

2024 - 287

Westchester County

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

May 6, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

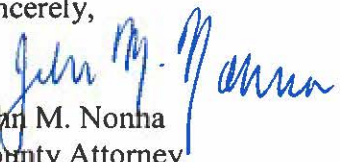
Transmitted herewith is an Act that, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to amend an agreement with the law firm of McCarthy Fingar LLP ("McCarthy Fingar"), as previously amended, (the "Agreement") pursuant to which the firm was retained, at County expense, to serve in an "of counsel" capacity to the County Attorney, as needed. The retention was made in connection with litigation relating to a will and indenture, which conveyed to the County parkland known as Merestead (the "Litigation"). The County Attorney is requesting an increase in the authorized not-to-exceed amount of the Agreement by Twenty-Six Thousand Dollars (\$26,000.00).

Under the Agreement, McCarthy Fingar was to be paid a total amount not-to-exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00), payable at various hourly rates for various personnel. The proposed amendment would authorize the County to increase the not-to-exceed amount of the Agreement to a new total amount not-to-exceed Three Hundred and Seventy-Six Thousand Dollars (\$376,000.00).

As your Honorable Board is aware, 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 original agreement with McCarthy Fingar was authorized by your Honorable Board, and thereafter executed by the County, in 2019, by Act 2019-18. Your Honorable Board subsequently authorized, and the County thereafter executed, amendments in 2020, by Act 2020-53, and 2022, by Act 2022-17. The Litigation proceeded over approximately five (5) years, including addressing efforts to intervene by adjoining landowners. This additional funding is now being requested to make funds available to pay for the final invoices from McCarthy Fingar for the conclusion of the work concerning the Litigation, which was the subject of the settlement approved by your Honorable Board on April 29, 2024, by Act 2024-76.

I respectfully recommend your Honorable Board's approval of the attached Act.

Sincerely,



John M. Nonha
County Attorney

JMN/bdm/nn

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the approval of an Act that, if adopted by your Honorable Board, would authorize the County of Westchester (the “County”) to amend an agreement with the law firm of McCarthy Fingar LLP (“McCarthy Fingar”), as previously amended, (the “Agreement”) pursuant to which the firm was retained, at County expense, to serve in an “of counsel” capacity to the County Attorney, as needed. The County Attorney has advised your Committee that the retention was made in connection with litigation relating to a will and indenture, which conveyed to the County parkland known as Merestead (the “Litigation”). The County Attorney has advised your Committee that he is requesting an increase in the authorized not-to-exceed amount of the Agreement by Twenty-Six Thousand Dollars (\$26,000.00).

The County Attorney has advised your Committee that, under the Agreement, McCarthy Fingar was to be paid a total amount not-to-exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00), payable at various hourly rates for various personnel. The County Attorney has advised your Committee that the proposed amendment would authorize the County to increase the not-to-exceed amount of the Agreement to a new total amount not-to-exceed Three Hundred and Seventy-Six Thousand Dollars (\$376,000.00).

The County Attorney has advised your Committee that, as your Honorable Board is aware, 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 County Attorney has advised your Committee that the original agreement with McCarthy Fingar was authorized by your Honorable Board, and thereafter executed by the County, in 2019, by Act 2019-18. The County Attorney has advised your Committee that your Honorable Board subsequently authorized, and the County thereafter executed, amendments in 2020, by Act 2020-53, and 2022, by Act 2022-17. The County Attorney has advised your Committee that the Litigation proceeded over approximately five (5) years, including addressing efforts to intervene by adjoining landowners. The County Attorney has advised your Committee that this additional funding is now being requested to make funds available to pay for the final invoices from McCarthy Fingar for the conclusion of the work concerning the Litigation, which was the subject of the settlement approved by your Honorable Board on April 29, 2024, by Act 2024-76.

According to the memorandum from the Planning Department, dated January 8, 2024, which is on file with the Clerk of the Board, with respect to the State Environmental Quality Review Act, the proposed local law does not constitute an action as defined in section 617.2(b) of 6 NYCRR Part 617. As such, no environmental review is required. Your Committee concurs with the Planning Department's conclusion.

Your Committee has been advised that the adoption of the proposed Act requires an affirmative vote of a majority of the members of your Honorable Board.

After due consideration, your Committee recommends adoption of the proposed Act.

Dated: _____, 2024
White Plains, New York

COMMITTEE ON

C:BDM-050224

FISCAL IMPACT STATEMENT

SUBJECT: McCarthy Fingar LLP - Amendment NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND AIRPORT FUND SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense NTE \$26,000

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: 101_18_1000_4923

To amend an agreement by increasing the authorized NTE amount of the agreement by \$26,000.

Potential Related Operating Budget Expenses: Annual Amount TBD

Describe: An Act authorizing the County to retain, at County expense, the law firm of McCarthy Fingar LLP to serve in an "of counsel" capacity to the County Attorney, in connection with litigation relating to a will and indenture which specifically affect the County park known as Merestead.

Potential Related Operating Budget Revenues: Annual Amount \$0

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \$0

Next Four Years: \$0

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: May 3, 2024

Reviewed By: 
PH

Budget Director

Date: 5/3/24

ACT NO. 2024 - _____

AN ACT authorizing the County to amend an agreement with the law firm of McCarthy Fingar LLP, as previously amended, pursuant to which the firm serves 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 \$26,000.00.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. The County of Westchester (the “County”) is hereby authorized to amend an agreement with the law firm of McCarthy Fingar LLP (“McCarthy Fingar”), as previously amended, (the “Agreement”) pursuant to which the firm was retained, 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 Twenty-Six Thousand Dollars (\$26,000.00), from a total amount not-to-exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00) to a new total amount not-to-exceed Three Hundred and Seventy-Six Thousand Dollars (\$376,000.00).

§2. The County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to carry out the purposes of this Act.

§3. This Act shall take effect immediately.