

cityofnovi.org

CITY of NOVI CITY COUNCIL

**Agenda Item I
August 9, 2010**

SUBJECT: Approval of an engineering contract amendment to Anderson, Eckstein & Westrick, Inc. for additional engineering services associated with the Meadowbrook Lake Dredging project in the amount of \$18,000 for additional tasks related to litigation and settlement with the project's contractor.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BIC*

CITY MANAGER APPROVAL *mp* *R24*

EXPENDITURE REQUIRED	\$18,000
AMOUNT BUDGETED	\$0
APPROPRIATION REQUIRED	\$18,000 (to be added to 1st Quarter Budget Amendment)
LINE ITEM NUMBER	210-211.00-805.685 (Drain Fund)

BACKGROUND INFORMATION:

Anderson, Eckstein and Westrick, Inc (AEW) provided the engineering services for the Meadowbrook Lake Dredging project. The project occurred in 2005 and ended in litigation between the City and Acme Contracting, the contractor for the project. The work related to the project (design engineering and construction engineering) was completed and AEW has been paid for the work that was directly related to the project.

In 2006, the contractor filed a lawsuit against the City relating to the project. The lawsuit was settled with the contractor in August 2008. The City Attorney's office worked with AEW between June 2008 and August 2008 to prepare a response to the lawsuit (see Tom Schultz letter dated August 4, 2010, attached). Upon settlement of the lawsuit, AEW submitted an invoice to the City in the amount of \$24,395 for the work during litigation, which at that time was outside of the original awarded scope of the project.

Since that time, staff has negotiated with AEW and has reached agreement on a settlement in the amount of \$18,000, which staff and the City Attorney believe to be reflective of the scope of work authorized by the City through the City Attorney's office. The settlement amount was based on staff's review of substantiating documents related to the invoice (such as detailed timesheet records) which resulted in staff's recommendation for payment in the amount of \$18,000.

RECOMMENDED ACTION: Approval of an engineering contract amendment to Anderson, Eckstein & Westrick, Inc. for additional engineering services associated with the Meadowbrook Lake Dredging project in the amount of \$18,000 for additional tasks related to litigation and settlement with the project's contractor.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

August 4, 2010

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Thomas R. Schultz
Direct: 248-539-2849
tschultz@secretwardle.com

Mr. Brian Coburn
Senior Civil Engineer
City of Novi
45175 West Ten Mile Road
Novi, MI 48375-3024

Re: *Acme Contracting v City of Novi*
Revised Anderson Eckstein (AEW) Payment Amount for Litigation
Services
Our File No. 55142 NOV

Dear Mr. Coburn:

You asked me to review the revised Anderson Eckstein (AEW) billing spreadsheet that reflects the time spent by AEW assisting the City in the litigation over the dredging of Meadowbrook Lake between Acme Contracting and the City. Although I am not certain of the basis for the delay in billing, I acknowledge that AEW did in fact perform services for the City in connection with defending against Acme's claims. If you recall, Acme was seeking over \$750,000 in damages for additional costs and lost profits primarily arising out of its claims that the conditions on site were different from what the City had represented them to be, the existence of underground springs not identified by the City, weather delays and the like. The City ended up settling the case at approximately \$225,000, much of which the City acknowledged was owed as a final payment in any event.

In July and August, the City was working with your office and AEW on the "engineering defenses" with regard to such claims. I trust that your office has reviewed the work described in AEW's invoices, and we have no objection to the resolution of those fees as proposed.

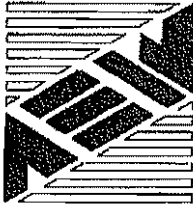
If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



Thomas R. Schultz

TRS/jah
cc: Clay Pearson, City Manager
Maryanne Cornelius, City Clerk
Rob Hayes, Director of Public Services
1468386_1



ANDERSON, ECKSTEIN AND WESTRICK, INC.
CIVIL ENGINEERS • SURVEYORS • ARCHITECTS
 51301 Schoenherr Road, Shelby Township, Michigan 48315
 Phone (586) 726-1234 Fax (586) 726-8780

Invoice

October 14, 2008
 Project No: 822003-0
 Invoice No: 0084297

CITY OF NOVI
 FINANCE DEPARTMENT
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024

Project 822003-0 MEADOWBROOK LAKE DREDGING

PO# 65262

447

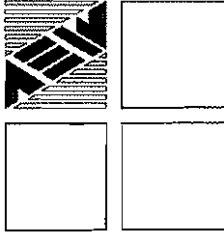
Professional Services from July 21, 2008 to September 14, 2008

Professional Personnel

	Hours	Rate	Amount
LEGAL			
PRINCIPAL ENG.	22.50	135.00	3,037.50
LIC. ENG/SUR/ARC	72.50	111.00	8,047.50
GRAD ENG/SUR/ARC	7.50	91.00	682.50
TEAM LEADER	15.00	91.00	1,365.00
ENG. AIDE II	1.50	69.00	103.50
ENG. AIDE I	.20	61.00	12.20
ENG AIDE TRAINEE	.60	44.00	26.40
SENIOR PROJ. ENG	92.80	123.00	11,414.40
MEETINGS			
SENIOR PROJ. ENG	2.00	123.00	246.00
Totals	214.60		24,935.00
Total Labor			24,935.00
		Total this Invoice	\$24,935.00

Outstanding Invoices

Number	Date	Balance
0083539	6/30/08	98,519.80
Total		98,519.80



ANDERSON, ECKSTEIN AND WESTRICK, INC.

51301 Schoenherr Road, Shelby Township, Michigan 48315
Civil Engineers • Surveyors • Architects 586-726-1234

August 4, 2010

Brian Coburn, PE, Senior Civil Engineer
City of Novi
Engineering Department
26300 Delwal Drive
Novi, Michigan 48375

Reference: Final Payment Agreement – Invoice No. 0084297
Meadowbrook Lake Dredging
AEW Project No. 822-003

Dear Mr. Coburn:

Pursuant to our telephone conversation, on August 2, 2010, Anderson, Eckstein and Westrick, Inc. (AEW) agrees to accept \$18,000 as payment in full for services rendered and invoiced under AEW Invoice No. 0084297. This agreement is subject to the City of Novi processing and AEW receiving said payment within ten (10) days of the date of this letter.

We trust this letter is consistent with your understanding and the payment will be processed accordingly. If you have any questions, please call.

Sincerely,

ANDERSON, ECKSTEIN AND WESTRICK, INC.

Gordon B. Wilson, PE
Executive Vice President

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