

**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

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Project: Drainage Swale
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Lake Elmo, MN

Miller Excavating, Inc

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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				
TOTAL A					\$5,962.50

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.