



ERIE COUNTY WATER AUTHORITY INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
Peggy A. LaGree, Treasurer

Cc: Terrence D. McCracken, Secretary
Margaret A. Murphy, General Counsel
Leonard F. Kowalski, Executive Engineer
Michael J. Quinn, Senior Distribution Engineer
Mike W. Wymer, Senior Production Engineer
Katherine A. Gillette, Associate Attorney

From: Karen A. Prendergast, Chief Financial Officer *KAP*
Russell J. Stoll, Chief Operating Officer *RJS*

Date: April 7, 2021

Subject: Approval of Special Services in Professional Service Agreements.

In the standard professional service agreement, the Erie County Water Authority (the "Authority") has provisions relating to "Special Services." As stated in the standard agreement:

The Authority may require the Consultant to provide or arrange for and assist in obtaining one or more of the following special services in carrying out the project. Because it is not possible to determine in advance the need for or the cost of such services, these are included as separate elements of cost which shall be separately negotiated.

In professional service agreements with engineering firms, such special services may relate to:

- Soil Investigations - including test borings, pavement cores, and the related analysis,
- Detailed mill, shop and/or laboratory inspection of materials and equipment,
- Land surveys, maps, plates, descriptions, and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities,
- Assistance to the Authority serving as an expert witness in litigation arising from project development or construction,
- New York State SEQR (Type I and Unlisted Actions),
- Air, water, and/or soil sampling, testing, and/or analysis,
- Operation and maintenance manuals,
- Start-up services,
- Hazardous material testing and assessment,

- Development of Maintenance and Protection of Traffic (MP&T) plans not included in the original scope of work,
- Assistance with NYSDOT and ECDPW permitting,
- Steady State and/or Extended Period Simulation hydraulic modeling and calibration.
- Wetland investigations, delineation, and mitigation,
- Stormwater Pollution Prevention Plans (SWPPP) development and inspections.
- Transient analysis and mitigation recommendations,
- Corrosion control analysis and recommendations,
- Assistance with grant research, compilation of grant applications, and reporting/documentation after award.

The so-called “standard” template for professional service agreements have evolved over the last two years due to a more stringent review of such agreements by the Legal Department, as per the comments and recommendations of the Board of Commissioners (the “Board”).

All professional service agreements currently in effect set a limitation on the special services expenditure based on an amount not to exceed. In more recent agreements, the Board has authorized certain members of the Executive Staff to approve such expenditures with the Authority’s Chief Financial Officer responsible for ensuring no expenditure is made more than the amount approved by the Board.

Nonetheless, there are still earlier agreements for which the questions of who may approve such expenditures remain open. One recent example is a professional service agreement with Arcadis relating to the design and construction of the new transmission line in the Town of Tonawanda. (MP-084, PN 202000084). Under the terms of its agreement, Arcadis may request compensation for special services relating to a SEQRA review for an Unlisted Action. Its agreement, however, is silent as to who may approve such expenditures within the contract limits.

For this reason, we would like to recommend to the Board a resolution delegating to the Chief Financial Officer and the Division Head responsible for overseeing a professional service contract to approve such expenditures within the expenditure limits set by the Board.

If you have any questions regarding this request, please do not hesitate to contact us.