

44583

Date: February 10, 2015

To: Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority to amend an agreement with The TASA Group, Inc. (“TASA”), as previously amended, pursuant to which TASA referred Robert Fuhrman, MBA, and John Downie, MBA, to the County to serve as expert witnesses in connection with the lawsuit entitled U.S. v. County of Westchester, 13-cv-5475, for a term commencing August 1, 2014 and continuing through December 1, 2014, for an amount not-to-exceed \$80,000, in order to 1) extend the term thereof, to a new termination date of December 31, 2015; and 2) increase the not-to-exceed amount thereof by \$80,000, from an amount not-to-exceed \$80,000 to an amount not-to-exceed \$160,000.

By resolution approved on September 11, 2014, your Honorable Board authorized the County of Westchester (the “County”) to enter into an agreement with TASA, an expert witness referral firm, pursuant to which TASA agreed to refer Robert Fuhrman, MBA, and John Downie, MBA, 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 serve as expert witnesses for the County in connection with the lawsuit entitled U.S. v. County of Westchester, 13-cv-5475, for the period August 1, 2014 through December 1, 2014, for an amount not-to-exceed \$60,000, payable at approved hourly rates, plus expenses (the “Agreement”). The Agreement was subsequently executed.

Thereafter, by resolution approved on October 16, 2014, your Honorable Board authorized the County to amend the Agreement by increasing its not-to-exceed amount by \$20,000, from an amount not-to-exceed \$60,000 to an amount not-to-exceed \$80,000 (the “First Amendment”). The First Amendment was subsequently executed.

The County now requires additional services from the experts in terms of both trial preparation and appearances at trial, which is currently scheduled for April 20, 2015 through May 1, 2015. Accordingly, the County respectfully requests authority to amend the Agreement in order to 1) extend the term thereof, to a new termination date of December 31, 2015; and 2)

increase the not-to-exceed amount thereof by \$80,000, from an amount not-to-exceed \$80,000 to an amount not-to-exceed \$160,000.

Except as specifically amended hereby, all terms and conditions of the Agreement shall remain unchanged and in full force and effect.

The public purpose of the proposed amendment is to provide the County with additional time to receive, and additional funds to pay for, the services of 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 above-mentioned litigation.

The goal and objective of the proposed amendment is to provide the County with additional time to receive, and additional funds to pay for, the services of 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 above-mentioned litigation.

The goal and objective of the proposed amendment is in the best interests of the County in terms of fiscal responsibility because without the expertise of Mr. Fuhrman and Mr. Downie, the County would not be able to contest the value of the fines the United States is seeking, which could have fiscal ramifications.

The goal and objective of the proposed amendment will be tracked and monitored by the attorney in the County Attorney's Office who is assigned to monitor this matter.

The proposed amendment 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."

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

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RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is hereby authorized to amend an agreement with The TASA Group, Inc. ("TASA"), as previously amended, pursuant to which TASA agreed to refer Robert Fuhrman, MBA and John Downie, MBA, 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 the County to serve as expert witnesses in connection with the lawsuit entitled U.S. v. County of Westchester, 13-cv-5475, for a term commencing August 1, 2014 and continuing through December 1, 2014, for an amount not-to-exceed \$80,000 (the "Agreement"), in order to 1) extend the term of the Agreement to a new termination date of December 31, 2015; and 2) increase the total amount not-to-exceed authorized under the Agreement by \$80,000, from an amount not-to-exceed \$80,000 to an amount not-to-exceed \$160,000, in order to compensate TASA for additional services rendered and expenses incurred by the experts; and be it further

RESOLVED, that except as specifically amended hereby, all terms and conditions of the Agreement shall remain unchanged and in full force and effect; 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.

Original Agreement: \$ 60,000
 First Amendment \$ 20,000
 This Amendment: \$ 80,000
Total: \$160,000

Account to be
 Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars
241	60	5110	4420		\$80,000

Budget Funding Year(s): 2014-2015 Start Date: 08/01/14 End Date: 12/31/15
 (must match resolution)

Funding Source Tax Dollars: 100%
 State Aid: _____
\$80,000 Federal Aid: _____
 (must match resolution) Other: _____