

Office of the County Attorney

55269

Date: February 16, 2017

To: Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority to amend a retainer agreement with The Wicks Group, PLLC for the provision of "of counsel" legal services to the County Attorney in connection with various legal issues relating to the Westchester County Airport, by increasing the amount not-to-exceed thereunder by an additional \$250,000.00, contingent upon the County's receipt of payment in such amount from Oaktree Infrastructure Fund, or a subsidiary or affiliate of Oaktree ("Oaktree") and payable at a blended rate of Three Hundred Fifty (\$350.00) Dollars per hour per attorney plus expenses with no daily fees limit.

By resolution approved on November 3, 2011 (the "November 3rd Resolution"), your Honorable Board authorized the County to enter into a retainer agreement with The Wicks Group, PLLC ("TWG" or the "Firm") for the provision of outside counsel services in connection with various legal issues relating to the Westchester County Airport (the "Airport") for a one (1) year term commencing upon execution of the retainer agreement by both parties and approval of same by the Office of the County Attorney (the "Agreement"). The November 3rd Resolution further provided that in consideration for services to be rendered, TWG would be paid at the blended rate of Three Hundred (\$300.00) Dollars per hour or Two Thousand (\$2,000.00) Dollars per day per attorney (plus normally reimbursable expenses such as travel, long distance telephone calls, copying, etc.), for a total aggregate amount not to exceed One Hundred Thousand (\$100,000.00) Dollars, inclusive of all expenses. The Agreement was fully executed and approved as of November 22, 2011.

Thereafter, by resolution approved on February 21, 2013, your Honorable Board authorized the County to amend the Agreement with TWG in order to 1) extend the term thereof for one (1) additional year commencing retroactive to November 22, 2012; and 2) increase the not-to-exceed amount authorized thereunder by an additional One Hundred Thousand (\$100,000.00) Dollars, from an amount not-to-exceed One Hundred Thousand (\$100,000.00) Dollars to an amount not-to-exceed Two Hundred Thousand (\$200,000.00) Dollars (the "First Amendment"). The First Amendment was subsequently executed.

Thereafter, by resolution approved on October 31, 2013, your Honorable Board authorized the County to further amend the Agreement with TWG for the limited purpose of extending the term thereof for one (1) additional year commencing on November 22, 2013, with no increase in the not-to-exceed amount requested (the "Second Amendment"). The Second Amendment was subsequently executed.

Thereafter, by resolution approved on October 30, 2014, your Honorable Board authorized the County to again amend the Agreement with TWG in order to 1) extend the term thereof for one (1) additional year commencing on November 22, 2014; and 2) increase the not-to-exceed amount authorized thereunder by an additional One Hundred Thousand (\$100,000.00) Dollars, from an amount not-to-exceed Two Hundred Thousand (\$200,000.00) Dollars to an amount not-to-exceed Three Hundred Thousand (\$300,000.00) Dollars (the "Third Amendment"). The Third Amendment was subsequently executed.

Thereafter, by resolution approved on March 3, 2016, your Honorable Board authorized the County to again amend the Agreement with TWG in order to 1) extend the term thereof for one (1) additional year commencing on November 22, 2015; and 2) increase the not-to-exceed amount authorized thereunder by an additional One Hundred Thousand (\$100,000.00) Dollars, from an amount not-to-exceed Three Hundred Thousand (\$300,000.00) Dollars to an amount not-to-exceed Four Hundred Thousand (\$400,000.00) Dollars (the "Fourth Amendment"). In addition, the Fourth Amendment authorized an increase in the blended rate from Three Hundred (\$300.00) Dollars per hour to Three Hundred Fifty (\$350.00) Dollars per hour or Two Thousand (\$2,000.00) Dollars per day per attorney. The Fourth Amendment was subsequently executed.

Most recently, by resolution approved on December 29, 2016, your Honorable Board authorized the County to again amend the Agreement with TWG in order to 1) extend the term thereof for one (1) additional year commencing on November 22, 2016; and 2) increase the not-to-exceed amount authorized thereunder by an additional One Hundred Thousand (\$100,000.00) Dollars, from an amount not-to-exceed Four Hundred Thousand (\$400,000.00) Dollars to an amount not-to-exceed Five Hundred Thousand (\$500,000.00) Dollars (the "Fifth Amendment"). The Fifth Amendment was subsequently executed.

As your Honorable Board is aware, TWG, in addition to the routine legal services it provides to the County under the Agreement, acted as special legal counsel to the County in connection with a proposed lease of the Airport to Oaktree (the "Transaction"). Oaktree, pursuant to a separate letter to the County Attorney dated December 9, 2016 (the "Oaktree Offer Letter"), has offered to pay the County for the legal fees and expenses incurred by the County to TWG in connection with the Transaction during the period from February 3, 2016 to December 12, 2016 (the "Transaction Period"). Oaktree's offer under the Oaktree Offer Letter is limited to an aggregate amount of Two Hundred Fifty Thousand (\$250,000.00) Dollars. The Oaktree Offer Letter states that "it is further understood that TWG's fees will be charged at the rates that have been approved by the County per the County's retention agreement with TWG."

The proposed amendment would not alter TWG's current approved blended rate of \$350.00 per hour. However, TWG has requested that the County exempt the daily fees limit of

\$2,000.00 per day per attorney just for the purposes of this amendment to pay their fees incurred during the Oaktree negotiations. The justification offered by TWG for exempting the daily fees limit for services rendered by the Firm in connection with the Transaction are twofold. First, unlike the routine services provided by the Firm under the Agreement in which it provides support on various matters that come up from time to time, the Transaction was a very labor intensive project that demanded large amounts of attorney time on a tight timetable. As such, it did not lend itself to capping the Firm's work to less than 6 hours per day. Indeed, had the Firm done so it would not have succeeded in the mandate it was given to negotiate by early November a lease that the parties would be ready to sign and that the County Executive could submit to the Board of Legislators, as well as to prepare a Preliminary Application to the FAA to be submitted immediately thereafter. Second, there will be no incremental cost to the County or its taxpayers because any funds paid to the Firm will be expressly conditioned upon receipt of such funds from Oaktree.

Accordingly, the authority of your Honorable Board is respectfully requested to further amend the Agreement with TWG in order to increase the not-to-exceed amount authorized thereunder by an additional Two Hundred Fifty Thousand (\$250,000.00) Dollars, from an amount not-to-exceed Five Hundred Thousand (\$500,000.00) Dollars to an amount not-to-exceed Seven Hundred Fifty Thousand (\$750,000.00) Dollars, contingent upon the County's receipt of payment in such amount from Oaktree and payable at a blended rate of Three Hundred Fifty (\$350.00) Dollars per hour per attorney plus expenses with no daily fees limit.

Except as specifically amended hereby, all remaining terms and conditions of the Agreement, as previously amended, shall remain in full force and effect.

By Act No. 135-2017 approved on February 13, 2017, the Westchester County Board of Legislators authorized the County to amend the retainer agreement with TWG by increasing the not-to-exceed cap under the retainer agreement with TWG by Two Hundred Fifty Thousand (\$250,000.00) Dollars, inclusive of all expenses, thereby increasing the total aggregate amount under the Agreement, as previously extended, from an amount not-to-exceed Five Hundred Thousand (\$500,000.00) Dollars to an amount not-to-exceed Seven Hundred Fifty Thousand (\$750,000.00) Dollars, contingent upon certain conditions and directions to the County Attorney regarding acceptance of the offer to pay TWG fees from Oaktree and the County's receipt of payment in the amount of \$250,000.00 from Oaktree.

The goals and objectives of this Agreement will be to ensure that the Airport is in compliance with all FAA regulations. The goals and objectives are in the best interest of the County by insuring the safety of the traveling public. The goals and objectives will be tracked and monitored through monthly 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/JPG/ml

RESOLUTION

Upon a communication from Robert F. Meehan, County Attorney, be it hereby:

RESOLVED, that the County of Westchester is authorized to amend a retainer agreement with The Wicks Group, PLLC for the provision of outside counsel services in connection with various legal issues relating to the Westchester County Airport (the "Agreement") by increasing the not-to-exceed amount authorized thereunder by an additional Two Hundred Fifty Thousand (\$250,000.00) Dollars, from an amount not-to-exceed Five Hundred Thousand (\$500,000.00) Dollars, to an amount not-to-exceed Seven Hundred Fifty Thousand (\$750,000.00) Dollars, contingent upon the County's receipt of payment in said amount of Two Hundred Fifty Thousand (\$250,000.00) Dollars from Oaktree Infrastructure Fund, or a subsidiary or affiliate of Oaktree; and it is further

RESOLVED, that for purposes of the increase in the not-to-exceed amount authorized by this amendment only, the daily fees limit of Two Thousand (\$2,000.00) Dollars per attorney per day shall not apply; and be it further

RESOLVED, that except as otherwise specifically amended hereby, all remaining terms and conditions of the Agreement, as previously amended, shall remain in full force and effect; 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.

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars
161	44	4110	4420		\$250,000

Budget Funding Year(s) 2016-2017 Start Date 11-22-16 End Date 11-21-17
(must match resolution)

Funding Source Tax Dollars _____
State Aid _____
\$250,000 Federal Aid _____
(must match resolution) Other _____