

75169

Date: March 9, 2020

To: The Honorable Board of Acquisition and Contract

From: John M. Nonna  
County Attorney

Re: Authority to amend a “short-form” contract with the TASA Group, Inc. (“TASA”) pursuant to which TASA agreed to refer John T. Wolohan, to the County of Westchester (“County”) to serve as an expert witness in connection with the lawsuit entitled Keith Thomas v. County of Westchester, for a term commencing on September 2, 2019 and continuing through September 1, 2020, in order to increase the not-to-exceed amount thereunder from \$35,000 to \$45,000.

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On or about September 17, 2019, 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, John T. Wolohan, an expert in Sports Law (the “Expert”), to the County to serve as an expert witness in connection with the lawsuit entitled Keith Thomas v. County of Westchester, for a term commencing on September 2, 2019 and continuing through September 1, 2020 for an amount not-to-exceed \$20,000.00, payable in accordance with an approved rate schedule (the “Agreement”). The Agreement was subsequently executed.

On or about January 15, 2020, the Agreement was amended to increase the not-to-exceed amount by \$15,000.00, from \$20,000.00 to \$35,000.00, in order to have sufficient funds available to pay TASA for additional services rendered and expenses incurred by the Expert in connection with the liability phase of the trial (the “First Amendment”). Since the increase in the not-to-exceed amount remained within the “short form” threshold, the approval of your Honorable Board was not required. The First Amendment was subsequently executed.

The case involves a former WCC student who claims that he lost out on a Division 1 Scholarship to play basketball at St. John’s University as a result of the former basketball coach submitting a forged transcript feigning his eligibility to play ball. He claims he had no idea about the fraud and claims he relied on the coach’s assurances that he was doing well in school. He claims that his Associate’s degree was taken away from him and that he lost out on an NBA career.

On February 6, 2020, the jury in this matter returned a verdict finding that the County was negligent with respect to the hiring of the basketball coach. The damages phase of this case

will begin next week and it will once again be necessary for the Expert to testify in court on behalf of the County. I am advised that there is only \$7,000.00 remaining under the existing \$35,000.00 not-to-exceed cap. In order to have sufficient funds available to pay TASA for the Expert's in-court testimony and expenses in connection with the damages phase of the trial, it will be necessary to amend the Agreement to increase the not-to-exceed cap from \$35,000.00 to \$45,000.00.

As your Honorable Board is aware, amendments to short-form contracts which result in increases which exceed the \$35,000 threshold for short-form contracts and/or term extensions beyond the one (1) year threshold, must first be approved by your Honorable Board. Since the not-to-exceed amount under the Agreement will now exceed the \$35,000.00 limit, the authority of your Honorable Board is required. Accordingly, authority is respectfully requested to amend the Agreement with TASA for the services of John T. Wolohan to serve as an expert witness for the County in connection with the lawsuit entitled Keith Thomas v. County of Westchester, for a term commencing on September 2, 2019 and continuing through September 1, 2020 for an amount not-to-exceed \$35,000.00, payable at approved rates, in order to increase the not-to-exceed amount thereunder by an additional \$10,000.00, from \$35,000.00 to \$45,000.00, in order to have sufficient funds available to pay TASA for additional services rendered and expenses incurred by the Expert.

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

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."

The goals and objectives of this Agreement are to retain an expert who is knowledgeable in the area of Sports Law, to assist the County in defending itself in connection with the instant litigation. The goals and objectives are in the best interests of the County in terms of fiscal responsibility because without Expert's expertise, the County would not be able to effectively contest plaintiff's allegations. The performance of this agreement will be tracked and monitored by the in-house attorney assigned to monitor this matter.

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

JMN/JPG/nn  
Attachment

**RESOLUTION**

Upon a communication from the County Attorney, be it hereby

**RESOLVED**, that the County of Westchester is hereby authorized to amend a “short form” agreement with the TASA Group, Inc. (“TASA”), as previously amended, pursuant to which TASA agreed to refer John T. Wolohan, an expert in Sports Law (the “Expert”), to the County to serve as an expert witness in connection with the lawsuit entitled Keith Thomas v. County of Westchester, for a term commencing on September 2, 2019 and continuing through September 1, 2020 for an amount not-to-exceed \$35,000.00, by increasing the not-to-exceed amount thereunder by an additional \$10,000.00, from \$35,000.00 to \$45,000.00, in order to have sufficient funds to pay TASA for additional services rendered and expenses incurred by the Expert in this matter; 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.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
615	59	0694/3850	4280		\$10,000

Budget Funding Year(s) 2019-2020 Start Date September 2, 2019 End Date September 1, 2020  
(must match resolution)

Funding Source Tax Dollars \$10,000

State Aid \_\_\_\_\_

**\$10,000** Federal Aid \_\_\_\_\_

(must match resolution)

Other \_\_\_\_\_