

91257

Date: March 30, 2022

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.

By a resolution approved on February 14, 2019, your Honorable Board authorized the County of Westchester (the “County”) to enter into an agreement (the “Original 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 concerning a will and an indenture, which conveyed to the County parkland known as Merestead (the “Litigation”). The Original 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 Original 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 Original Agreement was subsequently executed.

By a resolution approved on May 14, 2020, your Honorable Board authorized the County to amend the Original Agreement by increasing its authorized 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) (the “First Amendment”). The First Amendment was subsequently executed.

Additional funding is now needed because the Litigation is continuing in New York State Supreme Court.

Accordingly, the County respectfully requests that your Honorable Board authorize the County to amend the Original Agreement, as amended by the First Amendment, (the

“Agreement”) by increasing its not-to-exceed amount 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) (the “Second Amendment”).

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

The Second 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.

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

Act No. 2022-17, which authorized the County to enter into the Second Amendment with McCarthy Fingar, was adopted by the County’s Board of Legislators on March 28, 2022 and approved by the County Executive on March 29, 2022.

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 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); 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		\$100,000.00

Budget Funding Year(s): 2022
(must match resolution)

Start Date: 10/30/18

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

Funding Source

\$100,000.00

(must match resolution)

Tax Dollars: 100%

State Aid: _____

Federal Aid: _____

Other: _____