

**ID 93518**

DATE: August 4, 2022

TO: Board of Acquisition & Contract

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

RE: Resolution authorizing the County of Westchester to enter into a Management Agreement with Benjamin Restaurant Group, LLC, for the rehabilitation, management and operation of an existing restaurant building located at Woodlands Lake, formerly known as "The Cantina Restaurant," in V.E. Macy Park, Irvington, as a modern American grill restaurant, for a ten-year term, which term may be extended for an additional ten-year term, upon mutual agreement.

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Authority is hereby requested from your Honorable Board for the County of Westchester (the "County"), acting by and through its Department of Parks, Recreation & Conservation ("Department"), to enter into a management agreement ("Agreement") with Benjamin Restaurant Group, LLC ("BRG" or "Manager"), for the rehabilitation, management and operation of a restaurant building ("Restaurant Building"), formerly known as "The Cantina Restaurant," located at Woodlands Lake, in V.E. Macy Park, Irvington, adjacent to the Saw Mill River Parkway, as a modern American grill restaurant.

The Manager will manage and operate the Restaurant Building consistent with the recreational uses and as a public park facility for the benefit of the Park users and the community at large, subject to the control and direction of the County.

**BACKGROUND:**

The County is the owner of V.E. Macy Park, a portion of which is located adjacent to Woodlands Lake in Irvington, New York. The Restaurant Building previously served as a restaurant called Leighton's for many years, which subsequently became La Cantine (commonly known as The Cantina), and then, finally, The Roadhouse, which was operated until November of 1995. Since that time a number of Requests for Proposals were developed for the use of the Restaurant Building and proposals were received but none resulted in a final agreement.

On March 26, 2021 the County issued a Request for Proposals ("RFP") seeking proposals for the rehabilitation, management and operation of the Restaurant Building and to enter into a

public/private partnership, similar to what other jurisdictions throughout New York State and the Country have done in agreements with not-for-profit and private corporations, to take over management of a public park resource and raise private funds to make improvements to and operate such public park resource which the public owner cannot afford to do.

As a result, the County received two (2) proposals in response to the RFP including a proposal from the Manager to manage and operate the Restaurant Building as a modern American grill restaurant. The County now desires to engage the Manager to rehabilitate, manage and operate the Restaurant Building as a modern American grill restaurant.

### **PROPOSED AGREEMENT OVERVIEW OF TERMS AND CONDITIONS:**

The Agreement will be effective on the date that it is fully executed by the parties. The term of the proposed Agreement is ten (10) years ("Initial Term"), to commence on the date the Restaurant Building rehabilitation work is completed or three (3) years from the date the County provides written notice to the Manager to proceed with such rehabilitation work, whichever date is earlier ("Commencement Date"). The County shall grant a license to Manager to carry out the Restaurant Building rehabilitation work from the date of full execution of the proposed Agreement until the Commencement Date. The Initial Term may be renewed by an additional term of ten (10) years ("Renewal Term"), upon mutual agreement of the parties, subject to the approval of your Honorable Board. The County shall have the right to terminate the Agreement in the event of a default by the Manager which is not cured within 30 days from receipt of written notice, or if such cure is not possible within said thirty (30) day period and the Manager does not commence immediately to take steps to remedy the default and diligently prosecute same to completion. In addition, the County shall have the right to terminate if the Manager abandons the Restaurant Building or ceases to manage same, or any or all of the Manager's interest in the Agreement or the Restaurant Building 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 or if the Manager fails to procure or maintain required insurance.

Under the proposed Agreement, BRG will (i) make certain renovations and improvements to the Restaurant Building, including installation of all necessary equipment, installation and operation of a food concession stand/snack area with bathroom facilities, and purchase and installation of gravel for a new parking area at a newly designated parking area north of the Great Hunger Memorial, in order to operate the Restaurant Building ("Rehabilitation Work") as a modern American grill restaurant; (ii) manage, operate, maintain, make all non-structural repairs to the Restaurant Building; (iii) be responsible for the daily management and operation of the Restaurant Building as a modern American grill restaurant; and (iv) be responsible for all activities and operations of any kind and nature whatsoever conducted within the Restaurant Building and surrounding area, including but not limited to, special events and seasonal activities.

Subsequent to the completion of the Rehabilitation Work, the County will be responsible for all structural maintenance and repairs to the Restaurant Building and surrounding park area, including maintenance and repairs to the existing parking lot and other common areas of the park.

Commencing on the Commencement Date and for the duration of the Initial Term, the Manager will pay the County an annual management fee ("Annual Management Fee") due and payable in four (4) equal quarterly installments on or before the 15th day following the end of each quarter, during the term of the agreement. The Annual Management Fee will be:

Year 1	\$51,000
Year 2	\$52,020
Year 3	\$53,061
Year 4	\$54,122
Year 5	\$55,204
Year 6	\$56,308
Year 7	\$57,435
Year 8	\$58,583
Year 9	\$59,755
Year 10	\$60,950

As additional consideration for the operation of the Restaurant Building, the Manager will incur an up-front investment to undertake and complete the Rehabilitation Work, including installation and operation of a food concession stand/snack area with bathroom facilities, and purchase and installation of gravel for a new parking area at a newly designated parking area north of the Great Hunger Memorial, which up-front investment is estimated to cost approximately \$2,511,300.00. The Manager is responsible for and will purchase equipment valued at \$387,563.00, which will remain the property of the Manager and may be removed by the Manager upon the expiration or earlier termination of the Agreement, so long as such equipment can be removed without damage or destruction. The Manager will be responsible for any costs in excess of the estimated up-front rehabilitation costs or equipment costs. If damage is caused during removal of such equipment, Manager shall repair any such damage at its own cost and expense. It should be noted that the Restaurant Building's customers and employees will also have access to the non-paid, on-site existing parking spaces located on the east side of the Restaurant Building, north of the patio area.

The Manager will also be responsible to install, maintain and purchase all utilities serving the Restaurant Building and surrounding area, including the food concession stand/snack area with bathroom facilities and will pay all taxes related with the Restaurant Building.

During the Renewal Term, which is subject to your Honorable Board's approval, the County will receive as consideration, the greater of (i) an annual minimum fee of \$125,000, payable in four (4) equal quarterly installments or (ii) an amount equal to five percent (5%) of the total annual gross revenue less sales tax collected by the Manager from the Work for each year of the Renewal Term. The revenue share owed to the County at the end of the each year of the Renewal Term, resulting from the difference between the annual minimum fee set forth in subsection (i) hereof and the amount set forth in subsection (ii) hereof, shall be payable within three (3) months of the end of the preceding year and shall be accompanied by an audited statement of gross sales of the period covered, provided by a Certified Public Accountant. The Manager shall use commercially reasonable efforts to maximize Gross Revenue.

Except as set forth above, the Manager will be entitled to retain all revenue generated from the operation of the Restaurant Building as a modern American grill restaurant during the Initial Term and the Renewal Term, if applicable.

When the Agreement terminates or expires, all rights of the Manager in connection with the Restaurant Building will revert to the County or its designee, and the Manager may remove all removable equipment, such as the kitchen equipment, including ovens, grills, refrigerators and any other equipment that can be removed without damage or partial destruction to the adjacent area within or upon the County's premises. The Manager will also deliver to the Commissioner an accounting setting forth its gross revenues for the year prior to the termination or expiration of the Agreement and the Manager will pay the County any sums due and owing under this Agreement as a result of that accounting. The County, at the County's option, may direct that the Manager pay any outstanding contracts with third parties that will then be in effect.

**PUBLIC PURPOSE/GOALS AND OBJECTIVES:**

The Agreement will serve a public purpose by ensuring the proper development, rehabilitation, operation, maintenance, security and administration of the Restaurant Building for the benefit of park users and the general public. The goals and objectives of the Agreement will be to delegate the responsibility for the development, operation, maintenance, security and administration of the Restaurant Building to an organization dedicated to preserving that legacy of the former Cantina Restaurant. The Department's personnel will track and monitor the rehabilitation and oversight of the County property by the Manager.

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

KMO/cmc

## RESOLUTION

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

**RESOLVED**, that the County of Westchester (the “County”) is hereby authorized to enter into a management agreement with Benjamin Restaurant Group, LLC (“BRG” or “Manager”), for the rehabilitation (“Rehabilitation Work”), management and operation of the existing restaurant building (“Restaurant Building”), formerly known as “The Cantina Restaurant,” located at Woodlands Lake, in V.E. Macy Park, Irvington, adjacent to the Saw Mill River Parkway, as a modern American grill restaurant for the benefit of park users and the general public; and be it further

**RESOLVED**, that the Agreement shall be effective on the date that it is executed by the parties and be for a term of ten (10) years (“Initial Term”), commencing on the date the Rehabilitation Work is completed or three (3) years from the date the County provides written notice to the Manager to proceed with the Rehabilitation Work, whichever date is earlier (“Commencement Date”). The County shall grant a license to the Manager to carry out the Restaurant Building rehabilitation work from the date of full execution of the Agreement until the Commencement Date. In addition, the parties shall have the right to extend the term of the Agreement for an additional term of ten (10) years, upon mutual agreement of the parties and subject to all necessary legal approvals; and be it further

**RESOLVED**, that for the privilege of operating the Restaurant Building at V.E. Macy Park, BRG shall pay the following annual management fees, due and payable in four (4) equal quarterly installments on or before the 15<sup>th</sup> day of the month following the end of each quarter, to the County during the Initial Term:

Year 1	\$51,000
Year 2	\$52,020
Year 3	\$53,061
Year 4	\$54,122
Year 5	\$55,204
Year 6	\$56,308
Year 7	\$57,435
Year 8	\$58,583
Year 9	\$59,755
Year 10	\$60,950; and be it further

**RESOLVED**, that as additional consideration for the privilege of operating the Restaurant Building, BRG shall incur an up-front investment to undertake and complete the Rehabilitation Work, including the installation and operation of a food concession stand/snack area with bathroom facilities and purchase and install gravel for a new parking area at the newly designated parking area north of the Great Hunger Memorial, estimated to cost \$2,511,300.00 and purchase equipment valued at \$387,363.00, which will remain the property of the BRG; and

**RESOLVED**, that the Manager shall be responsible for any excess rehabilitation costs beyond the estimated \$2,511,300.00 up-front investment or excess costs in connection with the installation or removal equipment valued at \$387,363.00; and be it further

**RESOLVED**, that the Manager shall also be responsible to install, maintain and purchase all utilities serving the Restaurant Building and surrounding area, including the food concession stand/snack area with bathroom facilities and shall pay all taxes related with the Restaurant Building, if any; and be it further

**RESOLVED**, that subsequent to the completion of the Rehabilitation Work, the County shall be responsible for all structural maintenance and repairs, including maintenance or repairs to the existing parking lot and other common areas of the park, subject to annual appropriations; and be it further

**RESOLVED**, the Manager shall be entitled to retain all revenue generated from the operation of the Restaurant Building as a modern American grill restaurant; and be it further

**RESOLVED**, that upon expiration or earlier termination of the Agreement, all rights of the Manager in connection with the Restaurant Building will revert to the County or its designee, and the Manager may remove all removable equipment, such as the kitchen equipment, including ovens, grills, refrigerators and any other equipment that can be removed without damage or partial destruction to the adjacent area within or upon the County's premises, and if damage occurs, Manager shall repair such damage; and be it further

**RESOLVED**, that upon expiration or earlier termination of the Agreement, the Manager shall also deliver to the Commissioner an accounting setting forth its gross revenues for the year prior to the termination or expiration of the Agreement and the Manager shall pay the County any sums due and owing under the Agreement as a result of that accounting. The County, at the County's option, may direct that the Manager pay any outstanding contracts with third parties that will then be in effect, and be it further

**RESOLVED**, that the obligations of the County to make expenditures or incur any expense or financial liability under the Agreement are subject to annual appropriations by the County Board of Legislators pursuant to the Laws of Westchester County; 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
Year 1	165	42	4300	9289		\$51,000
Year 2	165	42	4300	9289		\$52,020
Year 3	165	42	4300	9289		\$53,061
Year 4	165	42	4300	9289		\$54,122
Year 5	165	42	4300	9289		\$55,204
Year 6	165	42	4300	9289		\$56,308
Year 7	165	42	4300	9289		\$57,435
Year 8	165	42	4300	9289		\$58,583
Year 9	165	42	4300	9289		\$59,755
Year 10	165	42	4300	9289		\$60,950

Budget Funding Year(s): Year 1 Start Date: End Date: Year 10  
(must match resolution)

Funding Source                      Tax Dollars \_\_\_\_\_  
   State Aid \_\_\_\_\_  
\$ 558,438                              Federal Aid \_\_\_\_\_  
(must match resolution)        Other Revenue \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACT - 09/08/2022 - RAYMOND SCULKY, SECRETARY