

**Office of the County Attorney**

**17214**

Date: February 9, 2011

To: Board of Acquisition and Contract

From: Robert F. Meehan  
County Attorney

Re: Authority to amend an agreement with Dr. Stuart Kleinman for the provision of professional consulting and expert witness services in connection with the civil matter of Candida Costabile, et.al. v. the County of Westchester, et.al., for the period from July 7, 2008 through May 27, 2010, by 1) extending the term of the contract through December 31, 2010; and 2) increasing the not-to-exceed amount authorized thereunder by \$30,000, from \$85,000 to \$115,000, with all other terms and conditions to remain the same

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On or about August 14, 2008, the County entered into a “short-form” agreement with Dr. Stuart Kleinman for the provision of professional consulting and expert witness services in connection with the civil matter of Candida Costabile, et.al. v. the County of Westchester, et.al., for the period from July 7, 2008 through July 6, 2009 in an amount not-to-exceed \$20,000 (the “Agreement”). The Agreement was subsequently executed.

Thereafter by resolution approved on July 9, 2009, your Honorable Board authorized the County to amend the Agreement in order to 1) increase the total not-to-exceed amount authorized thereunder by an additional \$30,000, from an amount not-to-exceed \$20,000 to an amount not-to-exceed \$50,000; and 2) extend the term of the Agreement through May 27, 2010 (the “First Amendment”). The First Amendment was subsequently executed.

Thereafter by resolution approved on February 11, 2010, your Honorable Board authorized the County to further amend the Agreement in order to increase the total not-to-exceed amount authorized thereunder by an additional \$35,000, from an amount not-to-exceed \$50,000 to an amount not-to-exceed \$85,000 (the “Second Amendment”). The Second Amendment was subsequently executed.

Dr. Kleinman assisted this office extensively in preparing this case for trial. In order to be able to compensate him for these services, the parties now desire to further amend the Agreement in order to 1) extend the term thereof through December 31, 2010 so that all invoices submitted by Dr. Kleinman and received after May 27, 2010 can be paid; and 2) increase the not-to-exceed amount authorized thereunder by an additional \$30,000, from \$85,000 to \$115,000, so that sufficient funds are available to compensate Dr. Kleinman for said additional services. Accordingly, authority is respectfully requested to amend the Agreement with Dr. Stuart Kleinman for the provision of professional consulting and expert witness services in connection with the civil matter of Candida Costabile, et.al. v. the County of Westchester, et.al., in order to 1) extend the term of the contract through December 31, 2010; and 2) increase the total not-to-exceed amount authorized thereunder by an additional \$30,000, from an amount not-to-exceed \$85,000 to an amount not-to-exceed \$115,000.

This Agreement is exempt from the procedural requirements of the Westchester County Procurement Policy pursuant to Section 3(a)vii thereof as this contract is required for the services of an expert witness 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 forensic psychiatry to assist the County defendants in defending themselves 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. Kleinman's expertise, the County would not have been able to defend itself in this matter. The performance of this agreement will be tracked and monitored by the in-house attorney assigned to monitor this matter.

Except as specifically amended hereby, all remaining terms and conditions of the Agreement, as previously amended, shall remain the same.

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 is hereby authorized to amend an agreement, as previously amended, with Dr. Stuart Kleinman for the provision of professional consulting and expert witness services in connection with the civil matter of Candida Costabile, et.al.v. the County of Westchester, et.al., for the period from July 7, 2008 through May 27, 2010 in an amount not-to-exceed \$85,000 (the "Agreement"), by 1) extending the term of the contract through December 31, 2010; and 2) increasing the not-to-exceed amount authorized thereunder by an additional \$30,000, from \$85,000 to \$115,000; and be it further

**RESOLVED**, that except as specifically amended hereby, all remaining terms and conditions of the Agreement between the County and Dr. Stuart Kleinman shall remain the same; and it is 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	\$20,000
First Amendment	\$30,000
Second Amendment	\$35,000
<b>This Amendment</b>	<b><u>\$30,000</u></b>
TOTAL	\$115,000

Agreement # LAW 766

Account to be  
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars
615	59	0680/2750	4220		\$30,000

Budget Funding Year(s) 2008-10 Start Date: July 7, 2008 End Date: December 31, 2010  
(must match resolution)

Funding Source Tax Dollars \_\_\_\_\_  
State Aid \_\_\_\_\_  
**\$ 30,000** Federal Aid \_\_\_\_\_  
(must match resolution) Other 6N \_\_\_\_\_