

Office of the County Attorney

60191

Date: January 5, 2018

To: Board of Acquisition and Contract

From: John M. Nonna
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 \$58,000 to compensate the firm for services rendered through the end of the last approved contract extension, November 21, 2017.

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.

Thereafter, 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.

Thereafter, by resolution approved on March 16, 2017, your Honorable Board authorized the County to again 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, to compensate the Firm for services rendered as special legal counsel to the County in connection with a proposed lease of the Airport to Oaktree Infrastructure Fund or a subsidiary or affiliate of Oaktree ("Oaktree"), payment of said amount contingent upon the County's receipt of such amount from Oaktree (the "Sixth Amendment"). The Sixth Amendment was subsequently executed.

Thereafter, by resolution approved on June 29, 2017, your Honorable Board authorized the County to amend the Agreement with TWG in order to increase the not-to-exceed cap thereunder by Two Hundred Thousand (\$200,000.00) Dollars, thereby increasing the total aggregate amount under the Agreement, as previously amended, from an amount not-to-exceed

Seven Hundred Fifty Thousand (\$750,000.00) Dollars, to an amount not to exceed Nine Hundred Fifty Thousand (\$950,000.00) Dollars, in order to compensate the Firm for assisting the County in connection with the Westchester County Airport Privatization RFP process (the "Seventh Amendment"). The Seventh Amendment was subsequently executed.

By Act No. 2017 – 224, approved on December 11, 2017, the Board of Legislators authorized the County to increase the not-to-exceed amount under the Agreement by \$58,000.00. In addition, the Agreement and Amendments First through Seventh thereto were each approved by Act of the Board of Legislators.

Accordingly, the authority of your Honorable Board is respectfully requested to further amend the Agreement with the TWG to increase the contract amount not-to-exceed by Fifty Eight Thousand (\$58,000.00) Dollars, inclusive of all expenses, thereby increasing the total aggregate amount under the Agreement, as previously amended, from an amount not-to-exceed Nine Hundred Fifty Thousand (\$950,000.00) Dollars to a new amount not-to-exceed One Million Eight Thousand (\$1,008,000.00) Dollars.

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

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.

JMN/JPG/ml
Attachment

RESOLUTION

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

RESOLVED, that the County of Westchester is authorized to further 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 Fifty Eight Thousand (\$58,000.00) Dollars, inclusive of all expenses, thereby increasing the total aggregate amount under the Agreement, as previously amended, from an amount not-to-exceed Nine Hundred Fifty Thousand (\$950,000.00) Dollars to a new amount not-to-exceed One Million Eight Thousand (\$1,008,000.00) Dollars; and it is 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		\$58,000

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 _____

\$58,000 Federal Aid _____

(must match resolution) Other _____