



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

April 10, 2019

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
E. Thomas Jones, Treasurer

Cc: Terrence D. McCracken, Secretary
Jacqueline Mattina, Associate Attorney
Robert J. Lichtenthal, Jr., Acting Executive Director
Karen A. Prendergast, Comptroller
Russell J. Stoll, Executive Engineer

From: Margaret A. Murphy, Attorney

Subject: Notice of Claim: City of Tonawanda
Cooperative Agreement between City of Tonawanda and ECWA
(Koenig Alley Watermain Replacement)
ECWA Project No. 201600028

On March 23, 2017, the Board of Commissioners (the "Board") of the Erie County Water Authority (the "Authority") approved and executed a Cooperative Agreement between the Authority and the City of Tonawanda for the coordination and facilitation of a reconstruction project along Koenig Alley Avenue in the City of Tonawanda. Pursuant to the Cooperative Agreement, the Authority agreed to reimburse the City of Tonawanda for waterline improvements "in an amount not to exceed \$234,000."

Upon the completion of the reconstruction project, the City of Tonawanda presented the Authority with invoices totaling \$253,265.12. Robert J. Lichtenthal, Jr. and Karen Prendergast authorized the payment of \$234,000, but rejected the remaining balance of \$19,265.12 on the grounds the Board had not authorized such payments prior to the completion of the project. The matter was then sent to the Legal Department to review.

I have treated this matter as a notice of contract claim. I have reviewed the invoices submitted in support of the claim with Karen Prendergast. These invoices do relate to the improvement of the water main along Koenig Alley. Engineering had reviewed and approved the work, including the additional costs associated with

those improvements, prior to the work being completed. Nonetheless, Engineering never proposed an amendment to the Cooperative Agreement to increase the authorized by the Board for the project.

In reviewing the submitted invoices, the capital improvements made to the water main was within the original amount set forth in the Cooperative Agreement, which included an additional budgeted \$22,000 set aside as a contingency. However, the amount in excess of \$234,000 was for inspection fees, estimated at the time of agreement as \$14,000.00. Both Karen and I have reviewed the invoices relating to the inspection fees, which set forth in detail the inspection performed on the Authority's behalf. Karen and I have found these inspection fees to be reasonable, but question why the original estimate was so low.

After consulting with the Comptroller and Engineering, I would recommend the Board authorize the payment of this claim in the amount of \$19,265.12.