

39071

Date: March 18, 2014

To: The Honorable Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority to amend a short-form contract with the TASA Group, Inc. ("TASA") for the provision of expert witness services to the County Attorney in connection with the lawsuit entitled Roesser v. County of Westchester, for a term commencing April 19, 2013 and continuing through April 18, 2014 for an amount not-to-exceed \$10,000, by 1) extending the term of the agreement from April 19, 2014 through December 31, 2014; and 2) increasing the total amount not-to-exceed thereunder by an additional \$10,000, from an amount not-to-exceed \$10,000 to an amount not-to-exceed \$20,000, to compensate TASA for additional services rendered.

On or about October 21, 2013, the County entered into a "short-form" contract with TASA, an expert witness referral firm, pursuant to which TASA agreed to refer one of its experts, Peter J. Sarich, an expert in the field of amusement ride safety, to serve as an expert witness to the County Attorney in connection with the lawsuit entitled Roesser v. County of Westchester, for a term commencing April 18, 2013 and continuing through April 19, 2014 for an amount not-to-exceed \$10,000.00, payable at the rate of \$265.00/hour for preparation activities and \$2,120.00 per day for deposition and/or in-court activities (the "Agreement"). The Agreement was subsequently executed.

This is a personal injury lawsuit brought against the County by plaintiff Allison Roesser, then age 38, alleging that the County improperly designed the Rye Playland ride, Ye Olde Mill, as a result of injuries sustained to her right fingers on August 19, 2010, while she was a patron on the ride with her two children. Plaintiff also alleges that the County failed to warn her of the risks associated with the ride, and that the County was negligent in its operation, maintenance and ownership of the ride. The County's motion for summary judgment was denied, and a trial date will be scheduled shortly.

Thus far my office has spent approximately \$7000.00 for the expert's services (inspection of the ride etc.) and it is anticipated that we will exceed the \$10,000.00 not-to-exceed amount once we begin to review the case with the expert, and for trial testimony and prep. In addition, the trial will

not be commenced until sometime later this year, beyond the expiration date of the Agreement. In order to be able to continue to utilize the services of the expert beyond the expiration date of the Agreement and to compensate TASA for additional services to be rendered by the expert, it will be necessary to extend the term of the Agreement through the end of this year and increase the not-to-exceed amount by an additional \$10,000.

As your Honorable Board is aware, amendments to short-form contracts which result in increases which exceed the \$20,000 threshold for short-form contracts and/or term extensions beyond the one (1) year threshold, must first be approved by your Honorable Board. Accordingly, authority is respectfully requested to amend the Agreement with TASA for the provision of expert witness services to the County Attorney in connection with the lawsuit entitled Roesser v. County of Westchester, for a term commencing April 19, 2013 and continuing through April 18, 2014 for an amount not-to-exceed \$10,000.00, by 1) extending the term of the agreement from April 19, 2014 through December 31, 2014; and 2) increasing the total amount not-to-exceed thereunder by an additional \$10,000.00, from an amount not-to-exceed \$10,000.00 to an amount not-to-exceed \$20,000.00, to compensate TASA for additional services to be rendered by its expert, Mr. Sarich.

This Agreement is exempt from the requirements of the Westchester County Procurement Policy pursuant to section 3(a) vii thereof, which exempts "contracts for the services of expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation."

Except as otherwise specifically amended hereby, all other terms and conditions of the Agreement will remain in full force and effect.

The goals and objectives of this Agreement are to retain the services of an expert in amusement ride safety to assist the County in defending itself in a lawsuit.

The goals and objectives are in the best interests of the County in terms of fiscal responsibility because without the assistance of the expert witness, it will be more difficult for the County to defend itself in the lawsuit which could result in a monetary judgment against the County.

The Agreement will be tracked and monitored by the County Attorney's Office.

Accordingly, your favorable action on the annexed Resolution is most respectfully urged and recommended.

RFM/JPG/nn

RESOLUTION

Upon a communication from the County Attorney, be it hereby

RESOLVED, that the County of Westchester is hereby authorized to amend an agreement with the TASA Group, Inc. ("TASA") for the provision of expert witness services to the County Attorney in connection with the lawsuit entitled Roeser v. County of Westchester, for a term commencing April 19, 2013 and continuing through April 18, 2014 for an amount not-to-exceed \$10,000 (the "Agreement"), by 1) extending the term of the Agreement from April 19, 2014 through December 31, 2014; and 2) increasing the total amount not-to-exceed thereunder by an additional \$10,000, from an amount not-to-exceed \$10,000 to an amount not-to-exceed \$20,000, to compensate TASA for additional services to be rendered; and be it further

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

RESOLVED, that the County Attorney or his duly appointed designee be, and hereby is, authorized to take such action and execute such documents as may be necessary and proper to effect the purposes hereof.

Original Agreement	\$	10,000
First Amendment	\$	10,000
TOTAL	\$	20,000

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
615	59	0689/3310	4420		\$10,000

Budget Funding Year(s) 2013-2014 Start Date April 19, 2013 End Date December 31, 2014
(must match resolution)

Funding Source Tax Dollars _____

State Aid _____

\$ 10,000 Federal Aid _____

(must match resolution)

Other 6N _____