

75351

Date: April 17, 2020

To: Board of Acquisition and Contract

From: John M. Nonna  
County Attorney

Re: Authority for the County of Westchester to amend its agreement with McCarthy Fingar LLP, pursuant to which it retained the firm, at County expense, to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with a matter concerning a will and an indenture, which conveyed to the County of Westchester the parkland known as Merestead.

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By a resolution approved on February 14, 2019, your Honorable Board authorized the County of Westchester (the “County”) to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of McCarthy Fingar LLP (“McCarthy Fingar”) to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with a matter (the “Litigation”) concerning a will and an indenture, which conveyed to the County parkland known as Merestead.

The Agreement was to be for a term that would commence on October 30, 2018 and continue until the Litigation was concluded, as the County would determine in its sole discretion; the County determined, in its sole discretion, to cease pursuing the Litigation; or the County otherwise terminated the Agreement.

Under the Agreement, McCarthy Fingar was to be paid a total amount not-to-exceed One Hundred Thousand Dollars (\$100,000.00), payable at various hourly rates for various personnel.

The Litigation was commenced pursuant to the Real Property Actions and Proceedings Law Section 1955 and the Estates, Powers and Trusts Law Section 8-1.1 to obtain relief from certain restrictions in the deed and trust that conveyed Merestead to the County. The relief requested included: (1) modifying some restrictions on the use of the main dwelling and other structures on the property, while retaining its use as parkland; (2) removal of the restrictions on the use of the trust fund created by the grantor for the use and maintenance of the property, based upon the principle of equitable deviation; and (3) authorizing the sale, through the principle of deaccessioning, of certain artwork in the main dwelling. The New York Attorney General represents the interests of the public and is working with counsel and the County to reach an agreement on a plan for the use of the property and release of the restrictions.

Additional funding is now required because of efforts to appear in the Litigation by Nelson and Claudia Peltz. The Peltzes own neighboring property and they have moved to intervene in the proceeding and seek to dismiss the Litigation. The Supreme Court denied the Peltzes' motion. The Peltzes moved for a stay and appealed to the Appellate Division the denial of their motion to intervene. This has delayed the conclusion of the Litigation, and has increased the costs significantly. The need for an increase in the not-to-exceed amount of the Agreement has been caused by the need to address the Peltzes' motions and appeal.

Accordingly, the County respectfully requests that your Honorable Board authorize the County to amend the Agreement by increasing its not-to-exceed amount by One Hundred and Fifty Thousand Dollars (\$150,000.00), from a total amount not-to-exceed One Hundred Thousand Dollars (\$100,000.00) to a new total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), which shall be payable at various hourly rates for various personnel (the "First Amendment").

The First Amendment will serve a public purpose by continuing to provide the County with the specialized knowledge and expertise necessary to ensure the County's proper handling of the Litigation.

Except as described above, all terms and conditions of the Agreement shall remain in full force and effect.

The goal and objective of the First Amendment is to continue providing the County with the specialized knowledge and expertise necessary to ensure the County's proper handling of the Litigation.

The goal and objective of the First Amendment is in the best interests of the County in terms of fiscal responsibility, as continuing to ensure the County's proper handling of the Litigation is expected to ultimately lead to positive financial results for the County.

The goal and objective of the First Amendment will be tracked and monitored by the Office of the County Attorney.

Act No. 2020-53, which authorized the County to enter into the First Amendment with McCarthy Fingar, was adopted by the County's Board of Legislators on April 14, 2020 and approved by the County Executive on April 16, 2020.

I respectfully recommend the adoption of the attached resolution.

JMN/bdm/nn

**RESOLUTION**

Upon a communication from the County Attorney, be it hereby:

**RESOLVED**, that the County of Westchester (the “County”) is hereby authorized to amend its agreement (the “Agreement”) with McCarthy Fingar LLP (“McCarthy Fingar”), pursuant to which it retained McCarthy Fingar, at County expense, to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with a matter concerning a will and an indenture, which specifically affect the County park known as Merestead, by increasing the authorized not-to-exceed amount of the Agreement by One Hundred and Fifty Thousand Dollars (\$150,000.00), from a total amount not-to-exceed One Hundred Thousand Dollars (\$100,000.00) to a new total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), which shall be payable at various hourly rates for various personnel; and be it further

**RESOLVED**, that except as hereby authorized to be amended, all terms and conditions of the Agreement shall remain in full force and effect; and be it further

**RESOLVED**, that the County Executive or his duly authorized designee is hereby authorized to execute and deliver any and all documents and to take all action necessary and appropriate to effectuate the purposes hereof.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	18	1000	4923		\$150,000.00

Budget Funding Year(s): 2020  
(must match resolution)

Start Date: 10/30/18

End Date: Matter concluded, matter ceased by County, or Agreement terminated by County.

Funding Source

**\$150,000.00**  
(must match resolution)

Tax Dollars: 100%  
State Aid: \_\_\_\_\_  
Federal Aid: \_\_\_\_\_  
Other: \_\_\_\_\_