally like to be done with their shifts by mid-day, but that might not be the best idea for either quick service in the park when things go wrong during the day, or for control of overtime.

### *Lump Sum Contracts*

A few lump sum items seem out of scale to us. First, we can figure out a relatively simple way to sweep the parking lot every day over four short months for less than \$125,000. This contract should be re-bid immediately, or the responsibility given over to the new amusement park operator as soon as possible (the operator would either bill the County for work in 2015 or absorb the cost as part of the overall management agreement).

Second, the \$150,000 cost to maintain a not-so-successful point of sale system seems very high. While it may not make sense to buy a new point-of-sale system if the County is only going to operate the amusement park for one more year, it is worth a discussion with the new amusement park operators to see if they will purchase one that the County can use in 2015, and they will continue to use thereafter. Since the new operator will likely bring back many of the same seasonal employees, the company has a reason to train current Playland staff on its point of sale system.

### *Utilities*

Playland’s existing lighting should be replaced by LED fixtures, which provide a much more attractive white light. The County could save as much as 70% on its bill for lighting by converting the

fixtures. Of course, this change would require a significant capital investment to pay for the equipment and labor to change all of the lights, and the County is only going to be operating the park for one more year. However, it's worth discussing this with the new amusement park operators to see if they will pay for the upfront capital cost—if electricity costs are passed along to them in 2016, it's in their interest to save money by converting the lights to LED. The investment could pay for itself within just a few years.

Alternatively, there is a company that will pay for all of the equipment and labor to switch fixtures to LED, but it will take a portion of the electricity savings for decades in order to make the project profitable. This option does, however, eliminate all capital expenses, and the County would still get a large portion of the savings, so it is appealing if the new amusement park operator doesn't want to contribute toward the project.

### *Parking Lots*

The County should immediately bid out operation of Playland's parking lots for 2015. If bids come in at numbers where the County would benefit financially from outsourcing operations, the County should enter into a contract for the 2015 season. The new amusement park operator may be interested in assisting or advising the County during this process.

## **10. Playland Pool**

The universal view of the Playland pool among qualified operators is that it should be converted into a small water park or splash playground, likely by the amusement park operator.

The pool itself is outdated: it's not deep enough for diving, but it's far too deep (ten feet) for children to safely swim without a great deal of care by lifeguards. From an amusement perspective, static pools don't provide the entertainment value and fun that families get from splash pads or pools with water slides. Westchester families could be having much more fun at a similar price point to today's admission charge.

The new pool area would blend a shallow swimming pool (probably a depth of about four feet) with small slides and other water features. It could also be expanded into the area immediately to the north of the current pool; that area could feature a second swimming pool and set of slides and other amenities. One of the pools could be geared toward younger children, and the other toward older children, expanding the potential visitor base for the pool complex.

**11. Playland Beach**

The County should remove all access charges to the beach, so that all of the park’s natural areas (the beach, the lawn, the lake, and the bird sanctuary) would be free and open to all visitors who want to enjoy this extraordinary natural site.

Free access to the water and woods will draw more off-season visitors to Playland Park, and therefore increase sales at the park’s concessions, possibly extending their season. It would also remove the awkward transition between the freely accessible boardwalk and the beach, which just doesn’t look right with the existing rules and layout.

The beach should also stay open later each day during the summer, and later into the season. While there may not be many true beach-goers after dark, being able to walk barefoot in the sand after a dinner at one of the new restaurants would be a great new amenity for visitors. And there are plenty of warm days after Labor Day when County residents will want to cool off at the beach.

**12. Relationship to Rye Town Park**

Beyond the scope of this project, but worth considering as the County tries to turn Playland from a drain on its budget into a lively park that generates funds for other County parks and services, would be a change in the awkward relationship between Playland and Rye Town Park.

The town of Rye in 2013 issued an RFP seeking ideas for their park asset, but received only one proposal and did not pursue it. Supervisor Joe Carvin, however, told us that the town would still like to

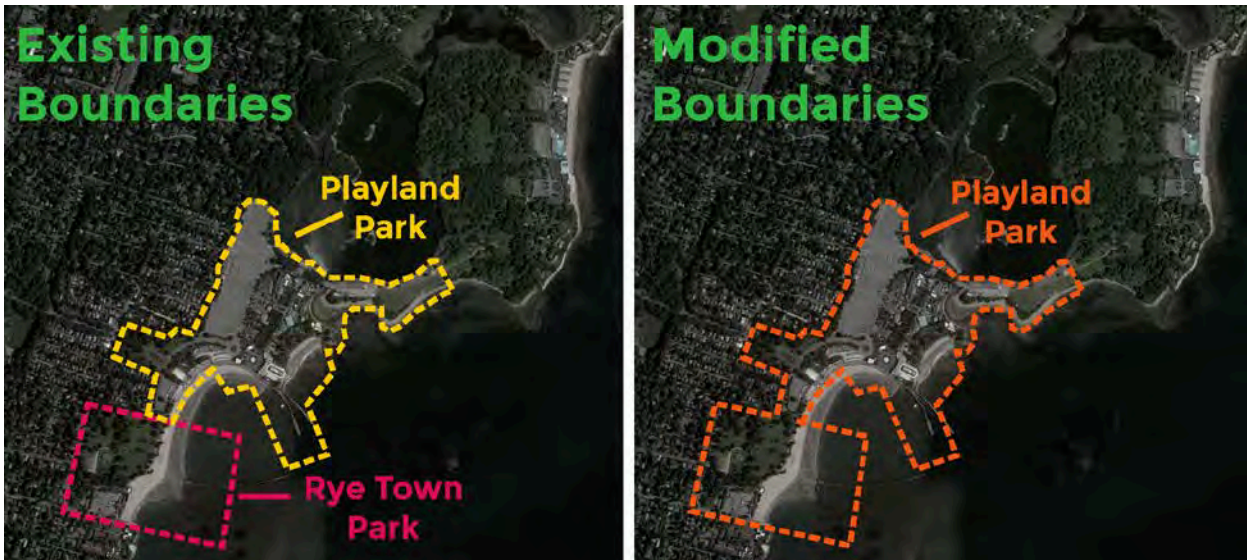


Figure 5: Boundaries for a new Playland, integrated with Rye Town Park.

find a creative way to offer a good public space experience while shedding the heavy financial burden of the park.

Among the sensible modifications to the current set-up (see Figure 5, below) would be to:

- Add the use of the Rye Town Park parking lot to Playland's parking capacity.
- Add the Seaside Johnny's restaurant in Rye Town Park to the food and beverage offerings adjacent to the Playland beach and boardwalk.
- Use some of the lawn area in Rye Town Park for the programming discussed below.

### 13. Added Features and Programming

Our research into the history of Playland indicates that, in the early years of the park, there were very frequently one-off events and activities that drew large crowds, who would then be sold on future visits to the park. Fireworks and a few

concerts remain, but not enough other special events to draw in new visitors. Apart from improving the quality and frequency of concerts (which our earlier recommendations will allow), other special events should be added to Playland. These might include food and wine/beer festivals that will generate revenue for the park, as well as art fairs. We spoke with an operator of a national, touring art fair who told us that Westchester County

is an ideal market for a fair that provides the public with direct access to artists, and that a portion of the Playland parking lot would be a good site (used during the offseason, such as in May or September/October).

We also see a major opportunity in promoting the fact that one of the most memorable scenes in the movie *Big* was filmed at Playland Park. Clearly there should be some type of signage, as well as a Zoltar Speaks machine, permanently on the site. In addition, the County should bring in a professional event producer and promoter to partner on an



*Special events based on food and drink (top) and weekly design markets (middle) will draw new audiences to Playland, while daily, free programming like yoga (bottom) will keep them coming back.*

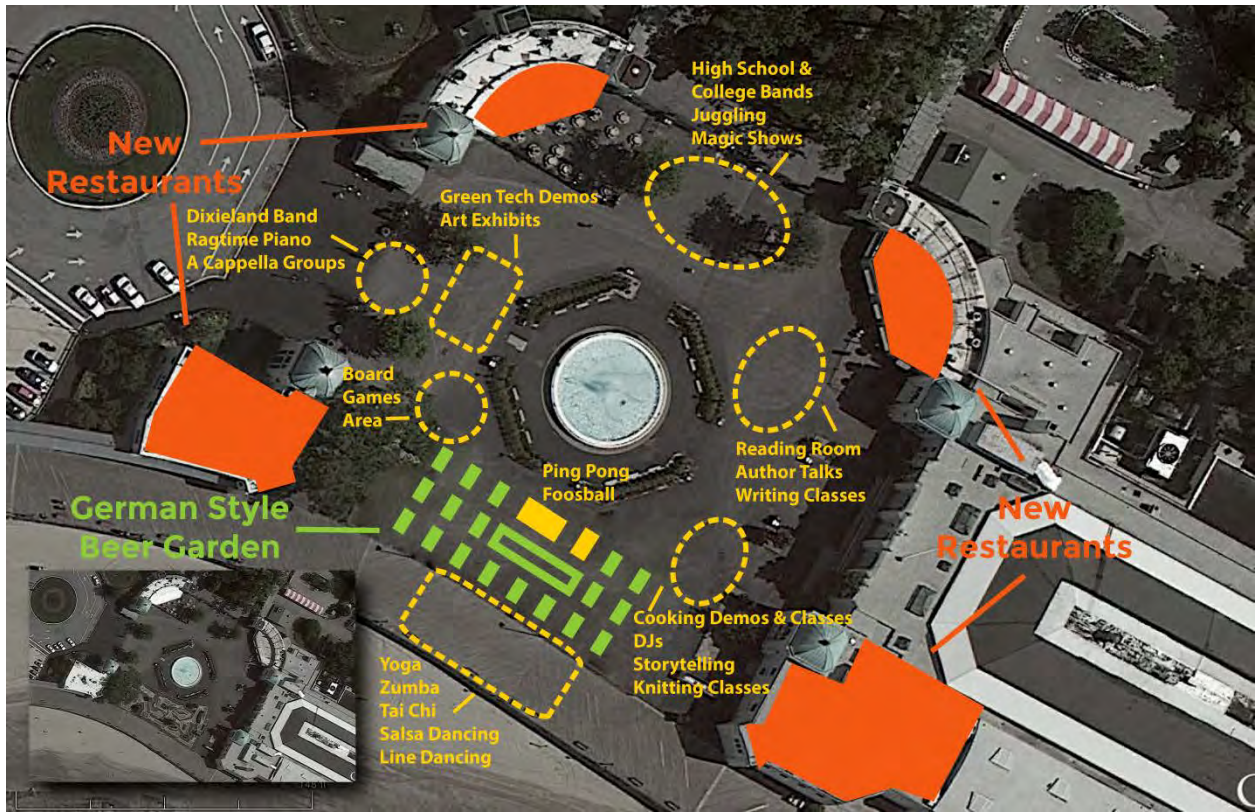


Figure 6: The above programming layout is for a hypothetical Saturday during the amusement park season. Programs don't occur simultaneously; usually, between one and four are happening at a given time, and only one at each location. A full list of recommended programs is in Appendix C.

annual *Big* festival. The 30<sup>th</sup> anniversary of the film's release is in 2018—given that 30 is the age Tom Hanks's character becomes after he wishes to be "big," this anniversary has a special significance and "hook" for the public and potential event sponsors.

In addition to special events, Playland should have a wide variety of free classes, activities, and amenities—collectively, public space "programming." Programming will draw more visitors to Playland, extend their stays, and give them more reasons to return. Some programs should be available daily, while others should be scheduled weekly or even monthly. They should almost always be free to the public. We recommend concentrating them in the Fountain Plaza and using other areas of the park as appropriate.

Programming not only draws new visitors to parks. It also provides attractive targets for commercial sponsors, who could improve the County's bottom line.

Among the relatively inexpensive programs we recommend are:

- Plaques with historic, geographic, and natural information.
- Historical tours of the park, possibly weekly.

- Off-season gift and green markets.
- Games area, with free lending of board games and special events like chess tournaments
- Reading room, with books, newspapers, and magazines for free use, placed on the free-to-public lawn.
- Ping pong area (sponsored).
- A variety of fitness classes, such as yoga, tai chi, zumba, and “boot camp”-style classes.
- Musical performances by local high school bands and choruses, as well as college bands and a cappella groups.

In addition, hundreds of lightweight movable chairs and tables should be added to the Fountain Plaza. Movable furniture will encourage people to use the programming, and also extend their stays at Playland by giving them comfortable places to sit—of which there is a real shortage today. Movable seating is superior to fixed seating, especially in an active park setting like Playland that attracts diverse groups of users. This is because movable seating allows guests to sit

- In conversational groupings, facing one another, instead of in a row on a bench
- In groups of any size, not limited by the benches surrounding a fixed picnic table
- Oriented toward a particular view or activity, with the ability to change that orientation
- In whatever relationship to sun and shade they want
- As close to each other (or as far from one another) as they want.

Apart from the Fountain Plaza (see Figure 6, above, for a hypothetical programming setup), new amenities should be added at the Boathouse. First, the County should find an imaginative entrepreneur to operate a concession for non-motorized maritime recreational activities. These should include standard activities like kayaking, canoeing, and paddle boats (this last activity is already at Playland), but also newer activities like paddleboarding and water bikes. The concessionaire should offer instructional classes and tours.

Movable seating and other amenities should be added for family members not going out on the water. These should be targeted to seniors as well as a parent with a younger child, as they’re the two audiences most likely to stay ashore when the entire family is using the boathouse.

The boathouse operator may also be interested in reviving Playland’s dock and adding a mooring field, if it’s practical. While there is little demand for transient docking, whether by private boaters or chartered boats, we believe that’s because Playland doesn’t currently offer the right mix of amenities to draw those visitors.

Taken together, upgrading the food and beverage options so Playland becomes a dining destination, significantly improving the entertainment (and bringing in more popular acts), and giving the amusement park a cosmetic makeover may be enough to start drawing boaters, given the right marketing campaign to spread awareness. In addition, chartered boats from New York City, or even re-

establishing some type of weekend ferry service, become a real possibility, once the new attractions have a few years of successful operation.



Appendix A:

Illustrative Maps and Diagrams

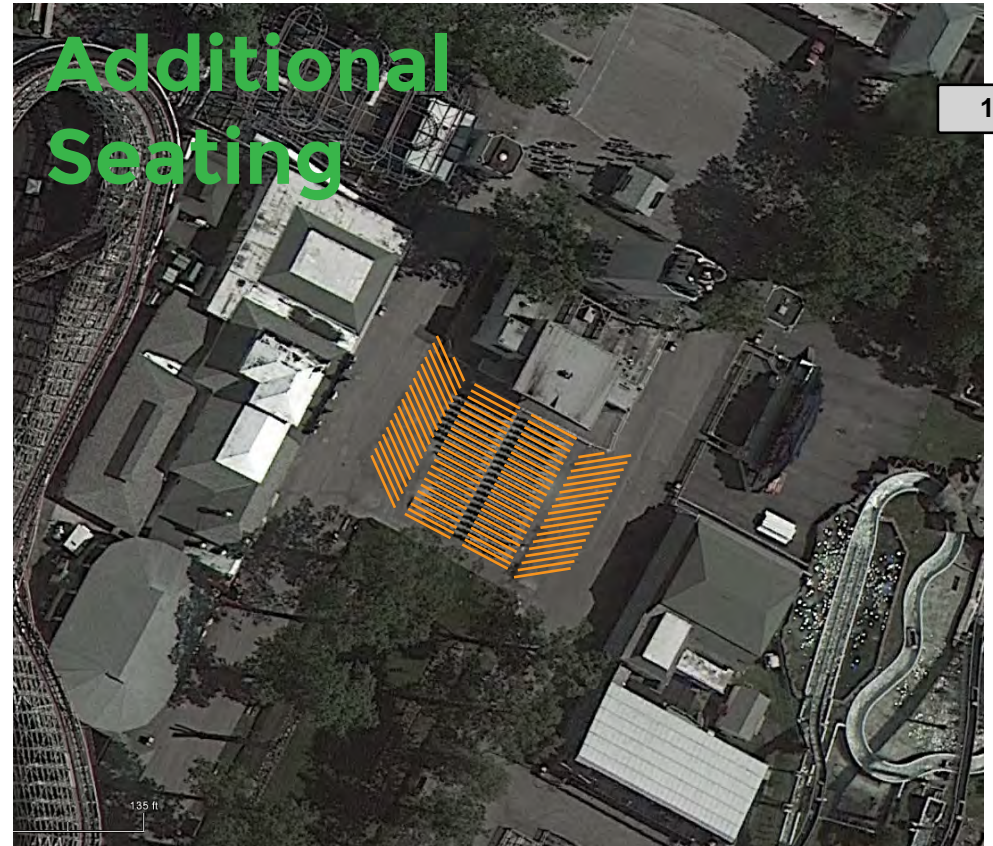
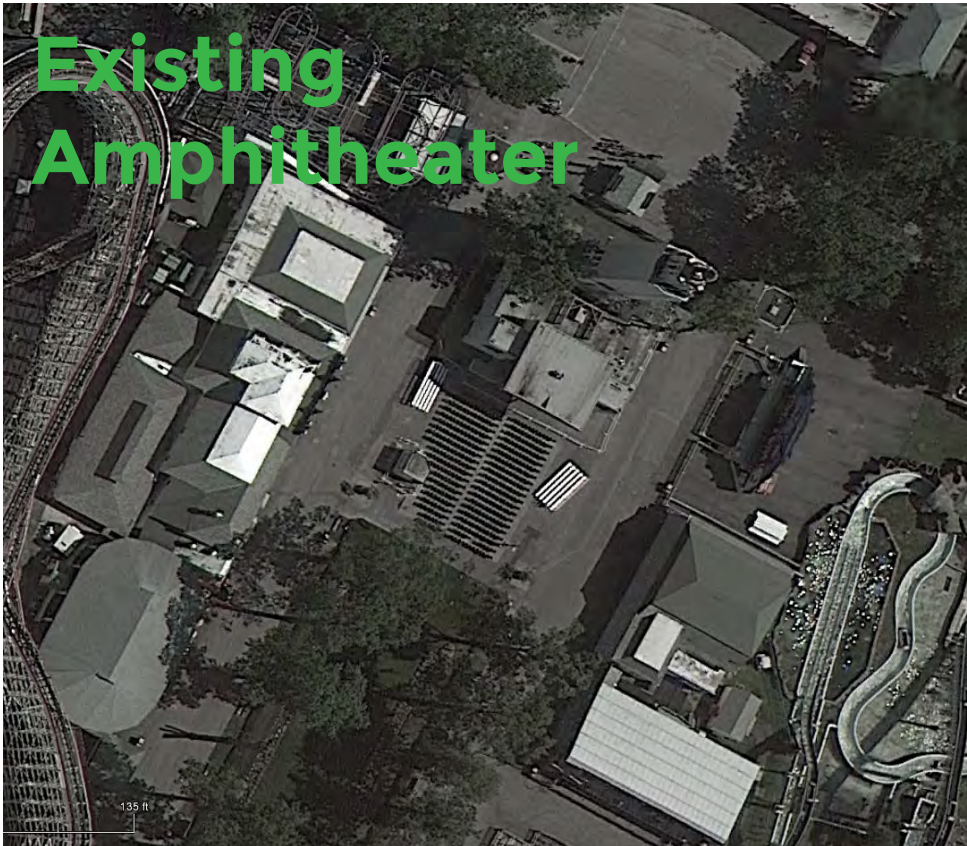
# Proposed Division of Park Operating Responsibilities



# Proposed Off-Season Athletic Fields



# Proposed Expansion of Amphitheater Seating



# Proposed Seasonal Stage

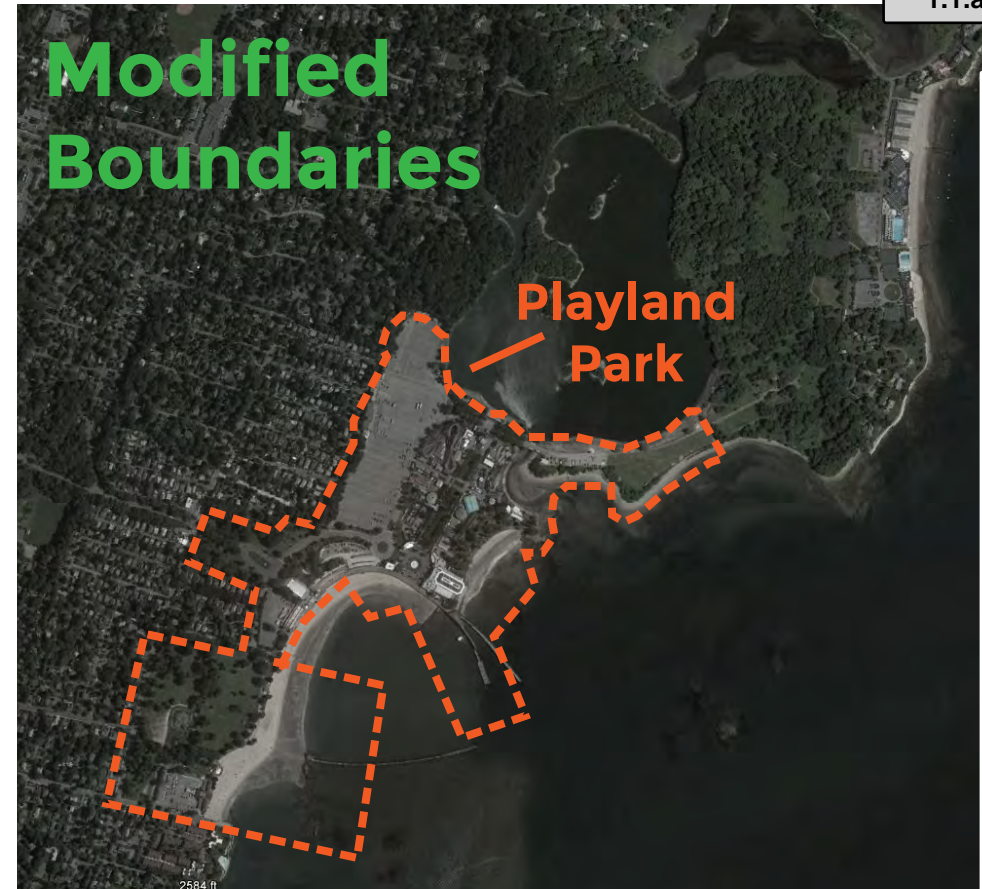


# Proposed Paid and Free Park Areas

1.1.a



# Proposed Integration of Rye Town Park



1.1.a





Appendix B:

Rough Estimated Impact of Recommendations on Playland Profit and Loss Statement

Rough Estimated Impact of Recommendations on Playland Profit and Loss Statement

Category	Change	Assumptions/Comments	Financial Benefit (in 000s)					
			2015		2016		Steady State Year	
			Expense Cut	Revenue Created	Expense Cut	Revenue Created	Expense Cut	Revenue Created
Operations	Conditionally transfer operation of parking lot to private company for 2015.	Bid out parking lot operation contract, but only execute if net positive to County.		\$ 10	*	*	*	*
Offerings	Revamp design and retailing of fountain plaza. Eliminate mini-golf, introduce new restaurants.	Beer garden to open in 2015; two restaurants in 2016; third restaurant comes later (small number in "steady state" year). Operators make majority of capital investment, but rent reaches 7% of gross revenues (a conservative estimate**).		\$ 35		\$ 250		\$ 600
Offerings	Install seasonal soccer/lacrosse fields at back of parking lot	Two fields from at least October through May.		\$ 75	*	*	*	*
Offerings	Upgrade size and appearance of event stage	Promoter will install bleachers, have more flexibility in scheduling.		\$ 10	*	*	*	*
Revenues	Introduce experiential marketing program, with major brands paying County for right to introduce new products with publically appealing events	Will need to be coordinated with new amusement park operator; a portion of experiential marketing revenues will accrue to that entity.		\$ 50		\$ 200		\$ 500
Operations	Re-bid vendor contracts for parking lot sweeping and POS maintenance/ wristbands	Assumes savings of roughly 15% (may be conservative).	\$ (42)		*	*	*	*

Attachment: Improving Playland - Biederman Report (8080 : Improving Playland - Biederman Report)

### Rough Estimated Impact of Recommendations on Playland Profit and Loss Statement

Category	Change	Assumptions/Comments	Financial Benefit (in 000s)					
			2015		2016		Steady State Year	
			Expense Cut	Revenue Created	Expense Cut	Revenue Created	Expense Cut	Revenue Created
Operations	Consult with private operator to trim overstaffing in sanitation and ride operations	3% overall reduction should be achievable; 5% may be possible.	\$ (48)		*	*	*	*
Operations	Transition to a mix of public and private security for daily patrols	Assumes one County sergeant and two uniformed officers present whenever amusement park open; twelve park ranger FTEs during amusement park season.	\$ (100)		*	*	*	*
Operations	Reduction/attrition of one tradesperson		\$ (87)		*	*	*	*
Revenues	Re-bid pouring rights contract	Needs to be coordinated with new amusement park operator; a portion of revenues will accrue to that entity.		\$ 100		\$ 75		\$ 150
<b>Total</b>			<b>\$ (277)</b>	<b>\$ 275</b>	<b>\$ -</b>	<b>\$ 525</b>	<b>\$ -</b>	<b>\$ 1,250</b>
<b>Net change to County Profit/Loss Statement</b>				<b>\$ 557</b>		<b>\$ 575</b>		<b>\$ 1,350</b>
<b>Operating deficit relieved by amusement park operator ***</b>						<b>\$ 500</b>		<b>\$ 500</b>
<b>Grand total change to County Profit/Loss Statement</b>						<b>\$ 1,075</b>		<b>\$ 1,850</b>

\* Benefit will accrue to new amusement park operator, who will relieve County of habitual operating deficit.

\*\* The actual rent formula for restaurants on the Fountain Plaza will be more complicated. We envision a fixed, low base rent that is supplemented by percentages of gross food sales at various break points; for example, \$100,000 per year plus 5% of food sales over \$500,000, 7% of food sales between \$500,000 and \$750,000, 8% of food sales between \$750,000 and \$1 million, and 10% of food sales over \$1 million. In addition, there should be rent based on a percentage of alcohol sales (beginning at the first dollar), in the 10-15% range.

\*\*\* Assumes that County will still be responsible for debt service payments. Average of 2010-14.

Appendix C:

Hypothetical Free Public Programming in Playland

Program Name	Category	Location	Frequency	Duration
A cappella	Music	Fountain Plaza	Weekly	4-8 weeks
Accordion	Music	Boardwalk	Weekly	4-8 weeks
After-school programs	Families and Children	Lawn	Weekly	4-8 weeks
Aquarium	Hobbies and Interests	Fountain Plaza	Daily	TBD
Architecture exhibits (on Playland)	Hobbies and Interests	Fountain Plaza	Daily	12-24 weeks
Army bands	Music	Fountain Plaza	Weekly	4-8 weeks
Art - reproductions of museum work	Arts and Culture	Fountain Plaza	Daily	12-24 weeks
Art classes (painting)	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Art supply recycling/upcycling	Hobbies and Interests	Fountain Plaza	Monthly	6-8 months
Artist in residence	Arts and Culture	Boardwalk	Weekly	4-8 weeks
Arts and crafts classes/demos	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Author readings	Arts and Culture	Fountain Plaza	Weekly	12-16 weeks
Ballroom dancing	Hobbies and Interests	Boardwalk	Weekly	8-12 weeks
Bike racks	Hobbies and Interests	Various	Daily	Year-round
Bike rental	Hobbies and Interests	Boardwalk	Daily	6-8 months
Board games	Hobbies and Interests	Fountain Plaza	Daily	6-8 months
Book clubs	Hobbies and Interests	Fountain Plaza	Monthly	6-8 months
Book stalls	Hobbies and Interests	Fountain Plaza	Episodic	6-8 months
Boot camp	Health and Fitness	Boardwalk	Weekly	Year-round
Buskers	Arts and Culture	Boardwalk	Weekly	4-8 weeks
Capoeira	Health and Fitness	Boardwalk	Weekly	4-8 weeks
Cooking classes	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Cooking demos	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Creative writing workshop	Hobbies and Interests	Fountain Plaza	Monthly	4-6 months
Dance bands	Music	Fountain Plaza	Weekly	4-8 weeks

Program Name	Category	Location	Frequency	Duration
Design/Craft/Art Market	Hobbies and Interests	Parking lot	Episodic	TBD
DJs	Music	Fountain Plaza	Weekly	4-8 weeks
Farmers market	Hobbies and Interests	Parking lot	Weekly	4-8 weeks
Fireside lectures	Arts and Culture	Fountain Plaza	Monthly	4-6 months
Fire pit	Site Amenities	Fountain Plaza	Daily	4-6 months
Fitness classes - general	Health and Fitness	Boardwalk	Weekly	4-8 weeks
Fitness-related concession	Health and Fitness	Boardwalk	Daily	6-8 months
Foosball	Games	Fountain Plaza	Daily	Year-round
French market	Hobbies and Interests	Parking lot	Weekly	4-8 weeks
Garden tours	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Green technology demos	Hobbies and Interests	Fountain Plaza	Monthly	6-8 months
High school/college bands	Music	Fountain Plaza	Weekly	4-8 weeks
Historical plaques/markers	Hobbies and Interests	Throughout	Daily	Year-round
History of Playland exhibit	Hobbies and Interests	Fountain Plaza	Daily	Year-round
Hockey slapshot game	Games	Fountain Plaza	Daily	Year-round
Horticultural info signs	Hobbies and Interests	Throughout	Daily	Year-round
Ice carving/sculpting performance	Arts and Culture	Fountain Plaza	Seasonal	Winter
Ice Cream and candy carts	Food and Retail	Fountain Plaza	Daily	Year-round
Ice sculptures	Arts and Culture	Fountain Plaza	Seasonal	Winter
Jazz combos	Music	Fountain Plaza	Weekly	4-8 weeks
Juggling lessons	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Juggling performance	Families and Children	Fountain Plaza	Weekly	4-8 weeks
Knitting classes	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Line dancing	Hobbies and Interests	Boardwalk	Weekly	4-8 weeks
Live piano and soloists	Music	Fountain Plaza	Weekly	4-8 weeks

Program Name	Category	Location	Frequency	Duration
Lounge chairs	Site Amenities	Boardwalk	Daily	Year-round
Magic shows	Families and Children	Fountain Plaza	Monthly	4-6 months
Meditation	Hobbies and Interests	Boardwalk	Weekly	4-8 weeks
Mommy and me fitness classes	Health and Fitness	Boardwalk	Weekly	4-8 weeks
Movable seating & umbrellas	Site Amenities	Throughout	Daily	Year-round
Nature classes	Hobbies and Interests	Boardwalk	Weekly	4-8 weeks
Outdoor bar	Food and Retail	Fountain Plaza	Daily	Year-round
Petanque	Games	Lawn	Daily	Year-round
Photography classes	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Ping pong	Games	Fountain Plaza	Daily	Year-round
Poetry slams	Arts and Culture	Fountain Plaza	Weekly	4-8 weeks
Puppet shows	Families and Children	Fountain Plaza	Monthly	4-6 months
Putting green	Games	Lawn	Daily	Year-round
Radio/television - remote broadcast	Arts and Culture	Fountain Plaza	Episodic	TBD
Reading room	Arts and Culture	Fountain Plaza	Daily	Year-round
Rotating art exhibit	Arts and Culture	Fountain Plaza	Seasonal	TBD
Roving violinist	Music	Fountain Plaza	Weekly	4-8 weeks
Salsa dancing	Hobbies and Interests	Boardwalk	Weekly	4-8 weeks
Specialty markets	Food and Retail	Parking lot	Episodic	TBD
Sports-related talks	Hobbies and Interests	Fountain Plaza	Monthly	4-6 months
Storytelling	Arts and Culture	Fountain Plaza	Monthly	4-6 months
Storytime	Families and Children	Lawn	Weekly	4-8 weeks
String quartets	Music	Fountain Plaza	Weekly	4-8 weeks
Tai Chi	Health and Fitness	Boardwalk	Weekly	4-8 weeks
Toy boats in fountain	Families and Children	Fountain Plaza	Daily	4-6 months

Program Name	Category	Location	Frequency	Duration
Vendor carts	Food and Retail	Boardwalk	Daily	Year-round
Video projections	Arts and Culture	Throughout	Seasonal	Winter
Walking clubs	Health and Fitness	Boardwalk	Weekly	4-8 weeks
Walking tours	Hobbies and Interests	Fountain Plaza	Weekly	4-8 weeks
Wireless internet access	Site Amenities	Throughout	Daily	Year-round
Yoga	Health and Fitness	Boardwalk	Weekly	4-8 weeks
Zumba	Health and Fitness	Boardwalk	Weekly	4-8 weeks



**THIS PLAYLAND MANAGEMENT AGREEMENT** (“Agreement”) made the \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between

**THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601, acting by and through the Department of Parks, Recreation and Conservation, and/or the Department of Public Works and Transportation and/or the County Executive, as appropriate (hereinafter the “County”),

and

**STANDARD AMUSEMENTS, LLC** a for profit Delaware limited liability corporation having an office for the transaction of business at 767 Fifth Avenue, New York, New York 10153 (hereinafter referred to as “Manager”).

The County and Manager hereinafter referred to collectively as the “Parties”.

**WITNESSETH:**

**WHEREAS**, Playland Park is a public park located within the County of Westchester, in Rye, New York (hereinafter referred to as “Playland Park”, “Playland” or the “Park”); and

**WHEREAS**, since 1928, the focal point of the property has been an Amusement Park, which today has 50 major rides and attractions. Playland also includes long stretches of scenic vistas of Long Island Sound, a beach, Olympic-sized pool, waterfront boardwalk, fishing piers, boating, dining and picnic areas, and indoor ice skating rinks; and

**WHEREAS**, there has been a downturn in attendance which has translated directly into greater County subsidies going to support the budget to operate Playland Park; and

**WHEREAS**, due to the current financial challenges facing local government now and for the foreseeable future, it has become necessary to develop creative solutions to continue the public’s ability to enjoy the full potential of park resources; and

**WHEREAS**, in August 2010, in an effort to reverse the current financial conditions of Playland Park, the County issued a Request for Proposals (“RFP”) seeking proposals for the management and operation of the existing Playland Amusement Park, in whole, in part, or some variation thereof; and

**WHEREAS**, the County’s goal in seeking proposals to reinvent Playland Park was to maximize the potential for this valuable County resource, reduce Park expenses and to enter into a public/private partnership, similar to what other jurisdictions throughout New York State and the Country have done in agreements with not-for-profit and private corporations to take over management of a public park and raise private funds to operate the park and make improvements that the public owner cannot afford to do; and

**WHEREAS**, the County received 12 proposals in response to the RFP including a proposal from the Manager; and

**WHEREAS**, the County, by an agreement dated July 23, 2013, engaged Sustainable Playland, Inc. to manage and operate all of Playland Park, however, that agreement was terminated prior to its

intended commencement date Sustainable Playland, Inc. never took over the management and operation of Playland Park and the agreement was terminated; and

**WHEREAS**, the County by an agreement dated August 21, 2014 engaged Playland Ice Casino, LLC to manage and operate the Playland Ice Casino (“Ice Casino”); and

**WHEREAS**, the County desires to engage Manager to manage and operate Playland Park.

**NOW, THEREFORE**, the Parties hereto in consideration of the terms and conditions herein contained do agree as follows:

**SECTION 1: Term; Co-Management Period; Initial Payments; Commencement of Full Management of Playland Park**

This Agreement shall take effect upon the date that it is fully executed by the County and Manager (“Agreement Commencement Date”). There shall be a period of co-management of Playland Park by the Parties which shall begin on the Agreement Commencement Date and shall end on the Management Commencement Date (“Co-Management Period”). The respective duties and responsibilities of the Parties during the Co-Management Period are described below.

Playland Park and the areas of Playland Park described herein, including, but not limited to, the amusement park, beach, pool, fountain plaza and boardwalk, are delineated in the attached drawing which is incorporated herein as Schedule “A” and in the attached survey which is incorporated herein as Schedule A-1.

The Manager shall commence full management and operation of Playland Park on October 31, 2015 (“Management Commencement Date”). The term of this Agreement shall be for a period consisting of the Co-Management Period and fifteen (15) years from the Management Commencement Date (“Term”), with a mutual option to renew the Agreement for an additional fifteen (15) years upon the agreement of the Parties. Assuming satisfactory performance of the Agreement by the Manager during the Term, it is the expectation of the Parties that the Agreement will be renewed for the additional fifteen (15) year term, subject to necessary legal approvals. In the event the County chooses not to renew this Agreement, then it shall be required to provide written notice to the Manager of such intent not to renew, not less than two (2) years before the expiration of the Term. If the Manager has performed satisfactorily and the County determines not to renew this Agreement, then the Manager shall be entitled to be reimbursed by the County for the unamortized portion of any capital improvements actually made by the Manager by the date of receipt of the notice of termination, as determined on a straight-line depreciation basis over the original term of this Agreement.

The Parties have entered into a separate escrow agreement which provides that the County Executive shall submit legislation (the “Legislation”) to the Westchester County Board of Legislators (“BOL”) seeking approval of this Agreement. The Legislation shall be reasonably acceptable to the Manager. The terms of that escrow agreement include, but are not limited to, the following:

The Manager shall place \$250,000 into escrow upon the execution of the escrow agreement. The escrow will be held by an independent escrow agent acceptable to the County and the Manager.

If the BOL does not approve and adopt the Legislation within sixty (60) days of its submission to the BOL, then the Manager shall direct the escrow agent to pay the County \$50,000 from the escrow, direct the escrow agent to pay the Manager \$200,000 from the escrow, terminate the escrow agreement and terminate its offer to the County to enter into this Agreement.

If the BOL approves the Legislation within sixty (60) days of its submission to the BOL, then the Manager shall place an additional \$250,000 into escrow, for a total amount of \$500,000 to be held by the escrow agent and upon the delivery to the escrow agent of (i) a copy of the resolution of the Board of Acquisition and Contract of the County authorizing the County to enter into this Agreement and (ii) a copy of this Agreement (with any modifications accepted by the Manager and the County), fully executed by the Manager and the County, the escrow agent shall pay the \$500,000 held in escrow to the County on the Agreement Commencement Date (the "First Initial Payment").

Not less than ten (10) business days prior to the Management Commencement Date, the Manager may opt to terminate this Agreement by notifying the County in writing. If the Manager exercises its option to terminate, the County shall retain all of the First Initial Payment.

Should the Management Commencement Date occur, the Manager shall make an additional payment to the County ("Second Initial Payment") in the amount of One Million Seven Hundred and Fifty Thousand (\$1,750,000.00) Dollars. The Second Initial Payment shall be made the day after the Management Commencement Date.

During the Co-Management Period, the County shall be the sole decision maker and continue to manage, operate, repair, maintain, make improvements to and have financial responsibility for costs and liabilities for Playland. During the Co-Management Period, the Manager shall assign the requisite number of personnel and/or consultants hired by the Manager to monitor County personnel, study Playland's operations, and take all steps necessary to complete its due diligence to prepare to take over the full management and operation of Playland Park with the Manager's personnel on the Management Commencement Date. The Parties agree to make commercially reasonable efforts to cooperate with each other during this Co-Management Period to ensure the continuity of operations at Playland.

During the Co-Management Period, the Parties shall create a schedule of items to be completed in order to transition full management and operation of Playland Park to the Manager. The items shall include, but are not limited to:

- (i) examination of the existing infrastructure and equipment, including the County's Point of Sale system;
- (ii) the County shall prepare a list of all contracts, licenses and other agreements that it currently has, which are used in the operation of Playland Park and present same to the Manager within thirty (30) days after the Agreement Commencement Date for the Parties to review to determine which, if any, such contracts including, but not limited to, software licenses, will, if possible, either be assigned to the Manager for the remaining term of such contract or terminated by the County upon its terms and conditions. If a contract is assigned, the Manager shall be responsible to carry out the terms of that contract until it terminates. Upon the expiration or termination of any County contract, the Manager shall perform such services or will be responsible to enter into agreements for the same or similar purposes at its cost and expense. The following are exceptions to this provision:
  - a. The license with 181 New England Seafood Corporation-Tiki Bar/Pier Restaurant shall continue until it expires on December 31, 2019. Prior to expiration, the County will conduct a request for proposal process with respect to this license and the Manager shall be permitted to submit a proposal in response to this request for proposal;

- b. The license with New York SMSA Limited Partnership d/b/a Verizon Wireless, its successors or assigns, for microcell, rerad, or other similar or comparable in-building radio-distribution devices will not be assigned or terminated and will continue as a County contract unless otherwise agreed to by the Parties in writing in an amendment to this Agreement;
  - c. The County and the Manager shall specifically negotiate the assignment of the County's contract with Playland Ice Casino LLC, to ensure a smooth transition;
  - d. The Manager agrees that it shall be subject to the existing and future County Parks contract for soda/water pouring rights and that any of its subcontractors shall also remain subject to such agreement(s). Commencing in 2016, the County shall include in future pouring rights contracts that include Playland the following language: "Pricing shall be uniform among all County park facilities".
  - e. The County's existing contract for automated teller machines ("ATMs") at Playland Park and other parks expires on April 17, 2017. The Manager agrees that it shall be subject to the existing ATM contract until it expires and upon expiration, the Manager, at its cost and expense, shall have an affirmative obligation to enter into an agreement for these purposes and to retain any fees; and
  - f. The Parties agree, except as noted above, that the County shall have the right to retain all fees paid to the County pursuant to any such contracts, and to maintain these contracts and any successor contracts for the Term of this Agreement, at no cost to Manager;
- (iii) develop all plans, rules and regulations as required by Section 5 below; and
  - (iv) create a list of County-owned items of personal property and equipment located at Playland Park to be transferred to the Manager for its use solely for Playland Park operations, which shall be attached hereto as **Schedule "B"** prior to the Management Commencement Date and if it is later determined that any item is not required for its use, the Manager shall return same to the County.

During the Co Management Period, the County shall provide the Manager with appropriate office space necessary to carry out its duties.

**SECTION 2: Management of Playland Park**

Starting on the Management Commencement Date:

A. In accordance with the terms and conditions of this Agreement, Manager, at its sole cost and expense, shall manage, operate, improve, maintain and repair Playland Park in accordance with standard industry practices and shall in due course of daily management make all repairs to the grounds, walkways, paved areas, facilities, buildings, structures, equipment, rides and other infrastructure at Playland Park, except for the County's responsibilities set forth in Sections 2-a and 12 below; and to also make restorations, renovations and improvements to Playland Park as outlined in **Schedule "C"**, which is attached hereto and made a part hereof, and any other work more particularly set forth in this Agreement (collectively the "Work").

In addition, the Manager shall be responsible to obtain and/or acquire all supplies, materials, accessories and equipment necessary to operate Playland Park. Notwithstanding the above, the Manager shall not be responsible to manage and operate the Ice Casino (except to the extent required if the County's license with the Ice Casino Manager is assigned to the Manager hereunder), the Tiki Bar, or the Westchester Children's Museum.

The County hereby grants to Manager the exclusive right and privilege to undertake the Work during the term of this Agreement. The Manager recognizes and understands that it must manage and operate Playland Park consistent with its current recreational uses and as a public park facility. The Manager shall complete all of the items identified in **Schedule "C"** within five (5) years of the Management Commencement Date.

B. During normal business hours the County, its employees, agents and independent contractors shall have access to all of Playland Park at all reasonable times during the Term of this Agreement to carry out the County's responsibilities under this Agreement without materially disturbing Manager's business operations, in accordance with agreed to protocols for ordinary day-to-day activities and with reasonable notice and cooperative planning for major repairs or capital improvements, except if an emergency situation requires immediate action by the County, whether during business hours or not, then the Manager shall be notified within a reasonable time after the emergency occurs, if the Manager did not notify the County of the emergency. Manager shall provide a set of keys or access codes for any locks to the County for these purposes.

C. The Manager, either by itself or through an approved subcontractor, shall ensure that Playland Park shall be operational during the period commencing with the Management Commencement Date and ending on the expiration or earlier termination of this Agreement. It is also recognized and understood by the Parties that the operation of an amusement park, the beach and the pool areas, are material elements of this Agreement. Notwithstanding the immediately preceding sentence, the Manager shall have the ability to repurpose the pool area as long as any future use includes a water theme. In addition, the Manager shall keep all currently non-gated public spaces at Playland Park maintained and open to the public which are described below with "in-season" defined as the time period when the amusement park, the beach and pool areas are operational (as determined by the Manager's operating schedules approved pursuant to the annual Operating Plan described in Section 4 below), and "off-season" as the time period when the amusement park, the beach and pool areas are not in operation (as determined by the Manager's operating schedules approved pursuant to the annual Operating Plan described in Section 4 below):

All public areas beginning immediately east of Forest Avenue, including:

- East of Forest Avenue through the top circle, inclusive of all property down to the entrance circle (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- Employee Parking Lot/Bus Depot (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- Main Parking Lot (year-round during any hours for Ice Casino and Children's Museum operation or dawn to dusk off-season; dawn to park closing in-season);
- Beach/Pool Parking Lot (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);

- Fountain Plaza (year-round during any hours for Ice Casino and Children’s Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- Main Boardwalk from Rye Town Park to Tiki Bar area and Seaside Walk entrance (dawn to dusk off-season; dawn to park closing in-season);
- Beach (dawn to dusk off-season for dog walkers with off-leash dogs; beach operations 10 a.m./beach closing in-season);
- Pier (dawn to dusk off-season; dawn to park closing in-season);
- Tiki Bar/Restaurant (10 a.m. up to 2 a.m. April through October);
- Seaside Walk from the back of the Ice Casino including the to be reconstructed North Boardwalk (dawn to dusk off-season; dawn to park closing in-season);
- Public Picnic Area/Lake Perimeter/Boathouse (dawn to dusk off-season; dawn to park closing in-season); and
- Roadway/property and additional parking past the Music Tower leading to Edith Read Sanctuary entrance (dawn to dusk off-season; dawn to park closing in-season).

The duty of the Manager to keep the public areas open shall be subject to Force Majeure as defined in Section 39.

In accordance with the RFP, it is recognized and understood by the Manager that the public must be guaranteed free access to Edith G. Read Natural Wildlife Park and Sanctuary and to the boardwalk and pier. The Manager shall also guarantee public access to the beach, provided that the Manager may establish fees for such public access as is presently required consistent with the fees set pursuant to Section 4 herein and with the policies adopted pursuant to Section 5 herein.

D. All of the Work shall be carried out in conformity with all applicable federal, state and local laws, rules and regulations, orders and ordinances and other legal requirements, including, but not limited to, all applicable rules and regulations of the Department of Parks, Recreation and Conservation.

E. The Manager shall perform all the Work in a good and workmanlike manner in order to keep Playland Park in a clean, orderly, safe and operational condition. The Manager shall keep all grounds, sidewalks, streets, curbs, parking areas, access roads and roadways free of snow, ice, dirt, rubbish and other obstacles.

F. In furtherance of Operating Plan required by Section 4 below and the Rules and Regulations and Plans required by Section 5 below, the Manager shall expeditiously develop policies and procedures for the operation and management of Playland Park.

G. In order to carry out the Security and Emergency and Contingency Plan required by Section 5 below, the Manager shall ensure that there are appropriate safety, security, emergency and fire response systems, including equipment and personnel, necessary to protect both persons and property prior to the Management Commencement Date.

H. The Manager shall not create, nor suffer to be created, any nuisance in, around or about Playland Park.

I. The Manager shall provide such other facilities, services and activities as necessary to undertake the Work.

J. The County Executive, and the departments under the administrative jurisdiction of the County Executive, and the Manager agree that they shall use best efforts to cooperate with each other to permit the Manager to carry out the Work.

K. The Manager shall use commercially reasonable efforts, in the exercise of the Manager's best judgment, to carry out the Work in a manner, which is compatible with the interests of the County and the Manager, Playland Park as a public park, the community surrounding Playland and the users of Playland Park.

L. The Manager shall have no liability for failure to perform its obligations under this Agreement to the extent, but only to the extent, that it is unable to perform by reason of either:

- (i) the failure of the County to provide any approval required under this Agreement and reasonably requested by the Manager as set forth in subparagraph W below, or
- (ii) the failure or refusal of the County to approve budgetary appropriations (or obtain funding from other sources) required by this Agreement, or
- (iii) the default by a third party not under the direction or control of the Manager, or
- (iv) Force Majeure as defined in Section 39.

M. The Manager or its designee shall attend quarterly meetings with County personnel at mutually agreeable times and locations.

N. The Manager shall cooperate and assist the County in dealing with all federal, state and local agencies in all matters relating to the Work.

O. The Manager shall provide technical advice within the knowledge of Manager to the County on Playland Park operations, maintenance and marketing programs and projects. The prior sentence notwithstanding, the Manager shall have no obligation to seek such advice from outside experts or consultants when the advice requested by the County is outside the knowledge of Manager.

P. The Manager shall provide written documentation of all accidents that take place at Playland Park where such accidents result in the occurrence of any of the following: (i) administration of first aid by the Manager; (ii) require a response by public safety services (Police/EMS/Fire); (iii) require a response by Manager's internal security service; or (iv) where such accidents are reported by a third party to the Manager. The Manager shall notify the County's Director of Risk Management within 24 hours of such accident by providing written documentation in a format acceptable to the Director of Risk Management.

Q. The County shall have the option to select and use appropriate space in the Administration Building and/or at one or more other buildings within Playland Park for use as office space, police facilities, information technology, filing and storage of documents or other purposes deemed necessary or desirable to the County, such space shall be in a location that is mutually acceptable to both Parties.

R. The Manager may maintain its own designated website for Playland Park. If the Commissioner finds any website content to be clearly defamatory or offensive to the reasonable standards of the community, then the Commissioner shall request a modification to the website which request shall not be unreasonably withheld, conditioned or delayed by the Manager. The County's website shall include a link to the Manager's website.

S. The Manager shall consider incorporating a water dependent boating component with docks and moorings (a "Marina") into the vision for the future of Playland in accordance with the resolution dated December 19, 2012 adopted by the City Council of the City of Rye provided the operation of a Marina is determined to be reasonably feasible, financially viable and a net revenue generator on a continuing basis.

T. The Manager shall provide evidence to the County that the Amusement Park within Playland Park is in compliance with ASTM F-24 standards.

U. The Manager, if necessary, shall comply with the provisions of Section 765.351 et seq. of the Laws of Westchester County ("the County Tree Law").

V. The Manager shall use its commercially reasonable efforts, in the Manager's sole judgment reasonably exercised, to attract subcontractors desirable and consistent with the Manager's response to the County's RFP.

W. Each approval, pursuant to or necessitated by the terms of this Agreement, of the Commissioner, or any other County commissioner or department under the administrative jurisdiction of the County Executive, shall not be unreasonably withheld, conditioned, or delayed.

X. The Manager may utilize a portion of the parking lot during the off-season for a temporary sports field or other attractions, provided that it does not interfere with the general operations of Playland Park, the operations of the Ice Casino and/or the operations of the Children's Museum.

Y. The Manager shall use commercially reasonable efforts, consistent with the proper maintenance and operation of the Playland Park, availability of funds and the safety of the public, to conserve water and electricity and to implement commercially reasonable conservation programs and to otherwise follow commercially reasonable practices for energy conservation to the extent practicable.

Z. It is a material element of this Agreement that the Manager utilize professional management in operating Playland Park, in particular the services of Jacob T. "Jack" Falfas who shall be deemed one of the Key Personnel under this Agreement. The Manager shall provide the County with a list of Key Personnel prior to the Management Commencement Date, which shall be attached hereto as **Schedule "D"**. No replacements shall be made to Key Personnel until the Manager notifies to the Commissioner in writing that the replacement has the same or better qualifications than the incumbent.

#### **SECTION 2-a: County's Duties for Maintenance and Repairs and Improvements**

The County as owner of Playland Park shall remain responsible for extraordinary maintenance, repairs and improvements, which are those that occur infrequently, are substantial and increase the economic life of the asset. For example: maintenance, repair, or replacement of sewer mains, electrical feeders, major structural components of buildings, re-pavement of parking lot when necessary; except for those restorations, renovations and improvements to Playland Park as outlined in **Schedule "C"** which the Manager shall be responsible for and also for any new restorations, renovations and improvements to Playland Park to be undertaken by the Manager in the future.



### SECTION 3: Compensation

A. **Initial Payments:** Initial Payments are those payments defined in Section 1 above which total Two Million Two Hundred and Fifty Thousand (\$2,250,000) Dollars.

B. **Annual Management Fee:** Beginning on the Management Commencement Date, the Manager shall pay the County an annual management fee payable in two equal installments due on or before January 1<sup>st</sup> and July 1<sup>st</sup> of each year. The amount of the annual management fee shall be Three Hundred Thousand (\$300,000.00) Dollars. Starting on the first anniversary of the Management Commencement Date, and for each year thereafter, the amount of the annual management fee shall increase by the greater of (i) two (2%) percent or (ii) the change in the Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northeastern New Jersey during the preceding twelve (12) month period ending September 30<sup>th</sup>. In the event that the Bureau of Labor Statistics revises the standard reference base period or if a change occurs in the structure of the index, the Parties agree to use the applicable conversion factors supplied by the Bureau of Labor Statistics to convert the changed CPI-U index to reflect the standard reference base period and structure of the CPI-U index that was in effect at the time of the execution of this Agreement. Verification of the calculation for the increase in the Annual Management Fee must be submitted to the Commissioner thirty (30) days prior to January 1<sup>st</sup> installment date.

C. **Profit Share:** The Manager shall pay the County annually seven and a half percent (7.5%) of net profits generated from Playland Park ("Profit Share") provided, however, that the Manager shall not pay any Profit Share to the County until the Manager has recouped its Initial Payment and Manager's Investment.

The annual Profit Share payment shall be payable within ninety (90) days at the end of each calendar year and for the final year of the Term within ninety (90) days of the last day of the Term. The Manager shall provide the Commissioner and the Commissioner of Finance with Certified Public Accountant ("CPA") reviewed and corporate officer certified statements, including but not limited all of the details necessary to make the above calculation in support of the Profit Share, within ninety (90) days of the end of each calendar year in order to calculate the Profit Share. The County reserves the right at its own cost to have a CPA conduct an independent audit of the calculation of the Profit Share. In the event the County's auditor disputes the Manager's calculation, the Parties shall mutually select a nationally recognized accounting firm ("Third Party Auditor") to review the calculation and supporting details. The Parties shall equally share in the cost of this review. The Parties agree to accept the conclusions of this Third Party Auditor.

D. **Manager's Investment:** The Manager shall undertake each item outlined in **Schedule "C"** at its sole cost and expense and shall make an investment of Twenty-Two Million Seven Hundred Fifty Thousand Dollars (\$22,750,000.00) ("Manager's Investment"). It is anticipated that the investment contained in **Schedule "C"** will be made within the first two (2) years following the Management Commencement Date, but the Schedule "C" improvements must be completed not later than five (5) years from the Management Commencement Date. In the event that the **Schedule "C"** improvements is less than Twenty-Two Million Seven Hundred and Fifty Thousand (\$22,750,000.00), the Manager shall pay the County the difference in addition to any other fees payable to the County set forth herein. Any such difference shall be payable within thirty (30) days of completion of the **Schedule "C"** items.

E. **County Debt:** The Parties recognize that the Playland Park has significant debt that the County is obligated to repay. The Manager shall not have any obligation of any kind with respect to the County's existing debt relating to Playland Park or any other County debt.

F. **Late Payments:** Any and all payments due from the Manager shall be timely made. In the event of a late payment, the Manager shall be assessed a late fee equal to one and one half percent (1.5%) of the fee for any payments made more than seven (7) business days past due.

G. **Real Property Taxes:** It is the County's position that the Playland Park and operations by the Manager at Playland are not subject to property taxes. If, however, all or part of Playland, excluding the Tiki Bar and the Ice Casino, is subject to real property taxes, the Manager shall pay the first Fifty Thousand (\$50,000.00) Dollars of such taxes annually. The County shall be responsible to pay real property taxes in excess of Fifty Thousand (\$50,000.00) Dollars per annum. However, should real property taxes be assessed in excess of One Hundred Thousand (\$100,000.00) Dollars per annum, the County shall have the right to terminate this Agreement immediately and Section 23B shall apply.

#### **SECTION 4: Operating Plan**

The Manager shall, not less than sixty (60) days prior to the Management Commencement Date and by March 1<sup>st</sup> of each year thereafter, prepare and submit to the Commissioner for the Commissioner's review and approval, a written annual operating plan ("Manager's Operating Plan"). Notwithstanding any inconsistent provision of this Agreement, the Commissioner shall not deny a proposed operating plan unless he/she believes approval of such plan will result in material adverse impact to the operation of Playland. If the Commissioner does not provide within thirty (30) days a detailed response enumerating the reasons the proposed operating plan materially adversely impacts the operation of Playland, then said plan shall be deemed approved. If the Commissioner does not approve the proposed operating plan, then the Manager's Operating Plan for the prior year shall continue in force and effect until a new plan is approved. In such event, it is understood that the Manager may adjust the dollar amounts contained in the prior year's plan by up to 5% up or down until a new plan takes effect.

The Manager's Operating Plan shall include, but not be limited to: a maintenance and repair schedule; a schedule of proposed changes to Playland's fee structure; a schedule of all new agreements to be entered into; recommendations, if any, for revisions to any of the Plans, Rules and Regulations required under Section 5 below; schedules, if any, for new non-capital and capital improvements of Playland facilities and acquisition of equipment; schedule of proposed changes to staffing levels; proposed changes to the advertising and promotional programs; daily operating schedule including changes to the length of season, hours of operation, and any other relevant factors which may affect Playland's operations and management.

#### **SECTION 5: Plans, Rules and Regulations**

The Manager shall prepare, as part of Manager's Operating Plan, the below described plans, rules and regulations for Playland Park, and any amendments thereto, as follows:

- (i) Prepare in consultation with the Commissioner a set of written Rules and Regulations governing public use of, and behavior in Playland Park, including, but not limited to: visitor conduct, public hours and rules to ensure the well-being and safety of the public, the enjoyment of Playland Park by the public for its intended purposes, and the safe and efficient conduct of activities in Playland Park. In addition, the Manager may from time to time propose modifications of the Rules and Regulations. Such approval shall not be unreasonably withheld. All Rules and Regulations shall be promulgated in accordance with applicable law, and thereafter enforced by the Manager.
- (ii) Prepare in consultation with the Commissioner and the Commissioner-Sheriff of the County Department of Public Safety, and the Commissioner of the Department of

Emergency Services, a written Security and Emergency Contingency Plan, in conformity with applicable federal, state and local laws, rules and regulations. Such Security and Emergency Contingency Plan shall be designed to protect the safety and security of the general public, the Parties' personnel and property on a daily basis.

**SECTION 6: Playland Park Improvements.**

A. **Material Improvements.** "Material Improvement" shall mean any renovations, construction or demolition to the land, buildings and infrastructure at Playland Park that materially changes the size, location, and character of the existing land, buildings and infrastructure at Playland Park. Should it be determined by the County that a Material Improvement has been proposed by the Manager all requirements of law shall apply. Notwithstanding the foregoing, the addition, removal or modification of rides, except historic rides, games concessions, restaurants, or retail shops, shall not be subject to this paragraph.

B. **County Review of Plans and Specifications.** Notwithstanding anything herein to the contrary, during the Term of this Agreement, the Manager shall provide the Commissioner and the Commissioner of the Department of Public Works and Transportation or his designee ("DPW&T Commissioner"), for their review and comment, with record copies of plans and specifications at various stages of design and construction for any improvements to Playland Park that would require the preparation of plans and specifications ("Plans and Specifications"). The Commissioner and the DPW&T Commissioner, shall furnish a written statement as to whether or not the Plans and Specifications meet the applicable terms and conditions of this Agreement within ten business days not including County holidays from the date of receipt of such Plans and Specifications from the Manager. The Manager, if necessary, shall prepare and submit revised Plans and Specifications for the Commissioner and the DPW&T Commissioner's review and comment. Notwithstanding the above, if the Commissioner and the DPW&T Commissioner does not respond within said ten (10) business day period, approval shall be deemed granted.

C. **Approvals for Improvements.** The Manager will procure all required permits and approvals for any improvement by any and all governmental authorities having jurisdiction thereof, and, if necessary, the County shall cooperate with Manager to procure same.

At the request of the Manager, the Commissioner will use commercially reasonable efforts to cooperate with the Manager to obtain all non-County approvals, and the Manager is hereby authorized to submit applications in the name and stead of the Commissioner to obtain such approvals, but without expense to the County in procuring any such permits and approvals.

To the extent that any County approvals can only legally be issued during implementation or upon completion of the improvements, any approval of the Commissioner or any other County commissioner or department under the administrative jurisdiction of the County Executive shall be subject to the provisions of Section 2(W) above.

D. **Closures.** During the implementation of any improvement, portions of Playland Park may be closed and the Manager shall not be required to provide any services to the public with respect to the closed area during such periods of demolition, construction, renovation, repairs and equipping until such portion of Playland Park is reopened to the public.

E. **Unexpected Capital Expenditures.** Unexpected and unplanned capital expenditures including, but not limited to, damage to property, buildings or equipment due to Force Majeure as defined in Section 39 shall be paid for by the County only to the extent that the County obtains insurance

proceeds and/or disaster recovery funding or similar sources of funds payable to the County. The County shall provide funding for such expenditures consistent with Section 13. However, nothing contained herein shall limit the Manager's rights consistent with Section 23A and 23B below.

F. **Performance Bonds.** No capital improvements, material or otherwise, or changes, alterations or non-recurring maintenance to existing or future improvements, estimated to cost more than Two Hundred and Fifty Thousand (\$250,000.00) Dollars, shall be commenced unless at the time thereof the Manager shall have obtained a performance and payment bond, for or from each prime contractor performing construction work, guaranteeing the full and faithful performance and completion of construction and the payment of the entire cost thereof, and having as a surety thereon a surety company of recognized responsibility and duly authorized to do business in the State of New York in a penal sum equal to 100% of the estimated cost of construction.

G. **Reasonable Diligence.** The Manager shall implement any improvements with commercially reasonable diligence.

H. **Standards and Criteria.** In the event Manager determines to renovate or build one or more improvements, each such improvement shall, except as otherwise agreed to in writing, meet the following:

- (i) Be consistent with industry standard design, character and appearance.
- (ii) Be consistent with Playland Park's unique status, including but not limited to, Playland's listing on the national register of historic places as a National Historic Landmark, and Playland's art deco style.
- (iii) Be constructed in accordance with all applicable laws, ordinances, regulations or orders of any federal, state, municipal or other public authority affecting the same, including but not limited to, the New York State Uniform Fire Prevention and Building Code Act. In addition, all improvements shall be constructed in accordance with all requirements of the New York Board of Fire Underwriters or other similar body having jurisdiction thereof and the National Electrical Code.
- (iv) Be free of liens and encumbrances for labor and materials supplied in connection with such work.
- (v) Be of a character that, when completed and evaluated in the totality, will not decrease the overall value of Playland Park.

I. **Final Plans and As Built Drawings.** Copies of all final plans, "as built" drawings (which shall be deemed to include final plans with field notations thereon) and equipment and building system operating and maintenance manuals, for any improvement, shall be delivered by the Manager to the Commissioner and the DPW&T Commissioner to complete the County's files.

J. **Improvement Insurance.** No improvements shall be commenced unless the Manager or an approved subcontractor shall first have procured, at its own cost and expense, and delivered to the Commissioner proof of insurance coverages as required by **Schedule "E"** which is attached hereto and made a part hereof, including copies of policies if requested by the County Director of Risk Management. In particular, the insurance certificate shall identify the specific improvement and the policy shall be endorsed to cover such improvement and the endorsement provided to the County Director of Risk Management.

In addition, the Manager shall ensure that its contracts with any and all third parties that are engaged to perform any work, or otherwise enter upon or occupy any portion of Playland Park, shall include a written requirement that said third parties shall procure and maintain insurance naming the County of Westchester as an additional insured as its interest may appear, and that such third parties shall, at its own cost and expense, procure and deliver to the County proof of the above insurance coverages, including copies of policies if requested by the County Director of Risk Management.

Each party hereto shall cause each insurance policy obtained by it to provide, to the extent available, that the insurer waives all right of recovery by way of subrogation against the other party in connection with any damage and/or liability covered by said insurance.

K. **Certificates.** Manager shall obtain and deliver to the Commissioner and DPW&T Commissioner copies of all proper certificates from the County Department of Health, the Board of Fire Underwriters, or such other certificates as are customarily obtained from any department or bureau having jurisdiction. Unless a certificate of occupancy shall hereafter be held to be legally required, Manager shall deliver to the County a certificate of completion, signed by Manager's engineer or architect.

L. **Inspection.** During implementation of any improvement, the Commissioner or the DPW&T Commissioner, or his/her designees, may, from time to time, and at reasonable times upon reasonable prior notice, inspect such improvement provided that conduct of such inspection shall not interfere with Manager's construction activities or operation as an amusement park.

In the event that, during the implementation of any improvement and prior to the completion of same, the Commissioner and/or DPW&T Commissioner, or his/her designees, shall reasonably determine that the improvement is not being constructed substantially in accordance with the Plans and Specifications and/or the applicable terms and conditions of this Agreement, then the Commissioner and/or the DPW&T Commissioner shall give prompt notice in writing to the Manager, specifying in detail the particular deficiency or omission in which the Commissioner and/or the DPW&T Commissioner claims construction does not accord with the above requirements. Manager shall respond within thirty (30) days notifying the Commissioner and/or the DPW&T Commissioner that Manager will remedy the deficiency and provide a Timetable within which to do so. It shall be the responsibility of the DPW&T Commissioner to schedule inspections at times he deems reasonably necessary and the Manager has no obligation to stop or delay construction because the DPW&T Commissioner is unable to inspect at the appropriate time during the construction cycle.

M. **Document Ownership Upon Default.** In the event this Agreement shall be terminated by reason of the default of the Manager as provided in this Agreement, prior to the completion of any improvement any and all Plans and Specifications, reports, estimates and models which shall have been prepared or made in connection with any improvement and which shall be in the possession of, and owned by, the Manager and any approved subcontractors, shall become the property of the County.

**SECTION 7: Utilities.**

As the owner of Playland Park, the County shall remain responsible to continue to provide or cause to be provided all utility connections, including water and electricity, cable/fiber optics, sanitary sewer facilities and the like serving Playland Park on the Management Commencement Date (including those intended to be provided and necessary for the operation of Playland Park even though they may be temporarily out of service or seasonally discontinued on the Management Commencement Date). The County shall provide any and all utilities that are currently provided in Playland including but not limited to, electric, water, fuel oil, propane and gasoline ("Utility(ies)"). Any other utilities that are not included within this definition are the Manager's responsibility to obtain and pay for separately.

The Manager shall be responsible for the payment of all charges for Utilities, within thirty (30) days of receipt of a bill from the County.

The Manager shall not seek damages from the County and not hold the County liable for an interruption of any Utility service that is not due to the County's actions or omissions.

The County shall cooperate with the Manager should the Manager, at its sole cost and expense, desire to install sub-meters at Playland Park after the Management Commencement Date. If the Manager installs a sub-meter, it shall still have the option to purchase Utilities through the County and reimburse the County for all charges for Utilities on a monthly basis.

The County will be responsible for the costs of maintaining or improving the utility distribution systems at Playland Park at levels necessary to support attendance of up to one million visitors annually at Playland Park. Any and all costs necessary to maintain and improve the utility distribution systems at Playland Park above the levels necessary to support attendance of over one million visitors annually, shall be borne by the Manager.

Notwithstanding the above, to the extent the Manager or any approved subcontractors make any improvement which would necessitate: (i) a new connection to any existing utility distribution system(s) at Playland maintained by the County (e.g. electricity, telephone, sewer and water); or (ii) increase the demand for such utility distribution systems; or (iii) otherwise materially affect the capacity or efficiency of such utility distribution systems, the prior review and approval of the DPW&T Commissioner shall be required, not to be unreasonably withheld, conditioned or delayed.

Manager, at its sole cost and expense, for any improvement requiring review under this Section, shall cause building mechanical schematics and site plans and specifications showing the method and location of all utility connections, normal and peak load demands for such services and such other information reasonably required by the DPW&T Commissioner to determine the effect, if any, of such increase in service on the capability, reliability and efficiency of the existing utility distribution systems at Playland.

**SECTION 8: Temporary Closing of Playland Park or selected areas.**

After the Management Commencement Date, the Commissioner shall notify the Manager of any closing by the County (County department or instrumentality acting on behalf, at the request of, or for the benefit of, the County) of the Park, or any portion thereof, due to an emergency or disaster declared by any federal, state or local government in accordance with applicable law. Such notice to the Manager shall be provided at the earliest possible time considering all of the facts and circumstances surrounding the emergency.

Manager shall not be obligated to pay the full Annual Management Fee for any period when Playland Park is closed per this Section 8, if Playland Park is closed for more than ten (10) business days during an operating season within a twelve (12) month period. In such circumstance, the Annual Management Fee will be prorated for the appropriate period of time that Playland Park is closed.

**SECTION 9: Permits and Sponsorships.**

A. Sponsorships. After the Management Commencement Date, the Manager shall manage the application and processing of corporate sponsorships relating to Playland Park ("Sponsorship Agreement(s)"), except for those contracts, licenses and lease delineated in Section 1 above (e.g. Ice Casino, pouring rights, Children's Museum) which the Manager has no rights to. Applications for

Sponsorship Agreements shall be made to the Manager, who shall make the determination whether the requested Sponsorship Agreement is appropriate for a family park considering all of the available facts and circumstances.

The Manager agrees that it will not enter into any Sponsorship Agreement with any person or entity that engages in activities that are clearly defamatory or engages in activities that are offensive to the reasonable standards of the community.

B. Permits.

- (i) Other than normal operational uses of Playland Park, the Manager shall give the Commissioner reasonable notice of any public programs, events, meetings or other public functions of any kind to be held by the Manager or an approved subcontractor, in Playland Park, unless the Commissioner shall within seventy-two (72) hours of receipt of such notice notify the Manager that such activity may not be conducted, the Manager may conduct such activity, except for those routine performances approved by the Commissioner as part of the Annual Operating Plan.
- (ii) During the Term, except as specifically provided in sub-paragraph (i) above, the Commissioner shall grant or withhold permits in Playland Park for assemblies, meetings, exhibits and or other activities in accordance with the rules and regulations of the Department of Parks, Recreation and Conservation. Application for a permit for any such assembly, meeting, exhibit and or other activity shall be made to the Manager, which shall recommend to the Commissioner that the permit be granted or denied, except for those which are specifically approved by the Commissioner in the Annual Operating Plan.
- (iii) Notice of each application for a permit under sub-section (ii) above, and of the Manager's recommendation as to such application, shall be sent to the Commissioner at least thirty (30) days before the commencement of any assembly, meeting, exhibit and or other activity for which permission is sought (or such shorter time as is practicable, if the Manager notifies the Commissioner that time is of the essence). Unless the Commissioner shall give notice to the Manager, no later than fifteen (15) days prior to the commencement of the proposed permitted activity (or if it the Commissioner has received less than thirty (30) days' notice, as soon as practicable), that the Manager's recommendation is disapproved, with reasons therefore, the Manager's recommendation as to such application shall be deemed approved.

C. Advertising. Except for those existing agreements that cannot be assigned to the Manager (e.g. County-wide bus and bus stop advertising agreement) or will not be assigned under this Agreement (e.g. automated teller machine agreement), the Manager shall have the right to sell signage and/or advertising for use inside Playland Park. If the Commissioner finds any of the content to be clearly defamatory or offensive to the reasonable standards of the community then the Commissioner shall request a modification to the signage and/or advertising which modification will not be unreasonably withheld or delayed by the Manager. It is understood and agreed that nothing in this Agreement grants authority to the Manager for the naming rights of Playland Park, or any facility, building or area in Playland Park, such naming rights rest solely with the County. The County retains the right to advertise in Playland Park for other County programs or events, provided that the quantity and location of such advertisements shall be mutually agreed upon by the Parties.

**SECTION 10: Assignment and Subcontracting.**

The Manager shall not delegate any duties or assign any of its rights under this Agreement, or subcontract any part of the Work, without the prior express written consent of the County, which consent will not be unreasonably withheld, conditioned or delayed. The County shall consider only the following criteria when determining whether to consent to a subcontract proposed by the Manager: subcontractor's integrity; subcontractor's prior performance of a County contract(s), and subcontractor's compliance with Federal, State, and Local Laws and Regulations. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without such prior express written consent is void.

All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Manager that for the purposes of this Agreement, all Work performed by County-approved subcontractors shall be deemed Work performed by the Manager and the Manager shall ensure that such subcontracted work is subject to the material terms and conditions of this Agreement. All subcontracts for the Work shall expressly reference the subcontractor's duty to comply with the material terms and conditions of this Agreement and shall attach a copy of the County's contract with the Manager. The Manager shall obtain a written acknowledgement from the owner and/or chief executive of subcontractors or his/her duly authorized representative that the subcontractors has received a copy of the County's contract, read it and is familiar with the material terms and conditions thereof. The Manager shall include provisions in its subcontracts designed to ensure that the Manager and/or its auditor has the right to examine all relevant books, records, documents or electronic data of the subcontractors necessary to review the subcontractor's compliance with the material terms and conditions of this Agreement. For each and every year for which this Agreement continues, the Manager shall submit to the Commissioner a letter signed by the owner and/or chief executive officer of the Manager or his/her duly authorized representative certifying that each and every approved subcontractor is in compliance with the material terms and conditions of the Agreement.

**SECTION 11: Employees.**

The Manager shall, as of the Management Commencement Date, have the sole and exclusive right and power to select, appoint, employ, direct, supervise, control, remove, discipline and discharge all persons employed by the Manager in Playland Park. The Manager's rights in this respect shall include, but not be limited to, the right to establish all terms and conditions of employment, to fix compensation, and to make promotions on the basis of fitness and ability. The Manager shall ultimately be responsible to the County for the employees of any approved subcontractors who carry out its duties under this Agreement, as the County shall have no contractual privity with such subcontractors.

All employees who carry out the Manager's duties under this Agreement shall be the employees of Manager or of approved subcontractors and not of the County. All matters pertaining to the employment of such employees shall be the sole responsibility of Manager or of its approved subcontractors and the County shall bear absolutely no responsibility or liability therefore.

The County shall make available certain Playland Park employees with specialized skills to train Manager's employees during the first year after the Management Commencement Date, as agreed to by the Parties in a separate writing.

All County employees who work in any capacity at Playland Park or who have responsibilities of any kind with respect to Playland Park prior to the Management Commencement Date and who are not hired by the Manager or an approved subcontractor as of the Management Commencement Date shall remain the sole responsibility of the County.



Manager, and its approved subcontractors, shall establish, administer, and maintain the payroll procedure and systems for Manager's employees at the Park and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Manager, and its approved subcontractors, shall fully comply with all applicable laws and regulations concerning workers' compensation, social security, unemployment, tax withholding and reporting, hours of labor, wages, working conditions and all other laws affecting or respecting the employment of such employees or independent contractors. All employees of Manager and all approved subcontractors shall be a citizen of the United States or an alien who has been lawfully admitted to the United States for permanent residence as evidenced by an alien registration receipt card. The Manager shall use commercially reasonable efforts to hire employees who are residents of Westchester County. The Manager, and its approved subcontractors, shall supervise and train its staff to perform their duties and to conduct themselves in an orderly and professional manner at all times. Each employee must thoroughly understand the need to exercise and display a courteous and polite demeanor when dealing with the public. The Manager, and its approved subcontractors, shall be required to remove from Playland Park any employee whose conduct, demeanor or appearance is objectionable to the Commissioner (which objection is based on Department of Parks, Recreation and Conservation standards and is in compliance with all laws) after consultation with the Manager. The Manager, and its approved subcontractors, shall have no authority to enter into any employment contract which purports to be on behalf of the County, or which otherwise obligates the County in any respect. The Manager, and its approved subcontractors, shall comply with federal and state labor and/or employment laws.

## **SECTION 12: Equipment and Amusement Park Rides.**

### **A. Equipment.**

The Manager shall, as of the Management Commencement Date, assume the use of all equipment which is the property of the County and has not been removed by the County in accordance with Section 1(iv) of this Agreement and a list of such equipment shall be created and attached hereto as **Schedule "B"** prior to the Management Commencement Date. The equipment shall be in good working order as of the Management Commencement Date.

The Manager will procure additional equipment that it deems necessary for the proper execution of its responsibilities as set forth herein and shall supply equipment reasonably deemed necessary for the proper operation of Playland Park after the Management Commencement Date, and make full payment for the same.

"Fixed Equipment" shall be defined as items or fixtures that are permanently or structurally attached to the County's premises. Fixed Equipment shall not include items or fixtures that can be removed without damage or partial destruction to the adjacent area within or upon the County's premises ("Removable Personal Property"). Removable Personal Property will be limited to property acquired by the Manager and will not include any property that belongs to the County. Any Removable Property procured by the Manager in order to fulfill its obligations herein will remain the property of the Manager, except that if the Manager removes such personal property upon the early Termination of this Agreement, it cannot seek recovery of the unamortized cost of such equipment in the event of such early Termination pursuant to Section 23(B) below.

Any Equipment will be replaced as follows:

- (i) The Manager shall be responsible if the Equipment is required to perform the Work as defined herein (e.g.: lawn mower); and

- (ii) The County shall be responsible if the Equipment is structurally necessary for the Manager to perform the Work as defined herein (e.g. HVAC system equipment).

Title to Fixed Equipment purchased by the Manager or an approved subcontractor for use at Playland Park shall vest in the County at such time as the Fixed Equipment is affixed to the County's property at Playland Park. To the extent permitted by law, the Manager, and/or its approved subcontractors, shall have the right, for tax purposes under the Internal Revenue Code, to immediately expense such Fixed Equipment.

**B. Amusement Park Rides.**

The Manager shall, as of the Management Commencement Date, assume the use of all amusement park rides that are owned or licensed by the County. There are seven (7) historic rides owned by the County, thirty five (35) non-historic rides owned by the County, and five (5) non-historic rides that the County does not own, but licenses from third parties. Such licensed non-historic rides shall be treated in accordance with Section 1(ii) of this Agreement. With respect to County-owned rides (historic and non-historic) the Manager has the discretion to replace any one or more of such rides in accordance with the terms set forth herein. For a list of all amusement park rides see Schedule "F" which is attached hereto and made a part hereof.

The Manager shall maintain, repair and operate the historic rides listed in Schedule "F" in accordance with the following: the National Historic Preservation Act and its applicable regulations, standards and guidelines; current industry standards; operating and maintenance manuals applicable to such historic rides; and, other applicable laws, rules, regulations and requirements, including but not limited to, operating permit conditions promulgated by the New York State Department of Labor.

The Manager shall maintain, repair and operate the non-historic rides, including those listed in Schedule "F" as well as any such rides that Manager brings into the Park whether owned, leased or licensed by the Manager, in accordance with the following: the manufacturer's standards, as set forth in applicable manuals, guidelines and bulletins; any other operating and maintenance manuals applicable to such non-historic rides; current industry standards; and, applicable laws, rules and regulations, including but not limited to, operating permit conditions promulgated by the New York State Department of Labor.

In addition to the rides that Manager has committed to procure in accordance with Schedule "C", the Manager shall procure such additional rides that it deems necessary for the proper execution of its responsibilities as set forth herein after the Management Commencement Date, and make full payment for the same.

"Fixed Amusement Park Rides" shall be defined as amusement park rides that are permanently or structurally attached to the County's premises. Fixed Amusement Park Rides shall not include amusement park rides that can be removed without damage or partial destruction to the adjacent area within or upon the County's premises ("Removable Amusement Park Rides"). Removable Amusement Park Rides will be limited to property acquired by the Manager and will not include any property that belongs to the County. Any Removable Amusement Park Rides procured by the Manager in order to fulfill its obligations herein will remain the property of the Manager, except that if the Manager removes such Removable Amusement Park Rides upon the early Termination of this Agreement, it cannot seek recovery of the unamortized cost of such Removable Amusement Park Rides in the event of such early Termination pursuant to Section 23(B) below.

Title to Fixed Amusement Park Rides purchased by the Manager or an approved subcontractor for use at Playland Park shall vest in the County at such time as the Fixed Amusement Park Rides are

affixed to the County's property at Playland Park. To the extent permitted by law, the Manager, and/or its approved subcontractors, shall have the right, for tax purposes under the Internal Revenue Code, to immediately expense such Fixed Amusement Park Rides.

**C. Prohibition against sale or disposal of County property.**

It is recognized and understood by the Parties that the Manager does not have the right to sell or dispose of any County property which the Manager has the right to use to carry out the terms of this Agreement. Such property may only be sold or disposed of by the County in accordance with Section 836.31 of the Laws of Westchester County.

**SECTION 13: Subject to Appropriations.**

The Parties recognize and acknowledge that the obligations of the County to pay amounts or incur any expense or financial liability under this Agreement are subject to annual appropriations by the BOL. Therefore, the payment obligations of the County under this Agreement shall be deemed executory only to the extent of the monies appropriated and available for payment. In the event that the County is obligated to pay amounts to the Manager under this Agreement including amounts due under Section 23B hereof, the County Executive hereby covenants and agrees to:

- (i) include in the next annual County budget (operating or capital) that it submits to the BOL after any such amounts due to the Manager under this Agreement shall become due and owing by the County, a request for appropriation (including executive authorization for payment) of funds sufficient to pay all such amounts due and owing from the County under this Agreement and if such appropriation is not made by the BOL, include a request for appropriation for such amounts due and owing to the Manager in each annual County budget thereafter until such amounts have been paid by the County;
- (ii) use its best efforts to cause the BOL to appropriate amounts that will be sufficient to enable the County to pay all such amounts due and owing under this Agreement, including exhausting all available reviews and appeals if such amounts are not appropriated; and
- (iii) if appropriated and available for payment, pay to the Manager all amounts due and owing to the Manager under this Agreement.

The Parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. To the extent any funds due from the County under this Agreement are insufficient in any year, the Manager shall have no obligation to fund such deficiency except as may be specifically set forth herein.

Notwithstanding anything herein to the contrary, the failure of the BOL to appropriate amounts due under this Agreement in any one fiscal year of the County will not result in a termination or expiration of this Agreement and in the event an appropriation is not made by the BOL, the obligations of the County Executive set forth in (i), (ii) and (iii) immediately above shall continue in each subsequent fiscal year until amounts due the Manager under this Agreement are appropriated by the BOL and the Manager is paid in full.

**SECTION 14: Inspection.**

The Commissioner, or his/her designee, and the County Director of Risk Management, or his/her designee shall be entitled to enter any space assigned to Manager hereunder for the purpose of inspecting, observing and monitoring any aspect of the Manager's operations. Manager shall also permit inspection, observation and monitoring of same by any federal, state, county or municipal officer having jurisdiction, at reasonable times upon reasonable prior notice to Manager. The Manager, at its sole cost and expense, shall promptly, and within a reasonable timeframe, remedy any and all violations issued as a result of such inspection.

**SECTION 15: Eminent Domain.**

In the event that the space assigned to Manager hereunder, or such a substantial part thereof so as to render impossible the operation of this Agreement, is taken by eminent domain, this Agreement shall terminate on the date upon which title vests in the condemnor and neither party shall have any liability to the other on account of such. If the Agreement is terminated pursuant to this Section 15, the County in accordance with Section 13, will reimburse Manager in accordance with the provisions of Section 23B.

**SECTION 16: Condition of Playland Park.**

The Manager acknowledges that the County has not made any representation as to the condition of Playland Park or any structures, improvements, equipment (except that equipment transferred from the County to the Manager under Section 12 above shall be in good working order), rides, vehicles, machinery and tools situated at Playland Park and accepts same in "as is" condition. The Manager further acknowledges, that as of the Management Commencement Date, that it has inspected Playland Park and the structures, improvements, equipment, rides, vehicles, machinery and tools and that it relies solely upon such inspection. Nothing contained in this section will affect either Parties' responsibility for maintenance and repairs outlined in this Agreement.

**SECTION 17: Bankruptcy.**

If at any time during the Term of this Agreement, any petition in bankruptcy shall be filed by or against Manager and if filed against the Manager, remains uncontested by the Manager or if Manager shall be adjudicated as bankrupt; or if a Receiver shall be appointed to take possession of Manager's property; or if Manager shall make any assignment for the benefit of creditors, this Agreement shall, at the option of the Board of Acquisition & Contract immediately cease, terminate or expire. Nothing hereunder shall relieve Manager from any liability incurred under this Agreement except as same may be discharged in bankruptcy.

**SECTION 18: Audit Provisions.**

A. Upon request by the County, no more than once a year and not to extend beyond the prior year, Manager shall complete annual financial reviews at its own cost and expense. The agreements with the approved subcontractors of Playland Park shall include the right to conduct annual financial reviews of the approved subcontractors' operations at Playland Park in accordance with generally accepted auditing standards, consistently applied. Without limiting the County's rights below, copies of such reviews shall be promptly submitted to the County Commissioner of Finance and Budget Director when issued. In addition, the County Commissioner of Finance, or his/her designee, may, at his/her option and at the County's sole cost and expense, annually conduct its own financial review of such books and records of the Manager for the prior calendar year. The County Commissioner of Finance reserves the

right to conduct such annual financial review up to one year after the expiration or termination of this Agreement.

B. The Commissioner also reserves the right to annually audit the Manager's, and its approved subcontractors', performance under this Agreement at the County's sole cost and expense. Such audit may include requests for documentation or other information which the Commissioner may deem necessary and appropriate to verify the information provided by the Manager under the terms of this Agreement. The County may also make site visits to the location(s) where the services to be provided under this Agreement are performed, upon reasonable prior written notice to Manager, in order to review Manager's or approved subcontractor's records and to observe the performance of services, and/or to conduct interviews of staff and patrons, where appropriate and not otherwise prohibited by law. In exercising this right to audit performance hereunder, the Commissioner may not intrude upon or disrupt in any manner the business and activities being conducted by the Manager or an approved subcontractor and any dissatisfaction on the part of the Commissioner observed on site at Playland Park shall be conveyed to the Manager or an approved subcontractor in private and out of earshot of any member of the public or any employee working in the Park. If the Commissioner's dissatisfaction warrants it, any verbal discussion shall be followed up by a written report delivered to the Manager or an approved subcontractor.

**SECTION 19: Property Insurance, Damage or Destruction.**

To safeguard the interests and property of the County, the County in its own name as the insured, will procure, maintain and pay for, throughout the Term of this Agreement, all risk insurance policies covering County-owned structures, County-owned boiler and machinery, County-owned contents, Fixed Equipment, and improvements at Playland Park that the County owns or obtains title to pursuant to this Agreement. Such policies shall cover one hundred percent (100%) of the insurable replacement value thereof, reserving the right to increase such coverage as and when the replacement values increase. Insurance proceeds, if any, shall be paid to the County.

After the Management Commencement Date, the Manager shall provide the Director of Risk Management with a list, to be updated as necessary during the Term of this Agreement, of any and all improvements upon their completion and any and all Fixed Equipment upon its attachment to the County's property.

The County shall not be responsible to insure non-County property that the Manager and/or its approved subcontractors bring into Playland Park, including but not limited to, Removable Personal Property which the Manager and/or its approved subcontractors shall identify in writing to the Director of Risk Management. It is recognized and understood by the Parties that the Manager and/or its approved subcontractors shall at their sole cost and expense procure insurance for all of their Removable Personal Property and provide evidence of same to the County's Director of Risk Management and that the insurance be for one hundred percent (100%) of the insurable replacement value thereof. To the extent that any loss is recouped by actual payment of the proceeds of any insurance to the Manager and/or its approved subcontractors, all such proceeds must first be used to replace such Removable Personal Property.

In the event any Fixed Equipment installed or improvements made by the Manager at Playland Park, insurable or uninsurable, are damaged or destroyed (except damage or destruction caused by the Manager as set forth below) to the extent that they are unusable by the Manager for the purposes for which they were used prior to such damage, or same are destroyed, the County shall be required to repair, replace or reconstruct such Fixed Equipment and improvements substantially as they were immediately

prior to such casualty. The funds for such repair, replacement or reconstruction shall be paid from insurance proceeds, to the extent available.

In the event any portion of Playland Park is damaged or destroyed by fire or other causes, by reason of any act or omission of the Manager, and/or its approved subcontractors, their respective officers, employees or agents, which constitutes negligence or willful misconduct, this Agreement shall continue in full force and effect, and the Manager and/or its approved subcontractors, shall be responsible to pay for the cost to repair or rebuild Playland Park or any portion thereof, so damaged or destroyed, and unless otherwise reimbursable by insurance hereunder, same shall be at their own cost and expense. Manager and/or its approved subcontractors shall be responsible for any deductible under these circumstances. The failure of the Manager and/or its approved subcontractors to pay for the cost to repair or rebuild within a reasonable period of time, shall be construed as a material breach of this Agreement.

**SECTION 20: Standard Insurance and Indemnity.**

A. The Manager agrees to procure and maintain insurance naming the County as additional insured, as provided and described in **Schedule "E"**, which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in **Schedule "E"**, the Manager agrees:

- (i) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligent acts or omissions or willful misconduct of the County, its officers, elected officials, employees, contractors or agents, the Manager shall indemnify and hold harmless the County, its officers, elected officials, employees, contractors and agents, from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorney's fees or loss arising out of the negligent acts or omissions or the reckless or willful misconduct of the Manager, its officers, employees, contractors or agents; and
- (ii) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action relating to this Agreement and arising out of the negligent acts or omissions or willful misconduct of the Manager, its officers, employees, contractors or agents and to bear all other reasonable costs and expenses related thereto.

B. The County shall indemnify and hold the Manager harmless for any act/occurrence prior to the Agreement Commencement Date, and the County shall defend any action arising out of said prior act/occurrence and be responsible for all costs and expenses relating thereto, including but not limited to Manager's reasonable attorney fees should it become necessary for the Manager to retain counsel.

**SECTION 21: Events of Default.**

Any of the following shall be an event of default, the continuation of which beyond the expiration of any time permitted herein to cure shall thereupon be deemed an "Event of Default" under this Agreement:

- A. With respect to the Manager:
  - (i) the Manager shall fail to perform or observe any material obligation of the Manager under any provision of this Agreement, and such failure shall continue and shall not be remedied within thirty (30) days after notice from the Commissioner specifying the nature of the default. Notwithstanding the immediately preceding sentence, it shall not

be an Event of Default if, for causes beyond the reasonable control of the Manager, such failure cannot be cured within thirty (30) days, as long as the Manager immediately takes steps necessary to remedy same and duly institutes and diligently prosecutes same to completion. For tasks in this Agreement which requires performance within less than thirty (30) days, e.g., filing an accident report within 24 hours, then the Manager shall only have an equivalent time period from the time of notice within which to cure; or

- (ii) the Manager shall fail to procure and maintain the insurance policies required by this Agreement and such failure shall continue for fifteen (15) days after notice from the County Director of Risk Management specifying the same; provided, however, that should the Manager fail to procure and maintain Commercial General Liability insurance for the operation of Playland Park after the Management Commencement Date, as required by Section 19 and **Schedule "E"**, then this Agreement shall terminate immediately, there shall be no opportunity to cure and the provisions of Section 22 below shall not apply; or
- (iii) the Manager abandons Playland Park after the Management Commencement Date, or ceases to manage Playland Park after the Management Commencement Date; or
- (iv) any or all of the Manager's interest in this Agreement or Playland Park or any part thereof shall be taken upon execution or by other process of law directed against the Manager, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against the Manager, and said attachment shall not be bonded, discharged or disposed of within ninety (90) days after levy thereof.

B. With respect to the County:

If the County shall fail to perform or observe any material obligation of the County under any provision of this Agreement, and such failure shall continue and shall not be remedied within thirty (30) days after notice from the Manager specifying the nature of the default.

Notwithstanding the immediately preceding sentence, it shall not be an Event of Default if, for causes beyond the reasonable control of the County, such failure cannot be cured within thirty (30) days, as long as the County immediately takes steps necessary to remedy same and duly institutes and diligently prosecutes same to completion. For tasks in this Agreement which requires performance by the County within less than thirty (30) days, the County shall only have an equivalent time period from the time of notice within which to cure.

## **SECTION 22: Remedies for Default.**

A. After a material Event of Default on the part of the Manager, the Commissioner shall have the right to elect to terminate this Agreement by notice to the Manager as provided in Section 23 below, subject to all necessary legal approvals.

B. After a material Event of Default on the part of the County, the Manager shall have the right to elect to terminate this Agreement by notice to the Commissioner as provided in Section 23 below.

C. The failure of either the County or the Manager to seek redress for any Event of Default, or to insist upon the strict performance of any provision of this Agreement, shall not prevent a subsequent act, which would have originally constituted an Event of Default from having all the force and effect of an original Event of Default.

**SECTION 23: Termination.**

A. If the Commissioner elects to terminate this Agreement pursuant to Section 22 above, the Manager shall be given a thirty (30) day written notice of the election to so terminate, specifying in such notice a termination date and on such date this Agreement shall terminate in all respects, provided that (except as otherwise provided in this Agreement) no party hereto shall be relieved of any obligation or liability which accrued prior to such date. After the receipt of such notice and on or before such termination date, unless the Event of Default (if applicable) giving rise to such termination notice has been theretofore cured, the Manager shall vacate Playland Park in accordance with the provisions of this Agreement.

B. If the Manager elects to terminate this Agreement pursuant to Section 22 above, it shall give the Commissioner a thirty (30) day written notice of its election so to terminate, specifying in such notice a termination date (except as otherwise provided in this Agreement), and on such date this Agreement shall terminate in all respects, provided that (except as otherwise provided in this Agreement) no party hereto shall be relieved of any obligation or liability which accrued prior to such date. After the giving of such notice and on or before such termination date, unless the Event of Default (if applicable) giving rise to such termination notice has been theretofore cured, the Manager shall vacate Playland Park in accordance with the provisions of this Agreement.

The date upon which either the Commissioner pursuant to subsection A above, or the Manager pursuant to subsection B above, may terminate this Agreement shall be called the "Termination Date".

C. Unless earlier terminated upon an Event of Default, this Agreement shall expire on the Expiration Date, and on or before such day the Manager shall vacate Playland Park, unless a new agreement for the purposes herein is entered into by the Parties.

D. Upon termination or expiration of this Agreement, the Manager shall assign to the County, at the County's option, any contracts with third parties that shall then be in effect.

E. Upon termination or expiration of this Agreement, all rights of the Manager under this Agreement shall revert to the County or its designee, and the County and the Manager shall have no further responsibility or liability under or with respect to this Agreement, except as provided in section 23B below and except that within thirty (30) days of the Termination Date or of the Expiration Date, as the case may be, the Manager shall deliver to the Commissioner an accounting for the year prior to the Termination Date or Expiration Date and Manager shall be obligated to pay the County any sums due and owing under this Agreement as a result of that accounting. Such accounting shall be performed by a certified public accountant licensed in New York State in accordance with generally accepted accounting principles.

**SECTION 23A: Termination Due to Unexpected Risk Event.**

The Manager shall have the right to terminate this Agreement if:

- (i) the County fails to appropriate sufficient funds to carry out its responsibilities under this Agreement which in turn materially impacts the ability of the Manager to carry out its duties under this Agreement; or
- (ii) in the event that damage to the property, buildings and equipment of Playland Park due to Force Majeure is so severe that the material revenue generating operations of the Park cannot be resumed within a period of: three (3) months when the Playland Park is "in-



season:” and six (6) months when Playland Park is “off-season” as those terms are defined in Section 2 C above; or

- (iii) a lawsuit or administrative proceeding brought by a third party successfully invalidates this Agreement or as a result of a decision in a lawsuit or an administrative proceeding brought by a third party, the rights of the Manager under this Agreement are modified in whole or in part and as a result of such modification the economic value to the Manager of this Agreement has been substantially reduced; or
- (iv) in the event a law is adopted by the BOL or a county regulation is adopted or modified which specifically relates to Rye Playland the result of which substantially reduces the economic value to the manager of this Agreement (each an “Unexpected Risk Event”).

**SECTION 23B: Recovery of Manager’s Investment.**

It is recognized and understood by the Parties that the Manager is making a large investment in Playland Park. If the Agreement is terminated due to a default by the County as defined in Section 21 B above, or by the Manager due to an Unexpected Risk Event as set forth in Section 23A above, as a result of a taking under eminent domain pursuant to Section 15, or by the County pursuant to Section 3 G above, then the County, consistent with Section 13, shall reimburse the Manager in accordance with the following schedule: (i) if the Agreement is terminated within the first twenty-four (24) months from the Management Commencement Date, the County shall reimburse the Manager for the entire amount of the Manager’s Investment actually made by the date of termination; and (ii) subsequent to the first twenty-four (24) months from the Management Commencement Date, the County shall reimburse the Manager for the unamortized portion of the Manager’s Investment actually made by the date of termination as determined on a straight-line depreciation basis over the term remaining after the first twenty-four (24) months of this Agreement, net of any insurance proceeds that the Manager is entitled to recover.

**SECTION 24: Non-Discrimination.**

The Manager expressly agrees that neither it nor any approved subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the Term of this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Manager acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

**SECTION 25: Compliance with Laws.**

A. The Manager, and all approved subcontractors, shall comply, at their own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, orders and ordinances and other legal requirements (“Law or Laws”).

B. Subject to any necessary legal approvals, the Manager may appeal or contest the validity or application of any Law upon the following conditions:

- (i) the Manager shall appeal or contest the same in good faith and by appropriate proceedings;

- (ii) such appeal or contest (or any resulting delay in compliance with any Law) shall not subject the County to any criminal or civil sanction, fine or penalty, or to any other financial obligation or liability, unless the Manager furnishes the County with a written undertaking, in form acceptable to the County Attorney in his/her reasonable discretion, to indemnify the County against the same; and
- (iii) the Manager from time to time shall advise the County Attorney, upon written request of the County Attorney, as to the status of any such appeal or contest.

**SECTION 26: MBE/WBE.**

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as **Schedule "G"** is a questionnaire entitled "Business Enterprises Owned and Controlled by Persons of Color or Women" which the Manager agrees to complete.

**SECTION 27: Records and Intellectual Property.**

All records or recorded data of any kind compiled by the Manager in completing the Work described in this Agreement and relating specifically and exclusively to the Work, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Manager may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County, subject to any third party restrictions.

Notwithstanding the foregoing, all deliverables that contain or constitute intellectual property (e.g. advertising, or signs) created under this Agreement by the Manager specifically and exclusively relating to the Work are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Manager hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Manager agrees to assist the County, if required, in perfecting these rights, at the County's sole cost and expense. The Manager shall provide the Commissioner with at least one copy of each deliverable.

Notwithstanding the foregoing, any and all intellectual property, including but not limited to the Manager trademarks, copyrights and protected property related to the Manager's general company operations shall remain the property of the Manager.

The Manager agrees to obtain from any approved subcontractor or other third party engaged by the Manager to deliver Work product containing intellectual property, a representation and warranty to defend, indemnify and hold harmless the County and the Manager for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Manager agrees to require approved subcontractor or other third party to provide documentation that will enable the County's continued use of the deliverable, or to modify or replace it. If the Commissioner determines that none of these alternatives is reasonably available, the deliverable shall be returned, to the extent the deliverable can be returned.

The Manager shall not claim ownership to or use of any County intellectual property such as trademarks, copyrights and other such protected property without written permission from the County.

The Manager shall not use any County intellectual property such as trademarks, copyrights and other such projected property except to run its operations in accordance with this Agreement.

**SECTION 28: Independent Contractors.**

The Manager and the County agree that the Manager, and its approved subcontractors, and their respective officers, employees, agents, and any third parties acting on their behalf, are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Manager covenants and agrees that neither the Manager, nor its approved subcontractors, and their respective officers, employees, agents, and any third parties acting on their behalf, will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

**SECTION 29: Criminal Background Disclosure.**

The Manager agrees to complete the Criminal Background Disclosure as required by Executive Order No. 1-2008 and attached hereto as **Schedule "H"**, which is hereby incorporated by reference.

**SECTION 30: MacBride.**

Pursuant to Act No. 56-1999, as codified in Chapter 310 of the Laws of Westchester County, no County procuring officer may award or recommend for award any contract not subject to competitive bidding to a party that does not execute a certification in substantially the form attached hereto and forming a part hereof as **Schedule "I"**. Therefore, the Manager agrees, as part of this Agreement, to complete the form attached hereto as **Schedule "I"**.

**SECTION 31: Required Disclosure.**

Attached hereto and forming a part hereof as **Schedule "J"** is a questionnaire entitled "Required Disclosure of Relationships to County." The Manager agrees to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the Term of this Agreement, Manager agrees to notify Commissioner in writing within ten (10) business days of such event. The Manager shall also have each approved subcontractor complete this questionnaire and shall advise each approved subcontractor of the duty to report any changes to the information contained therein to the Manager within ten (10) business days of such event and such information shall be forwarded by the Manager to the Commissioner.

**SECTION 32: No Waiver.**

Failure of either party hereto to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by either party of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver under such circumstances by a party of any provision hereof shall be implied.

**SECTION 33: No Lease.**

Neither Playland Park, nor any land, building, space, improvement or equipment is being sold or leased hereunder, nor is any interest in real property being granted, or any possessory right with respect to the Playland Park or any part thereof being granted, to the Manager and/or its approved subcontractors; but the Manager shall manage and operate Playland Park at all times on behalf of the County. Under no circumstances shall this Agreement be construed as granting the Manager, or its approved subcontractors, any real property rights, nor any title or interest of any kind or character in, on, or about Playland Park.

**SECTION 34: Notices.**

All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), or email (with a copy of the notice also sent by overnight, registered or certified mail postage pre-paid) as set forth below or to such other addresses as the respective Parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

County Executive  
County of Westchester  
Michaelian Office Building, 9<sup>th</sup> Floor  
148 Martine Avenue  
White Plains, NY 10601

With a copies to:

Commissioner  
Westchester County Department of Parks, Recreation & Conservation  
450 Saw Mill River Road  
Ardsley, NY 10502

Commissioner  
Westchester County Department of Public Works and Transportation  
Michaelian Office Building, Room 518  
148 Martine Avenue  
White Plains, New York 10601

County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

To the Manager:

Standard Amusements, LLC  
767 Fifth Avenue  
New York, New York 10153

With copies to:

Winston & Strawn LLP  
200 Park Avenue  
New York NY 10166  
Attn.: James S. Normile, Esq. and William F. Dudine, Esq.

**SECTION 35: Definition of Commissioner.**

Notwithstanding anything contained herein to the contrary, it is agreed by the Parties that if it were to be concluded or determined that it has been and now is inappropriate for the Department of Parks, Recreation and Conservation and its Commissioner to manage and operate Playland Park based upon the definitional provisions in Chapter 134 and 249 of the Laws of Westchester County (“LWC”), then the day to day management and operations of Playland Park would fall to the DPW&T Commissioner who is “in charge of the preservation and maintenance of all buildings and grounds owned by the county for county purposes, except the lands and buildings under the jurisdiction of the Department of Parks, Recreation and Conservation...” (LWC Section 241.261) or, alternatively, the day to day management and operations of Playland Park would fall to the County Executive pursuant to Chapter 110 of the LWC which provides among other things, that the County Executive “shall be the chief executive and administrative officer of the county government. It shall be the duty of the County Executive: (1) to supervise, direct and control, subject to law and the provisions of this act and local laws, the administrative services and departments of the county.” (LWC Section 110.11).

**SECTION 36: Entire Agreement.**

This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

**SECTION 37: No Third Party Rights.**

Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

**SECTION 38: Conflict of Interest.**

The Manager shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the Commissioner in the event of a conflict of interest. The Manager shall also use all reasonable means to avoid any appearance of impropriety.

**SECTION 39: Force Majeure**

Neither the County nor the Manager, as the case may be, shall be deemed in breach hereof if it is prevented from or materially delayed in performing any of the obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any other similar circumstances not within its reasonable control.

**SECTION 40: Authority.**

The County Board of Legislators has duly authorized this Agreement by Act No. 2015-\_\_\_\_\_, approved by the Westchester County Board of Legislators at a meeting duly held on \_\_\_\_- day of \_\_\_\_\_, 2015.

The County Board of Acquisition and Contract has duly authorized this Agreement by Resolution approved at its meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**SECTION 41: Enforceability.**

This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the Parties hereby agree that for any cause of action arising out of this Agreement, any such action shall be brought in the County of Westchester, New York.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

**SECTION 42: County Attorney Opinion.**

It is recognized and understood by the Parties that, in addition to all other rights of termination set forth herein, the Manager has the option to terminate this Agreement if a separate opinion from the Westchester County Attorney addressed to the Manager is not given stating that when this Agreement has been duly authorized by the BOL and the Westchester County Board of Acquisition and Contract and has been fully executed by the Parties, that it will be a valid, binding and enforceable agreement. Said form of opinion shall be reasonably acceptable to the Manager and shall be delivered simultaneously with the execution of this Agreement by the parties hereto. In the event said opinion is not delivered and the Manager terminates this Agreement, then all amounts held in escrow as described in Section 1 shall be paid to the Manager.

**IN WITNESS WHEREOF**, The County of Westchester and the Manager have caused this Agreement to be executed on the day and year first above written.

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_

**STANDARD AMUSEMENTS, LLC**

By:  \_\_\_\_\_

Approved by the Westchester County Board of Legislators at a meeting duly held on \_\_\_ - day of \_\_\_\_\_, 2015 by Act No. 2015-\_\_\_\_\_.

Approved by the Board of Acquisition and Contract of the County of Westchester on the \_\_\_ day of \_\_\_\_\_, 2015.

Approved as to form  
and manner of execution

\_\_\_\_\_  
Associate County Attorney  
County of Westchester

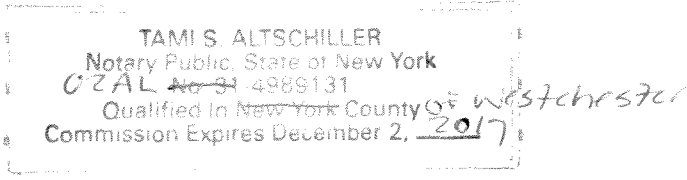
s/a/PRC/Playland RFP/ SA Management Agreement 4.13.15F.docx

ACKNOWLEDGMENT

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF Westchester

On the 13<sup>th</sup> day of April in the year 2015 before me, the undersigned, personally appeared Jacob Falgas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies) as member, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Date: 4/13/15  
Tami S. Altschiller  
Notary Public





**CERTIFICATE OF AUTHORITY-LIMITED LIABILITY COMPANY**

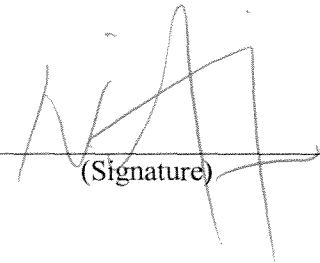
I, Nicholas Singer,  
(member or manager other than person executing the agreement)

certify that I am a member of Standard Amusements LLC  
(member/manager) (Name of Limited Liability Company)

(the "LLC") duly organized under the Laws of the State of New York; that  
(Name of State)

Jacob Falkas who signed said Agreement on behalf of the LLC  
(Person Executing Agreement)

was, at the time of execution, a manager of the LLC; that said Agreement was duly signed for and on behalf of said LLC and as the act of said LLC for the purposes therein mentioned.

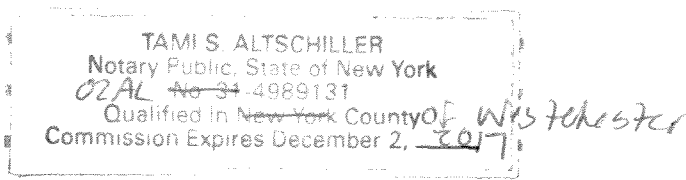
  
(Signature)

STATE OF NEW YORK )  
ss.:  
COUNTY OF Westchester

On the 13<sup>th</sup> day of April in the year 2015 before me, the undersigned, a Notary Public in and for said State, Nicholas Singer personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the member/manager described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at Miami Beach FL, and he/she is a member/manager of said LLC; that he/she is duly authorized to execute said certificate on behalf of said LLC, and that he/she signed his/her name thereto pursuant to such authority.

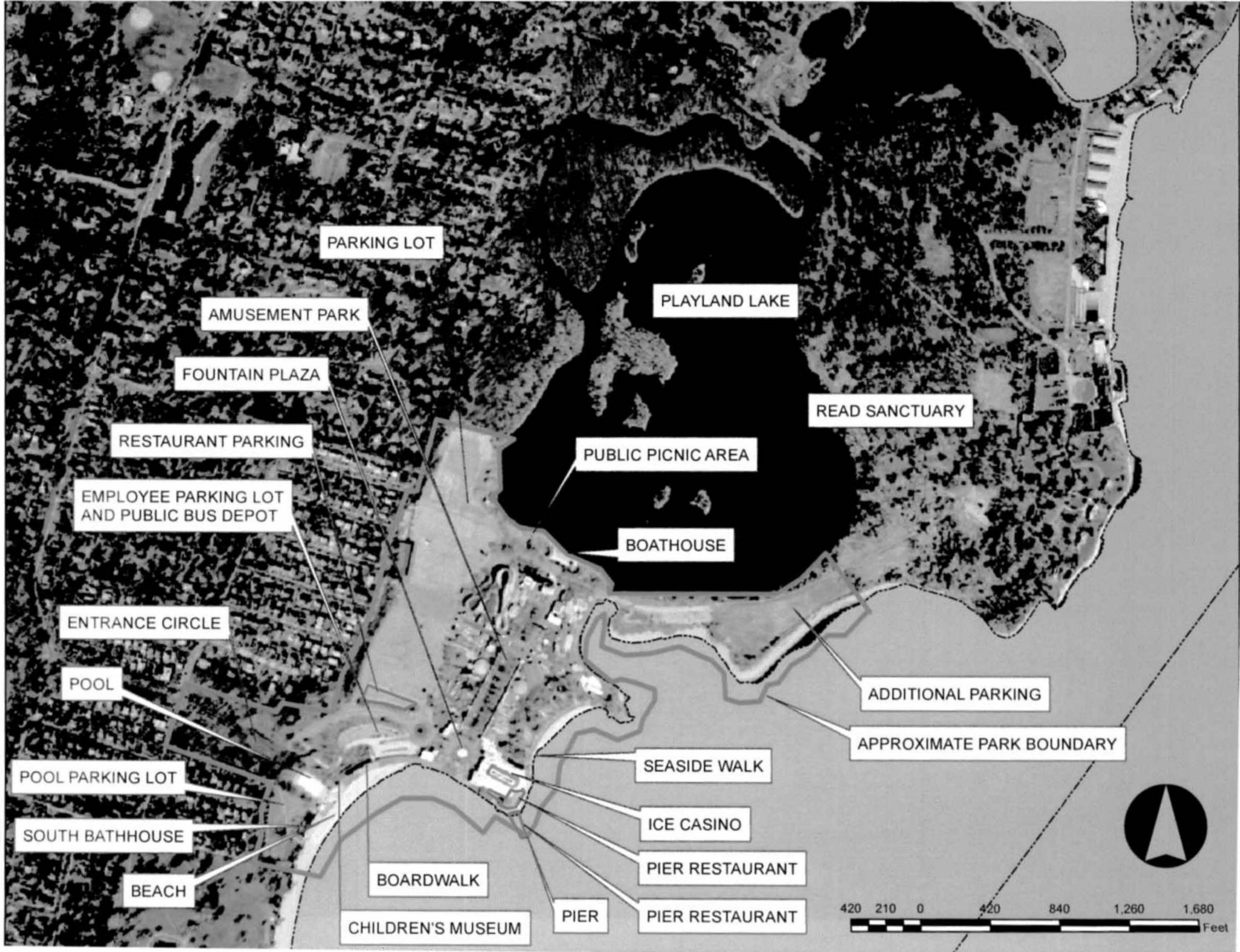
Date: 4/13/15

  
Notary Public



**SCHEDULE "A"**  
**DRAWING OF PLAYLAND PARK**

**To be attached**



PARKING LOT

AMUSEMENT PARK

FOUNTAIN PLAZA

RESTAURANT PARKING

EMPLOYEE PARKING LOT  
AND PUBLIC BUS DEPOT

ENTRANCE CIRCLE

POOL

POOL PARKING LOT

SOUTH BATHHOUSE

BEACH

BOARDWALK

CHILDREN'S MUSEUM

PIER

PIER RESTAURANT

PIER RESTAURANT

ICE CASINO

SEASIDE WALK

ADDITIONAL PARKING

APPROXIMATE PARK BOUNDARY

420 210 0 420 840 1,260 1,680 Feet



PLAYLAND LAKE

READ SANCTUARY

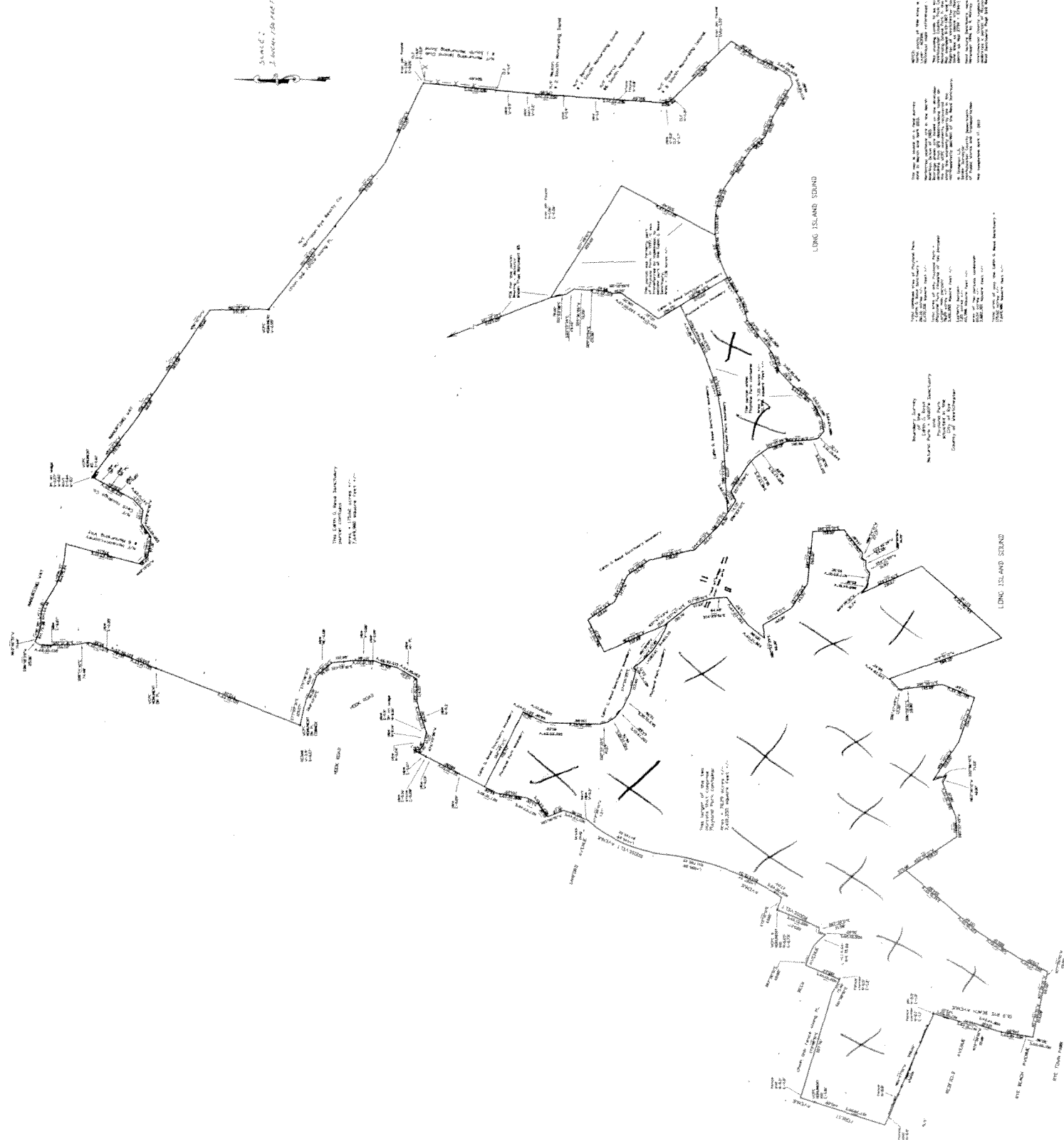
PUBLIC PICNIC AREA

BOATHOUSE

**SCHEDULE "A-1"**  
**SURVEY OF PLAYLAND PARK**

**To be attached**

SAMPLE 7  
 3 100000/500000



The City of New York  
 Office of the City Clerk  
 100 City Hall  
 New York, N.Y.

The City of New York  
 Office of the City Clerk  
 100 City Hall  
 New York, N.Y.

Map of the City of New York  
 Office of the City Clerk  
 100 City Hall  
 New York, N.Y.

This map shows the boundaries of the lots in the City of New York, and is intended for general information only. It is not intended to be used as a legal document. The City of New York is not responsible for any errors or omissions on this map. The City of New York is not responsible for any damages or losses resulting from the use of this map. The City of New York is not responsible for any claims or liabilities arising from the use of this map. The City of New York is not responsible for any claims or liabilities arising from the use of this map. The City of New York is not responsible for any claims or liabilities arising from the use of this map.

LONG ISLAND SOUND

LONG ISLAND SOUND

**SCHEDULE "B"**

**To be attached at conclusion of Co-Management Period**

List of County owned items of personal property and equipment  
located at Playland Park to be transferred to the Manager

**SCHEDULE "C"**

	<b>3-Year Capital Plan (X1,000)</b>			<b>Total</b>
	<b>2016</b>	<b>2017</b>	<b>2018</b>	
Painting	375	100	100	575
Wood Replacement	350	100	100	550
Pavement Work	100	50	50	200
Study Parking Lot/Entrance Reconfiguration	-	400	-	400
Landscaping	200	100	100	400
Signage	200	25	25	250
Food Stands/Equipment	2,000	100	100	2,200
Lawn and Fields	4,000	-	-	4,000
Bathhouse Renovation	-	500	500	1,000
Picnic Area	150	50	25	225
Pool/Fountain Improvements	250	225	30	505
Restoration of Historic Rides	400	400	500	1,300
Interactive Children's Water Elements	2,200	50	50	2,300
Double Aqua Loop Slide	-	1,500	25	1,525
Unicoaster	-	1,200	-	1,200
Other New Rides/Attractions	-	-	1,000	1,000
3-Point Challenge Basketball Game	75	-	-	75
Contingency	500	500	250	1,250
Total Capital and Maintenance	10,800	5,300	2,855	18,955
Working Capital	3,795	-	-	3,795
<b>Total</b>	<b>14,595</b>	<b>5,300</b>	<b>2,855</b>	<b>22,750</b>

**SCHEDULE "D"**

**List of Key Personnel**

Jacob T. "Jack" Falfas



**SCHEDULE "E"**

**INSURANCE PROVISIONS**  
**(Contractor)**

1. Prior to commencing work, the Contractor shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Contractor and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Contractor shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Contractor shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 (9/07) or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: [www.wcb.state.ny.us](http://www.wcb.state.ny.us) (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

If the employer is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$10,000,000\* for bodily injury and \$1,000,000 for property damage or a combined single limit of \$10,000,000 (c.s.1), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

(i) Premises - Operations.

(ii) Broad Form Contractual.

(iii) Independent Contractor and Sub-Contractor.

(iv) Products and Completed Operations

(v) Liquor Liability

(vi) Food Products Liability

\*Any combination of primary and/or umbrella/excess coverage shall satisfy the 10,00,00,00 limit of liability as set forth herein.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

(i) Owned automobiles.

(ii) Hired automobiles.

(iii) Non-owned automobiles.

(e) Owners Protective Liability Policy naming the County as insured, with a minimum limit of liability per occurrence of \$3,000,000. A copy of which shall be delivered to the County prior to the commencement of any capital improvements.

(f) For the construction of any capital improvement or the alteration, addition or improvement of any existing building encompassing any structural change Builder All Risk Insurance in the amount of one hundred (100%) percent of the estimated completion cost of the project shall be required. This policy shall be written on a completed value form. Any proceeds from the Builder All Risk Insurance policy must be used to complete the insured capital improvement.

3. All policies of the Contractor shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor.

**SCHEDULE "F"**  
**LIST OF AMUSEMENT PARK RIDES**

**7 Historic Rides (County-owned)**

Kiddyland Rides:

Kiddy Carousel  
Kiddy Coaster

Major Rides:

Derby Racer  
Dragon Coaster  
Grand Carousel  
The Whip  
Ye Old Mill

**35 Non-Historic Rides (County-owned)**

Kiddyland Rides:

Antique Cars  
Boat Ride  
Convoy  
Crazy Submarine  
Flying Dragons  
Fun Slide  
Himalaya  
Jolly Caterpillar  
Jump 'N' Bean  
Jungle Jammin'  
Kiddy Whip  
Mini Scrambler  
Motorcycle Jump  
Playland Express  
Red Baron  
Slime Buckets  
Sun & Moon  
Swing Around  
Up, Up and Away

Major Rides:

Bumper Cars  
Catch-A-Wave  
Crazy Mouse  
Double Shot  
Family Flyer  
Go-Karts  
Gondola Wheel  
House of Mirrors  
Kite Flyer  
Log Flume  
Music Express  
Playland Plunge

Playland Yo-Yo  
Sky Skater  
Superflight  
Wipeout

**5 Non-Historic (County-Concession License)**

Major Rides:

Flying Witch  
Sky Flyer  
Starship 2000  
Thunderbolt  
Zombie Castle

**SCHEDULE "G"**

**QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES  
OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR**

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
  - a. is at least 51% owned by one or more persons of color or women;
  - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
  - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
  - d. is an enterprise authorized to do business in this state which is independently owned and operated.
  
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
  
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

\_\_\_\_\_ No

\_\_\_\_\_ Yes

**Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.**

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

\_\_\_\_\_ Women

\_\_\_\_\_ Persons of Color (*please check off below all that apply*)

\_\_\_\_\_ Black persons having origins in any of the Black African racial groups

\_\_\_\_\_ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

\_\_\_\_\_ Native American or Alaskan native persons having origins in any of the original peoples of North America

\_\_\_\_\_ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of person completing questionnaire: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

## SCHEDULE "H"

### CRIMINAL BACKGROUND DISCLOSURE INSTRUCTIONS

Pursuant to Executive Order 1-2008, the County is required to maintain a record of criminal background disclosure from all persons providing work or services in connection with any County contract, including leases of County-owned real property and licenses:

- a.) If any of the persons providing work or services to the County in relation to a County contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County contract; and
- b.) If any of the persons providing work or services to the County in relation to a County contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure ("Persons Subject to Disclosure") include the following:

- a.) Consultants, Contractors, Licensees, Lessees of County-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, subcontractors, Sublessess, or Sublicensees who are providing services to the County, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

Under Executive Order 1-2008, it is the duty of every County Consultant, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.<sup>1</sup> Accordingly, you are required to complete the attached Criminal Background Disclosure Form and Certification.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from the disclosure requirements of Executive Order 1-2008. If translation services are required by the Consultant, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Consultant, Contractor, Licensee, or Lessee.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal charge(s) will not automatically result in a denial of a person's right to work on a County contract, right to be on County property, or license, but may, if the County determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any part of his/her conviction history or any pending criminal charge(s) for any reason, he/she may be prohibited from working or being on County property without any risk assessment. If it is later determined that a Person Subject to

---

<sup>1</sup> For these disclosures, a "crime" or "pending criminal charge" includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.



Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a County contract, be on County property, or license may be terminated at any time.

Please further note that, pursuant to Executive Order 1-2008, and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County has the right to bar a Person Subject to Disclosure from providing work or services to the County or from being on County property if any such person has:

- a.) A conviction of a crime(s);
- b.) A pending criminal proceeding for a crime(s); or
- c.) Refused to answer questions concerning his/her criminal background

Please finally note that any failure by a County Consultant, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1-2008 may be considered by the County to be a material breach and shall be grounds for immediate termination by the County of the related County contract.

### **Exemptions**

Executive Order 1-2008 exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a County contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify the Procuring Officer<sup>2</sup>. The Procuring Officer will then determine whether the Person(s) Subject to Disclosure are actually exempt, and provide written notification of his/her determination. If the Procuring Officer determines that a Person Subject to Disclosure is not exempt, the Procuring Officer will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

### **Subconsultants, Subcontractors, Sublessees, or Sublicensees**

Under Executive Order 1-2008, it is your duty to ensure that any and all approved subconsultants, subcontractors, sublessees, or sublicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subconsultant, subcontractor, sublessees, or sublicensees can be approved to perform work on a contract.

### **New Persons Subject to Disclosure**

---

<sup>2</sup> Procuring Officer” shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(a) of the Laws of Westchester County, the Purchasing Agent.

Under Executive Order 1-2008, you have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the County with any other updates that may be necessary to comply with the disclosures required by Executive Order 1-2008.

---

*PLEASE CONTINUE TO THE*

*Criminal Background Disclosure Form and Certification*

*BEGINNING ON THE NEXT PAGE*

**CRIMINAL BACKGROUND DISCLOSURE**  
**FORM AND CERTIFICATION**

If this form is being completed by a subconsultant, subcontractor, sublessee, or sublicensee, please consider all references in this form to “consultant, contractor, lessee, or licensee” to mean “subconsultant, subcontractor, sublessee, or sublicensee” and check here: \_\_\_\_\_

I, \_\_\_\_\_, certify that I am a principal or a \_\_\_\_\_ *(Name of Person Signing Below)*

representative of the Consultant, Contractor, Lessee, or Licensee and I am authorized to complete and execute this Criminal Background Disclosure Form and Certification. I certify that I have asked each Person Subject to Disclosure the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**
  
- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer **either** of the questions above are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

(If more space is needed, please attach separate pages labeled “REFUSED to Answer - Continued.”)

I certify that the names and titles of Persons Subject to Disclosure who answered “Yes” to **either of the** questions above are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

5. \_\_\_\_\_

(If more space is needed, please attach separate pages labeled "YES Answers - Continued.")

Each Person Subject to Disclosure listed above who has either **been convicted of a crime(s)** and/or **is subject to a pending criminal charge(s)** must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has **been convicted of a crime(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

A Person Subject to Disclosure who **is subject to a pending criminal charge(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By my signature below, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

**It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto County property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.**

**It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into County property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.**

**It is further understood and agreed that the consultant, contractor, lessee, or licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the County as necessary to comply with the requirements of Executive Order 1-2008.**

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

**SCHEDULE "I"**

**CERTIFICATION REGARDING BUSINESS DEALINGS  
WITH NORTHERN IRELAND**

A. The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.

B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including Managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

(5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;

(7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.

D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Contractor is in violation of paragraph "A," the County shall review such information and give the Contractor opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Contractor in default,

and/or terminate this Agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the County the difference between the contract price for the uncompleted portion of this Agreement and the cost to the County of completing performance of this Agreement either by itself or by engaging another contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Contractor plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

Agreed:

Name of Contractor \_\_\_\_\_

By: (Authorized Representative) \_\_\_\_\_

Title: \_\_\_\_\_ Date \_\_\_\_\_

**SCHEDULE "J"**

**REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY**

*A potential County contractor must complete this form as part of the proposed County contract.*

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

3.) Do any County officers or employees have an **interest** in the Contractor or in any approved subcontractor that will be used for this contract?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





# CITY COUNCIL AGENDA

NO. 9

DEPT.: City Manager's Office

DATE: April 22, 2015

CONTACT: Frank J. Culross, City Manager

**AGENDA ITEM:** Continuation of Public Hearing to amend local law Chapter 165 , "Signs", of the Rye City Code by adding Section §165-10,"Regulation of banners", to establish regulations for banners on utility poles on City property.

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHAPTER 165

SECTION 10

**RECOMMENDATION:** That the City Council hold a Public Hearing to amend Chapter 165, "Signs".

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Council is asked to consider amendments to Chapter 165, "Signs" of the Rye City Code to allow for the display of banners on utility poles on City property.

See attached Draft Local Law.

**CITY OF RYE**

**LOCAL LAW NO. 2015**

**A local law to amend Chapter 165 “Signs” of the Code of the City of Rye by adding a new §165-10 to establish the process by which banners can be placed on City owned utility poles located on City property and to renumber the remaining section of the Chapter as follows:**

**Section 1: Chapter 165, Signs.**

**§ 165-10. Banners on City owned utility poles.**

**A. Banners are not permitted on City utility poles in the Central Business District unless the City Council approves a license agreement. The City Council has discretion as to whether it should consider any request to display banners. Only banners for monumental anniversaries or other types of special events as determined by the City Council shall be considered. If the City Council considers a request, it shall consider the following requirements as conditions of any license agreement:**

- (1) All banners to be placed on the utility poles shall be approximately 30” by 60”.**
- (2) When reviewing applications, the City Council shall take into consideration the design and colors of the banners to ensure that such are appropriate for display in the Central Business District.**
- (3) The City Council shall consider applications for banners on a first come/first serve basis and shall have discretion over how long banners may be displayed depending on the demand for space, the length of time the advertised event will be occurring, the time of year (e.g. seasonal signs), and any other reasonable circumstances surrounding the request. Under no circumstances shall banners interfere with the City’s display of seasonal decorations and/or banners.**
- (4) The City Council may place reasonable conditions on any license as part of its approval.**
- (5) No establishment may be granted a license for displaying banners within 90 days of the expiration of the establishment’s previous license for displaying banners.**

**B. Once a license is issued, the licensee is required to provide the banner(s) to the Department of Public Works for display. The City shall display and remove all banners.**

**C. The license fee(s) shall be set annually by resolution of the City Council.**

**§ 165-101. Severability.**

If any phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, an all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

**Section 2:** This local law will take effect immediately on filing in the office of the Secretary of State.

DRAFT



# CITY COUNCIL AGENDA

NO. 10

DEPT.: Corporation Counsel

DATE: April 22, 2015

CONTACT: Kristen K. Wilson, Corporation Counsel

**AGENDA ITEM:** Public Hearing to amend local law Chapter 177, "Taxation", Article XII, "Exemption for Historic Districts" by adding Section §177-82, "Historic Districts", to designate portions of downtown Rye as one historic district to allow property owners to apply for the real property tax exemption.

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHARTER

SECTION 177

**RECOMMENDATION:** That the City Council hold a Public Hearing to amend Chapter 177, "Taxation".

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The City Council amended Chapter 177, "Taxation" of the City of Rye Code at their December 18, 2013 City Council meeting by adding, Article XII "Exemption for Historic Districts" to provide tax exemptions for improvements to historic properties. To qualify for the tax exemption a property must lie within a historic district. The Landmarks Advisory Committee requests approval to designate portions of downtown Rye (B-2 zone plus portions of contiguous B-1 zones) as one historic district. The Council is asked to hold a Public Hearing to amend the Chapter 177 to include this change.

See attached request from the Landmarks Advisory Committee and draft Local Law.

**CITY OF RYE**  
**LOCAL LAW NO. 2015**

**A local law to amend Chapter 177 “Taxation” Article XII “Exemption for Historic Districts” of the Code of the City of Rye by adding a new Section 177-82 “Designation of Historic Districts” as follows:**

**Be it enacted by the City Council of the City of Rye as follows:**

**Section 1: Chapter 177 Taxation; Article XII Exemption for “Historic Districts”**

**§ 177-82. Designation of Historic Districts.**

A. The designated Historic District shall be set forth in this section by block and lot number, street designation, and if appropriate, by local designation.

(1) Central Business District: portions of downtown Rye located in the B-2 zone and portions of contiguous B-1 zones as designated on the accompanying map as one historic district.

**Section 2: Severability.**

If any clause, sentence, paragraph, section or part of any section of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

**Section 3: Effective date.**

This local law will take effect immediately on filing in the office of the Secretary of State.



# CITY COUNCIL AGENDA

NO. 11

DEPT.: Planning

DATE: April 22, 2015

CONTACT: Christian K. Miller, AICP, City Planner

**AGENDA ITEM:** Presentation and discussion of proposed design changes for sidewalk and street improvements in the Central Business District.

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** A presentation will be made by City Planner Christian Miller on the proposed design changes for sidewalk and street improvements in the Central Business District.



# CITY COUNCIL AGENDA

NO. 13      DEPT.: City Council      DATE: April 22, 2015  
CONTACT: Mayor Joseph A. Sack

**AGENDA ITEM:** Resolution to appoint an Interim City Manager effective May 1, 2015.

**FOR THE MEETING OF:**  
April 22, 2015

**RECOMMENDATION:** That the Council consider the following resolution:

RESOLVED, that the City Council of the City of Rye hereby authorizes the Mayor to sign an employment agreement with Eleanor M. Militana to serve as Interim City Manager effective May 1, 2015.

**IMPACT:**     Environmental     Fiscal     Neighborhood     Other:

**BACKGROUND:**  
City Manager Frank J. Culross has announced his resignation as City Manager effective with the close of business on April 30, 2015. The City Council is asked to authorize Eleanor M. Militana to serve as Interim City Manager effective May 1, 2015.



# CITY COUNCIL AGENDA

NO. 14 DEPT.: Police DATE: April 22, 2015  
CONTACT: William A. Pease, Police Commissioner

**AGENDA ITEM:** Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #118.1, "Department Records".

**FOR THE MEETING OF:**

April 22, 2015

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** Amendment of General Order #118.1, "Department Records."

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:  
Enhancement of the operational effectiveness of the Department.

**BACKGROUND:** The proposed revision of General Order #118.1 updates the Department's procedures regarding the creation and handling of Department Records.

A copy of the proposed revision noting the changes in red is attached. The proposed revision was provided to the Rye Police Association for review pursuant to the provisions of the collective bargaining agreement.



**CITY OF RYE POLICE DEPARTMENT**

General Order #118.1 03/19/15	New [ ]      Revised [ x ] Supersedes: 118.1 issued
Subject: Department Records	
Date Issued 04/15/2015	Date Effective 04/15/2015
Page 1 of 2	
Issuing Authority: William A Pease, Police Commissioner	

PURPOSE

To assign responsibility for the receipt, review, retention, retrieval and control of all written information and documents that pertain to the Department's operations.

BACKGROUND

The integrity, effectiveness, and quality of a law enforcement agency are all heavily dependent on its control of records and documents inherent to its various operations.

POLICY AND PROCEDURE

The Detective Division is specifically responsible for the acquisition, distribution, storage and retrieval of the following records:

1. Case Arrest Reports
2. Crime Reports - NIBRS
3. Intelligence Reports
4. Subpoenas
5. Orders of Protection and Affidavits of Service
6. Fingerprints - Electronically submitted
7. Evidence/Property inventory
8. Criminal History Files
9. Sealing Orders
10. Criminal Summonses and other legal processes (warrants, etc.)
11. Background Investigations of Applicants
12. Good Conduct Certificates

The Patrol Division Commander shall be responsible for the acquisition, distribution, storage and retrieval of the following records:

1. Public Relations Documentation
2. Policies, procedures, directives and regulations

3. Schedule and roll call data
4. Overtime, Compensatory Time and Leave Requests
5. Sick Reports
6. Training Records
7. Complete inventory of Department Property
8. Firearms records
9. All Freedom of Information Requests

All Uniformed Officers must adhere to the following procedures when turning in daily reports:

1. All completed and reviewed reports/paperwork must be placed in the locked report box, immediately or as soon as time permits.
2. All "Personal and/or Confidential" department related correspondence shall also be placed in the lock box for safekeeping
3. All reports/paperwork must remain in the lock box until removed by records/staff services personnel
4. Any supervisor who comes across a report or other document which has not been saved, on a computer and server, shall ensure that the document is saved on a police department computer and server, as soon as possible.

All reports that are computer generated must be saved on a server within the department. All calls for service will be automatically assigned a computer generated number. All additional paperwork must be electronically imputed into a department computer, and a hard copy must be placed in the locked box at the desk.

## General Order #118.1 Page 2 of 2

The Youth Division shall be responsible for the acquisition, distribution, storage and retrieval of the following records:

1. All Juvenile Records

The Records Division shall be responsible for the acquisition, distribution, storage and retrieval of the following records:

1. Incident/Complaint reports, follow up reports
2. Property Inventories/Impounds
3. Accident Reports/Witness Statements
4. Vehicle & Traffic Summonses
5. Parking Summonses
6. City Code Violations
7. Inventory and order all forms used in patrol
8. Alarm permit files
9. Taxi Permits and Inspections
10. All DMV correspondence, confiscated DLIC/REG/Destruction of plates

The Office of the Police Commissioner shall be responsible for the acquisition, distribution, storage and retrieval of the following records:

1. Fiscal Receipts
2. Personnel Records
3. Agency Budget Records
4. Central Correspondence Files
5. Compensation Cases
6. Emergency operation Center Files
7. Accreditation Files