

55884

Date: March 6, 2017

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”) pursuant to which TASA agreed to refer Timothy G. Joganich, M.S., C.H.F.P., to the County to serve as an expert witness in connection with the lawsuit entitled Catherine Small as executrix of the estate of Robert Small v. County of Westchester, for a term commencing on September 11, 2015 and continuing through September 10, 2016, in order to retroactively extend the term of the Agreement through September 30, 2017.

On or about September 11, 2015, 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, Timothy G. Joganich, M.S., C.H.F.P., a biomechanics injury analyst (the “Expert”), to the County to serve as an expert witness in connection with the lawsuit entitled Catherine Small as executrix of the estate of Robert Small v. County of Westchester, for a term commencing on September 11, 2015 and continuing through September 10, 2016 for an amount not-to-exceed \$20,000.00, payable at the rate of \$380.00 per hour for case review and site inspection, and \$430.00 per hour for testimony, plus expenses (the “Agreement”). The Agreement was subsequently executed.

This case involves a fatal bicycle accident that occurred on the North County Trailway in Yorktown in July, 2015. Plaintiff, the widow and executor of the estate of Robert Small, brought this lawsuit against the County alleging that a defect existed on the trailway and seeking compensatory and punitive damages against the County for the wrongful death of her husband. The Expert has already inspected the accident scene and the bicycle.

Of the \$20,000 authorized under the Agreement, only \$4,610.64 has thus far been expended. Thus, there remain sufficient funds available to compensate TASA for the additional services required of the Expert. However, since the term of the Agreement expired on September 10, 2016, it will now be necessary to amend the Agreement to retroactively extend the term thereof through September 30, 2017.

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. Since the term of the Agreement will now exceed the one-year threshold, the authority of your Honorable Board is required. Accordingly, authority is respectfully requested to amend the Agreement with TASA for the services of Timothy G. Joganich, M.S., C.H.F.P., in connection with the lawsuit entitled, Catherine Small as executrix of the estate of Robert Small v. County of Westchester, for a term commencing on September 11, 2015 and continuing through September 10, 2016 for an amount not-to-exceed \$20,000.00 payable at approved rates, in order to retroactively extend the term thereof from September 11, 2016 through September 30, 2017, to provide the Expert with additional time in which to review the depositions and provide an affidavit in support of the County's motion for summary judgment.

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 biomechanical injury analysis, 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 Mr. Joganich'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.

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 a “short form” agreement with the TASA Group, Inc. (“TASA”), pursuant to which TASA agreed to refer Timothy G. Joganich, M.S., C.H.F.P., a biomechanics injury analyst, to the County to serve as an expert witness in connection with the lawsuit entitled Catherine Small as executrix of the estate of Robert Small v. County of Westchester, for a term commencing on September 11, 2015 and continuing through September 10, 2016 in an amount not-to-exceed \$20,000 payable at approved hourly rates (“Agreement”), in order to retroactively extend the term of the Agreement from September 11, 2016 through September 30, 2017; 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	0695/3910	4420/01		

Budget Funding Year(s) 2015-2017 Start Date September 11, 2015 End Date September 30, 2017
(must match resolution)

Funding Source Tax Dollars _____

State Aid _____

\$ _____ Federal Aid _____

(must match resolution)

Other _____