

Law & Major Contracts Meeting Agenda



800 Michaelian Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Committee Chair: David Imamura

Monday, April 22, 2024

10:00 AM

Committee Room

CALL TO ORDER

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website: <https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

Joint with Budget & Appropriations committee.

MINUTES APPROVAL

Monday, April 15, 2024 at 1:00 p.m.

I. ITEMS FOR DISCUSSION

1. [2024-176](#) ACT - Settlement of Clean Air Quality Service, Inc.

AN ACT authorizing the County of Westchester, acting by and through the Commissioner of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle the legal action titled Clean Air Quality Services, Inc. v. The County of Westchester, for the amount of TWO HUNDRED FIFTY-FIVE THOUSAND (\$255,000) DOLLARS.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

Guests: Law Dept.: Chris Inzero, Assistant County Attorney; Sheppard Mullin: Ira Schulman, Partner

2. [2024-224](#) ACT - Merestead Settlement

AN ACT authorizing the County Attorney to settle the Special Proceeding entitled Petition for Cy Pres and Related Relief of An Indenture/Deed, Trust and other Documents Concerning the Grant of Merestead, a County facility to The County of Westchester.

Guest: Law Dept.: County Attorney John Nonna

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

March 26, 2024

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

Re: Legislation authorizing the County of Westchester (the "County"), acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle a legal action titled *Clean Air Quality Service, Inc. v. The County of Westchester*, in the amount of \$255,000.00.

Dear Honorable Members of the Board:

This request, if enacted, would authorize the County, acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle a legal action commenced in the Supreme Court of the State of New York, County of Westchester, titled *Clean Air Quality Service, Inc. v. County of Westchester*, bearing Index No. 57837 / 2023 (the "legal action"), for the amount of \$255,000.00.

On or about July 14, 2017, the County, acting by and through its Department of Public Works and Transportation (the "Department"), and Clean Air Quality Service, Inc. ("CAQS"), entered into Department Contract No. 11-560 (the "Contract"), whereby CAQS agreed to provide all labor, services, and material in connection with the boiler and generator replacement at the Ossining Wastewater Treatment Plant in Ossining, New York (the "Project"). The base contract value was for the sum of \$5,983,000. Pursuant to the Contract, the County issued CAQS a Notice to Proceed with the work, dated July 24, 2017. Under the Contract, CAQS was required to complete all work by March 26, 2019.

On March 1, 2023, CAQS commenced the legal action against the County, claiming that the County owed it no less than \$1,200,000. CAQS claimed that the County breached the Contract, alleging that it: (1) delayed, disrupted, and actively interfered with CAQS' performance; (2) hindered and prevented the normal, orderly, efficient and profitable performance of the Project on CAQS' part; (3) failed to recognize and promptly pay for the legitimate claims of the contractor for extra and additional work performed by CAQS at the

Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914- 995-3132*

*Please be advised that service by facsimile is not accepted.



Project; (4) failed to properly coordinate and schedule the work of others at the Project; (5) forced CAQS to perform extra and additional work at the Project without compensation; (6) failed to promptly and properly review and approve requisitions for payment for the work at the Project; (7) forced CAQS to accelerate its work at the Project; (8) failed to provide CAQS with access to the site; and (9) forced CAQS to completely revise its construction methods and labor scheduling at the Project from that contemplated under the agreement between the parties. CAQS also claimed that the County was unjustly enriched, alleging that the County failed to pay it for the work it performed.

Commencing on or about October 2023, the County and CAQS engaged in settlement negotiations. The negotiations resulted in a proposed agreement, subject to your Honorable Board's approval, to settle all claims by CAQS against the County with respect to the Contract. Pursuant to the proposed agreement, the County would pay CAQS the sum of \$255,000.00, and CAQS would release the County from all of its claims.

Approval of the settlement is recommended for several reasons. First, as the litigation is in its infancy, both the County and CAQS will avoid extended legal fees as a result of discovery, the exchange of documents, depositions, and motion practice and potentially trial. Additionally, there are still some MAW funds remaining to assist in funding the settlement. Accordingly, there are already funds allocated to this Project. Further, the settlement amount is less than 25% of the overall amount sought by CAQS as set forth in its pleadings and during mediation. For example, in its complaint, CAQS claims it is entitled to damages not less than \$1,200,000.00. As a result, the settlement amount is approximately 21% of the overall damages sought by CAQS. This is a reasonable outcome because a jury could otherwise find that the County breached its written agreement with CAQS by failing to pay complete costs for certain work performed during the course of the Project. Accordingly, approval of the settlement of \$255,000.00 is recommended.

To protect the County's legal interests, and upon recommendation of Hugh J. Greechan, Commissioner of the Department of Public Work and Transportation, authority to enter into a stipulation of settlement with CAQS, to settle the legal action, is requested.

Very truly yours,


John M. Norina
County Attorney

JMN/cji

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize the County of Westchester (the “County”), acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle a legal action commenced in the Supreme Court of the State of New York, County of Westchester, titled *Clean Air Quality Service, Inc. v. County of Westchester*, bearing Index No. 57837 / 2023 (the “legal action”), for the amount of \$255,000.00.

On or about July 14, 2017, the County, acting by and through the Department of Public Works and Transportation (the “Department”), and Clean Air Quality Service, Inc., (“CAQS”), entered into Department Contract No. 11-560 (the “Contract”), whereby CAQS agreed to provide all labor, services, and material in connection with the boiler and generator replacement at the Ossining Wastewater Treatment Plant in Ossining, New York (the “Project”). The base contract value was for the sum of \$5,983,000. Pursuant to the Contract, the County issued CAQS a Notice to Proceed with the work, dated July 24, 2017. Under the Contract, CAQS was required to complete all work by March 26, 2019.

On March 1, 2023, CAQS commenced legal action against the County claiming the County owed it no less than \$1,200,000. CAQS claimed that the County breached the contract, alleging that it: (1) delayed, disrupted, and actively interfered with CAQS’ performance; (2) hindered and prevented the normal, orderly, efficient and profitable performance of the Project on CAQS’ part; (3) failed to recognize and promptly pay for the legitimate claims of the contractor for extra and additional work performed by CAQS at the Project; (4) failed to properly coordinate and schedule the work of others at the Project; (5) forced CAQS to perform extra and additional work at the Project without compensation; (6) failed to promptly and properly review

and approve requisitions for payment for the work at the Project; (7) forced CAQS to accelerate its work at the Project; (8) failed to provide CAQS with access to the site; and (9) forced CAQS to completely revise its construction methods and labor scheduling at the Project from that contemplated under the agreement between the parties. CAQS also claimed that the County was unjustly enriched, alleging that the County failed to pay it for work it performed.

Commencing on or about October 2023, the County and CAQS engaged in settlement negotiations. The negotiations resulted in a proposed agreement, subject to your Honorable Board's approval, to settle all claims by CAQS against the County with respect to the Contract. Pursuant to the proposed agreement, the County would pay CAQS the sum of \$255,000.00, and CAQS would release the County from all of its claims.

Approval of the settlement is recommended for several reasons. First, as the litigation is in its infancy, both the County and CAQS will avoid extended legal fees as a result of discovery, the exchange of documents, depositions, and motion practice and potentially trial. Additionally, there are still some MAW funds remaining to assist in funding the settlement. Accordingly, there are already funds allocated to this Project. Further, the settlement amount is less than 25% of the overall amount sought by CAQS as set forth in its pleadings and during mediation. For example, in its complaint, CAQS claims it is entitled to damages not less than \$1,200,000.00. As a result, the settlement amount is approximately 21% of the overall damages sought by CAQS. This is a reasonable outcome because a jury could otherwise find that the County breached its written agreement with CAQS by failing to pay complete costs for certain work performed during the course of the Project. Accordingly, approval of the settlement of \$255,000.00 is recommended.

Your Committee has carefully considered the subject matter and the accompanying Act, and recommends authorizing the County, acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle the legal action titled *Clean Air Quality Service, Inc. v. County of Westchester*, for the amount of \$255,000.00.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
March , 2024

l:cji

COMMITTEE ON

ACT NO. - 2024

AN ACT authorizing the County of Westchester, acting by and through the Commissioner of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle the legal action titled *Clean Air Quality Service, Inc. v. The County of Westchester*, for the amount of \$255,000.00.

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

Section 1. The County is hereby authorized by and through the Commissioner of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle the legal action commenced in the Supreme Court of the State of New York, County of Westchester, titled, *Clean Air Quality Service, Inc. v. The County of Westchester*, bearing Index No. 57837 / 2023, for the amount of \$255,000.00.

Section 2. The County Attorney or his duly designated representative is hereby authorized to prepare and execute all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Settlement of Clean Air Quality Serv. Inc. NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 255,000.00

Total Current Year Revenue \$ 0

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: Capital Contract #SOS09-00 C

322-60-0000-0000-CAPP-6120

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

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

Current Year: _____

Next Four years: _____

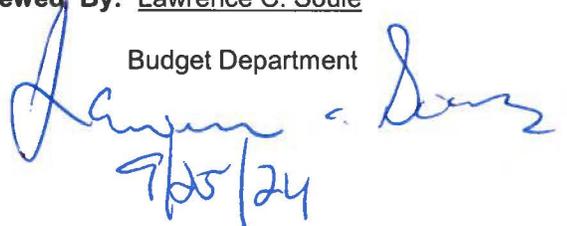
Prepared by: Christopher J. Inzero

Title: Associate County Attorney

Department: Law

Reviewed By: Lawrence C. Soule

Budget Department


9/25/24

If you need more space, please attach additional sheets.

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

April 18, 2024

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

Re: Request for Authorization to Settle the Special Proceeding entitled *Petition for Cy Pres and Related Relief of An Indenture/Deed, Trust and other Documents Concerning the Grant of MERESTEAD, a County facility to The COUNTY OF WESTCHESTER, Petitioner*, pending in the Supreme Court of the State of New York, Westchester County Index No. 59460/2019

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if enacted by your Board, would authorize the settlement of the special proceeding relating to Merestead, as set forth below.

As you are aware, by Act 102 of 2019, your Honorable Board authorized the commencement of litigation to remove certain deed and trust restrictions relating to Merestead, which frustrated the ability of the County to properly manage and maintain the facility. This Office commenced the litigation, which has been ongoing for over four years, and has negotiated significant changes in the operative documents with the Office of the New York State Attorney General and the Merestead Committee, which consists of members of the Patterson family. Those changes are encapsulated in an order of settlement (“the Order”), enclosed herewith, which requires approval by your Honorable Board.

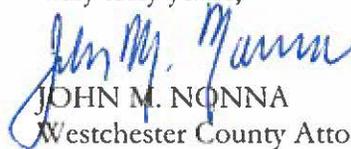
The changes that would be put into effect by the Order are:

- 1) The restriction on commercial use will be modified to allow certain commercial uses;
- 2) The restriction on residential occupancy will be modified to allow certain limited residential uses;

- 3) The restriction requiring a caretaker and/or security guard will be eliminated so long as the County maintains the safety and security of the property in accordance with standard Parks Department practices;
- 4) The restriction on landscaping will be eliminated so long as the County maintains the appropriate historic landscape architecture consistent with best management practices;
- 5) The restrictions relating to tangible contents will be eliminated, subject to the adoption of the Collections Management Policy annexed to the Order;
- 6) The restriction on the Patterson CD Fund will be eliminated, and the County will be able to liquidate the fund to use the proceeds for repair, restoration, and maintenance of Merestead, subject to a requirement that the County match those funds as they are being used;
- 7) The restriction on the Patterson Investment Fund will be eliminated, and the County shall liquidate the fund, place the first \$1,750,000.00 of the proceeds into a trust for Merestead, and the balance placed into the Patterson CD Fund;
- 8) The restriction on dogs contained in the deed will be modified to allow dogs on portions of the grounds, subject to the normal rules for dogs in County parks; and
- 9) The restriction requiring the feeding of deer in the winter will be eliminated.

The above changes will allow the County to better maintain and operate Merestead. As such, I recommend adoption of the enclosed Act.

Very truly yours,


JOHN M. NONNA
Westchester County Attorney

JMN/jra

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the settlement of the special proceeding relating to Merestead, as set forth below.

Your Committee is aware that, by Act 102 of 2019, this Honorable Board authorized the commencement of litigation to remove certain deed and trust restrictions relating to Merestead, which frustrated the ability of the County to properly manage and maintain the facility. The County Attorney commenced the litigation, which has been ongoing for over four years, and has negotiated significant changes in the operative documents with the Office of the Attorney General and the Merestead Committee, which consists of members of the Patterson family. Those changes are encapsulated in an order of settlement (“the Order”) subject to this Honorable Board’s approval.

Your Committee is informed that the changes that would be put into effect by the Order are:

- 1) The restriction on commercial use will be modified to allow certain commercial uses;
- 2) The restriction on residential occupancy will be modified to allow certain limited residential uses;
- 3) The restriction requiring a caretaker and/or security guard will be eliminated so long as the County maintains the safety and security of the property in accordance with standard Parks Department practices;
- 4) The restriction on landscaping will be eliminated so long as the County maintains the appropriate historic landscape architecture consistent with best management practices;

AN ACT authorizing the County Attorney to settle the Special Proceeding entitled *Petition for Cy Pres and Related Relief of An Indenture/Deed, Trust and other Documents Concerning the Grant of MERESTEAD, a County facility to The COUNTY OF WESTCHESTER, Petitioner*, pending in the Supreme Court of the State of New York, Westchester County Index No. 59460/2019

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

Section 1. The County Attorney is hereby authorized to settle the Special Proceeding entitled *Petition for Cy Pres and Related Relief of An Indenture/Deed, Trust and other Documents Concerning the Grant of MERESTEAD, a County facility to The COUNTY OF WESTCHESTER, Petitioner*, pending in the Supreme Court of the State of New York, Westchester County Index No. 59460/2019, in accordance with the terms contained in the Order signed by the Honorable David F. Everett, Justice of the Supreme Court, appearing as Document No. 132 in the New York State Courts Electronic Filing System.

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.

At Courtroom 201 of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr., Blvd., White Plains, New York, the 15th day of April, 2024

PRESENT: Honorable David F. Everett,
Justice of the Supreme Court

-----X

Petition for Cy Pres and Related Relief of An Indenture/Deed, Trust and other Documents Concerning the Grant of

ORDER

Index No. 59460/2019
(J. Everett)

MERESTEAD, a County facility, to

The COUNTY OF WESTCHESTER, Petitioner.

-----X

WHEREAS, the property known as "Merestead" is currently a Westchester County park ("Merestead"), consisting of a 130 acre tract of land that includes farmland, woodlands, gardens, trails, an historic farmhouse, horse barn, cow barn, chicken house, dairy garage, sheds, stable, carriage house and other structures, including the main dwelling, a 28-room mansion ("Main Dwelling"); and

WHEREAS, Merestead is the former home of Dr. Robert Lee Patterson, Jr. and Margaret Sloane Patterson and was gifted to the County of Westchester ("County of Westchester" or the "County") from Dr. and Mrs. Patterson by Indenture/Deed in December, 1982, during their lifetimes and was subject to a life estate arrangement in favor of Dr. and Mrs. Patterson, the Grantors, for their lifetimes. Dr. Patterson died on

November 18, 1994, and Mrs. Patterson died on August 3, 2000; and, therefore, the life estates have expired; and

WHEREAS, the overall mission, intent and purpose of the grant of Merestead to the County are set forth in three related grant documents, collectively referred to hereinafter as the "Grant Documents":

- A. Indenture/Deed signed December 15, 1982, and filed with the Westchester County Clerk's Office, Division of Land Records on December 21, 1982, Liber 7805, cps. 163 - 175 (hereinafter called the "Indenture").
- B. Merestead Charitable Trust agreement between Robert Lee Patterson, Jr., and Margaret Sloane Patterson (as Grantors) and Chemical Bank and Margaret Sloane Patterson (as Trustees) dated March 15, 1983 (hereinafter sometimes called the "Trust").
- C. Last Will and Testament of now deceased Grantor, Margaret Sloane Patterson, dated August 31, 1994, admitted to probate in Surrogate's Court, Westchester County (hereinafter sometimes called the "Will"); and

WHEREAS, there are numerous restrictions and conditions placed within the Grant Documents, including restrictions on the use of funds or other assets held by the County of Westchester. The assets held by the County of Westchester are as follows:

- Funds distributed by the executors of Mrs. Patterson's estate that are currently subject to restrictions set forth in the Will ("Patterson Investment Fund"). As of March 31, 2024, the Patterson Investment Fund has a value of \$3,628,895.37;

- Funds distributed by the trustee of the Trust ("Patterson CD Fund") that are currently subject to restrictions set forth in the provisions of the Trust. As of March 31, 2024, the Patterson CD Fund has a value of \$1,530,150.04 and
- Assets held in the Main Dwelling, consisting of furniture, silver, paintings, drawings, prints, the autographed letters of the Presidents of the United States, original letters of authors and poets, the collection of more than 52 engravings and paintings of old New York City, coin collections or other furnishings ("Tangible Contents"); such Tangible Contents are subject to restrictions set forth in the Will; and

WHEREAS, the Will also provides for an advisory committee referred to as the Merestead Committee ("Committee"). The role of the Committee is to ensure compliance with the terms and conditions set forth in the Grant Documents. The current members of the Committee are:

Nancy Patterson Sevckenko (Chair);
Douglas Sloan Patterson;
Jessica Patterson;
William Canning Patterson;
Robert Walker Patterson;
Elisabeth Sevckenko;
Seth Patterson; and
Matthew Sloane Swift; and

WHEREAS, the County of Westchester commenced the within proceeding in which it seeks various relief; and

WHEREAS, the County is committed to continuing to fulfill the overall mission, intent and purpose of the Grantors as specified in the Grant Documents and to maintain and preserve Merestead for the use and enjoyment of the public; and

WHEREAS, the following parties have appeared in this proceeding: (a) the County of Westchester has appeared in this proceeding through its attorney, John M. Nonna, Westchester County Attorney, with McCarthy Fingar LLP as of counsel; (b) Nancy P. Sevchenko, the Chair of the Committee, has appeared in this proceeding pro se; (c) the Attorney General of the State of New York has appeared in this proceeding on behalf of the ultimate charitable beneficiaries of the State of New York; and (d) no other interested party has appeared (the parties who have appeared in this proceeding will sometimes be referred to collectively as the "Parties"); and

WHEREAS, the Parties have engaged in discussions in an effort to resolve all issues in this proceeding; and

WHEREAS, the County has provided the Parties with various documents and information concerning short-term and long-term plans for Merestead, including, but not limited to, information and documents concerning short-term and long-term capital improvement projects; and

WHEREAS, the Parties desire to resolve all issues in this proceeding, and the Parties have no objection to this Court ordering the following relief; and it is hereby

ORDERED, that the County's Supplemental and Amended Verified Petition For Cy Pres and Related Relief, with exhibits, **NYSCEF Nos. 118-126**, is hereby granted, solely to the extent as set forth in this Order; and it is further

ORDERED, that the restrictions on dogs set forth in the Indenture, page 10 - "Grantee shall take reasonable steps to exclude dogs from the grounds." – are hereby modified so that the County may permit dogs at portions of Merestead's grounds; provided, however, that dogs shall be subject to the rules in Westchester Parks,

including Chapter 765 of the Laws of Westchester County, which requires dogs be leashed and that dog owners clean up their dogs' excrement; and it is further

ORDERED, that that the restrictions on deer set forth in the Indenture, page 10 - "Grantee shall, to the extent feasible, provide for the care and feeding of the deer population during the winter season" – are hereby eliminated, subject to Westchester County law, which prohibits the feeding of deer; and it is further

ORDERED, that restrictions on the commercial use of the Main Dwelling set forth in the Indenture, page 7- "Grantee shall not utilize or operate the premises, or any part thereof for any commercial purpose" – is hereby modified so that Westchester County may use any of the Merestead buildings as follows:

- i. Occasional uses by musical groups, as performance space;
- ii. Residences for use by non-profits, for artists in residence programming or for retreats;
- iii. Art lectures and classes, to be arranged by a visual arts organization;
- iv. Historical tours;
- v. Historical lectures, including author and other related events, particularly during winter (the off season for park use);
- vi. Event space for groups no larger than 100 people;
- vii. Facility rental for nature, art or history camps;
- viii. Facility rental for classes, local programming for schools, artist studios;
- ix. Photo shoots and filming; and
- x. All of the uses above (¶¶ i-ix) shall be consistent with the use of Merestead for conservation, education, cultural, intellectual, historical and recreational purposes while maintaining its unique character and natural beauty;

and it is further

ORDERED, that restrictions concerning residential occupancy in the Indenture are hereby modified such that the County of Westchester may use any of the Merestead buildings for residential occupancy for the following purposes:

- i. for an artists' or poets' in residence venue; and/or
- ii. short or long term residential educational programs, including seminars and conferences; and/or
- iii. use by a County Parks employee and their immediate family; and/or
- iv. All such uses above (¶¶ i-iii) of any of the Merestead buildings shall be consistent with the use of Merestead for conservation, education, cultural, intellectual, historical and recreational purposes while maintaining its unique character and natural beauty;

and it is further

ORDERED, that restrictions concerning a caretaker or security guard set forth in the Indenture, p. 9 - "Grantee shall provide a suitable caretaker to be in residence on the premises at all times, Grantee shall also protect the Main House by a security guard or guards and/or electronic surveillance equipment in conformance with security standards customarily used by historical museums in the Westchester County area" - shall be eliminated, provided that the County ensures the safety and security of Merestead in accordance with the safety and security practices and policies for historic buildings and structures and parks maintained by the Westchester County Department of Parks, Recreation and Conservation ("the Parks Department").

ORDERED, that the restrictions concerning the gardens and grounds in the Indenture, page 8 - "the grounds surrounding the Main Dwelling, including its formal gardens, shall be maintained by Grantee in good order and repair and in essentially the

same condition as existed during the three (3) years preceding the death of the last surviving Grantor” – are hereby eliminated, provided that the County uses its good faith efforts to ensure that the grounds surrounding the Main Dwelling maintain the historic landscape architecture of the formal gardens consistent with best management practices for maintaining gardens and utilizing native species; and it is further

ORDERED, that all restrictions or conditions on the Tangible Contents are hereby eliminated, subject to the County of Westchester’s adoption of the Collections Management Policy annexed as **Exhibit A** to this Order; and it is further

ORDERED, that that the restrictions concerning the Patterson CD Fund set forth in Article THIRD(B)(1) of the Trust, pages 2-3, as follows -

Westchester County shall, to the extent necessary, use the income from the Fund herein created to pay the reasonable costs and expenses of maintenance, conservation and operation of Merestead and shall accumulate and add any income so not used to principal and if in a given calendar year the income therefrom is insufficient to pay such reasonable costs and expenses, shall use so much of the principal of such Fund as shall not exceed an amount equal to 3% of the principal of such Fund as valued at the end of the calendar year and as is necessary to pay such costs and expenses -

are hereby eliminated and the County of Westchester may liquidate the Patterson CD Fund and the County of Westchester may use the proceeds of such liquidated funds for the immediate repair and ongoing restoration and maintenance of Merestead (“Repair and Restoration of Merestead”) consistent with the use of Merestead for conservation, education, cultural, intellectual, historical and recreational purposes while maintaining its unique character and natural beauty, and provided further that the Patterson CD Fund will be used on a matching funds basis, so that, by example, when Westchester County spends \$500,000 for the Repair and Restoration of Merestead, Westchester County will

pay \$250,000 and \$250,000 shall be withdrawn from the Patterson CD Fund, until the Patterson CD Fund is fully exhausted; such expenditures by the County representing the minimum County expenditures for Merestead’s ongoing restoration and maintenance; and it is further

ORDERED, that the restrictions on the use of the Patterson Investment Fund set forth in Article NINTH(B)(1) of Mrs. Patterson’s Will, page 15, as follows -

Westchester County shall, to the extent necessary, use the income from such Fund to pay the reasonable costs and expenses of maintenance, conservation and operation of Merestead and the building thereon and shall accumulate and add any income so not used to principal and if in a given calendar year the income therefrom is insufficient to pay such reasonable costs and expenses, shall use so much of the principal of such Fund as shall not exceed an amount equal to five percent (5%) of the principal of such Fund as valued at the end of the calendar year and as is necessary to pay such costs and expenses - are hereby eliminated, subject to the following:

- i. the County will, upon the entry of this Order, liquidate the Patterson Investment Fund (“Net Proceeds of the Patterson Investment Fund”);
- ii. the County will, upon the entry of this Order, disburse the sum of \$1,750,000 out of the Net Proceeds of the Patterson Investment Fund to Orange Bank & Trust Company, as trustee of The Merestead Trust, a copy of which is annexed hereto as **Exhibit B**; and
- iii. after the disbursement of \$1,750,000 to The Merestead Trust, the balance of the Net Proceeds of the Patterson Investment Fund shall be added to the Patterson CD Fund, to be disbursed by the County, as provided above: to wit, for the Repair and Restoration of Merestead on a matching funds basis; and it is further

ORDERED, that until all net proceeds of the Patterson CD Fund and net proceeds of the Patterson Investment Fund (the “Repair and Restoration Funds”) above have been spent, the County shall provide an annual written report to the OAG no later than December 31 of each year, which includes amounts spent from the Repair and

Restoration Funds, the amount of matching funds provided by the County and an itemized description of the use of the Repair and Restoration Funds; and it is further

ORDERED, that all notices, reports and other communications pursuant to this Order will be in writing and will, unless expressly provided otherwise herein, be given by hand delivery, express courier, or electronic mail at an address designated in writing by the recipient, followed by postage-prepaid mail, and will be addressed as follows:

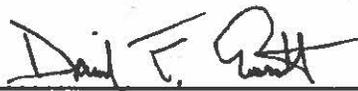
James Sheehan, Charities Bureau, Chief
Office of the Attorney General of the State of New York
28 Liberty Street
New York, NY 10005
Email: james.sheehan@ag.ny.gov

or in his/her absence, to the person holding the title of Bureau Chief of the Charities Bureau in the Office of the Attorney General;

and it is further

ORDERED, that this order shall be effective upon approval of the Westchester County Board of Legislature.
ORDERED, that this Court shall retain continuing jurisdiction over all the parties

hereto to implement, carry out, construe and enforce any and all of the terms of this Order.



Hon. David F. Everett, J.S.C.

EXHIBIT

A

Merestead's Collections Management Policy

Merestead, a Westchester County Park, was gifted to the County of Westchester by Dr. Robert Lee Patterson, Jr. and his wife, Margaret Sloane Patterson pursuant to an Indenture/Deed in December 1982, during their lifetimes and was subject to life estates of Dr. and Mrs. Patterson. Dr. Patterson died on November 18, 1994, and Mrs. Patterson died on August 3, 2000, at which point the County of Westchester became the owner of Merestead and began management of the grounds, Merestead's buildings and their contents.

A. The Mission Statement

Merestead's mission is to preserve the collections, grounds and structures consistent with the educational and cultural uses of the property and to conserve the property as a cultural, agricultural and recreational resource and to use it to educate the public about the history of Northern Westchester and the place of both the estate and Westchester County in wider historic, cultural and artistic currents such as suburbanization, industrialization, progressivism, and the Colonial Revival.

B. Purpose of this Policy

This document sets forth the guidelines and procedures for the care, preservation, public access and deaccessioning of artwork, books, autographed letters and all other tangible personal property ("Tangible Contents") partially situated in the Main Dwelling, an historic 28-room mansion constructed in 1906 in the Georgian Revival Architectural style. All Tangible Contents, for which the County has developed a detailed inventory (the "Inventory"), are subject to the Collection Management Policy and include (i) the appraisal of six hundred and forty-nine (649) fine art objects (including but not limited to furniture, silver, paintings, drawing, prints, engravings, coins, textiles and other furnishings), by certified appraiser, Victoria Shaw-Williamson dated October 10, 2015 reflecting values of such contents as of May 4, 2015 (the "Appraisal"), and (ii) the autographed letters of the Presidents of the United States (the "Presidential Letter Collection") The Inventory has been provided to the OAG and is further described as Bates Number MERESTEAD001-332. The Appraisal has been provided to the OAG and is further described as Bates Number MERESTEAD332-437. The Presidential Letter Collection has been provided to the OAG; and is further described as Bates Number MERESTEAD438-439.

C. Roles and Responsibility of Tangible Contents

Merestead is a park managed by the Westchester County Department of Parks, Recreation and Conservation ("Department"). The Department is guided by a Parks Commissioner. Merestead is operated under the Conservation Division that is overseen by a Deputy Commissioner.

1. Parks Commissioner

The Commissioner of Parks ("Commissioner"), who is appointed by the County Executive, has ultimate responsibility for the Tangible Contents at Merestead.

2. Deputy Parks Commissioner

The Deputy Parks Commissioner ("Deputy Commissioner") acts as a representative of the Commissioner. The Deputy Commissioner also sets goals and objectives for the Conservation Division. The Deputy Commissioner also addresses Merestead issues as they come up.

D. The Tangible Contents: Scope of Collections

The Tangible Contents are currently exclusively situated at the Main Dwelling, save for such items that are maintained by Westchester County in other secured facilities of the County for various reasons, including as the County has moved forward with repairs and renovation at the Main Dwelling. Westchester County obtained appraisals of the Tangible Contents, or parts thereof, from three well known appraisal companies, Sotheby's, Christies and Bonhams in or about 2019, and from such appraisals identified items from the Tangible Contents that might be sold through deaccessioning (see below). Given the changed circumstances at Merestead, the Main Dwelling will not be used as a formal museum.

E. Management of Tangible Contents

The management of the Tangible Contents ensures the safe care, processing and conservation of the Tangible Contents. Decisions, discussed below, are made by the Commissioner, subject to the ultimate approval of the Westchester County Board of Legislators. The Tangible Contents at Merestead are subject to change, as indicated below.

1. Deed of Gift

The Commissioner is authorized to accept gifts of additional items of personal property for placement at Merestead. A deed of gift form will be filled out for all donations from 2001 onwards. Gifts will not be accepted that have any restrictions attached to them, or that are not relevant to Merestead's mission.

2. Acquisitions

The acquisition of items of tangible property should expand and refine

the mission of Merestead. Objects can be acquired as gifts, donations, purchases, bequests, exchanges, field collections, trade or transfers. All acquisitions for Merestead become property of Westchester County, under and subject to the charitable restrictions set forth in this document, with specific placement at Merestead.

3. Deaccessioning

Deaccessioning is the process of removing an item of the Tangible Contents from the collection, which could include a sale of one or more items of the Tangible Contents.

a. Deaccessioning Criteria

One or more items of Tangible Content may be deaccessioned based on any one of the following criteria:

- i. The object is no longer relevant to Merestead's mission;

One or more items of the Tangible Contents may be sold. Any such sale will be in accordance with the procedures in place as to the sale of any property by the County of Westchester, and the net proceeds of such sale will be used in furtherance of the direct care of the Tangible Contents and/or any additional acquisitions or collections for Merestead;

- ii. An object is being replaced by a more representative example;
- iii. An object has deteriorated beyond the reasonable expectations of preservation;
- iv. An item of Tangible Contents can no longer be cared for; and/or
- v. An item of Tangible Contents has been lost or stolen.

b. Decision-Making Process for Deaccessioning

Based upon the criteria for deaccessioning described above, the Commissioner, after consultation and a meeting with a committee consisting of the following three members - (i) a member of the Merestead Committee ; (ii) a representative of

the Merestead Conservancy with knowledge of conservation and historic preservation; and (iii) the Director of Conservation, Westchester County Department of Parks, Recreation and Conservation - shall submit a report to the Westchester County Board of Legislators as to the items of Tangible Contents for potential deaccessioning. Such report shall address the criteria for deaccessioning described above and shall include the position of each member of the committee (the "Deaccessioning Report"). A copy of the Deaccessioning Report shall be provided to the OAG Charities Bureau at the time such report is submitted to the Board of Legislators.

Decisions to deaccession will consider the best interests of Merestead, the charitable beneficiaries it serves and the public trust it represents.

The Commissioner shall submit the committee's report and his or her recommendations as to deaccessioning to the Board of Legislators, which shall accept or reject the Commissioner's recommendations. The County shall inform the OAG Charities Bureau of the Board of Legislature's decision within 10 days of the Board of Legislators acceptance or rejection.

All notices, reports and other communications pursuant to this Collections Management Policy to the Attorney General of the State of New York will be in writing and will, unless expressly provided otherwise herein, be given by hand delivery, express courier, or electronic mail at an address designated in writing by the recipient, followed by postage-prepaid mail, and will be addressed as follows:

James Sheehan, Charities Bureau, Chief
Office of the Attorney General of the State of New York
28 Liberty Street
New York, NY 10005
Email: james.sheehan@ag.ny.gov

or in his/her absence, to the person holding the title of Bureau Chief of the Charities Bureau in the Office of the Attorney General.

c. Disposal, Including Sale of Items of Tangible Contents

If an item of Tangible Contents is deaccessioned, the following

methods may be applied to the disposal:

- i. Consideration must be given whenever possible to a gift or trade of an item of Tangible Contents to another public and not-for-profit agency, with preference given to museums located in Westchester County.
- ii. Should sale be recommended, any such sale will take place in a manner that ensures that the County receives fair market value for each object to be deaccessioned.

d. Policies and Procedures

- i. Any item of Tangible Contents that is deaccessioned will be modified and removed from the database maintained by the Commissioner of Parks for the Tangible Contents;
- ii. Deaccessioned objects shall never be given away to staff or employees of the County; and
- iii. The Westchester County Parks Department does not provide appraisals for any item of Tangible Contents.

4. Loans to Merestead

The purpose of a loan of one or more items of Tangible Contents is to enhance the mission of Merestead, including ensuring that, as a Westchester County Park, Merestead's grounds and its various buildings will be accessible to the public. The following procedures shall apply to such loans:

a. The Commissioner will enter into a loan agreement with the following stipulations that are County of Westchester procedures and policies:

- i. Under a year or less than \$20,000 cost

If the incoming or outgoing loan is for a period under a year and involves a County cost of \$20,000 or less, the "Short-Term loan" process employed by Westchester County must be followed before any loan is approved by the Commissioner.

- ii. Over a year or more than \$20,000 cost

If the period of the loan is for more than a year and or the County has to spend more than \$20,000 on it, the loan has to go through the "Acquisition and Contract" process for approval. Once approved, a copy of the loan form, and the insurance certificate has to be submitted to Risk management before the Commissioner can sign the loan form. The \$20,000 cost can include one item or a group of items, but it has to be from one loaner. Each different loaner also require a separate "Acquisition and Contract" if over a year and or \$20,000 or more in cost.

iii. Loans to Merestead

Loan forms will be used to document the loan. Merestead will only borrow items for exhibit. The term of the loan will be a year and can be renewed. Loans will only be accepted for those objects that Merestead can care for under the same standards as its own collections.

iv. Loans from Merestead

Merestead may loan items of Tangible Contents to other museums. Loan agreements must cover:

- A. The duration of the loan;
- B. Copyright questions;
- C. Requirements for security;
- D. Requirements for transportation;
- E. Care of the item during the loan; and
- F. Requirements for insurance.

b. Inter-departmental and Inter-County Loans

Loans to and from the nature centers, other park divisions and the divisions with-in the county can be arranged in consultation with the Commissioner and related parties. Loan forms will be signed to document the loan. Transportation of the loan will be worked out amongst the Commissioner and loan parties. Loans shall be for no longer than a year with an option to renew.

c. Courier Policy

Bonded couriers will be hired by the Parks Department to transport any objects for loans other than inter-departmental or inter-county loans.

5. Documentation

The Commissioner is responsible for maintaining complete and up-to-date records on the Tangible Contents.

6. Risk Management

The Tangible Contents at Merestead shall be protected from theft, fire and other disasters by security and prevention systems comparable to other historic properties. There is currently in place a yearly insurance policy for the Tangible Contents and the County will continue to obtain such policy.

Dated: April 15, 2024
White Plains, New York

EXHIBIT

B

THE MERESTEAD TRUST

TRUST AGREEMENT ("Trust Agreement" or "Trust") made as of the ____ day of April, 2024, between the COUNTY OF WESTCHESTER, with offices at 148 Martine Avenue, White Plains, NY 10601 ("Grantor") and ORANGE BANK & TRUST COMPANY, with offices at 510 South Columbus Avenue, Mount Vernon, NY 10550 ("Trustee").

WHEREAS, the property known as "Merestead" is currently a Westchester County park ("Merestead"), consisting of a 130 acre tract of land that includes farmland, woodlands, gardens, trails, an historic farmhouse, horse barn, cow barn, chicken house, dairy garage, sheds, stable, carriage house and other structures, including the main dwelling, a 28-room mansion; and

WHEREAS, this Trust Agreement is established pursuant to an order of the Supreme Court of the State of New York, in and for the County of Westchester, dated April 15, 2024, in which the sum of \$1,750,000 ("Trust Property") has been delivered to the Trustee; and

WHEREAS, during the term of the Trust, the Trustee shall make distributions for the sole purpose of providing funds to the COUNTY OF WESTCHESTER for the immediate repair and ongoing restoration and maintenance of Merestead ("Repair and Restoration of Merestead").

NOW, THEREFORE, the Trustee agrees to hold the Trust Property and to manage, invest and reinvest it, in trust, for the following uses and purposes.

First. Purpose of Trust

A. The purpose of this Trust Agreement is for the Trustee to invest and reinvest assets of the Trust and to make distributions of income and principal of the Trust to the COUNTY OF WESTCHESTER for the Repair and Restoration of Merestead. The charitable objectives are set forth in three related grant documents as follows (collectively the "Grant Documents"):

1. Indenture/Deed signed December 15, 1982, and filed with the Westchester County Clerk's Office, Division of Land Records on December 21, 1982, Liber 7805, cps. 163 - 175.
2. Merestead Charitable Trust agreement between Robert Lee Patterson, Jr., and Margaret Sloane Patterson (as Grantors) and Chemical Bank and Margaret Sloane Patterson (as Trustees) dated March 15, 1983.
3. Last Will and Testament of now deceased Grantor, Margaret Sloane Patterson, dated August 31, 1994, admitted to probate in Surrogate's Court, Westchester County.

B. This Trust Agreement Trust is created and shall be administered exclusively for charitable purposes set forth in the Grant Documents.

Second. Restrictions on Trustee

In the event that in any taxable year the Trust shall be a private foundation as described in Section 509(a) of the Code, the Trust shall comply with the provisions of Sections 4942 and 508 of the Code, insofar as such Sections: (i) require the Trust to distribute income for each taxable year in such manner as not to subject the corporation to tax under Section 4942 of the Code; (ii) prohibit the Trust, its Trustee or the Grantor

from engaging in any act of self-dealing as defined in Section 4941 of the Code; (iii) prohibit the Trust from retaining any excess business holdings as defined in Section 4943 of the Code; (iv) prohibit the Trust from making any investments which jeopardize charitable purposes as specified in Section 4944 of the Code; or (v) prohibit the Trust from making any taxable expenditures as defined in Section 4945 of the Code.

Third. Dispositive Provisions During the Term of Trust

A. Distributions During the Term of the Trust. The Trustee shall pay to the COUNTY OF WESTCHESTER for the Repair and Restoration of Merestead the greater of (1) the net income of the Trust, or (2) an amount equal to five (5%) percent of the net fair market value of the Trust Property valued as of the first day of each taxable year of the Trust.

B. Perpetuity Trust. The County of Westchester reserves the right to seek distributions from the Trust for the Repair and Restoration of Merestead through an application to the Supreme Court, Westchester County, beyond the distributions set forth in paragraph A above, upon notice to the Attorney General of the State of New York, provided that such application shall not be made prior to ten (10) years from the date of the initial funding of the Trust, and the Trust has a value greater than \$2,000,000 at the time of such application, and the Trust must maintain a value of at least \$2,000,000; and provided further that any such application takes into consideration the duration and preservation of the Trust, in perpetuity; the Repair and Restoration of Merestead; and the expected total return from income and the appreciation of investments of the Trust. Otherwise, unless otherwise directed by an order of the Supreme Court, Westchester County, the Trustee shall hold the assets of this Trust for

perpetuity, for the ultimate benefit of Merestead.

Fourth. Valuation.

In computing the net fair market value of the Trust Property there shall be taken into account all assets and liabilities without regard to whether particular items are taken into account in determining the income of the Trust. All determinations of the Trust's net fair market value shall be in accordance with generally accepted fiduciary accounting.

Fifth. Appointment of Successor Trustees.

If the Trustee shall cease to serve as a Trustee, the Grantor shall have the right to designate any individual or bank or trust company having trust powers as successor Trustee in the event the Trustee resigns or ceases to serve.

An appointment of a successor or a co-Trustee hereunder shall be made by an instrument in writing duly signed and acknowledged by the person so making the appointment and delivered to the other then acting Trustee or Trustees. Any appointment of a successor Trustee hereunder shall take effect at the time and on the contingencies and conditions stated in the instrument of appointment and may be revoked at any time before such appointment shall take effect by a like instrument delivered to the other then acting Trustee or Trustees, or if none, to the person whose appointment is being revoked. Upon said appointment as successor or as co-Trustee becoming effective, such successor or co-Trustee shall indicate his acceptance of such appointment by filing a duly signed and acknowledged instrument of acceptance with the then acting Trustee.

Any Trustee appointed by virtue of the foregoing powers shall upon qualifying have all of the powers, authority, duties, discretion and immunities conferred by law and

by this Trust Agreement, including the power and duty hereinabove given to appoint another Trustee hereunder.

Sixth. Investment Powers and Duties.

In addition to all powers now or hereafter conferred upon them by law, the Trustee and any Successor Trustee are authorized:

- A. to acquire by purchase, by exercise of options, or otherwise, and to retain as long as they deem advisable; any kind of real and personal property, or undivided interests therein without diversification as to kind or amount and without regard to the limitations imposed by law on investments;
- B. to sell for cash or on credit (at public or private sale, exchange, grant options to purchase (without regard to statutory restrictions), or otherwise dispose of any real or personal property upon such terms as they deem advisable;
- C. to delegate discretionary powers to agents, including voting trustees, proxies, and committees in respect of corporate reorganizations, consolidations, mergers, recapitalizations, refinancings, or other corporate transactions.
- D. to waive, reduce, extend the time of payment of, or compromise, claims in favor of or against the trust; and
- E. to borrow for any purpose which, in their opinion will facilitate the administration of the trust, and pledge or mortgage property as security for any such loans.

Seventh. Compensation of Trustee.

A trustee shall be entitled to commissions allowable by law, and such commissions shall be solely charged to income. ORANGE BANK & TRUST COMPANY shall be entitled to commissions pursuant to ORANGE BANK & TRUST COMPANY'S fee schedule in effect at that time.

Eighth. Bond.

No Trustee named herein or appointed hereunder shall be required to give bond,

security or undertaking in any jurisdiction for the faithful performance of its duties.

Ninth. Irrevocability.

This Trust Agreement is irrevocable.

Tenth. Counterparts.

This Trust Agreement may be executed in counterparts and each shall constitute an original of one and the same instrument.

Eleventh. Trustee's Authority.

No person or corporation dealing with the Trustee shall be required to investigate the Trustee's authority for entering into any transaction or to see to the application of the proceeds of any transaction. In addition to any powers which may be conferred upon the Trustee under this Agreement and under the laws of the State of New York in effect during the term of this Trust, with regard to the discretion of the Trustee, any currently serving Trustee shall have the broadest possible powers available for the investment and management of the Trust assets, subject to sections 11-2.2 and 11-2.3 of the Estates, Powers and Trusts Law.

Twelfth. Definition of Terms.

The word Trustee and the pronouns therefor as used in this Trust Agreement shall be construed as masculine, feminine or neuter and as singular or plural as the sense requires.

Thirteenth. Effective Date and Governing Law.

This Trust Agreement shall become effective upon the execution of this Trust Agreement by the Grantor and any Trustee and shall be construed, regulated and administered in all respects in accordance with the laws of the State of New York except

that this shall not be deemed to require that the tax laws of such State shall be applicable to this Trust.

Fourteenth. Trust Agreement Binding Upon Trustees.

This Trust Agreement shall be binding upon the Trustees, Personal Representatives, Administrators, successors or assigns of the parties hereto.

Fifteenth. Captions.

The captions used in this Trust Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Trust Agreement of the intent of any provision thereon.

Sixteenth. Counterparts.

This Trust Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the date first above written.

COUNTY OF WESTCHESTER, Grantor

By: _____

ORANGE BANK & TRUST COMPANY,
Trustee

By: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

On the _____ day of April, 2024, the undersigned, a Notary Public in and for said State, personally appeared NAME, a _____ of the COUNTY OF WESTCHESTER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

On the _____ day of April, 2024, the undersigned, a Notary Public in and for said State, personally appeared NAME, a _____ of ORANGE BANK & TRUST COMPANY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public