

MEMORANDUM OF LAW

DATE: April 21, 1988

TO: Richard Potter, Associate Civil Engineer  
FROM: City Attorney  
SUBJECT: Metcalf and Eddy Agreement: Compensation  
Limits

By memorandum of April 5, 1988, you asked whether in the above entitled agreement the compensation total found in Section IV is restricted and qualified by Attachment D which juxtaposes task descriptions and compensation amounts.

To answer this question, we start with the fundamental proposition that a contract must be interpreted to give a reasonable, operative and definite meaning to all the terms contained therein. Restatement 2d., Contracts, section 203(a); Witkin, Summary of California Law, section 690.

The payment standards for the consultant's services are detailed in Section IV which references Exhibits C and D, both of which are integrated into the contract by incorporation. Exhibit C is a compensation summary while Exhibit D is clearly marked "Engineering Fee Estimate" (emphasis added). Were nothing else said, the plain and clear meaning of the word "estimate" is an approximation and not a limitation. We need not base our interpretation on this explicit term alone since Section IV C. modifies and explains the purpose of Attachment D.

This breakdown Attachment D is provided only to assist the CITY in establishing the reasonableness of the total cost ceiling and the general apportionment of effort between tasks.

With this clause being explicit as to the purpose of Attachment D and with Attachment D itself being labeled an "estimate," we find the plain and clear meaning of the attachment is to provide an approximation of costs and not a limitation of costs.

Accordingly while the cost ceiling must be strictly observed and while the estimate should be used for evaluating progress toward obtaining the services contracted for, the estimate in Attachment D cannot be construed to be a fixed limitation on compensation.

JOHN W. WITT, City Attorney

By

Ted Bromfield

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Chief Deputy City Attorney