



WAGNER, FALCONER & JUDD, LTD.

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January 28, 2014

The City of Lake Elmo
Ryan Stempksi, P.E.
3800 Laverne Avenue North
Lake Elmo, MN 55402

SENT VIA U.S. MAIL AND EMAIL
ryan.stempksi@focusengineeringinc.com

Re: St. Croix Valley Landscaping, Inc.
Our File No.: 196504 WI

Dear Mr. Stempksi:

The undersigned firm has consulted with St. Croix Valley Landscaping pertaining to the payment of their invoice for maintenance of the City of Lake Elmo's seventeen rain gardens. In your letter dated January 8, 2013, you state that the City Council approves payment in the amount of \$3,560.00 for the maintenance contract. In your letter, you state: "Six of the seventeen rain gardens were determined to be defective and did not function, therefore the maintenance requirements were not met for these six rain gardens." You then prorated the agreed upon price for maintenance of the seventeen rain gardens, \$5,501.00, to provide no payment for the six rain gardens that were defective, to arrive at the payment offer of \$3,560.00.

Your assessment that "the maintenance requirements were not met for these six rain gardens" is inaccurate. A few important facts to consider include:

- 1) That even though six of the rain gardens were defective, the gardens still needed to be and were maintained by St. Croix Valley Landscaping. The majority of the plants in the defective gardens was not covered by water and were weeded and watered by St. Croix Valley Landscaping. **All seventeen of the rain gardens were maintained by St. Croix Valley Landscaping.**
- 2) That the rain gardens were defective due to their design and that St. Croix Valley Landscaping did not design the rain gardens. Accordingly, it was not St. Croix Valley Landscaping's fault that the rain gardens were defective and it is unjust to penalize it by refusing to pay the full bill for the services performed.
- 3) That St. Croix Valley Landscaping went above and beyond its obligations in the performance of the maintenance contract. The Mayor and Council Communication dated September 4, 2012, stated that the maintenance includes "removing weed invasive species twice annually" St. Croix Valley Landscaping in-fact weeded all seventeen rain gardens five times (three more than was required) and weeded them for both invasive and non-invasive species (again, more than was required).

In light of the above facts, St. Croix Valley Landscaping requests that the City of Lake Elmo reconsider the payment of the full contract price to St. Croix Valley at its February City Council meeting. It is my professional opinion that there is no legal basis for the City of Lake Elmo to pay less than the agreed-upon price of \$5,501.00 in this case.


However, in the event that it is not possible to comply with this request or the City Council denies the request for full payment, St. Croix Valley Landscaping will accept your offer of \$3,560.00 to settle this matter. St. Croix Valley Landscaping disputes the reduced payment, but will accept it to resolve this matter amicably. It is our hope, however, that the City Council will reconsider its position and do the right thing when all the facts are presented to it.

Please send your response to this letter to the undersigned firm by February 28, 2014. If the City Council agrees to payment in full or a fairer price, please submit a Project Pay Form that reflects that amount for St. Croix Valley Landscaping to execute. If the City Council insists on its current offer, please inform us of that decision and St. Croix Valley Landscaping will then execute the Project Pay Estimate 2 and submit it to the City of Lake Elmo.

Thank you for your anticipated cooperation. I trust that the City Council will genuinely take a look at the facts and consider the payment of the agreed upon contract price in good faith.

Sincerely,

WAGNER, FALCONER & JUDD, LTD.



Meridith J.O. Socha
Attorney at Law

cc: St. Croix Valley Landscaping