



**George Latimer**  
County Executive

Office of the County Attorney

**John M. Nonna**  
County Attorney

February 28, 2022

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 (the "Agreement") with the law firm of McCarthy Fingar LLP ("McCarthy Fingar"), 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 One Hundred Thousand Dollars (\$100,000.00).

Under the Agreement, McCarthy Fingar was to be paid a total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), 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 Fifty Thousand Dollars (\$350,000.00).

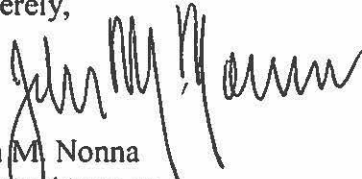
The Litigation was commenced pursuant to the Real Property Actions and Proceedings Law Section 1955 and the Estates, Powers and Trusts Law Section 8-1.1 to obtain relief from certain restrictions in the deed and trust that conveyed Merestead to the County. The relief requested included: (1) modifying 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. This additional funding is now being requested because the Litigation is continuing in New York State Supreme Court.

The proposed amendment does not meet the definition of an action under New York State

Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. No environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Nonna". The signature is fluid and cursive, with a large initial "J" and "M".

John M. Nonna  
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 (the "Agreement") with the law firm of McCarthy Fingar LLP ("McCarthy Fingar"), 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 One Hundred Thousand Dollars (\$100,000.00).

The County Attorney has advised your Committee that, under the Agreement, McCarthy Fingar was to be paid a total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), 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 Fifty Thousand Dollars (\$350,000.00).

The County Attorney has advised your Committee that 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 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 County Attorney has advised your Committee that this additional funding is now being requested because the Litigation is continuing in New York State Supreme Court.

Your Committee concurs with the conclusion that the proposed amendment does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. Accordingly, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators.

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.

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

Dated: \_\_\_\_\_, 2022  
White Plains, New York

**COMMITTEE ON**

C:BDM-022822

# 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 TBD (NTE \$100,000)

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 \$100,000.

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: February 24, 2022

Reviewed By:   
PH Budget Director

Date: 2/24/22

ACT NO. 2022 - \_\_\_\_\_

AN ACT authorizing the County to amend an agreement with the law firm of McCarthy Fingar LLP, 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 \$100,000.00.

**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 (the “Agreement”) with the law firm of McCarthy Fingar LLP (“McCarthy Fingar”) 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 One Hundred Thousand Dollars (\$100,000.00), from a total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) to a new total amount not-to-exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00).

§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.