

59163

Date: October 2, 2017

To: The Honorable Board of Acquisition and Contract

From: Kathleen M. O'Connor
Commissioner

Adam Rodriguez
Real Estate Director

Re: Resolution authorizing the County of Westchester to (i) waive its current right of first refusal; (ii) enter into an agreement to accept a new right of first refusal from Kitchawan Barns LLC, and (iii) enter into a license agreement with Kitchawan Barns LLC, in connection with certain real property located adjacent to and on the County's Kitchawan Preserve in the Town of Yorktown, Westchester County, New York.

In 1989, the Brooklyn Botanic Garden (the "Garden") sold to the County approximately 208 acres of land and the improvements located at Kitchawan Road in Yorktown ("Kitchawan Preserve"). The Garden retained its adjoining parcel of approximately 14.7 acres and its research facility, greenhouses and other improvements (the "Retained Property"). The Garden granted the County a right of first refusal to purchase the Retained Property if the Garden entered into, among other things, an agreement to sell the Retained Property to a third party ("Right of First Refusal"). At the time Kitchawan Preserve was sold to the County, the County granted the Garden, its successors and assigns ("Grantee"), a vehicular and pedestrian easement on, over and across the existing entrance road of the Kitchawan Preserve in order to provide access to and from the Retained Property and Route 134, Kitchawan Road ("Access Easement"). The Access Easement further provided that in the event the County declines to exercise its Right of First Refusal, the Grantee would have the benefit of the easement for the longer of a period of (x) one year from the date of the transfer of fee title or (y) during which and only as long as the Retained Property is used for a garden or facility for horticultural, botanical and agricultural research, studies and educational activities or other similar or related uses or any other use permitted under the 1989 zoning laws (without a variance).

On October 13, 1998, the Garden sold the Retained Property to the Weston Charitable Foundation, Inc. ("Weston"). The County, at that time, waived its Right of First Refusal and was granted a new Right of First Refusal from Weston. Thereafter, on or about November 26, 2001,

Weston sold the Retained Property to the Kenneth S. Warren Institute (the "Institute"). The County, simultaneously with the sale of the Retained Property, again waived its Right of First Refusal and entered into a new Right of First Refusal agreement with the Institute. Both Weston and the Institute have complied with the above stated provisions of the Access Easement.

On November 3, 2016, the Institute notified the County that it had elected to sell the Retained Property and had entered into a contract of sale with Steven Spiro and Michael Katz ("the Contract Purchasers") which contract of sale was thereafter amended on or about May 1, 2017 in order to clarify the intended use of the Retained Property (the "Contract").

On or about May 3, 2017, the Contract Purchasers assigned to Kitchawan Barns LLC., a Delaware limited liability company (the "Purchaser"), all of the Contract Purchasers' rights, title and interest as purchaser in to and under the Contract and the Purchaser agreed to accept such assignment and assume all of the obligations of the Contract Purchasers under the Contract pursuant to that certain Assignment and Assumption of Contract of Sale between the Contract Purchasers and the Purchaser. As set forth in the Contract, the Purchaser plans to use the Retained Property as a for-profit office and flex space including, but not limited to, use for a digital printing/cutting/laminating business.

Pursuant to the Right of First Refusal Agreement between the Institute and the County, the County has been asked to either exercise or waive its current Right of First Refusal with respect to the sale to the Purchaser. The County Board of Legislators on June 5, 2017 by Act 102-2017 (the "2017 Act") authorized the County to waive its current Right of First Refusal on certain real property located adjacent to the Kitchawan Preserve in the Town of Yorktown, New York, pursuant to a Right of First Refusal Agreement with the Kenneth S. Warren Institute, Inc., dated November 26, 2001 and recorded on March 11, 2002 in the office of the Westchester County Clerk in Control No. 420520476. The 2017 Act also authorized the County to accept from the Purchaser a new Right of First Refusal to the Retained Property to purchase the Retained Property if the Purchaser enters into an agreement to sell the Retained Property to a third party.

Additionally, the 2017 Act authorized the County to enter into a license agreement with the Purchaser for the duration of Purchaser's ownership of the Retained Property pursuant to which the Purchaser will, on occasion, have use of one parking space in the parking area in exchange for which they shall, at their sole cost and expense, undertake some work to repair and embellish the parking area, as well as the roadway that makes up the Access Easement. Such work includes, but is not limited to:

- a) remove 2 trees, 4"-6" dbh
- b) remove existing timber retaining structure, approx. 80 l ft.
- c) reset boulders, approx. 12
- d) relocate gravel, approx. 900 sf
- e) regrade site, approx. 2400 sf.
- f) resurface asphalt driveway, approx. 5400 sf, 3" depth top course
- g) install gravel parking areas, approx. 3300 sf, 4" compacted gravel
- h) install new timber guide rail, approx. 525 l ft.
- i) install new concrete wheel stops, 16 total

- j) install 1 new bench
- k) install 1 new wood routed timber flag sign.

All such work would be subject to the prior written approval of the Commissioner of the Westchester County Department of Parks, Recreation and Conservation. The Purchaser shall also continue to inspect, repair and maintain the work after completion for the duration of their ownership. The County will retain a right to terminate the agreement for any reason on six (6) months' notice.

The Westchester County Parks, Recreation and Conservation Board adopted a resolution on October 19, 2017 authorizing the proposed Agreement.

The proposed License Agreement is exempt from the County's Procurement Policy pursuant to Section 3(b) thereof and the Waiver and Right of First Refusal are not subject to procurement.

For the foregoing reasons, we respectfully request the approval of the annexed proposed Resolution.

KMO/TSA

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/19/2017 - LISA M. MURPHY, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester (“County”) is hereby authorized to waive its current Right of First Refusal on certain real property located adjacent to the Kitchawan Preserve in the Town of Yorktown, New York, pursuant to a Right of First Refusal Agreement with the Kenneth S. Warren Institute, Inc., dated November 26, 2001 and recorded on March 11, 2002 in the office of the Westchester County Clerk in Control No. 420520476; and be it further

RESOLVED, that the County is hereby authorized to accept from Kitchawan Barns LLC, a Delaware limited liability company, (“Purchaser”) a new Right of First Refusal on approximately 14.7 acres along Kitchawan Road and adjacent to the Kitchawan Preserve in the Town of Yorktown, New York (“Retained Property”). In order to provide access to and from the Retained Property and Route 134, Kitchawan Road, an access easement was given in 1989 by the County pursuant to an easement agreement dated as of October 17, 1989 by and between the County and Brooklyn Botanic Garden Corporation and recorded on October 18, 1989 in the office of the Westchester County Clerk in Liber 9654 at page 208 (“Access Easement”). The Purchaser plans to use the Retained Property as a for-profit office and flex space including, but not limited to, use for a digital printing/cutting/laminating business, which use is in compliance with the Access Easement and, as such, the Purchaser shall continue to have access to the Retained Property by way of the Access Easement; and be it further

RESOLVED, that the County is authorized to enter into a license agreement with the Purchaser for the duration of Purchaser’s ownership of the Retained Property pursuant to which the Purchaser will, on occasion, have use of one parking space in the parking area in exchange for which they shall, at their sole cost and expense, undertake some work to repair and embellish the parking area, as well as the roadway that makes up the Access Easement. Such work includes, but is not limited to:

- a) remove 2 trees, 4”-6” dbh
- b) remove existing timber retaining structure, approx. 80 l ft.
- c) reset boulders, approx. 12
- d) relocate gravel, approx. 900 sf
- e) regrade site, approx. 2400 sf.
- f) resurface asphalt driveway, approx. 5400 sf, 3” depth top course
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- h) install new timber guide rail, approx. 525 l ft.
- i) install new concrete wheel stops, 16 total
- j) install 1 new bench
- k) install 1 new wood routed timber flag sign.

All such work would be subject to the prior written approval of the Commissioner of the Westchester County Department of Parks, Recreation and Conservation. The Purchaser shall also

continue to inspect, repair and maintain the work after completion for the duration of their ownership. The County will retain a right to terminate the agreement for any reason on six (6) months' notice and be it further

RESOLVED, that the County Executive or his authorized designee is hereby empowered to execute any and all instruments and take such other actions as may be reasonably necessary to effectuate the purposes hereof.

Account to be Charged/Credited

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

Budget Funding Year(s): Start Date: _____ End Date: _____
 (must match resolution)

Funding Source Tax Dollars _____
 State Aid _____

\$ N/A Federal Aid _____
 (must match resolution) Other _____

APPROVED BOARD OF ACQUISITION & CONTRACTS 10/26/2017 - LISA MRS. SECRETARY