



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele Iannello, Treasurer

Cc: Terrence D. McCracken, Secretary
Karen A. Prendergast, Chief Financial Officer
Russell J. Stoll, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer
Lavonya C. Lester, Director of Administration

From: Mark S. Carney, General Counsel

Date: February 28, 2022

Re: Professional Legal Services
Barclay Damon LLP

The Law Firm of Barclay Damon has been on retainer with the Erie County Water Authority since September of 2015 at a mixed hourly rate of \$225.00 per hour.

The attorneys at Barclay Damon and the prior firms of Hiscock & Barclay, as well as, Damon Morey, have performed various complex legal representation to the Erie County Water Authority for the past twenty-three years.

Since September of 2015 Barclay Damon has successfully represented the Erie County Water Authority on a number of legal matters and it is in the best interests of the Erie County Water Authority to continue this relationship into the future.

After discussions between General Counsel, Mark S. Carney, and James P. Domagalski, Partner with Barclay Damon LLP, it was agreed that Barclay Damon would reduce its ordinary partners hourly wage from \$375.00 per hour to \$300.00 per hour and would reduce its associates fee to \$245.00 an hour, for any and all work performed on behalf of the Erie County Water Authority.

After review of billable hourly rates at other firms in the Western New York area, these hourly rates are commensurate with other firms of Barclay Damon stature, and I would recommend that the Erie County Water Authority execute the retainer agreement with Barclay Damon LLP for any and all legal matters the Water Authority may engage Barclay Damon in the future.

Funds are available for the project in the 2022 O&M Budget as follows:

Unit: 5010 Legal

Item 52 Legal Services

MSC:mes

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** _____
Project Description: Authorization to Enter into an Engagement Letter with Barclay Damon, LLP for expert Legal Professional Services on an as needed basis.

Item Description:





- | | | | |
|---|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input checked="" type="checkbox"/> Other <u>Engagement Letter with Barclay Damon</u> | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input checked="" type="checkbox"/> Other <u>Requesting authorization for General Counsel, Mark S. Carney, to sign engagement letter with Barclay Damon, LLP.</u> | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|--|---|-------------------------|
| <input type="checkbox"/> Other (if Applicable) | _____ | Date: _____ |
| <input type="checkbox"/> Chief Operating Officer | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Executive Engineer |  | Date: <u>03/02/2022</u> |
| <input checked="" type="checkbox"/> Director of Administration |  | Date: <u>03/01/2022</u> |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Financial Officer |  | Date: <u>02/28/2022</u> |
| <input checked="" type="checkbox"/> Legal |  | Date: <u>3/2/2022</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|---|---------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: <u>3/2/22</u> |
|--|---|---------------------|

Remarks: _____

Resolution Date: _____ **Item No:** _____

BARCLAY DAMON^{LLP}

James P. Domagalski
Partner

February 28, 2022

VIA ELECTRONIC MAIL – mcarney@ecwa.org
and Regular First Class Mail

Mark S. Carney, Esq., General Counsel
Erie County Water Authority
295 Main Street, Suite 350
Buffalo, NY 14203-2494

Re: Continued Engagement of Barclay Damon LLP
Our Client No. 031531
New Rates Effective March 1, 2022

Dear Mr. Carney:

The Firm is currently representing the Erie County Water Authority in the following open matters (“Matters”): **Matter 3077680 - Retained Labor and Employment Matters and Matter 3077698 - Retained Construction Matters**. The Firm is pleased to continue this representation of the Water Authority (“Client”). The purpose of this letter is to memorialize updated rates effective March 1, 2022 on Matters which are currently open and on those Matters to be opened in the future.

As a matter of Firm policy, it is necessary that the Firm provide you with this engagement letter to set out the specific terms applicable to the representation. These terms consist of the terms set forth in this letter and in the Standard Terms of Engagement for Legal Services (“Standard Terms”) attached hereto (collectively, the “Engagement Letter”). Please be aware that we are not to be considered to be your attorneys on the Matter until this Engagement Letter has been signed and returned by you, so please respond promptly. You should not sign this Engagement Letter if you do not understand the terms of the representation or if they are unacceptable.

Thank you for allowing BD to continue to be of service to you in connection with this engagement. If the terms of this Engagement Letter meet with your approval, please so indicate by signing and returning the original to me. A counterpart of this Engagement Letter is enclosed for your files.

Erie County Water Authority
February 28, 2022
Page 2

Very truly yours,


James P. Domagalski

AGREED TO AND ACCEPTED:

ERIE COUNTY WATER AUTHORITY

By: Mark S. Carney, Esq.

Title: General Counsel

Dated: _____

Standard Terms of Engagement for Legal Services

("Standard Terms")

Introduction

This Standard Terms of Engagement for Legal Services contains the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of the letter (the "Letter") to which this Standard Terms of Engagement is attached (collectively, the "Engagement Letter"). Therefore, we ask that you review this document carefully and contact us promptly if you have any questions.

1. **Parties.** This Standard Terms states the terms under which Barclay Damon LLP (we or "BD") shall provide and the client identified in the Letter ("Client") shall pay for legal services. If Client is a corporation, partnership, or limited liability company, BD represents only that entity and does not represent its parent company, subsidiaries, affiliates, shareholders, officers, directors, partners, members, managers, or employees. If Client is an individual, BD represents only that individual and not that individual's spouse or other family members, any entities in which the individual owns an interest nor any other owners of such entities.

2. **Scope of Services ("Matter").** BD shall provide legal services to Client in connection with the Matter described in the Letter. Legal services not required for the Matter as described therein will not be provided unless Client requests such services and BD agrees, in writing, to provide them.

3. **Primary Attorney.** James P. Domagalski will be the attorney at BD who has primary responsibility for work on the Matter (the "Primary Attorney"). The Primary Attorney may be reached at the following contact information: telephone (716) 566-1510, facsimile (716) 566-4003, e-mail jdomagalski@barclaydamon.com. The legal secretary for the Primary Attorney is Deborah Komorowski who may be reached at the following contact information: telephone (716) 858-3831, facsimile (716) 768-2831, e-mail dkomorowski@barclaydamon.com. The Primary Attorney may use other BD attorneys and non-attorney staff (such as paralegals) to do work on the Matter. Client has the right, exercisable at any time, to require a change in the Primary Attorney and other attorneys and staff working on the Matter. BD also reserves the right to make changes to such personnel at any time.

4. **Client Confidentiality.** BD will protect client confidences and secrets as required by law. Please use special care when communicating with BD via electronic mail or by cellular telephone because such methods of communication are not always secure and could lead to the inadvertent waiver of attorney-client privilege.

5. **Preservation of Evidence.** For litigated matters, you are required by law to preserve any evidence that may be relevant to the claim. This includes business records, correspondence, e-mail or other messages, photographs or video, or other physical evidence. You must take steps immediately to identify and locate any material and make sure that it is not discarded or deleted. You should err on the side of including material. If this claim involves a business and it has a practice of discarding material after a certain period of time, you must stop

that process as it relates to any material relating to this claim. Further, any individual in the organization who may have any such material should be advised of this requirement of preservation. When we meet, we will discuss how to deal with this issue going forward.

6. **Conflicts of Interest.**

(a) **Client's "Affiliates"**. In this engagement, BD represents only the person or entity that is identified as the "Client" in the Letter. "Client" does not include any "affiliates" of Client (*i.e.*, if Client is a corporation, limited liability company, or partnership, "affiliate" means any parent, subsidiary, employee, officer, director, shareholder, member or partner of the corporation, limited liability company, or partnership; or, if Client is a trade association, "affiliate" includes any member of the trade association). Accordingly, for conflict of interest purposes, Client agrees that BD may represent another client with interests adverse to any such affiliate, without obtaining Client's consent. Client further agrees that Client will not seek to disqualify BD from representing another client in a matter where such client is adverse to Client's affiliate. Upon BD's request, Client will use best efforts to arrange it so that none of Client's affiliates will seek to disqualify BD from representing another client in any such matter.

(b) **Other Clients Adverse to "Client"**. BD is a large law firm which represents many clients in a variety of matters. It is possible that in the future, BD may be asked by one of those clients to represent it in a matter where Client is an adverse party or has an adverse interest. If such a future matter is substantially unrelated to the Matter in this engagement and if Client has not given BD any confidential information that is materially relevant to such a future matter, then Client agrees prospectively (1) to waive any conflict of interest in connection with BD representing another client in such a future matter even though it may be against Client or an interest of Client; and (2) not to seek to disqualify BD from representing another client in any such future matter.

7. **Fees.** The fees BD will charge for its services will be based on the amount of time spent by its attorneys and paralegals on the Matter. Time is charged in units of tenths of an hour. The fee will be the time spent by attorneys and paralegals multiplied by their hourly billing rate in effect when the work is done. The current hourly billing rates effective as of March 1, 2022 are:

Partner: \$ 300.00

Associate: \$ 245.00

Paralegal: \$ 140.00

Upon request, BD will provide Client with the hourly billing rate for each person working or expected to work on the Matter.

8. **Expenses.** In addition to the fees described above, BD will charge Client for expenses it incurs that are related to the Matter. Examples of such expenses are filing fees, expert witness fees, travel expenses, mileage, transcripts, judgments and lien searches, computerized legal research and the like. Expenses may either be incurred/paid by BD and billed to Client, the bill for the expense may be submitted to Client for payment directly to the billing party, or BD

may assist Client in setting up a billing relationship between the third party vendor and Client so Client can pay the charges directly.

9. **Fee Estimates and No Guarantee of Outcome.** We may provide Client with an estimate or a proposed budget for the fees and expenses that are expected to be incurred for this engagement. Although we make every effort to be accurate in providing estimates and budgets, Client agrees that these projections and budgets are estimates only and that circumstances beyond our control may result in fees and expenses being larger than projected. Similarly, although we may be asked to comment on or predict the expected outcome of the matter, we are unable to guarantee any result for this engagement. Client agrees that such projections are just that, predictions.

10. **Retainer.** *NOT APPLICABLE.*

11. **Billing and Payment.** BD's normal practice is to send Client a monthly bill for fees and expenses for the prior month, although that practice may vary. Payment is due on receipt of the bill. In the event of a fee dispute, Client may have the right to seek arbitration; we will provide Client with the necessary information regarding arbitration in the event of a fee dispute, or upon Client's request.

12. **Records Retention.** We will endeavor to return original documents and records to you at the termination of the engagement. Records are kept for at least seven years. Please inquire of your attorney as to the specific time period that records of your engagement will be retained. Following the expiration of the retention period, records are destroyed by confidential means.

13. **Attorney-Client Relationship.** We are very proud of our client relationships, and occasionally identify clients to others who ask about our client base, or in institutional materials. Unless you object in writing, we assume that you agree that we may state that we represent you in such matters as we deem appropriate, although of course we would not publish or disseminate any confidential information.

14. **Termination.**

(a) **By Client.** Client may terminate this engagement at any time for any reason by notifying BD in writing. Client shall be responsible for outstanding invoices, for unbilled fees and expenses incurred before termination, and for fees and expenses in connection with an orderly transition of the Matter.

(b) **By BD.** BD may terminate this engagement at any time for any reason, including Client's failure to pay BD's fees and expenses, provided, however, that BD's right to terminate is subject to the applicable rules of professional conduct and the rules of any court having jurisdiction of the Matter.

(c) **On Completion of the Matter.** BD's representation of Client on this Matter shall terminate automatically when the Matter is complete. The relationship of attorney-client between BD and Client thereafter shall continue only if Client has engaged BD on other matters or once again engages BD on this Matter.

15. **Entire Agreement.** This Engagement Letter constitutes the entire agreement between BD and Client as to the Matter and may be changed only by a written document, signed by both parties.

16. **Governing Law.** Any dispute arising under this Engagement Letter shall be governed by the laws of the State of New York. Client consents to the personal and subject matter jurisdiction of the Supreme Court of the State of New York held in and for the County of Erie to resolve any such disputes.

17. **Additional Services.** BD is a full-service law firm with a wide array of expertise as described in the enclosed list of our Practice Areas and Industry Teams. Please feel free to contact us about additional services offered by BD.

PRACTICE AREAS AND INDUSTRY TEAMS

PRACTICE AREAS

Corporate & Transactional

- Corporate
- Employee Benefits
- Environmental
- Financial Institutions & Lending
- Health Care
- Higher Education
- International
 - » Immigration
- Labor & Employment
- Professional Liability
- Project Development
- Public Finance
- Real Estate
- Restructuring, Bankruptcy & Creditors' Rights
- Tax
- Trusts & Estates

Financial Services

- Financial Institutions & Lending
- Public Finance
- Real Estate
- Restructuring, Bankruptcy & Creditors' Rights
- Trusts & Estates

Intellectual Property

- Branding, Trademarks & Copyrights
- Intellectual Property Litigation
- Patents & Prosecution

Litigation

- Commercial Litigation
- Construction & Surety
- Employee Benefits
- Environmental
- Family & Matrimonial Law
- Health Care Controversies
- Insurance Coverage & Regulation
- Intellectual Property Litigation
- Labor & Employment
- Mass & Toxic Torts
- Professional Liability
- Property Tax & Condemnation
- Restructuring, Bankruptcy & Creditors' Rights
- Telecommunications
- Torts & Products Liability Defense
- Trusts & Estates
- White Collar & Government Investigations

Real Estate & Land Use

- Land Use & Zoning
- Project Development
- Property Tax & Condemnation
- Real Estate
- Tax

Regulatory

- Energy
- Environmental
- Land Use & Zoning
- Lobbying & Election Law Compliance
- Project Development
- Property Tax & Condemnation
- Regulatory
- Telecommunications

FEATURED INDUSTRIES

Energy

- Energy
- Electric Power
- Energy Markets
- Linear Infrastructure
- Oil & Gas
- Renewable Energy

Health Care

- Health Care
- Health & Human Services Providers
- Health Care Controversies

Higher Education

Insurance & Reinsurance

Manufacturing

Technology

- Technology
- Communications & Networking Technology
- Emerging Technologies
- Medical Devices

NEW & EMERGING INDUSTRY PRACTICE AREAS

Canada-US Cross-Border

Cannabis

COVID-19 Response Team

Cybersecurity

Elder Law & Medicaid Planning

Hotels, Hospitality & Food Service

Outdoor & Wildlife

Tax Credits

Transportation

OFFICES

ALBANY
80 State Street
Albany, NY 12207

BOSTON
160 Federal Street, 10th Floor
Boston, MA 02110

BUFFALO
The Avant Building
200 Delaware Avenue, Suite 1200
Buffalo, NY 14202

NEW HAVEN
545 Long Wharf Drive, Ninth Floor
New Haven, CT 06511

NEW YORK
1270 Avenue of the Americas, Suite 501
New York, NY 10020

ROCHESTER
2000 Five Star Bank Plaza
100 Chestnut Street
Rochester, NY 14604

SYRACUSE
Barclay Damon Tower
125 East Jefferson Street
Syracuse, NY 13202

WASHINGTON DC
1325 G Street NW, Suite 500
Washington, DC 20005

TORONTO
120 Adelaide Street West, Suite 2500
Toronto, ON M5H 1T1

