



# MAYOR & COUNCIL COMMUNICATION

**DATE:** July 21, 2015  
**REGULAR**  
**ITEM #** 12

**AGENDA ITEM:** Stormwater Drainage Improvements – Approve Ditch Cleaning at 8690 and 8702 Ironwood Trail N

**SUBMITTED BY:** Ryan Stempski, Assistant City Engineer

**THROUGH:** Julie Johnson, City Clerk

**REVIEWED BY:** Jack Griffin, City Engineer  
Mike Bouthilet, Public Works  
Cathy Bendel, Finance Director

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item..... City Engineer
- Report/Presentation ..... City Engineer
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion ..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

**POLICY RECOMMENDER:** Engineering / Public Works.

**FISCAL IMPACT:** \$5,962.50.

The City obtained a quote from Miller Excavating, Inc. in the amount of \$5,962.50 to remove sediment that is blocking drainage of the ditch along the property line of 8690 and 8702 Ironwood Trail N. Ditch cleaning/restoration is funded through Surface Water Management Fund.

**SUMMARY AND ACTION REQUESTED:**

The City Council is respectfully requested to consider approving the ditch cleaning at 8690 and 8702 Ironwood Trail N and awarding a construction contract to Miller Excavating, Inc. in the amount of \$5,962.50 to complete the work. The recommended motion for this action is as follows:

*“Move to approve ditch cleaning at 8690 and 8702 Ironwood Trail N and award a construction contract to Miller Excavating, Inc. in the amount of \$5,962.50.”*

**LEGISLATIVE HISTORY/BACKGROUND INFORMATION:**

A culvert under Ironwood Trail N collects drainage from a portion of the Tablyn Park Neighborhood including the public street right-of-way and discharges along the property line of 8690 and 8702 Ironwood Trail N. A 10-foot wide drainage and utility easement exists along this property line to facilitate drainage. Sediment deposit over time has filled in the ditch restricting the intended drainage path and creating standing water within the easement and adjacent properties. The sediment needs to be removed to restore a positive grade. The ditch grading work would consist of approximately 100 feet of sediment removal blending into the existing grades and re-establishing turf in the disturbed area.

Public Works did not have time and equipment available to complete the work and requested Engineering to obtain a contractor for this improvement. Due to the small size of the project it was a challenge to get contractors to provide a quote, therefore only one quote has been obtained. Miller Excavating, Inc. was recently awarded a street reconstruction project in Lake Elmo, therefore they will have crews mobilized in the area and were willing to take on the added work.

Attached are right of entry forms signed by each property owner to allow the work to be completed and restored as necessary to facilitate drainage along their shared property line. Both property owners have requested the work to be completed for several years and are concerned about the standing water along the ditch that is currently blocked by excess sediment. We have detailed the scope of work to be completed in the right of entry forms and have communicated with the property owners.

**RECOMMENDATION:**

Staff is recommending that the City Council approve the ditch cleaning at 8690 and 8702 Ironwood Trail N and award a construction contract to Miller Excavating, Inc. in the amount of \$5,962.50 to complete the work. The recommended motion for this action is as follows:

***“Move to approve ditch cleaning at 8690 and 8702 Ironwood Trail N and award a construction contract to Miller Excavating, Inc. in the amount of \$5,962.50.”***

**ATTACHMENT(S):**

1. Construction Contract with Miller Excavating, Inc.
2. Waiver of Trespass / Right of Entry Agreement for 8690 Ironwood Trail N.
3. Waiver of Trespass / Right of Entry Agreement for 8702 Ironwood Trail N.

**CONSTRUCTION CONTRACT FOR DITCH  
CLEANING AT 8690 & 8702 IRONWOOD TRAIL N  
LAKE ELMO, MINNESOTA**

This Contract, made this \_\_\_\_\_ day of \_\_\_\_\_ **2015**, by the City of Lake Elmo, Minnesota (hereinafter called the "Owner") and Miller Excavating, Inc. (hereinafter called the "Contractor").

WITNESSETH that the parties hereto agree as follows:

The Contractor shall provide all labor, services, materials, equipment and machinery, transportation, tools, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals, including profit and overhead, necessary for the performance, testing, start-up, and completion of the work as described herein:

DESCRIPTION OF WORK:

The Contractor shall remove sediment within the existing drainage ditch along 8690 and 8702 Ironwood Trail N to provide a minimum 2% slope from the existing 24-inch culvert end to daylight (approximately 100 feet in length). The Contractor shall match into the existing side slopes to create a 4:1 slope that can be mowed. The existing riprap in the ditch bottom shall be salvaged and placed at the 24-inch outlet for energy dissipation. Geotextile fabric and additional class III riprap is to be furnished and installed as necessary to finish the culvert end. A minimum of 4 inches of topsoil, seed and wood fiber blanket must be provided to establish turf for all disturbed areas.

All work shall be completed within the specified time frame and under the terms and conditions provided within this Construction Contract, and in accordance with the "General Conditions" shown in this contract. The contractor shall complete the proposed work by **AUGUST 21, 2015**.

The Owner will make payment for the whole contract on a lump sum basis upon acceptance by the Owner of all work required hereunder and in compliance with all the terms and conditions of this contract.

**TOTAL AMOUNT: \$5,962.50**

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

(Contractor)

(City of Lake Elmo)

## GENERAL CONDITIONS

- I. CHANGES IN WORK. - The Owner may at any time, make changes in the drawings and specifications, within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract or in the time required for its performance, an equitable adjustment will be made, and this contract will be modified accordingly by a "Contract Change Order". No charge for any extra work or material will be allowed unless the same has been ordered on such contract change order by the Owner and the price therefore stated in the order.
- II. INSPECTION OF WORK. - All materials and workmanship will be subject to inspection, examination, and test, by the Owner, who will have the right to reject defective material and workmanship or require its correction.
- III. COMPLETION OF WORK. - If the Contractor refuses or fails to complete the work within the time specified in this contract, or any extension thereof, the Owner may terminate the Contractor's rights to proceed. In such event the Owner may take over the work and prosecute the same to completion by contract or otherwise, and the Contractor will be liable for any excess cost occasioned the Owner thereby; and the Owner may take possession of and utilize in completing the work such materials and equipment as may be on the site of the work and necessary therefore. If the Owner does not terminate the right of the Contract to proceed, the Contractor will continue the work, in which event, actual damages for delay will be impossible to determine, and in lieu thereof, the Contractor may be required to pay to the Owner the sum of **\$100** as liquidated damages for each calendar day of delay, and the Contractor will be liable for the amount thereof: Provided, however, that the right of the Contractor to proceed will not be terminated because of delays in the completion of the completion of the work due to unforeseeable causes beyond the Contractor's control and without Contractor's fault or negligence.
- IV. RELEASES. - Prior to final payment, the Contractor will submit evidence that all payrolls, material bills, and other indebtedness connected with the work have been paid as required by the Owner.
- V. OBLIGATION TO DISCHARGE LIENS. - Acceptance by the Owner of the completed work performed by the Contractor and payment therefore by the Owner will not relieve the Contractor of obligation to the Owner (which obligation is hereby acknowledged) to discharge any and all liens for the benefit of subcontractors, laborers, material-person, or any other persons performing labor upon the work or furnishing material or machinery for the work covered by this contract, which have attached to or may subsequently attach to the property, or interest of the Owner.
- VI. NOTICES AND APPROVAL IN WRITING. - Any notice, consent, or other act to be given or done hereunder will be valid only if in writing.
- VII. CLEANING UP. - The Contractor shall keep the premises free from accumulation of waste material and rubbish and at the completion of the work shall remove from the premises all rubbish, implements and surplus materials.
- VIII. WARRANTY. - Contractor warrants and guarantees that title to all work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens. If within one year after completion of the work, any work is found to be defective, Contractor shall promptly, without cost to the Owner, correct such defective work as approved by the Owner.
- IX. IDEMNIFICATION. - Contractor shall defend and indemnify the city against claims brought or actions filed against the city or any of its officers, employees or agents for property damage, bodily injury or death to third persons, arising out of or relating to contractors work under the contract.
- X. WORKERS' COMPENSATION INSURANCE. - Contractor shall provide a certificate of insurance showing evidence of workers' compensation coverage or provide evidence of qualification as a self-insurer of workers' compensation.
- XI. LIABILITY INSURANCE REQUIREMENTS. - A certificate of insurance acceptable to the City shall be filed with the City prior to the commencement of the work. The certificate and the required insurance policies shall contain a provision that the coverage afforded under the contract will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the city. Contractor shall maintain commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence and an aggregate limit of not less than \$2,000,000. The CGL insurance shall cover liability arising from premises, operations, independent contractors, subcontractors, products-completed operations, personal injury and advertising injury, and contractually-assumed liability. The city shall be named as an additional insured under the CGL. Contractor shall maintain automobile liability insurance, and if necessary, umbrella liability insurance with a limit of not less than \$1,000,000 each accident and an aggregate limit of not less than \$2,000,000. The insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

**City of Lake Elmo**

3800 Laverne Ave. N.  
Lake Elmo, MN 55042

**Phone:** 651-770-2537  
**Fax:** 651-777-6530  
**Cell:**  
**Email:** dmcklocker@gmail.com

**Project:** Drainage Swale  
Ironwood Tr N  
Lake Elmo, MN

**Miller Excavating, Inc**

3636 Stagecoach Trail North  
Stillwater, MN 55802

**Phone:** 651-439-1637  
**Fax:** 651-351-7210  
**Web:** www.millerexc.com

**Date:** July 12, 2015  
**Estimator:** Steve St. Claire

**A. SWALE GRADING**

ITEM	DESCRIPTION	Est.		Rate	Amount
		Quantity	Unit		
1	Grade Swale from Culvert to Daylight				
2	CL III Rip Rap w/ Geotextile Fabric				
3	Import & Place 4" Topsoil				
4	Seed & Blanket Disturbed Area				
<b>TOTAL A</b>					<b>\$5,962.50</b>

**PROJECT NOTES**

1. Payment due within 30 days of initial invoice. Balances over 30 days will accrue a 1.5% per month charge.
2. Estimate price valid for 30 days.
3. Swale to be graded about 4 feet wide at bottom
4. Seed & blanket disturbed area during work.

**WAIVER OF TRESPASS/RIGHT OF ENTRY**

THE UNDERSIGNED, owner, tenant, or contract for deed vendee of certain land in the City of Lake Elmo, who is a person(s) with right to grant entry to the affected property, do(es) hereby consent and grant unto the City of Lake Elmo, its agents and assigns, the right to enter upon and commence construction and all activities required in connection with the removal of sediment within an existing drainage ditch, including grading the ditch to a minimum 2% slope and matching into the existing side slopes and completion of related work over, under, on, and across the property located at:

\_\_\_\_\_  
(8690 Ironwood Trail N) + 8702 Ironwood Trail North

Upon completion of the grading activity, the City, its agents and assigns, will restore the disturbed area.

It is further understood that this Waiver constitutes as a waiver on behalf of the owner or persons of interest in the property to any claim for damages or compensation for the acquisition of temporary easements over the above described property for the purposes of the public improvements herein described by the City of Lake Elmo, its agents and assigns, and by the general contractor.

Dated this 7<sup>th</sup> day of July, 2015.

Property Owners:

Joseph H. Chalub  
\_\_\_\_\_



**WAIVER OF TRESPASS/RIGHT OF ENTRY**

THE UNDERSIGNED, owner, tenant, or contract for deed vendee of certain land in the City of Lake Elmo, who is a person(s) with right to grant entry to the affected property, do(es) hereby consent and grant unto the City of Lake Elmo, its agents and assigns, the right to enter upon and commence construction and all activities required in connection with the removal of sediment within an existing drainage ditch, including grading the ditch to a minimum 2% slope and matching into the existing side slopes and completion of related work over, under, on, and across the property located at:

8702 Ironwood Tr N  
(8702 Ironwood Trail N)

Upon completion of the grading activity, the City, its agents and assigns, will restore the disturbed area.

It is further understood that this Waiver constitutes as a waiver on behalf of the owner or persons of interest in the property to any claim for damages or compensation for the acquisition of temporary easements over the above described property for the purposes of the public improvements herein described by the City of Lake Elmo, its agents and assigns, and by the general contractor.

Dated this 7<sup>th</sup> day of July, 2015.

Property Owners:

Linda M. Storkerich