

ASSET MANAGEMENT AGREEMENT

THIS AGREEMENT made the _____ day of _____ 2013

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, as appropriate (hereinafter the “County”),

and

SUSTAINABLE PLAYLAND, INC., a New York not-for-profit corporation authorized to carry out the purposes set forth in its certificate of incorporation which is attached hereto and made a part hereof as **Schedule “A”**), having an office for the transaction of business c/o Cuddy & Feder LLP, 445 Hamilton Avenue, 14th Floor, White Plains, New York 10601, Attn: Joseph P. Carlucci, Esq. and Eon S. Nichols, Esq. (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 to reinvent Playland Park for the 21st Century; 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 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 and after a lengthy review by the County and a citizens committee, the Manager’s proposal was chosen because it combined the best community vision for the sustainability of the Park with a financial model designed to reduce the financial strain and burden on the County taxpayer; and

WHEREAS, the County believes that with appropriate management and investment Playland Park can be returned to its historic position as a premier public park for the benefit and enjoyment of all residents of the County and would thereby significantly enhance the social, cultural and recreational life of residents of and visitors to the County; and

WHEREAS, the County desires to receive management services and investment for Playland Park from the Manager and its approved subcontractors, and the Manager is willing to accept responsibility on behalf of the County and for the benefit of the public, and will undertake responsibility to manage the operation, maintenance, security, administration and improvements of Playland Park as the Manager on behalf of the County.

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

SECTION 1: Term and the Transition of Management and Control to the Manager

This Agreement shall take effect upon the date that it is fully executed by the County and the Manager (“Effective Date”). It is recognized and understood by the Parties that in order to allow the Parties to address various issues, including but not limited to, clean up, repairs and reconstruction due to Hurricane Sandy, development of implementation schedules for improvements, and examination of the existing infrastructure and equipment, that it will be necessary to provide a period of time for the Parties to take necessary steps to implement a smooth transition of Playland from the County to the Manager (“Transition Period”).

The Parties intend that commencing October 1, 2013 (“Commencement Date”), the Manager shall commence to manage, operate, repair, maintain, make improvements to and have financial responsibility for all costs and liabilities for all of Playland Park in accordance with the terms and conditions of this Agreement (“Park Management”), including, but not limited to, payments to the County of the amounts set forth in Section 4(C) below for a ten (10) year term.

Notwithstanding the foregoing, the Parties agree that the Commencement Date may be delayed until such date that the Amusement Zone, the Beach/Aqua Zone which will include the water deck (“Water Deck”), and the Field Zone which will include the field house (“Field

House”), (the Park zones are further defined in Section 7 below) have any and all required approvals and permits in place that are necessary to commence the improvements proposed by the Manager in accordance with Section 8 below. Such approvals and permits shall include, but are not limited to, the approvals and permits that can be issued by departments of the County under the administrative jurisdiction of the County Executive and the approval required by the Westchester County Board of Legislators (“BOL”) pursuant to Section 8 of this Agreement.

Upon the Commencement Date, this Agreement shall run for a period of ten (10) years (“Term”), with a mutual option to renew the Agreement for an additional ten (10) years upon the agreement of the Parties. The last day of this Term shall be the expiration date of this Agreement (“Expiration Date”). Assuming satisfactory performance of the Agreement during the Term, it is the expectation of the Parties that the Agreement will be renewed for the additional ten (10) year term, subject to necessary legal approvals.

It is understood and agreed that the Manager will not have the Park zones fully operating on the Commencement Date and that some period of time will be required to bring each Park zone on line. Notwithstanding the foregoing, the Manager agrees that the Amusement Zone, Beach/Aqua Zone which will include the Water Deck, and Field Zone which will include the Field House, shall commence business operations by May 1, 2014, provided, however, that if the Commencement Date is postponed as set forth in the preceding paragraph, then the May 1, 2014 target date will likewise be postponed an equivalent amount of time.

SECTION 1A: Transition Period

I. General.

a. During the Transition Period, the County shall continue to manage, operate, repair, maintain, make improvements to and have financial responsibility for costs and liabilities for Playland. The Parties agree to make their best efforts to cooperate with each other during this Transition Period to ensure the continuity of operations at Playland.

b. During the Transition Period, the Parties shall cooperate with each other in good faith to identify and develop a list of all necessary approvals and permits for each and every operational element and improvement proposed by Manager in response to the RFP, and as modified during negotiations with the County, as well as any other operational elements that the Parties identify during the Transition Period required by any department under the administrative jurisdiction of the County Executive. In addition, during the Transition Period, the Parties shall cooperate with each other in good faith to identify and develop a list as best as possible of the approvals and permits that may be required by other County departments not under the administrative jurisdiction of the County Executive. The foregoing is conditioned upon the Manager first providing to the Commissioner of the Department of Parks, Recreation and Conservation or her designee (“Commissioner”) detailed information regarding the operational elements and improvements for which such approvals or permits may be required, and further provided that this shall not apply to Material Improvements which are addressed in Section 8 of this Agreement.

c. When such necessary approvals and permits are identified by the Parties, the County commits to timely review and make a determination regarding same, but only for approvals and permits that can be issued by departments of the County under the administrative jurisdiction of the County Executive. The Manager recognizes and understands that certain boards and bodies of the County, such as the BOL and the Westchester County Board of Health, are independent entities and are not under the County Executive's administrative jurisdiction. In addition, the Manager acknowledges that approvals for certain operational or improvement plans may be required from non-County governmental bodies and agencies. The County Executive and the departments under his administrative jurisdiction commit to work together in good faith with the Manager to obtain timely approvals from any entity not under the County Executive's administrative jurisdiction.

d. It is further recognized and understood by the Parties that certain approvals cannot be issued until after the Commencement Date. For example, temporary and final Health Department permits to operate.

e. Within thirty (30) days of the Effective Date of this Agreement, or as soon thereafter as is practicable, the Parties shall create a schedule of items to be completed prior to the Commencement Date. The items include, but are not limited to: (i) examination of the existing infrastructure and equipment, including the existing Point of Sale system; (ii) review all contracts, licenses and other agreements to determine which, if any, such contracts including but not limited to software licenses will, if possible, be assigned to the Manager or terminated by the County; (iii) the County maintains contracts for certain services which may include Playland, such as the County Parks solid waste removal contract, the Parties agree to review such contracts and if the Manager, in its sole discretion, desires to participate in any such contract, the Manager shall pay the County the proportionate share for services to Playland; (iv) development of operating budgets and plans, as well as improvement plans and long-term improvement plans, which shall be effective as of the Commencement Date; (v) develop all plans, rules and regulations as required by Section 6 below; (vi) develop an implementation schedule for the improvements contemplated in Section 8 below; and (vii) removal by the County of all broken, obsolete, disused, inoperable and stored equipment, trailers, dumpsters and the like that are not needed or used in the operation of Playland Park provided that all such items shall be identified in a writing agreed to by the Parties.

II. Manager's Board of Directors.

Manager shall, within thirty (30) days of the Effective Date if it has not already done so, amend its incorporation documents, if necessary, and file same with the Secretary of State, to require the appointment of additional members to its board of directors as follows: one director appointed by the Westchester County Executive, one director appointed by the Westchester County Board of Legislators, one director who shall be the Commissioner of the Westchester County Department of Parks, Recreation and Conservation, *ex officio*, and to require that at least one director be a resident of the City of Rye, New York. The bylaws of the Manager shall be amended, within thirty (30) days of the Effective Date, if necessary, to require approval by the Manager's Board of Directors of each operating budget and plan submitted to the County

pursuant to Section 5 below and each improvement plan submitted to the County pursuant to Section 8 below.

III. Hurricane Sandy.

It is acknowledged that on or about October 29, 2012 a “superstorm” named Hurricane Sandy caused damage to the Ice Casino, a portion of the Boardwalk, certain equipment and other parts of Playland Park. The County agrees that it is responsible to remove, at its cost and expense, all trash, storm or other debris, that are a result of this storm and to pay the cost to repair the damage caused by Hurricane Sandy unless otherwise agreed to by the Parties. Such clean-up and repairs shall be identified by the Parties in writing during the Transition Period. The County will use its best efforts to undertake the clean-up process and to repair the damage so identified by the Parties, prior to the Commencement Date, except for the Ice Casino repairs, which the Parties acknowledge cannot be completed by the Commencement Date. The County will use its best efforts to complete the Ice Casino repairs as soon as possible. With respect to any clean-up items not completed by the Commencement Date, the County shall remain responsible for such clean-up after the Commencement Date and shall do so in cooperation with the Manager who shall coordinate the work of the County and the Approved Subcontractors to ensure, to the extent practicable, that the work of one does not interfere with the work of the other.

The Boardwalk sustained damage as mentioned above. The County is in the process of applying for reimbursement from insurance coverage then in effect at the time of the hurricane and/or for damage reimbursement funds made available from the Federal Emergency Management Agency (“FEMA”). The County will, subject to appropriations and all other necessary legal approvals, restore the Boardwalk to its pre-storm condition. In the event the Parties agree during the Transition Period that the Boardwalk need not be restored wholly or in part, the County will make the insurance proceeds and FEMA funds available to fund restorations, but only to the extent allowed by law, the terms and conditions of the County’s insurance policies then in effect and in accordance with FEMA reimbursement rules and regulations.

The Ice Casino, certain equipment in the Ice Casino and the Ice Casino Roof also sustained damage as mentioned above. The County is in the process of applying for reimbursement from insurance coverage then in effect at the time of the hurricane and/or for damage reimbursement funds made available from FEMA. The County will, subject to appropriations and all other necessary legal approvals, restore the Ice Casino and Ice Casino Roof. Such restoration shall include making all structural and non-structural repairs in order to deliver same to the Manager water-tight and in good working order.

IV. Survey.

The County will provide the Manager with a survey of the perimeter of Playland Park prior to the Commencement Date no later than sixty (60) days after the Effective Date.

SECTION 2: Management of the Park

A. Starting on the Commencement Date, the Manager shall be responsible for Park Management on behalf of the County as a public park, shall be responsible to operate all of the zones (as defined in Section 7 below), and shall also be responsible for all activities and operations of any kind and nature whatsoever conducted within the Park as further specified in this Agreement (the “Work”).

B. The Manager, either by itself or through an approved subcontractor, shall ensure that an Amusement Park Zone and Beach/Aqua Zone (as those zones are defined in Section 7 below), shall be operational during the entire Term of this Agreement. It is recognized and understood by the Parties that the operation of an amusement park and beach/water park are critical elements of this Agreement. 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 approved pursuant to Section 5 herein and with the policies approved pursuant to Section 6 herein.

C. (i) The County hereby grants to Manager the exclusive right and privilege to undertake the Work. The Work shall be carried out by the Manager in accordance with industry best practices and standards.

(ii) 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.

D. The Manager covenants and agrees during the Term of this Agreement, at the Manager’s own cost and expense, to perform all maintenance and repairs throughout the Park, including but not limited to, all grounds, sidewalks, streets, curbs, parking areas, access roads and roadways and agrees to keep same free of snow, ice, dirt, rubbish and other obstacles. The Manager shall perform all maintenance and repairs in a good and workmanlike manner in order to keep the Park in a clean, orderly, safe and operational condition.

E. The Manager shall perform all the duties normally associated with sound, safe, innovative, prudent and efficient management of a park and shall provide all of the Work as is customary and usual to such an operation, including, but not limited to, the following:

(i) The Manager shall perform the Work in a safe and efficient manner.

(ii) Unless otherwise agreed to between the Parties with respect to improvements at Playland Park that may be demolished or temporarily closed, the Manager shall maintain and repair all equipment, including but not limited to rides, machinery and tools (including replacement if necessary).

- (iii) Unless otherwise agreed to between the Parties with respect to improvements at Playland Park that may be demolished or temporarily closed, the Manager shall maintain and repair all buildings and structures including, without limitation, plumbing, electrical, sprinkler, heating and air conditioning systems, apparatus and equipment, such maintenance to include janitorial services.

F. Subject to the ultimate approval of the Commissioner the Manager will expeditiously develop policies and procedures for the operation and management of the Park prior to the Commencement Date.

G. 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 Commencement Date.

H. The Manager shall undertake alterations, improvements, and projects, at its sole cost and expense, except as otherwise provided herein, in accordance with the terms and conditions further delineated in Section 8 below.

I. The Manager shall not create, nor suffer to be created, any nuisance in, around or about the Park and shall not commit or cause any waste of or to the Park, except to the extent that the County approves any plan(s) to demolish infrastructure currently existing or to be constructed at the Park in the future as part of any approved plan(s) for improvements in accordance with Section 8 of this Agreement.

J. 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.

K. In connection with the operation of the Amusement Zone, see Section 3 below, the Manager shall provide evidence that the Approved Subcontractor (hereinafter described in Section 3) operating the Amusement Zone is in compliance with the ASTM F-24 standards.

L. The Manager shall provide such other facilities, services and activities as necessary to undertake the Work, subject to the Commissioner's approval,

M. The County Executive and the departments under the administrative jurisdiction of the County Executive and Manager agree that they shall cooperate reasonably with each other to permit the Manager to carry out the Work.

N. The Manager shall use its best 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, the community surrounding Playland and the users of Playland.

O. 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 unreasonable 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 unreasonable failure or refusal of the County to approve budgetary appropriations (or obtain funding from other sources) required by this Agreement.

P. The Manager or its designee shall attend periodic meetings with County personnel at times and locations designated by the Commissioner.

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

R. The Manager shall provide technical advice within the knowledge of Manager and its subcontractors to the County on Playland 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 and its Approved Subcontractors (hereinafter described in Section 3).

S. The Manager shall provide written documentation of all accidents that take place at Playland within 24 hours of their occurrence in a format acceptable to the Westchester County Director of Risk Management.

T. 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”).

U. The Manager shall use its best 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.

V. The Manager will 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.

W. Each approval of the Commissioner or any other County commissioner or department under the administrative jurisdiction of the County Executive may not be unreasonably delayed, conditioned or denied.

SECTION 3: Management Structure

A. In accordance with the provisions contained in Sections 12 and 30 herein, the Parties hereto acknowledge and agree that, at or about the time of execution of this Agreement but in no event later than the Commencement Date unless otherwise agreed to by the Parties in writing, the Manager will enter into a contractual relationship with the following entities which are hereby approved by the County to act as subcontractors to the Manager (“Approved Subcontractors”) and provide services for the named purpose(s) in connection with this Agreement:

- (i) Biederman Redevelopment Ventures Corporation (hereinafter “BRV”) to manage the day to day operations on behalf of and as agent of the Manager;
- (ii) Playland Sports Center LLC to manage, operate, construct and maintain an indoor field house and outdoor sports fields (it being acknowledged that Playland Sports Center LLC has engaged and may continue to engage the outside consulting services of Pinnacle Indoor Sports to provide various services related thereto);
- (iii) American Skating Entertainment Centers, LLC (“ASEC”), or a related entity owned, controlled or under common ownership of or control by ASEC, to manage, operate, maintain, and make non-structural repairs, restorations, renovations and improvements to the indoor skating facilities within the Ice Casino and a potential seasonal outdoor ice skating facility in the vicinity of the Ice Casino (it is recognized and understood that the Manager shall remain responsible for structural repairs to the Ice Casino after the County has completed repairs required pursuant to Section 1A(III));
- (iv) Mega Fun Works, Inc., or a related entity owned, controlled or under common ownership of or control by Mega Fun Works, Inc., to manage, operate, construct, repair, restore, renovate and/or improve and maintain the Amusement Park, Water Deck in the location of the existing pool and the public beach within Playland Park commonly known as Rye Beach.

It is recognized and understood by the Parties, in accordance with the Manager’s response to the County’s RFP, one or more of the Approved Subcontractors will be responsible for areas of the Park defined as specific Park zones see section 7 below.

It is recognized and understood by the Parties that the Manager shall be responsible for all obligations under this Agreement and the County shall have no obligations, financial or otherwise, to any Approved Subcontractor, except as set forth in Section 12 of this Agreement. The Manager shall be responsible to ensure that the Approved Subcontractors carry out any of the Manager’s obligations required by this Agreement.

B. Each Approved Subcontractor or other entity engaged in activities and operations within Playland Park will make payments to the Manager as may be required by their respective asset management sub-agreements with the Manager.

C. The Manager may request the Commissioner to add to and/or revise the list of Approved Subcontractors consistent with the Manager’s response to the County’s RFP and in accordance with the terms of this Agreement. The Manager shall provide the Commissioner with sufficient background information to evaluate the experience, reputation and financial capacity of any new proposed subcontractor. Such approval may not be unreasonably delayed or denied if an additional or substituted subcontractor shall have the appropriate experience, reputation or financial capacity.

SECTION 4: Compensation

A. (i) The term “Revenue(s)” shall mean any and all revenues and income of any kind derived from the operation of Playland (including, but not limited to, concession payments of any kind, Permits and Sponsorship Agreements (as defined in Section 11 below) and special events) determined in accordance with generally accepted accounting principles consistently applied.

 (ii) The term “Expense(s)” shall mean any and all expenses paid, incurred or properly accrued under Manager’s operation of Playland, not including any payments made pursuant to Section 4(c)(i) or (ii) below, or any costs paid out of the Capital Reserve, in accordance with generally accepted accounting principles consistently applied. Notwithstanding the foregoing, depreciation expenses for Removable Personal Property (as defined in Section 14 below) are not an allowable Expense under this Agreement

B. When used herein the term “Depreciation” shall mean straight-line method of depreciation.

C. The Parties recognize that Playland has significant debt that the County is obligated to repay. Neither the Manager, nor any Approved Subcontractor, shall have any obligation of any kind with respect to the County’s existing debt relating to Playland or any other County debt.

(i) The Manager has agreed to pay Three Million Two Hundred and Fifty Thousand (\$3,250,000) Dollars to the County as follows:

- a. Five Hundred Thousand (\$500,000) Dollars upon the Commencement Date;
- b. Seven Hundred Fifty Thousand (\$750,000) on the earlier of May 1, 2014 (as that date may be postponed by the number of days equal to the postponement of the Commencement Date) or the date the Field Zone (the Park zones are further defined in Section 7 below) commences business operations at Playland;
- c. Seven Hundred Fifty Thousand (\$750,000) on the earlier of May 1, 2014 (as that date may be postponed by the number of days equal to the postponement of the Commencement Date) or the date the Amusement Zone commences business operations at Playland;
- d. Seven Hundred Fifty Thousand (\$750,000) on the earlier of May 1, 2014 (as that date may be postponed by the number of days equal to the postponement of the Commencement Date) or the date the Beach/Aqua Zone (including the Water Deck) commences business operations at Playland;
- e. Five Hundred Thousand (\$500,000) Dollars on the earlier of May 1, 2014 (as that date may be postponed by the number of days equal to the postponement of the Commencement Date) or the date the Great Lawn Zone commences business operations at Playland; and

- f. The term “commences business operations” shall mean the date the activities in a Park zone generates the first dollar of revenue from the activities and programs occurring in such Park zone after such Park zone opens to the public.

(ii) Prior to Hurricane Sandy it was anticipated by the Parties that the Manager’s Approved Subcontractor would begin management and operation of the Ice Casino on the Commencement Date and based on this assumption the Manager had offered to pay the County \$750,000.00 on the date that both Ice Rinks in the Ice Casino commenced business operations at Playland. As a result of damages caused to the Ice Casino by Hurricane Sandy (see Section 1A(III) above), the payment offer was withdrawn as the basis for the Manager’s revenue projections were no longer valid. When the County notifies the Manager of the firm completion date for the Ice Casino repairs, within ten (10) business days thereafter the Manager or its Approved Subcontractor, shall present the County with a new pro forma for the business operations at the Ice Casino. Upon the County’s receipt of the new pro forma, the Parties shall negotiate in good faith a new amount to be paid by the Manager to the County and shall pay such amount on the date that the Ice Casino commences business operations at Playland. Such negotiated amount shall be recorded in a written amendment to this Agreement, subject to all necessary legal approvals.

(iii) It was projected in the Manager’s response to the RFP that NOI would be \$1.2 million at the end of the first full year of operations, following the Commencement Date, during which all of the Park zones (i.e.: the Amusement Zone; the Beach/Aqua Zone, including the Water Deck that may be located within the Beach/Aqua Zone; the Field Zone; the Fountain Plaza Zone, including the four restaurants in the Plaza and both Ice Rinks in the Ice Casino; and the Great Lawn Zone) have been fully operational for one full calendar year or one full season if only operated seasonally (hereinafter a “Stabilized Year”). As manager of the County’s asset, the Manager shall, after the payment of all Expenses as set forth in the Manager’s Operating Budget and the Manager’s Capital Budget approved by the Commissioner, as well as the payment of additional non-budgeted expenditures necessitated by emergencies or other acts beyond the Manager’s control and before transfers of net operating funds into the Operating Reserve and the Capital Reserve as hereinafter set forth, pay over to the County all of the Manager’s net operating income (“NOI”) derived from all of the Manager’s operations at Playland Park, which shall include fixed payments from the Approved Subcontractors to the Manager for the use of each Park zone.

At such time as independent auditors determine NOI for each pre-Stabilized Year and, thereafter, each Stabilized Year, such NOI shall be distributed as follows:

- a. Fifty (50%) percent to the County (or more up to and including 100% pursuant to paragraph d below) of the NOI after the payment of all operating Expenses and capital Expenses as set forth above in this subsection (iii);
- b. Twenty-five (25%) per cent to the Capital Reserve until the amount therein shall equal Ten Million (\$10,000,000) Dollars;

- c. Twenty-five (25%) percent to the Operating Reserve until the amount therein shall equal Five Million (\$5,000,000) Dollars;
- d. If at any time the Capital Reserve and Operating Reserve are fully funded, then the percent of the NOI to the County shall increase; and
- e. The payment of estimated NOI to the County shall be made not later than thirty (30) days after the end of the Manager's fiscal year, provided that for the first two years of the Agreement after the Commencement Date, the Manager shall only pay the County 75% of the estimated NOI owed to the County under sub-paragraph a above, until final audited statements are received at which time the Manager shall be responsible to pay the County the balance owed, if any. Upon notification to the County by the Manager of the receipt of final audited statements from the Manager's independent auditor for the prior calendar year (or fiscal year as the case may be): (i) in the event of an underpayment of NOI, the Manager shall pay the County such amount within thirty (30) days; (ii) in the event of an overpayment of NOI, the County will pay the Manager such amount within thirty (30) days. Such audited statements shall be received not later than one hundred twenty (120) days from the end of the calendar year (or fiscal year as the case may be). The Manager shall provide to the Commissioner quarterly reports of Revenues and Expenses derived from the operation of Playland.
- f. In the event the NOI is less than zero, the Manager shall not be permitted to carry the loss over to the next year's calculation of NOI.

SECTION 5: Operating Budget; Operating Plan; Capital Budget

A. The Manager shall, not less than thirty (30) days prior to the intended Commencement Date of October 1, 2013, and by April 1st of each year thereafter, prepare and submit to the Commissioner for the Commissioner's review and approval, a written annual operating budget ("Manager's Operating Budget") and a written annual operating plan ("Manager's Operating Plan"), all of which will have been approved by the Manager's Board of Directors prior to submission to the Commissioner.

(i) Each Manager's Operating Budget shall itemize all categories of anticipated Revenues and operating Expenses for the upcoming calendar year.

(ii) Each Manager's Operating Plan shall include, but not be limited to: a maintenance and repair schedule; a schedule of proposed changes to Playland fees since the date of the last Manager's Operating Plan; a list of all changes to the Approved Subcontractors since the date of the last Manager's Operating Plan; a schedule of all new agreements to be entered into since the date of the last Manager's Operating Plan; recommendations, if any, for revisions to any of the Plans, Rules and Regulations required under Section 6 below; schedules, if any, for new non-capital improvements of Playland facilities and acquisition of equipment since the date of the last Manager's Operating Plan; schedule of proposed changes to staffing levels since the date of the

last Manager's Operating Plan; proposed changes to the advertising and promotional programs since the date of the last Manager's Operating Plan; changes to the length of season, hours of operation, and any other relevant factors which may affect Playland's operations and management for the upcoming calendar year since the date of the last Manager's Operating Plan. It is the intent of the Parties that in developing the annual Manager's Operating Plan, the Manager shall keep the public spaces at Playland Park open to the public every day all year round subject to events beyond its control such as, by way of example only, an Act of God, act of war, civil unrest or a declared national disaster. In that regard, there shall be no general admission to the Park unless the Commissioner shall consent to change such policy and the public shall pay for only those activities and services that it chooses to enjoy. It is the intent of the Parties to keep the Park open as many hours as practical, to the extent permitted by the availability of funds and consistent with the requirements of safety and security.

B. The Manager shall, not less than ninety (90) days prior to the intended Commencement Date, and by April 1st each year thereafter, prepare and submit to the Commissioner for the Commissioner's review and approval, a written capital budget ("Manager's Capital Budget"), which has been approved by the Manager's Board of Directors prior to submission to the Commissioner.

SECTION 6: Plans, Rules and Regulations

Manager shall, submit the below described plans, rules and regulations, and any amendments thereto, to the Commissioner as follows:

- (i) Prepare, in consultation with the Commissioner, and submit to the Commissioner for review and approval not less than ninety (90) days prior to the intended Commencement Date, a set of written Rules and Regulations governing public use of, and behavior in the 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 the Park by the public for its intended purposes, and the safe and efficient conduct of activities in the Park and of the operation of the facilities within each Park zone. In addition, the Manager may from time to time propose modifications of the Rules and Regulations. 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 and submit to them for their review and approval, not less than ninety (90) days prior to the intended Commencement Date, 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. In addition, such Security and Emergency Contingency Plan shall also address amusement ride catastrophes and accidents; fires, bombings, personal accidents; sudden illness; natural disasters; civil disturbances; riots, acts of terror or any other emergency which might affect or imperil the health, safety or

security of persons or property at Playland or the orderly and efficient operation of Playland and provide such facilities, training, supervision, and coordination as may be reasonably required to implement this Plan.

- (iii) Copies of the above Rules and Regulations and the Security and Emergency Contingency Plan are to be submitted to the County Board of Legislators for their information and review. Each of the foregoing shall be subject to modification by the County on thirty (30) days written notice to the Manager, provided that any costs required to implement modifications shall be paid for by the County.
- (iv) In addition to the above, the Manager shall use its best efforts, consistent with the proper maintenance and operation of 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 best practices for energy conservation to the extent practicable.

SECTION 7: Playland Park Zones

The Park zones will be as follows: Amusement Zone, Beach/Aqua Zone which will include the Water Deck, Field Zone which will include the Field House, Great Lawn Zone, Fountain Plaza Zone which may include restaurants, and Common Area Zone which comprises all other areas of the Park.

The Parties agree that the specific locations of each Park zone may be adjusted as each Park zone becomes operational, however, the Park zones will be in substantially the same areas, and contain substantially the same activities as described in the Manager's response to the RFP. The Parties agree and understand that the areas currently described below may be adjusted and are subject to the Playland Improvement Plan as required to be submitted under Section 8 of this Agreement. For those adjustments that are not subject to the Playland Improvement Plan, e.g. non-material changes (see Section 8(S)), the Manager shall provide the Commissioner and the DPW&T Commissioner with a written description of how the Park zone is being adjusted, both as to location and activities.

Specifically the Parties agree with respect to the:

- (i) Amusement Zone - the Amusement Zone will be located in the current existing area of the Amusement Park and will include, but will not be limited to, the following: Kiddy Land and the Dragon Coaster areas which will consist of approximately 34 rides (21 kiddy, 10 family, and 3 thrill) including all 7 historic rides; food; boardwalk games; arcades; body art; photo booths; retail shops; concerts; special events; group outings; shows; fireworks; and holiday festivals, all as same may change from time to time to accommodate changes resulting from new technology and equipment, and changing popular tastes in programs and activities.
- (ii) Beach/Aqua Zone and Water Deck - will be located in the current Beach area and area currently operated as Playland Pool. (It should be noted that the Manager and

not the Approved Subcontractor for this Park zone shall be responsible for the north and south bath houses and the connecting corridor, except that the Westchester Children's Museum, upon the full and proper execution of a lease agreement with the County, shall become responsible for the north bath house). The Beach/Aqua Zone area will consist of new rental furniture, cabanas, and food options; attractions will include Zip Lines, Euro Bungee, Waterslides, Banana Boat rides, parasailing, water skiing, and other family activities. The Water Deck area will consist of Aqua Adventure spray and play zone with over 30 interactive features, Waterslides, a Lazy River; adequate seating and private cabanas; and updated café, restored restrooms, retail shop and first aid. Both areas will be used occasionally for special events, concerts, group outings, shows, fireworks and other festivals. Activities in both the Beach/Aqua Zone and Water Deck may change from time to time to accommodate changes resulting from new technology and equipment, and changing popular tastes in programs and activities.

- (iii) Field Zone - which will include the Field House, will be situated within the main parking lot at Playland Park and be substantially consistent with the Manager's response to the RFP. Normal activities include, but are not limited to: league play in a variety of sports; instructional programs in a variety of sports and activities; camps and clinics; tournaments; birthday parties; mommy and me type daytime activities; rental of the indoor and outdoor facilities to outside sports groups; speed and agility training; and small trade shows. Additional activities include, but are not limited to: community business functions (e.g., Chamber of Commerce functions); awards banquets; civic gatherings (e.g., United Way kick off); Boy/Girl Scout functions; Boys and Girls club functions; outdoor field functions such as a small children's fair, and exotic car shows. All such activities may change from time to time to accommodate changes resulting from new technology and equipment, and changing popular tastes in programs and activities.
- (iv) Great Lawn Zone - will be substantially situated in the area currently bordered by the Long Island Sound to the East, the current promenade/walkway and new Amusement Zone to the West, the Ice Casino to the south and the Playland access road/entrance to the Edith G. Read Natural Wildlife Park and Sanctuary to the North. The Great Lawn Zone will contain activities including but not limited to: a large lawn suitable for passive recreation (like picnics) and unorganized, active recreation (like Frisbee). It will also feature a variety of free activities and amenities like croquet, badminton, ping pong, and musical performances. The Great Lawn Zone will also include the Playland promenade, which will feature elaborately-designed and colorful gardens. The promenade ends at the existing Playland stage, which will continue to host a variety of performances. All such activities may change from time to time to accommodate changes resulting from new technology and equipment, and changing popular tastes in programs and activities.
- (v) Fountain Plaza Zone - which may include event space, will be situated in the area currently occupied by the Playland Fountain and Miniature Golf course, bordered on the east by the Ice Casino, the south by the Boardwalk and bordered further by the

current Administration building and food vendor locations. Activities in the Fountain Plaza Zone shall include, but are not limited to: learn to skate classes; public skating sessions; learn to play hockey classes; ice hockey programs; kids first hockey programs; freestyle skating; summer camps; special events, parties, and seasonal activities; restaurant/café; off-ice hockey training; off-ice figure skating training, as same may change from time to time to accommodate changes resulting from new technology and equipment, and changing popular tastes in programs and activities, as well as future changes to the sport of hockey and ice skating.

The Fountain Plaza Zone will also contain up to two destination restaurants, not including the Pier Restaurant and Tiki Bar. These restaurants may have waiter service, different operating concepts, and a mix of indoor and outdoor seating. In addition, the Fountain Plaza Zone will feature a variety of free public activities and amenities. These may include board games, a reading room, lectures, and musical performances. All such activities may change from time to time to accommodate changes resulting from new technology and equipment, and changing popular tastes in programs and activities.

- (vi) Common Area Zone - consists of the shore zone and entry zone as set forth in the Manager's response to the RFP, all parking areas and all other areas of the Park that are not within another defined Park zone. Parking, as of the Execution Date, is comprised of the main parking lot and overflow parking area next to the Edith G. Read Natural Wildlife Park and Sanctuary; the beach and pool parking lot adjacent to the North and South Bath Houses and the employee/bus depot parking area adjacent to the Main Boardwalk. The main parking lot will be used primarily for parking cars during the summer. The Parking area will be repaired as needed and re-stripped to allow for a more efficient use of space. It will continue to be used as parking for Playland visitors. There will still be a fee for parking at Playland.

Activities in the Common Area Zone shall include, but are not limited to, special events, shows, festivals, and concerts. All such activities may change from time to time to accommodate changes resulting from new technology and equipment, and changing popular tastes in programs and activities.

The Parties further agree and understand that the activities to be contained and/or conducted within each Park zone shall be substantially consistent with the Manager's response to the RFP and consistent with the respective plans, including but not limited to, the Playland Improvement Plan, submitted for approval as required pursuant to this Agreement. Any requested change of proposed uses, activities or material changes in the area of any Park zone is subject to the approval of the Commissioner and any required approvals of this Agreement. The prior sentence notwithstanding, any changes within a Park zone that contemplates any use or activity described in the Manager's response to the RFP and was set forth in the Playland Improvement Plan that has been approved by the BOL, shall be deemed uses or activities that may be moved within and between Park zones and shall only require approval by the

Commissioner, except that a new permanent structure may require an approval under SEQRA or a site plan approval.

SECTION 8: Playland Improvements

The Manager, and its Approved Subcontractors, upon compliance with the provisions of this Section, shall have the right, at their own cost and expense, to make improvements to Playland.

A. **Manager's Investment.** Approximately \$34 million dollars is planned to be invested in property and equipment over the Term of this Agreement to make improvements within and to Playland Park upon receipt of necessary approvals for all of the activities that are to take place at Playland Park consistent with the Manager's response to the County's RFP, which shall include but not be limited to the following projects:

- Amusement Park, Beach and Water Deck
- Indoor Field House and Outdoor Fields
- Indoor and potential Outdoor Ice Skating
- Restaurants/Multi-use Event Space
- Open Space

Such expenditures will comprise a combination of investments the Manager itself will make within certain areas of the Park and investments to be made by the Approved Subcontractors within the Park. All such expenditures shall be made by the Manager or Approved Subcontractors from equity or debt sources of its or their own choosing without any commitment of funds from the County (except as may otherwise be specifically set forth herein).

The improvements resulting from such expenditures shall become the property of the County at such time as the improvement is completed. To the extent permitted by law, the parties making such investments shall have the rights and liabilities of an owner for tax purposes under the Internal Revenue Code, including but not limited to, the right to depreciate such improvements, to the extent depreciable.

The Manager shall provide the Director of Risk Management with a list, to be updated as necessary, of all such improvements upon their completion. It is the Manager's duty to advise the Director of Risk Management of any and all improvements upon their completion in order for the proper insurance coverage to be placed into effect in accordance with Section 21 below. The Manager shall provide the Director of Risk Management with any and all details necessary to provide the appropriate insurance coverage for that improvement,

B. **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, appearance, layout and character of the existing land, buildings and infrastructure at Playland Park.

C. **Playland Improvement Plans.** Within thirty (30) days of the Effective Date, or such additional period of time as mutually agreed to in writing by the Parties, and annually thereafter on the anniversary of the Commencement Date, the Manager and its Approved Subcontractors shall submit to the Commissioner a list of all proposed Material Improvements for the entire Park. All Material Improvements to Playland Park proposed by the Manager and its Approved Subcontractors shall be subject to the review and approval of the appropriate County Department, Office or Board.

The Manager shall prepare and submit to the Commissioner a list, along with detailed information, of each and every proposed Material Improvement to be made in Playland Park. Such list, along with the supporting detailed information shall include, but not be limited to:

- preliminary plans and drawings prepared by a licensed architect;
- a proposed schedule for implementation of each Material Improvement (“Timetable(s)”). A proposed Timetable shall include, but not be limited to, a construction schedule for each project.

Such list and detailed information shall hereinafter be referred to as a “Proposed Playland Improvement Plan”. Any Proposed Playland Improvement Plan shall be approved by the Manager’s Board of Directors prior to submission to the County.

In addition, the Proposed Playland Improvement Plan shall include a statement of all major actions that are required to implement each such project and the affect such actions will have on Playland Park, including but not limited to, construction and demolition at Playland Park.

Within thirty (30) days of receipt of the Proposed Playland Improvement Plan, the County administration shall create a complete list of County approvals that will be necessary to carry out such plan. Any approval of the Commissioner, or any other County commissioner or department under the administrative jurisdiction of the County Executive, may not be unreasonably delayed or denied. Upon receipt of those approvals for the Proposed Playland Improvement Plan that can be legally obtained prior to commencement of any Material Improvement, the County Executive will submit legislation to the BOL for their review and approval of the Proposed Playland Improvement Plan.

The Manager further understands that the lead agency shall be determined in accordance with the New York State Environmental Quality Review Act and its implementing regulations (“SEQRA”) relating to a Material Improvement at Playland Park. Interested and involved agencies (as that phrase is used under SEQRA) shall be determined by the County Commissioner of the Department Planning in consultation with the Manager.

The Manager understands that the projects identified under the Proposed Playland Improvement Plan may not proceed until the above approvals are granted and SEQRA completed. Any individual project contained in a Playland Improvement Plan that has been approved by the BOL in accordance with the above procedures shall be deemed an approved Material Improvement (“Approved Material Improvement”).

D. **Three Year Playland Improvement Plan.** On the Commencement Date, the Manager shall prepare and submit to the Commissioner, simultaneously with the Proposed Playland Improvement Plan, a long-term improvement plan for the Park for a three year period following the year covered by the Proposed Playland Improvement Plan (“Three Year Playland Improvement Plan”). Such Three Year Playland Improvement Plan shall describe anticipated Material Improvements and include a summary of the individual project descriptions over the three year period. Any proposed Three Year Playland Improvement Plan shall have been approved by the Manager’s Board of Directors prior to submission to the County.

E. **County Review of Plans and Specifications.**

During the implementation of an Approved Material Improvement, the Manager shall provide the Commissioner of the Department of Public Works and Transportation or his designee (“DPW&T Commissioner”), for his review and comment, with record copies of plans and specifications at various stages of design and construction as agreed to by the DPW&T Commissioner and the Manager (“Plans and Specifications”). The DPW&T Commissioner, within ten (10) business days, not including County holidays, after receipt of Plans and Specifications from the Manager, will furnish a written statement as to whether or not the Plans and Specifications meet the applicable terms and conditions of this Agreement, e.g., Sections 8(N) and 9 below. The Manager, if necessary, shall prepare and submit revised Plans and Specifications for the DPW&T Commissioner’s review and comment.

F. **Playland Improvement Management.** The Manager shall manage all aspects of construction, renovation and equipping of the land, buildings and equipment to be done by itself, the Approved Subcontractors or other third parties not under the control of the County within the Park related to any Approved Material Improvements. The Manager will procure all required permits and approvals for any Approved Material Improvement by any and all governmental authorities having jurisdiction thereof.

G. **Non-County Governmental Approvals.** The Manager and its Approved Subcontractors shall apply for any required permits and approvals from the appropriate non-County governmental entities, if necessary, to carry out an Approved Material Improvement. At the request of the Manager, the Commissioner will cooperate with the Manager to obtain all such 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.

H. **Approvals by the County for Approved Material Improvements.** To the extent that any County approvals can only legally be issued during implementation or upon completion of the Approved Material Improvement, any approval of the Commissioner or any other County commissioner or department under the administrative jurisdiction of the County Executive may not be unreasonably delayed or denied.

I. **Closures.** During the implementation of any Approved Material 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 the Park is reopened to the public.

J. **Limitation of Liability For Material Improvements.** The County shall have no liability or responsibility in connection with any Approved Material Improvements, including but not limited to:

- (i) the construction and supervision of the improvements;
- (ii) the accuracy, adequacy or sufficiency of any specifications, plans, drawings or other contract documents relating to the improvements (or any errors or omissions therein) except to the extent same have been modified by the County or any County Department, Board or agency thereof; or
- (iii) any cost overruns except as otherwise provided in this Agreement.

K. **Unexpected Capital Expenditures.** Unexpected and unplanned capital expenditures including, but not limited to, damage to property, building and equipment from an Act of God, civil unrest, act of war, terrorism or other unusual event, 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 and the Capital Reserve shall be less than \$10 million dollars. The County shall provide funding for such expenditures subject to appropriation.

L. **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 Twenty Thousand (\$20,000.00) 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. The costs resulting from this requirement shall be a permitted Expense in the Manager's Operating Budget under Section 4(A).

M. **Reasonable Diligence.** The Manager shall implement any Approved Material Improvement, with reasonable diligence.

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

- (i) Be of a first class design, character and appearance.

- (ii) Be consistent with Playland’s unique status, including but not limited to, those areas of Playland that are on the national register of historic places, and its 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 Approved Material 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) Upon completion, be free of liens and encumbrances for labor and materials supplied in connection with such work. It is recognized and understood by the Parties, that the immediately preceding sentence shall not apply to amusement rides which are Removable Personal Property as defined in Section 14 below which may have a financing lien.
- (v) Be of a character that, when completed, the value and utility of the improvements shall not be less than the value and utility thereof immediately prior to any such improvement if applicable except for projects that comprise demolition without replacement.

O. **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 Approved Material Improvement, and where applicable for any non-material changes to the land, buildings and infrastructure at Playland Park, shall be delivered to the Commissioner and DPW&T Commissioner to complete the County’s files.

P. **Improvement Insurance.** No Approved Material Improvement 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 “B”**, including copies of policies if requested by the County Director of Risk Management. In particular, the insurance certificate shall identify the specific Approved Material Improvement and the policy shall be endorsed to cover such Approved Material Improvement and the endorsement provided to the County Director of Risk Management.

In addition, the Manager will 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.

Q. **Certificates**. Manager will 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.

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

In the event that, during the implementation of any Approved Material Improvement and prior to the completion of same, the DPW&T Commissioner, or his/her designees, shall reasonably determine that the Approved Material Improvement is not being constructed substantially in accordance with the Plans and Specifications and/or the applicable terms and conditions of this Agreement, e.g., Sections 8(N) and 9, then the DPW&T Commissioner shall give prompt notice in writing to the Manager, specifying in detail the particular deficiency or omission in which the DPW&T Commissioner claims construction does not accord with the above requirements. Manager shall respond within thirty (30) days notifying 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 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.

S. **Non-Material Changes**. Any non-material changes to the land, buildings and infrastructure at Playland Park made by Manager, other than as described in this Section, which do not require amendment of the Plans and Specifications, may be made at any time, without the prior approval of the County.

T. **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 Approved Material Improvement any and all Plans and Specifications, reports, estimates and models which shall have been prepared or made in connection with any such Approved Material Improvement and which shall be in the possession of, and owned by, the Manager and its Approved Subcontractors, shall become the property of the County.

SECTION 9: Utilities.

As the owner of Playland Park, the County shall remain responsible to continue to provide or cause to be provided all utilities, including water and electricity, cable/fiber optics,

sanitary sewer facilities and the like serving Playland Park on the Commencement Date (including those intended to be provided and necessary for the normal operation of Playland Park although temporarily out of service or seasonally discontinued on the Commencement Date). Charges for the use thereof shall be paid by Manager and either billed by the County administration monthly or where applicable be billed by separate utility companies directly to the Manager. The Manager shall be responsible for the payment, within thirty (30) days from receipt of a bill from the County, of all charges for electricity, telephones, water and sewer associated with Playland Park upon the Commencement Date and thereafter during the Term of this Agreement. The County administration shall reasonably cooperate with the Manager in securing the most favorable available rates for all utilities serving the Park.

To the extent the County provides the distribution system within the Park for any utility, the County's costs after the Commencement Date for maintenance, repairs and new debt service incurred as a result, shall be paid for by the Manager from the Manager's Capital Budget or the Capital Reserve, but only from the Capital Reserve to the extent that the amount set forth in the Manager's Capital Budget shall be insufficient.

The County shall cooperate with the Manager should the Manager, at its sole cost and expense, desire to install sub-meters in any Park zone after the Commencement Date, so that each Approved Subcontractor may be billed directly for its utility usage and the costs thereof.

To the extent the Manager or Approved Subcontractors make any Approved Material Improvement which would necessitate: (i) a new connection to any existing utility distribution system at Playland maintained by the County (e.g. electricity, telephone, sewer and water); or (ii) increase the demand for such utility services; 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. Any costs associated with any of the above shall be borne by the Manager. Alternatively, in the Manager's judgment reasonably exercised, such costs may be paid for by the Manager from the Manager's Capital Budget or the Capital Reserve, but only from the Capital Reserve to the extent that the amount set forth in the Manager's Capital Budget shall be insufficient.

Manager, at its sole cost and expense, for any Approved Material 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 10: Temporary Closing of Playland Park or selected areas.

A. In addition to the closure provisions set forth in Section 8(I) above, upon ten (10) business days notice to the Commissioner, the Manager may temporarily close any portion of the Park after the Commencement Date, to perform ordinary maintenance, repairs, non-material construction work, or landscaping (including tree pruning in accordance with the County Tree Law) to provide for the safety and health of the public, to comply with Laws, or to discharge

other responsibilities of the Manager under this Agreement. It is recognized and understood by the Parties that the immediately preceding sentence shall not apply to daily maintenance throughout Playland Park, such as daily maintenance performed on rides in the Amusement Zone.

B. After the 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.

SECTION 11: Permits and Sponsorships.

A. Sponsorships. After the Commencement Date, the Manager shall manage the application and processing of corporate sponsorships relating to Playland Park (“Sponsorship Agreement(s).”) 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 likely to hold the County or a person or group of persons up to scorn or ridicule, or engages in activities that are offensive to the standards of the community.

B. Permits.

- (i) Other than normal operational uses of the Park zones, the Manger 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 the 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.
- (ii) During the Term, except as specifically provided in sub-paragraph (i) above, the Commissioner shall grant or withhold permits in the Park for assemblies, meetings, exhibits and or other activities in accordance with the rules and regulation of the Department. 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.
- (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 as 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 therefor, the Manager's recommendation as to such application shall be deemed approved.

SECTION 12: Approved Subcontractor Agreements.

A. It is contemplated by the Parties that Playland Park will be managed by the Manager and its Approved Subcontractors who will manage and operate separate business activities and operations within Playland Park. The initial activities of the Approved Subcontractors are expected to include, but not be limited to, the repair, construction, reconstruction, equipping, demolition, removal and/or replacement of the amusement rides, outdoor fields, indoor field house, the Ice Casino, multi-event space, multiple dining venues, Water Deck and fountain, kayaking and sailing facilities and a great lawn. The terms of agreement with each Approved Subcontractor shall be on commercially reasonable terms as determined solely by the Manager in the exercise of its reasonable judgment, subject to the terms and conditions contained in this Agreement and in accordance with the provisions of Section 30 of this Agreement. It is recognized and understood by the Parties that the Approved Subcontractors are making substantial investments in the Park and in order to obtain financing will require long term agreements up to twenty (20) years. The Manager may execute agreements with the Approved Subcontractors for terms of up to twenty (20) years provided that the Manager shall have previously submitted copies of such subcontractor agreements to the County and such agreements are approved by the County Board of Acquisition and Contract ("Board of A&C") prior to execution of such subcontract. The Commissioner shall expeditiously submit requests for approval by the Board of A&C.

B. The last sentence of the prior paragraph notwithstanding, the County agrees that an Approved Subcontractor agreement may contain a provision that it shall be terminated only for cause on ninety (90) days prior notice, during which period the Approved Subcontractor may cure the cause resulting in the termination notice, provided, however, that if the default is curable in less time the Approved Subcontractor shall be obligated to diligently pursue such cure.

If an Approved Subcontractor for any Park zone is unable to operate its zone pursuant to the terms of both this Agreement and its Approved Subcontractor agreement with the Manager, and the Manager is unable to take over the operations of the affected zone or find a suitable replacement subcontractor for such zone that is acceptable the County, then the County may, upon mutual agreement of the Parties, elect to (i) assume operations of the affected zone, or (ii) enter into negotiations with any subcontractor for the operation of the affected zone, or (iii) elect to cease operations of the affected zone.

C. In the event an approved subcontract terminates prior to the time the capital improvements made by such party have been fully depreciated, and if the termination is due to the County notifying the Manager of a default under the terms of this Agreement, then, subject to

appropriation as set forth in Section 15 below, the County shall pay to the Manager, less the fair market value of any Removable Personal Property (as defined in Section 14 below) which the Manager or any Approved Subcontractor removes from Playland Park at the termination of this Agreement, and the Manager shall reimburse the Approved Subcontractor, an amount equal to the unamortized portion of such capital improvements as determined on a straight-line depreciation basis assuming 15 year life of such capital improvements, except the party who constructs a new Field House and the party who constructs the new Water Deck, shall be reimbursed the greater of (a) an amount equal to the unamortized portion of the appraised value of the Field House or Water Deck determined on a straight-line basis assuming a 20 year life of such Field House or Water Deck, or (b) the appraised value of the one-location business on the date prior to the termination valued over the remainder of a contract assumed to be 20 years in length. The Parties will mutually agree on one appraiser for any such business appraisal, and the cost of such appraisal shall be borne equally (50/50) by the Parties. Notwithstanding the foregoing, in the event any of the Approved Subcontractors willfully abandons or ceases to operate the Park zone for which they are responsible, the County shall not be obligated to make any payments pursuant to this sub-section. In addition, any failure of the Manager and/or any Approved Subcontractor to repair or rebuild within a reasonable period of time in accordance with Section 21 of this Agreement shall be construed as a material breach of this Agreement and the County shall not be obligated to make any payments pursuant to this sub-section.

D. The appropriate County Commissioner shall give a notice of termination to all County licensees, concessionaires, lessees or other parties having use or occupancy or other rights at Playland Park prior to the Commencement Date as of the first date termination may occur pursuant to the particular license, concession agreement, lease or other document evidencing the relationship between the party and the County. The above notwithstanding, the Parties agree that the County need not give termination notices to the operator of the Pier Restaurant and Tiki Bar currently 181 New England Seafood Corporation, SMSA Limited Partnership d/b/a Verizon Wireless for the license agreement for microcell, rerad, or other similar or comparable in-building radio-distribution devices, or JP Morgan Chase Bank, NA for the automated teller machines. In addition, notices will not be sent to those parties that the Manager determines should remain at Playland and for which the Manager so informs the Commissioner in writing during the Transition Period. In addition, the Manager shall honor the license that the County has with the Pier Restaurant and Tiki Bar currently 181 New England Seafood Corporation for the operation of the Tiki Bar and Pier restaurant including provisions related to parking. The Manager acknowledges that a copy of the license agreement has been provided.

The Manager recognizes and understands that the north and south bath houses are located in the proposed Beach/Aqua Zone and Water Deck within Playland Park. The Manager in its proposal recognized that “[t]he Westchester County Children’s Museum, which is being advanced separately from the SPI proposal, will complement SPI’s proposed vision, creating a year-round destination for families...”. The Manager recognizes and understands that the proposed children’s museum would be located in the north bath house. Any lease between the County and the Westchester Children’s Museum that has received all necessary legal approvals shall be managed by the Manager in accordance with the terms thereof. The County will provide a copy of any such lease to the Manager.

SECTION 13: Employees.

The Manager shall, as of the 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 the Park or in connection with the 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.

All employees shall be the employees, or sub or independent contractors, of Manager or of the Approved Subcontractors and not of the County. All matters pertaining to the employment of such employees, or sub or independent contractors shall be the sole responsibility of Manager or of its Approved Subcontractors and the County shall bear absolutely no responsibility or liability therefore. All County employees who work in any capacity at Playland or who have responsibilities of any kind with respect to Playland prior to the Commencement Date and who are not hired by the Manager or an Approved Subcontractor as of the 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, 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, will be required to remove from the Park any employee whose conduct, demeanor or appearance is objectionable to the Commissioner 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 employment laws.

SECTION 14: Equipment.

The Manager shall, as of the Commencement Date, assume the use of all equipment which is the property of the County which has not been removed by the County in accordance with Section 1A(I)(e) of this Agreement. All such remaining equipment shall be in good working order.

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 Commencement Date, and make full payment for the same. The Manager shall maintain all equipment, in good order and repair at the Manager's sole cost and expense during the Term of this Agreement.

"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"). Such Removable Personal Property shall include, but not be limited to, amusement rides that may be unbolted from their ground mounts and moved to another location inside or outside Playland.

Title to Fixed Equipment acquired or 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 located and used 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 depreciate such equipment, to the extent depreciable.

The Manager shall provide the Director of Risk Management with a list, to be updated as necessary, of all Fixed Equipment. It is the Manager's duty to advise the Director of Risk Management of any and all Fixed Equipment upon its attachment to the County's property in order for the proper insurance coverage to be placed into effect in accordance with Section 21 below. The Manager shall provide the Director of Risk Management with any and all details necessary to provide the appropriate insurance coverage for that Fixed Equipment.

SECTION 15: Subject to Appropriations.

The Parties recognize and acknowledge that the obligations of the County to make expenditures or incur any expense or financial liability under this Agreement are subject to annual appropriations by its BOL pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available, provided that the County Executive shall use commercially reasonable efforts to submit budget requests to the BOL consistent with the terms of 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.

In the event the County Executive has submitted budget requests to the BOL consistent with the preceding paragraph and the BOL has not approved such appropriation within one (1) year of such submission, then the Manager may draw down from the Capital Reserve an amount equal to that requested by the Manager.

SECTION 16: 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. The Manager, at its sole cost and expense, shall promptly remedy any and all violations issued as a result of such inspection.

SECTION 17: 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 termination except that the Manager or an Approved Subcontractor shall be entitled to receive a portion of any condemnation award allocable to assets for which such parties would be entitled to reimbursement hereunder upon termination as provided in Section 12(C) herein.

SECTION 18: Condition of Playland.

The Manager acknowledges that the County has not made any representation as to the condition of Playland or any buildings, structures, improvements, equipment, vehicles, machinery and tools situated at Playland, except as stated in the first paragraph of Section 14 above. The Manager further acknowledges, that as of the Commencement Date, that it has inspected Playland and the buildings, structures, improvements, equipment, vehicles, machinery and tools and that it relies solely upon such inspection.

The Parties agree to identify in writing, prior to the Commencement Date, any buildings and structures that the Manager is unwilling to accept. The County shall be responsible to secure and close such buildings and structures in order to prevent public access.

SECTION 19: Bankruptcy.

If at any time during the Term of this Agreement, any petition in bankruptcy shall be filed by or against 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 A&C 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 20: Audit Provisions.

A. Manager shall cause annual audits of its own, and shall include in its agreements with the Approved Subcontractors the right to conduct annual audits of the Approved Subcontractors', operations at Playland in accordance with generally accepted auditing procedures, consistently applied to be conducted by an independent auditor. Without limiting the County's rights below, copies of such audits shall be promptly submitted to the County Commissioner of Finance and Budget Director. 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 audit such books and records of the Manager. The County Commissioner of Finance reserves the right to conduct such annual audits up to one year after the expiration or termination of this Agreement.

B. The Commissioner also reserves the right to audit the Manager's, and it's 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, in his/her discretion, 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 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 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 21: 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.

To the extent that any loss is recouped by actual payment to the County of the proceeds of the insurance, the County shall distribute such proceeds to the Manager and/or Approved Subcontractors, as set forth below. The County shall bear the cost of any and all deductibles related to the County's assets; provided that the County is not funding any betterment or capital improvement and that the County will only be obligated to fund restoration of such property to its prior condition.

After the Commencement Date the Manager and/or its Approved Subcontractors will be making improvements and bringing in Fixed Equipment in accordance with Section 8(A) and Section 14 of this Agreement, which require lists be provided to the Director of Risk Management and that said lists will be updated as necessary to reflect any changes. In order for the proper insurance coverage to be placed into effect, the Manager shall advise the Director of Risk Management 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 improvements, insurable or uninsurable, at Playland Park 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 Manager shall be required to repair or reconstruct the improvements substantially as they were immediately prior to such casualty, or in a new or modified design, which is subject to the approval of the Commissioner and the DPW&T Commissioner. The funds for such repair or replacement shall be paid from insurance proceeds, to the extent available, and, if not, then from the annual Manager's Capital Budget, if the expenditure shall have been approved in the annual Manager's Capital Budget, and, if not, from the Capital Reserve to the extent funds are sufficient. Any deficiency shall be paid by the County, subject to appropriation.

Payments of insurance proceeds will be made by the County to the Manager in installments as work progresses within thirty (30) days after the County's Director of Risk

Management receives a requisition for payment from the Manager and/or Approved Subcontractor, provided that as to each request for payment the Manager and/or Approved Subcontractor, shall certify by a responsible officer or authorized representative that the amounts requested are due and payable to its contractor for work completed or materials delivered to and located on the site. Upon completion of all the work and payment by the County of the final bill, the Manager, or its Approved Subcontractor, shall certify by a responsible officer or authorized representative that such rebuilding and repairs have been completed, that all costs in connection therewith have been paid by the Manager, or its Approved Subcontractor, and said costs are believed to be fair and reasonable and said certification shall also include an itemization of costs.

The Manager agrees that such work will be promptly commenced and pursued to completion with due diligence, subject to delays beyond the Manager's reasonable control. Nothing herein contained shall be deemed to release the Manager from any of its customary repairs, maintenance or rebuilding obligations as set forth under this Agreement.

In the event improvements at Playland Park are 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 gross negligence or willful misconduct, this Agreement shall continue in full force and effect, and the Manager and/or its Approved Subcontractors, shall repair or rebuild the improvements so damaged or destroyed, and unless otherwise reimbursable by insurance hereunder, same shall be at their own cost and expense, and in a good workmanlike manner to substantially the same condition existing at the time of the casualty, subject to applicable building codes existing at the time of repair or rebuilding. The failure of the Manager and/or its Approved Subcontractors to repair or rebuild within a reasonable period of time, shall be construed as a material breach of this Agreement. In such event, the County shall be relieved of its obligation, if any, to make any payment to the Manager and/or Approved Subcontractor, as applicable, that would otherwise be required pursuant to Section 12(C) of this Agreement.

SECTION 22: Standard Insurance and Indemnity.

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

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Manager shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Manager or third parties under the direction or control of the Manager; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

SECTION 23: 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 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 the Park after the Commencement Date, as required by Section 22 and **Schedule "B"**, then this Agreement shall terminate immediately, there shall be no opportunity to cure and the provisions of Section 25 below shall not apply; or
- (iii) the Manager abandons Playland Park after the Commencement Date, or ceases to manage Playland Park after the Commencement Date; or
- (iv) any or all of the Manager's interest in this Agreement or the 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 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 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 24: 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 25 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 25 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 25: Termination.

A. If the Commissioner elects to terminate this Agreement pursuant to Section 24 above, the Manager shall be given written notice of the election to so terminate, specifying in such notice a termination date which is at least three (3) months subsequent to the date of the giving of such notice 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 24 above, it shall give the Commissioner written notice of its election so to terminate, specifying in such notice a termination date which is at least three (3) months subsequent to the date of the giving of such notice (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 the 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 the 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. It is further recognized and understood that if this Agreement with the Manager is terminated or expires without renewal, the County shall accept an assignment of each of the Approved Subcontractor agreements from the Manager, provided that the Manager shall have previously submitted copies of such subcontractor agreements to the County and such agreements are approved by the Board of A&C prior to any such assignment. The Commissioner shall expeditiously submit requests for approval by the Board of A&C.

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 that within two hundred seventy (270) days of the Termination Date or of the Expiration Date, as the case may be, the Manager shall deliver to the Commissioner an accounting setting forth its Revenues and operating Expenses for the year prior to the Termination Date or Expiration Date. Thereafter, within ninety (90) days after receipt of such accounting:

- (i) the Manager shall transfer to the County any funds previously or then held in the Capital Reserve or any other Revenues unexpended to the Termination Date or the Expiration Date and not otherwise due to others for goods or services rendered but unpaid prior to the termination or expiration of this Agreement; and
- (ii) the Manager shall transfer and assign to the County all tangible personal property used in connection with the Manager's activities in Playland Park, purchased with funds received pursuant to the terms of this Agreement and from all Approved Subcontractors, except for Removable Personal Property that has been previously identified as such in writing.

F. Upon termination or expiration of this Agreement, the Manager shall have the right to retain any unexpended grants, bequests, contributions and funds raised or received by it for the benefit of Playland Park, subject to any restrictions placed thereon by the applicable gift instrument unless such restrictions are released by the donor, and the Manager may use any such funds for its general charitable purposes; provided, however, that if such termination shall be caused by an Event of Default on the part of the Manager, the Manager shall transfer all such grants, bequests, contributions and funds (whose terms do not prevent such transfer) to the County, subject to any restrictions placed thereon by the applicable gift instrument unless such restrictions are released by the donor.

G. Notwithstanding anything contained herein to the contrary, if permits and approvals necessary to renovate, construct, improve, equip and operate each of the Amusement Zone, the Beach/Aqua Zone (including the Water Deck), the Field Zone, the Fountain Plaza Zone (including both Ice Rinks in the Ice Casino) and the Great Lawn Zone, as described in the Manager's response to the RFP, are not received by May 1, 2015, then the Manager shall have the option to terminate this Agreement on sixty (60) days written notice to the County and the Parties shall have no further rights against or obligations to each other, except that, subject to appropriation, the County shall pay to the Manager, less the fair market value of any Removable Personal Property which the Manager removes from Playland Park at the termination of this Agreement, an amount equal to the unamortized portion of capital improvements made by the Manager as determined on a straight-line depreciation basis over the original term of this Agreement.

H. Notwithstanding anything contained herein to the contrary, if the Commencement Date is delayed beyond January 1, 2014 for the sole reason that the BOL has not issued its approval of the Proposed Playland Improvement Plan, then the Manager shall have the right, but not the obligation, to terminate this Agreement on thirty (30) days written notice to the County.

SECTION 26: Non-Discrimination.

The Manager expressly agrees that neither it nor any Manager, 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 27: 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 28: 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 "C"** is a questionnaire entitled "Business Enterprises Owned and Controlled by Persons of Color or Women" which the Manager agrees to complete.

SECTION 29: Records.

All records or recorded data of any kind compiled by the Manager in completing the Work described in this Agreement, 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.

Notwithstanding the foregoing, all deliverables that contain or constitute intellectual property (e.g. advertising, or signs) created under this Agreement by the Manager 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. The Manager shall provide the Commissioner with at least one copy of each deliverable.

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.

SECTION 30: Assignment and Subcontracting.

Except as set forth in Section 3 above, the Manager shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the Commissioner which consent will not be unreasonably delayed or denied. The Manager shall not subcontract any part of the Work without the written consent of the Commissioner which consent will not be unreasonably delayed or denied. 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 a 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 31: 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 32: 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 "D"**, which is hereby incorporated by reference.

SECTION 33: 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 "E"**. Therefore, the Manager agrees, as part of this Agreement, to complete the form attached hereto as **Schedule "E"**.

SECTION 34: Required Disclosure.

Attached hereto and forming a part hereof as **Schedule "F"** 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 35: 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 36: 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 Playland Park or any part thereof being granted, to the Manager and/or its Approved Subcontractors; but Manager shall manage and operate the 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 37: 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), 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, 9th 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:

President
Sustainable Playland, Inc.
c/o Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, New York 10601

With a copy to:

Joseph P. Carlucci, Esq.
Eon S. Nichols, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, New York 10601

SECTION 38. 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 the 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 the 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 39: 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.

In the event of any conflict between the terms of this Agreement and the terms of the County’s RFP, the Manager’s response to the County’s RFP as modified during negotiations with the County, a schedule or attachment, it is understood that the terms of the following documents shall be controlling in the order set forth below:

1. This Agreement
2. The Manager’s response to the RFP
3. The RFP

SECTION 40: 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 41: 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 42: 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.

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: _____
Robert P. Astorino
County Executive

SUSTAINABLE PLAYLAND, INC.

By: _____

Approved by the Board of Acquisition and Contract of the County of Westchester on the 18th day of April, 2013.

Approved as to form
and manner of execution

County Attorney
County of Westchester
S/A/PRC/Playland RFP/SPI Management Agreement/FINAL.docx

ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 2013 before me, the undersigned, personally appeared _____, 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 _____, 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: _____

Notary Public

CERTIFICATE OF AUTHORITY
(CORPORATION)

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of
(Title)
the _____
(Name of Corporation)

a corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporation Law) named in the
foregoing agreement; that _____
(Person executing agreement)

who signed said agreement on behalf of the _____
(Name of Corporation)

was, at the time of execution _____
(Title of such person)

of the Corporation and that said agreement was duly signed for and on behalf of said Corporation
by authority of its Board of Directors, thereunto duly authorized and that such authority is in full
force and effect at the date hereof.

(Signature)

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

On the _____ day of _____ in the year 2013 before me, the undersigned, a
Notary Public in and for said State, _____ personally appeared,
personally known to me or proved to me on the basis of satisfactory evidence to be the officer
described in and who executed the above certificate, who being by me duly sworn did depose
and say that he/she resides at _____,
and he/she is an officer of said corporation; that he/she is duly authorized to execute said
certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to
such authority.

Notary Public
Date _____

SCHEDULE "A"

SPI's Certificate of Incorporation

SCHEDULE "B"

PLAYLAND 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.ny.gov.

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

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 "C"

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 "D"

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.¹ 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

¹ 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.

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 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 Officer². 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.

² 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.

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

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 "E"

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 "F"

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**³ 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: _____

³ "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.