

Office of the County Attorney

41961

Date: August 26, 2014

To: Board of Acquisition and Contract

From: Robert F. Meehan  
County Attorney

Re: Authority to enter into an agreement with The TASA Group, Inc. (“TASA”), pursuant to which TASA will refer Robert Fuhrman, MBA and John Downie, MBA, experts in the field of economics relating to environmental enforcement cases, to assist the County Attorney’s Office in defending the County in connection with the civil matter U.S. v. County of Westchester, 13-cv-5475, for the period from August 1, 2014 through December 1, 2014, in an amount not-to-exceed \$60,000 payable at agreed upon hourly rates, plus expenses.

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Authority is requested to enter into an agreement with TASA, an expert witness referral firm, pursuant to which TASA will refer Robert Fuhrman, MBA, and John Downie, MBA, experts in the field of economics relating to environmental civil penalty litigation, to assist the County Attorney’s Office in defending the County in connection with the civil matter, U.S. v. County of Westchester, 13-cv-5475, for the period from August 1, 2014 through December 1, 2014 (the “Agreement”).

The service to be performed by the experts under the Agreement will be to write a rebuttal expert report relating to economic benefits/ability to pay in connection with the U.S. Environmental Protection Agency’s (“EPA”) request for fines against the County relating to the treatment of water in County Water District No. 1. In addition, Mr. Fuhrman will also consult with the Law Department in preparation for the deposition of the EPA’s expert witness, attend that deposition, and have his own deposition taken.

In consideration for services to be rendered, the County will pay TASA as follows: For the services of Mr. Fuhrman, the County will pay TASA at the rate of \$620 per hour, plus expenses. For the services of Mr. Downie, the County will pay TASA at the rate of

\$520/hour plus expenses. In no event shall the total amount payable to TASA exceed the sum of \$60,000, inclusive of all expenses.

It should be noted that pursuant to a separate agreement between TASA and the experts, the experts have agreed that all matters pertaining to billing and payment for services shall be handled through TASA.

The goals and objectives of this Agreement are to retain experts who are knowledgeable in the areas of ability-to-pay, economic benefit, and other types of analyses as they relate to environmental civil penalty cases, 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 the expertise of these experts, the County would not be able to contest the value of the fines the EPA is seeking. The performance of this agreement will be tracked and monitored by the in-house attorney assigned to monitor this matter.

This Agreement is exempt from the procedural requirements of the Westchester County Procurement Policy pursuant to Section 3(a)vii thereof as this contract is required for the services of expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation.

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

RFM/JA/jpg

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION - COUNTY SECRETARY VIEIRA

## RESOLUTION

Upon a communication from the County Attorney, be it hereby:

**RESOLVED**, that the County of Westchester is hereby authorized to enter into an agreement with The TASA Group, Inc. ("TASA"), pursuant to which TASA will refer Robert Fuhrman, MBA and John Downie, MBA, experts in the field of economics relating to environmental enforcement cases, to assist the County Attorney's Office in defending the County in connection with the civil matter U.S. v. County of Westchester, 13-cv-5475, for the period from August 1, 2014 through December 1, 2014 (the "Agreement"); and be it further

**RESOLVED**, that in consideration for services to be rendered under the Agreement, the County will pay TASA as follows: For the services of Mr. Fuhrman, the County will pay TASA at the rate of \$620 per hour, plus expenses. For the services of Mr. Downie, the County will pay TASA at the rate of \$520/hour plus expenses. In no event shall the total amount payable to TASA under the Agreement exceed the sum of \$60,000, inclusive of all expenses; and be it further

**RESOLVED**, that this Agreement is subject to County appropriations; and be it further

**RESOLVED**, that this Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

**RESOLVED**, that the County Executive or his duly authorized designee is hereby 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
101	18	1000	4923		\$60,000

Budget Funding Year(s) 2014 Start Date 08/01/14 End Date 12/01/14  
(must match resolution)

Funding Source Tax Dollars \$60,000  
State Aid \_\_\_\_\_  
**\$60,000** Federal Aid \_\_\_\_\_  
(must match resolution) Other \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACTS 09/11/2014 - JOMARY VEIRA, SECRETARY