

**59210**

Date: October 2, 2017

To: The Honorable Board of Acquisition and Contract

From: Robert F. Meehan  
County Attorney

Re: Authority to amend a contract with the TASA Group, Inc. ("TASA"), as previously amended, 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 30, 2017, in order to extend the term of the Agreement through March 31, 2018.

---

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").

Thereafter, by resolution approved on April 6, 2017, your Honorable Board authorized the County to amend the Agreement 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 (the "First Amendment"). The First Amendment was subsequently executed.

The County's motion for summary judgement is currently pending. However, if the motion is denied and the parties proceed to trial, the Expert will be needed to provide testimony. Since the Agreement expired on September 30, 2017, the County is seeking a no-cost extension thereof through March 31, 2018 so that the Expert will continue to be available to provide testimony at trial should he be needed to do so. It should be noted that there is sufficient funding available under the Agreement to pay for additional services.

Accordingly, authority is respectfully requested to further 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 30, 2017 for an amount not-to-exceed \$20,000.00 payable at approved rates, in order to further extend the term thereof from October 1, 2017 through March 31, 2018, to enable the County to retain the Expert's services for trial testimony should it be needed.

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/nh  
Attachment

**RESOLUTION**

Upon a communication from the County Attorney, be it hereby

**RESOLVED**, that the County of Westchester is hereby authorized to amend an agreement with the TASA Group, Inc. ("TASA"), as previously amended, 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 30, 2017 in an amount not-to-exceed \$20,000 payable at approved hourly rates ("Agreement"), in order to further extend the term of the Agreement from October 1, 2017 through March 31, 2018; and be it further

**RESOLVED**, that except as specifically amended hereby, all other terms and conditions of the Agreement, as previously amended, 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 October 1, 2017 End Date March 31, 2018  
 (must match resolution)

Funding Source Tax Dollars \_\_\_\_\_

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

\$ \_\_\_\_\_ Federal Aid \_\_\_\_\_

(must match resolution)

Other \_\_\_\_\_