

Office of the County Attorney
13366

Date: August 10, 2010

To: Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority to enter into a retainer agreement with the law firm of Kaplan Kirsch & Rockwell LLP to provide "of counsel" legal services to the County Attorney in connection with on-going litigation concerning a complaint filed with the Federal Aviation Administration ("FAA") against the County by a tenant at the Westchester County Airport (the "Airport"), in the total not to exceed amount of Thirty-Five Thousand (\$35,000) Dollars, for a one (1) year term commencing on July 26, 2010 and continuing through July 25, 2011

On August 9, 2010, Act # 94-2010, the Westchester County Board of Legislators authorized the County to retain, at County expense, the law firm of Kaplan Kirsch & Rockwell LLP ("Kaplan Kirsch") for the provision of outside counsel services in connection with on-going litigation concerning a complaint filed with the Federal Aviation Administration ("FAA") against the County by a tenant at the Westchester County Airport (the "Airport"). Under section 161.11(1) of the Laws of Westchester County, the authority of your Honorable Board is also required.

On October 19, 2007, 41North, 73West, Inc. (a tenant at the Airport doing business as Avitat Westchester and Jet Systems Inc.) ("Avitat") filed a complaint with the FAA challenging the County's long-standing policy of encouraging light general aviation activities and reserving specific facilities for light general aviation, as opposed to corporate and commercial aviation. This challenge strikes at the heart of the County's ability to determine the use of Airport facilities and manage Airport growth. Kaplan Kirsch has appeared on behalf of the County in successfully responding to the 2007 complaint and a subsequent appeal and is currently representing the County in the Second Circuit appeal. It is important for the County to submit a brief to the Court in support of its aviation program. The County has been advised by Kaplan Kirsch that the papers must be filed in the U.S. Court of Appeals for the Second Circuit on August 20, 2010. The proposed retainer Agreement will be for a one (1) year term commencing on July 26, 2010 and continuing through July 25, 2011.

For the aforesaid services rendered to the County, Kaplan Kirsch will be paid at the blended rate of Three Hundred Ninety (\$390.00) Dollars per hour for all lawyers (plus normally reimbursable expenses such as travel, long distance telephone calls, copying, etc.), for a total aggregate amount not to exceed Thirty-Five Thousand (\$35,000.00) Dollars, inclusive of all expenses.

It should be noted that this contract will be funded entirely through the Department of Transportation's Airport Special Revenue Fund, and no tax levy funds will be involved.

Authority to exempt this Agreement from the requirements of the Westchester County Procurement Policy and Procedures pursuant to Section 3(a)xxi thereof, has been granted by your Honorable Board in accordance with a separate resolution of even date herewith.

The goals and objectives of this Agreement will be to protect the Airport's light general aviation program and ensure it is in compliance with all FAA regulations. The goals and objectives are in the best interest of the County by insuring the County's ability to determine the use of Airport facilities and manage Airport growth. The goals and objectives will be tracked and monitored through regular reports to be supplied by the firm detailing the services rendered.

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

RFM/EOS/ml

APPROVED BOARD OF ACQUISITION & CONTRACT - 8-26-2010 - JUMP RYAN/MLR/SECRETARY

RESOLUTION

Upon a communication from the County Attorney, be it hereby:

RESOLVED, that the County of Westchester is authorized to enter into a retainer agreement with the law firm of Kaplan Kirsch & Rockwell LLP (“Kaplan Kirsch”) for the provision of outside counsel services in connection with on-going litigation concerning a complaint filed with the Federal Aviation Administration against the County by a tenant at the Westchester County Airport for a one (1) year term commencing on July 26, 2010 and continuing through July 25, 2011; and it is further

RESOLVED, that in consideration for services rendered to the County, Kaplan Kirsch will be paid at the blended rate of Three Hundred Ninety (\$390.00) Dollars per hour for all lawyers (plus normally reimbursable expenses such as travel, long distance telephone calls, copying, etc.), for a total aggregate amount not to exceed Thirty-Five Thousand (\$35,000.00) Dollars, inclusive of all expenses; and be it further

RESOLVED, that all funding for this retainer agreement will come from the Airport Special Revenue Fund and no County tax levy funds would be appropriated for this purpose; 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.

APPROVED BOARD OF ACQUISITION & CONTRACT - 8-26-2010 JOMAR VILLA SECRETARY

Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	44	4110	4420		\$35,000.00

Budget Funding Year(s) 2010 Start Date July 26,2010 End Date July 25, 2011
(must match resolution)

Funding Source Tax Dollars _____

State Aid _____

\$35,000.00 Federal Aid _____

(must match resolution) Other Airport Special Revenue Fund

APPROVED BOARD OF ACQUISITION & CONTRACT - 8-26-2010 - JOMARY VIEIRA, SECRETARY