

59178

Date: September 29, 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 Dr. Phillip Calenda, M.D., to the County to serve as an expert witness in connection with the lawsuit entitled Koji Kakinuma v. County of Westchester, for a term commencing on June 29, 2016 and continuing through June 28, 2017, in order to retroactively extend the term of the Agreement for an additional year, from June 29, 2017 through June 28, 2018.

On or about July 5, 2016, 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, Dr. Phillip Calenda, M.D, a board certified ophthalmologist (the “Expert”), to the County to serve as an expert witness in connection with the lawsuit entitled Koji Kakinuma v. County of Westchester, for a term commencing on June 29, 2016 and continuing through June 28, 2017 for an amount not-to-exceed \$12,000.00, payable in accordance with an approved rate schedule (the “Agreement”). The Agreement was subsequently executed.

This case involves a golfer at Sprain Lake Golf Course who alleges he was hit in the eye/face with the sprinkler near the 12th tee, causing injuries to his eyes. The plaintiff commenced this lawsuit against the County seeking damages for personal injuries. The Expert is needed to review plaintiff’s medical records, perform an ophthalmologic IME of plaintiff, and provide trial testimony.

To date, the Expert has not completed all the services required by the County. Of the \$12,000 authorized under the Agreement, only \$1,720 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 June 28, 2017, it will now be necessary to amend the Agreement to retroactively extend the term thereof for an additional year, from June 29, 2017 through June 28, 2018, in order to give the Expert additional time in which to complete the services.

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 limit, the authority of your Honorable Board is required. Accordingly, authority is respectfully requested to amend the Agreement with TASA for the services of Dr. Phillip Calenda, M.D., to serve as an expert witness for the County in connection with the lawsuit entitled Koji Kakinuma v. County of Westchester, for a term commencing on June 29, 2016 and continuing through June 28, 2017 for an amount not-to-exceed \$12,000.00, payable at approved rates, in order to retroactively extend the term thereof from June 29, 2017 through June 28, 2018, to provide the Expert with additional time in which to perform services for the County.

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 ophthalmologic medicine, 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 Dr. Calenda’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/nm
Attachment

RESOLUTION

Upon a communication from Robert F. Meehan, 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 Dr. Phillip Calenda, M.D., to the County to serve as an expert witness in connection with the lawsuit entitled Koji Kakinuma v. County of Westchester, for a term commencing on June 29, 2016 and continuing through June 28, 2017, in an amount not-to-exceed \$12,000, payable at approved rates (“Agreement”), in order to retroactively extend the term of the Agreement for an additional year, from June 29, 2017 through June 28, 2018; 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	0694/3810	4420/01		\$12,000

Budget Funding Year(s) 2016-2017 Start Date June 29, 2017 End Date June 28, 2018
(must match resolution)

Funding Source Tax Dollars \$12,000

State Aid _____

\$12,000 Federal Aid _____

(must match resolution)

Other _____