

(5)TB, Lisa, Barb, Micaela,
Ben, Public

CONTRACT FOR SERVICES

This contract for services is made and entered into between the Town of La Pointe in Ashland County, Wisconsin, (the "Town") and Nelson Construction (the "Contractor").

RECITALS

WHEREAS, the Town desires to obtain the services described herein; and

WHEREAS, the Contractor represents to the Town that it has the expertise, knowledge and experience necessary to properly perform this contract according to its terms and that it is ready, willing and able to do so,

NOW, THEREFORE, in exchange for the valuable consideration set forth herein, the Town and the Contractor hereby agree as follows:

1. **Description of Services.** The Contractor will, in accordance with the terms and provisions set forth herein, provide the Town with the following services:

Install 80 cy of rock hauled in by barge and placed by an excavator from the shoreline, including permitting.

Such services will be provided at:

Joni's Beach located at 677 Main Street, La Pointe, WI

2. **Payment.** In exchange for the Contractor providing the Town with the services described herein, the Town will pay the Contractor the sum of up to \$ \$13,910.00 as follows:

Nothing down, balance in full upon completion of contract. Price is based on estimate.

The total amount payable by the Town to the Contractor for services under this contract shall, in no event, exceed \$ \$15,000.00.

3. **Dates of Service.** The services provided for herein shall be provided between June 24, 2020 and August 31, 2020.

4. **Reimbursement for Expenses.** The Contractor shall bear most of the costs and expenses under the terms of this Contract. However, in addition to the aforesaid payment for services, the Town will also reimburse the Contractor for the following actual, reasonable out-of-pocket expenses incurred in connection with performing this Contract: Not Applicable.

5. **Specifications.** The specifications for the services to be provided by the Contractor to the Town are set forth in the annexed Exhibit A which are incorporated herein by reference as a part of this Contract.

6. **Workmanlike Manner.** The services provided by the Contractor shall be provided in a workmanlike manner consistent with the terms and provisions of this contract.

RECEIVED

JUN 23 2020

Initial: dg

7. Warranty. The Contractor warrants that:

- a) All services it provides pursuant to this contract will be performed in accordance with all applicable federal, state and local laws, rules, regulations, codes and ordinances; and
- b) Any project or work of improvement the Contractor works on pursuant to this contract will comply when it is completed with all applicable federal, state and local laws, rules, regulations, codes and ordinances; and
- c) In the event it is determined that the Contractor has breached this warranty, the Contractor will promptly, upon being notified of such breach, immediately correct and cure the breach.

8. Compliance with Regulations. Within five (5) business days after this contract has been signed by the Contractor, the Contractor will provide the Town with a legible copy of each license, certificate and permit which has been issued to the Contractor evidencing that the Contractor is authorized by law to provide the services described in this contract. Compliance with this provision is a condition precedent to the performance of this contract.

9. Assumption of Liability. Each party to this contract accepts and assumes and shall be liable and responsible for any and all damages, injuries, deaths, losses, costs, expenses, fees and charges caused by the acts, omissions and negligence of its own directors, officers, members, employees, agents and representatives and any subcontractors and shall protect, defend and hold the other party to this agreement harmless from the same.

Neither party to this contract shall be liable or responsible for the negligence, acts or omissions of the other party or the other party's directors, officers, members, employees, agents or representatives.

10. Hold Harmless. The Contractor covenants that it will protect, defend, indemnify and hold the Town harmless from and against any and all claims, actions and causes of action filed or asserted by any person, entity, governmental unit or department against the Town or its supervisors, officers, employees, agents or representatives, for any damages, injury, death, losses, costs, expenses and fees or charges associated with, related to or arising from any occurrence, accident or incident caused by any negligence, act or omission of the Contractor or its officers, members, employees, agents or representatives in connection with this contract and its performance.

11. Relationship Between Town and Contractor. With respect to this contract, the Contractor shall be an independent contractor in regard to the Town and not an employee of the Town. As such, the Contractor shall, in accordance with §102.07(8)(b) Wisconsin Statutes:

- a) Maintain its business separate and apart from the Town.
- b) Hold a Federal Employer Identification Number for its business or else file a self-employment income tax return with the IRS reflecting its status.
- c) Control the means of performing this contract.

- d) Incur the main expenses related to the services provided under this contract.
- e) Be responsible for the satisfactory completion of the services provided for herein and be liable for a failure to complete the work or service specified herein.
- f) Receive the compensation provided for herein on the basis provided for herein.
- g) Realize a profit or suffer a loss under this contract, depending on how the Contractor performs.
- h) Have continuing reoccurring business liabilities and obligations.
- i) Operate a business, the success or failure of which depends on the relationship between business receipts and expenditures.

12. Proof of Insurance. Within five (5) business days after signing this contract, the Contractor shall file with the Town Clerk written documentation establishing that the Contractor has in effect the following types and amounts of insurance coverage:

- a) Worker's compensation insurance of at least \$500,000 each accident.
- b) Commercial liability insurance with limits of at least \$1,000,000 per occurrence/\$1,000,000 aggregate.
- c) Comprehensive automobile liability insurance of at least \$1,000,000 per occurrence/\$1,000,000 aggregate.
- d) The Town must be listed as additional insured.

13. Default; Termination. In the event of a default by either party in the performance of an obligation under this contract which continues for a period of twenty (20) days following written notice thereof to the party in default, the other party to this contract may terminate this contract by written notice to the party in default.

14. No Assignment. Neither party to this contract may assign their rights or obligations under this contract to another, in whole or in part, without prior written consent of the other party. Any assignment or attempted assignment in violation of this provision shall be null and void.

15. Applicable Law; Venue. This contract shall be interpreted under the laws of the State of Wisconsin. Any suit or proceeding relating to this contract shall be venued in Ashland County, Wisconsin.

16. Entire Agreement; Amendment. This contract sets forth the entire understanding and agreement between the parties relating to the subject of this contract and supersedes and replaces any prior discussions, negotiations and agreements, oral or written. This contract may be amended only by a writing signed by the undersigned.

17. Binding Contract. Each of the undersigned states they have read this contract in its entirety, that they understand each of its terms and provisions and that they sign the same freely and voluntarily, intending to be legally bound hereby.

18. Notice. Any notice to either party under this contract shall be in writing and be served either personally or by registered or certified mail addressed as follows:

To the Town:

Administrator
Town of La Pointe
PO Box 270
La Pointe, WI. 54850
administrator@townofla-pointe.wi.gov

To the Contractor:

Nelson Construction
PO Box 5
La Pointe, WI 54850
nelsonco@chednet.net

IN WITNESS WHEREOF, the undersigned have executed this agreement this ____ day of _____,
20____

The Town of La Pointe (the Town)

Signature: _____

Printed Name: _____

Title: _____

Full Legal Name of Contractor (the Contractor)

Signature: Arnold Nelson

Printed Name: Arnold Nelson

Title: President

**Piledriving - Marine Construction - Sand & Gravel
Sewer & Water - Concrete Ready-Mix**

NELSON

CONSTRUCTION COMPANY

ATTACHMENT A

**PO Box 5, La Pointe, WI 54850
Phone: 715-747-3300
Fax: 715-747-5000
Email: nelsonco@cheqnet.net**

September 27, 2019

Town of La Pointe
Attn: Ben Schram
PO Box 270
La Pointe, WI 54850

RE: JONI'S BEACH - SHORELINE RIP RAP ESTIMATE

Dear Ben;

Sorry it has taken me so long to give you this estimate to do the rip rap at Joni's Beach.

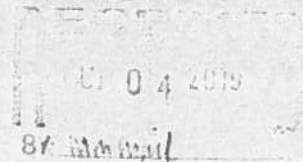
This estimate is for 80 cy of rock hauled in by barge and placed by an excavator from the shoreline - this should do about 80 LF to 90 LF of shoreline - our breakdown is as follows:

1) DNR & Army Corps exempt permit:	\$ 500.00
2) 6 hrs - Tug, barge & excavator - bringing in rock @ \$430.00/hr:	\$ 2,580.00
3) 80 cys - Large Rock @ \$93.00/yd:	\$ 7,440.00
4) Move in 135 Excavator to beach:	\$ 150.00
5) 6 hrs - 135 Excavator on the shoreline placing rock @ \$170.00/hr:	\$ 1,020.00
6) 160 sq yds - Filter cloth @ \$2.75/sq yd:	\$ 440.00
7) 6 hrs - Labor - 2 men @ \$130.00/hr:	\$ 780.00
Our Price:	\$12,910.00

Send no money now, but if you want us to proceed with the permit, just sign and return this estimate and when we get the permit we will see what or how much you want to do at that time.

All the prices above are based on estimates. You will be billed by materials hauled by the cubic yard and for machine hours used on your job. Prices subject to fuel surcharge as fuel prices change. All erosion control demanded by UDC (silt fence, seed and hay) will be installed & maintained on a Time & Material basis - all these materials & labor are extras & are not included in this estimate. All prices quoted above are current rates, at completion of the project rates and material costs may be adjusted to reflect price increases, if any.

If you have any questions, please feel free to call me direct (715-209-1300).




**Piledriving - Marine Construction - Sand & Gravel
Sewer & Water - Concrete Ready-Mix**

Joni's Beach Shoreline Rip Rap Estimate

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9/27/2019

Respectfully Submitted,


Arnold E. Nelson

I (we) accept the following line items as detailed above and as set forth in the Terms & Conditions on the reverse side of this contract:

YES

NO

Accepted by:

Ben Schram, Interim Town Foreman

Date

NOTICE OF LIEN RIGHTS

AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, NELSON CONSTRUCTION COMPANY OF LA POINTE, INCORPORATED, HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES FURNISHING LABOR OR MATERIALS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO CONTRACTOR PLUMBING, INC., ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH SUCH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY NELSON CONSTRUCTION COMPANY OF LA POINTE, INCORPORATED AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.

TERMS & CONDITIONS

A. SCOPE OF SERVICE

1. Unless indicated otherwise in the Proposal/Contract ("Contract"), NELSON CONSTRUCTION COMPANY OF LA POINTE, INCORPORATED (hereinafter "CONTRACTOR") will perform such services as directed by the Purchaser, or if the Contract is for a firm price CONTRACTOR will provide such services to the extent called for in the Contract.

2. If the service is performed at the Purchaser's business facility, CONTRACTOR representatives and others employed by CONTRACTOR shall comply with the Purchaser's rules for visitors pertaining to safety & protection. 3. It is recognized that the nature of service is such that changes in the scope of the work as originally contemplated often occur; CONTRACTOR will undertake additional work within the normal scope of such service but reserves the right to require the Purchaser to confirm in writing any extension of the work originally ordered. Pending receipt of requested written confirmation, CONTRACTOR shall be entitled to rely upon oral orders, including instructions of Purchaser's representatives. Any additional services performed by CONTRACTOR pursuant to such written or oral orders or instructions shall be paid for on the basis set forth herein or as otherwise agreed to in writing between the parties.

B. CHARGES

1. *General.* If the price for performing the service is firm, such price shall apply only to the work called for in CONTRACTOR's contract which shall be performed during ordinary business hours, unless otherwise agreed in writing. If the Purchaser requests changes in the scope of the work or an increase in the schedule of hours to be worked, additional charges will be made in accordance with the ordinary and customary practices of CONTRACTOR for time and materials work, as noted below. Purchaser is responsible for payment of all added costs related to changes directed by the Purchaser or Purchaser's agent, whether reduced to writing or not. Unless a fixed price has been agreed upon in writing, the work shall be performed on a time and material basis, and the Purchaser shall pay CONTRACTOR for the straight time and overtime expended in the performance thereof in accordance with those rates of CONTRACTOR in effect at the time the work is performed.

2. *Rates And Charges.* a. *Straight Time Rates.* The straight time rate will be charged for time worked on five eight hour workdays, Monday through Friday, each workday consisting of consecutive eight hours, exclusive of lunch time, beginning ordinarily at 8:00 a.m. If the work is performed on the Purchaser's premises, travel to the work site from CONTRACTOR's headquarters and return will be charged at the straight time rate. b. *Overtime Rates.* The overtime rate shall be applicable to all time worked not otherwise within the Monday through Friday eight hour daytime period. c. *Minimum Charges.* A minimum one-hour charge for cash service call shall be charged. Sunday and holidays are double rate.

C. *PARTS AND MATERIALS.* 1. *Service Parts.* Service parts furnished by CONTRACTOR will be invoiced to the Purchaser at CONTRACTOR's current regular prices these terms and conditions. 2. *Purchased Service Parts and Materials.* If, at the request of the purchaser, CONTRACTOR furnishes labor, parts or materials provided by contractors or suppliers or obtains service from machine or electrical shops, the charge to the Purchaser shall consist of the costs to CONTRACTOR plus then current profit and overhead charges.

D. *PAYMENT.* 1. Payment is due upon receipt of invoice. Penalty interest charges will be applied on all late payments. Penalty interest is 1.5% per month, accruing monthly, on any unpaid balance, from date of invoice. "Late Payments" are defined as any payment not received within 30 days of the invoice date. Penalty interest may not show on invoices, but remains due. Advanced payment for materials to be stockpiled on site and progress payments may be required and invoiced. Credit is not being extended under this Contract. All payments on this obligation or any resulting judgment will be applied first to costs of collection, next to accrued interest, and then to principal. This provision shall continue to apply until actual payment in full, notwithstanding the reduction to judgment of the underlying obligation.

2. If at any time during performance of this contract, in the sole judgment of CONTRACTOR, the financial condition of the Purchaser puts payment to CONTRACTOR at risk, CONTRACTOR may require full or partial payment in

advance. 3. Any controversy or claim arising out of, related to or concerning this Agreement, shall be brought and heard in Ashland County Wisconsin Circuit Court. The prevailing party in shall be entitled to recover all their actual costs of the action and any appeal, including payment of their reasonable actual (a) attorney's fees, (b) expert witness fees, (c) witness expense (including employee time at charge out rates), (d) out of pocket costs, and (e) other litigation related expenses. This provision shall continue to apply until actual payment in full, notwithstanding the reduction to judgment of the underlying obligation.

E. *TAXES.* The prices quoted do not include any sales, privilege, use, turnover, estate or other similar tax. The amount of any such tax which CONTRACTOR shall be required to pay because of the furnishing of services or delivery of parts or materials hereunder, shall be reimbursed to CONTRACTOR by the Purchaser upon presentation of invoice therefore, or in lieu thereof the Purchaser shall provide CONTRACTOR a tax exemption certificate acceptable to the taxing authorities.

F. *COMMENCEMENT AND COMPLETION.* Unless otherwise noted on the reverse side, the start date will be within 30 days of acceptance of this proposal. The completion date will be within 180 days thereafter. If for reasons beyond the direct control of CONTRACTOR, start or completion is delayed, Purchaser shall not unreasonably refuse to execute a change order reflecting the delayed start or completion date.

G. *LIMITED WARRANTY.* All materials are guaranteed to be as specified. CONTRACTOR agrees to correct any of its labor found defective for a period of one year following substantial completion of all work. The Owner's sole remedy for any defect in materials (including labor and supplies necessary to repair or replace defective materials) shall be to the manufacturer's warranty and is strictly with the manufacturer, not with CONTRACTOR. CONTRACTOR shall have no obligation to perform under this warranty unless paid in full on this contract.

THE WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. THIS LIMITED WARRANTY CONSTITUTES THE SOLE WARRANTY OF CONTRACTOR. CONTRACTOR'S LIABILITY TO PURCHASER ARISING OUT OF THE SERVICES, PARTS AND MATERIALS, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY LEGAL THEORY AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATION, OR DEFECTS FROM ANY CAUSE, SHALL BE LIMITED EXCLUSIVELY TO CORRECTING OF THE WORKMANSHIP.

H. LIABILITY

1. CONTRACTOR will carry Worker's Compensation insurance for its employees, if any, while involved in the subject work and will maintain public liability and property damage insurance in reasonable amounts to cover the liability arising from its activities. Any and all liability of CONTRACTOR whether in contract, in tort, including negligence, or otherwise SHALL EXPIRE ONE YEAR AFTER THE SUBSTANTIAL COMPLETION OF CONTRACTOR'S WORK.

2. NEITHER CONTRACTOR NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT, (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR OF SUBSTITUTE USE OR PERFORMANCE OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS FOR DAMAGES OF PURCHASER'S CUSTOMERS.

3. The Purchaser shall indemnify and hold CONTRACTOR, together with its employees, agents and suppliers harmless from any loss, liability or claim resulting from exposure to hazardous materials, asbestos, or asbestos containing materials.

Revised 08/20/10

