

94817

Date: July 18, 2022

To: The Honorable Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority to retroactively amend a short-form contract with Howard Tarkin, M.D. for the provision of expert witness services to the County Attorney in connection with the lawsuit entitled *Suzan Russell v. County of Westchester et al*, for a term commencing on March 9, 2021 and continuing through March 8, 2022 for an amount not-to-exceed \$30,000, payable at approved rates, by extending the term of the agreement from March 9, 2022 through April 30, 2023.

On or about September 24, 2021, the County of Westchester (the "County") entered into a "short-form" contract with Howard Tarkin, M.D., pursuant to which Dr. Tarkin agreed to serve as an expert medical witness to the County Attorney in connection with the lawsuit entitled *Suzan Russell v. County of Westchester et al*, 16-cv-1712 (KMK)(PED), for a term commencing retroactive to March 9, 2021 and continuing through March 8, 2022 for an amount not-to-exceed \$30,000, payable at various agreed-upon rates (the "Agreement").

Due to delays caused by, *inter alia*, Plaintiff's requests for adjournments, and since Dr. Tarkin's services were needed to assist in the preparation of an affidavit in support of the County's motion for summary judgment, as well as in responding to Plaintiff's opposition to the motion, it will be necessary to retroactively extend the term of his contract through April 30, 2023.

As your Honorable Board is aware, amendments to short-form contracts which result in term extensions beyond the one (1) year threshold, must first be approved by your Honorable Board. Since it will now be necessary to retroactively extend the term of Dr. Tarkin's contract for more than a year, the authorization of your Honorable Board is required. Accordingly, authority is respectfully requested to retroactively amend the Agreement with Howard Tarkin, M.D. for the provision of expert witness services to the County Attorney in connection with the lawsuit entitled *Suzan Russell v. County of Westchester et al*, for a term commencing on March 9, 2021 and continuing through March 8, 2022 for an amount not-to-exceed \$30,000, payable at various agreed-upon rates, by extending the term of the Agreement from March 9, 2022 through April 30, 2023.

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 the services of a medical expert to evaluate the veracity of Plaintiff’s claims in the instant lawsuit.

The goals and objectives are in the best interests of the County in terms of fiscal responsibility because without the assistance of the expert witness, it will be more difficult for the County to defend itself in the lawsuit which could result in a significant monetary judgment against the County.

The Agreement will be tracked and monitored by the County Attorney’s Office.

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

JMN/IC/jpg
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 08/11/2022 - RAYMOND SULLIVAN, SECRETARY

RESOLUTION

Upon a communication from the County Attorney, be it hereby

RESOLVED, that the County of Westchester is hereby authorized to retroactively amend a “short form” agreement with Howard Tarkin, M.D., pursuant to which Dr. Tarkin agreed to serve as an expert medical witness to the County Attorney in connection with the lawsuit entitled *Suzan Russell v. County of Westchester et al*, 16-cv-1712 (KMK)(PED), for a term commencing on March 9, 2021 and continuing through March 8, 2022 for an amount not-to-exceed \$30,000, payable at various agreed-upon rates (the “Agreement”), by extending the term of the Agreement from March 9, 2022 through April 30, 2023; 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.

Original Agreement \$30,000
This Amendment **\$0**
 Total \$30,000

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
N/A					

Budget Funding Year(s) 2021-2023 Start Date March 9, 2021 End Date April 30, 2023
 (must match resolution)

Funding Source Tax Dollars _____

State Aid _____

\$ N/A Federal Aid _____

(must match resolution)

Other _____