

In the Matter of the Petition of

and Others,  
For Constructing County  
Ditch No. \_\_\_\_\_

**Contract and Contractor's  
Bond**

of

The *within Bond and the sureties*  
*thereon are hereby approved this*.....  
*day of*....., 19.....

Filed....., 19.....

County Auditor.

RECEIVED

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1908

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1908

Exhibit 5

In the Matter of the Petition of \_\_\_\_\_ and Others for a  
Public Ditch in the County of \_\_\_\_\_ State of Minnesota:

THIS AGREEMENT, Made this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_  
by and between \_\_\_\_\_  
of \_\_\_\_\_ part \_\_\_\_\_ of the first part, and the County  
of \_\_\_\_\_ State of Minnesota, party of the second part, WITNESSETH:

THAT WHEREAS. The Board of County Commissioners of the County of \_\_\_\_\_  
State of Minnesota, did establish and order to be constructed a certain ditch, by their order bearing  
date the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_, according to the  
report of the civil engineer appointed to survey the same, made and filed herein, and according to the  
report of the viewers appointed herein, made and filed herein, which said ditch is designated as County  
Ditch No. \_\_\_\_\_, which number has been given to it by the County Auditor of said County;

AND WHEREAS. At a public sale of jobs of digging and constructing the entire work of said  
ditch, either as one job or in lineal sections of one hundred feet each, each of which sections is marked  
and numbered by a stake set by said engineer at the foot of each of said sections, as shown by said report  
of said engineer, which sale was held on the \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 19\_\_\_\_, the said County Auditor of said County did, with the  
approval of said engineer, duly sell to the part \_\_\_\_\_ of the first part hereto, he being the lowest and  
best responsible bidder therefor, the job of digging and constructing \_\_\_\_\_

the following sections of said ditch, numbered as follows from the outlet of said ditch, to-wit: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

for the total sum of \_\_\_\_\_ Dollars;

NOW, IN CONSIDERATION OF SAID PREMISES, The said part \_\_\_\_\_ of the first part hereby  
contract \_\_\_\_\_ and agree \_\_\_\_\_ to dig and construct said shares and sections above described \_\_\_\_\_

\_\_\_\_\_ within the time and in the manner set forth in  
the report of said engineer, and according to this contract, and the plans and specifications hereto  
attached and made a part hereof, marked "Exhibit A," and subject to the approval of said engineer  
and of the County Auditor of said County, and subject to all the requirements of law relating to this  
contract, and the provisions of law relating to the giving of bonds by contractors for public works and  
improvements.

The said part \_\_\_\_\_ of the first part further agree \_\_\_\_\_ that time shall be of the essence of this contract,  
and that if there shall be any failure to perform the work herein described according to the terms of  
this contract, and within the time limits specified therein, and according to the plans and specifications  
contained in said engineer's report, that \_\_\_\_\_ shall forfeit and pay to said County the sum

of Ten and no/100 - - - - - Dollars for each day that such failure shall  
continue; and that no extension of time within which to complete said work shall be granted unless  
applied for in writing to said County Auditor, showing to his satisfaction good and sufficient reasons  
therefor, and that no extension granted shall affect the right of said party of the second part to enforce  
such forfeiture, if any, as shall occur after the time originally limited before such extension or that  
shall occur after the limit of such extension.

Said part \_\_\_\_\_ of the first part also agree \_\_\_\_\_ to pay, as they become due, all just claims for all work  
and labor performed, and all skill and material furnished, in the execution of this contract, and to  
save said second party harmless from any cost, charge and expense that may accrue on account of the  
doing of the work specified in this contract.

Said part \_\_\_\_\_ of the first part also agree \_\_\_\_\_ that said engineer shall have the right, with the consent  
of said County Auditor, to modify his plans and specifications of said work as said work proceeds  
and as circumstances may require, provided no changes are made that will substantially impair the  
usefulness of any part of said ditch, or substantially alter its original character, or increase its total

(BOND)

Know All Men by these Presents:

That..... as principal....., and..... as sureties, are held and firmly bound unto the County of..... State of Minnesota, and to any person or persons who may perform any work or labor or furnish any skill or material in the execution of the contract described herein, or who may show themselves to be aggrieved or injured by any breach of the said contract, in the sum of.....

..... DOLLARS, lawful money of the United States of America, to be paid to the said County of..... State of Minnesota, its successors or assigns, and said person or persons above specified, their heirs, executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the..... day of..... A. D. 19.....

The condition of the above obligation is such that, whereas, at a public sale of the jobs of digging and constructing the certain ditch designated as No..... held on the..... day of..... A. D. 19....., certain sections thereof numbered..... were duly sold to the said.....

..... and the said..... ha..... made a contract with the said County of.....

State of Minnesota, bearing date the..... day of..... A. D. 19..... to construct the same;

NOW, THEREFORE, If the said..... shall well and truly perform his said contract, and shall complete the work in said contract specified according to its terms, and within the time and for the price therein specified, and shall comply with all the requirements of law relating to said contract, and shall pay all damages which may accrue by reason of..... failure to complete said contract and said work within the time and in the manner required by said contract; and shall pay, as they become due, all just claims for all work and labor performed, and skill and material furnished, in the execution of said contract, and shall have said second party to said contract harmless from any cost, charge and expense that may accrue on account of the doing of said work in said contract specified; and that, in case of the failure to construct said work according to the terms of said contract, the sureties hereon shall be liable for all damages resulting from such failure, whether said work be re-sold or re-let, or not, and that any person showing himself aggrieved, injured, or damaged by such failure may maintain an action upon this obligation in his own name, and that such right of action shall be successive in favor of all such persons so injured or damaged; and that, in case any change, extension, addition or alteration is made in the terms of said contract, such change, extension, addition or alteration shall in no case affect the obligation of this bond, or the obligation of said principal..... and sureties thereto; then this obligation shall be void, otherwise it shall remain and be of full force and virtue.

Signed, Sealed and Delivered in Presence of }..... (SEAL)
}..... (SEAL)
}..... (SEAL)
}..... (SEAL)

State of Minnesota, } ss.
County of..... }

came personally before me on this..... day of..... A. D. 19..... to me well known to be the persons who executed the foregoing bond, and each acknowledged that he executed the same as his free act and deed.

State of Minnesota, } ss.
County of..... }

..... being first duly sworn, doth say, each for himself, that he is the same person as the surety above named, and he executed the foregoing instrument, and that he is a resident freeholder in the County of..... State of Minnesota, and worth the sum of..... Dollars above his debts and liabilities and exclusive of his property exempt from execution.

Subscribed and sworn to before me this..... day of..... A. D. 19.....

cost by more than ~~ten~~<sup>ten</sup> per centum of the total original contract price for the construction thereof

Upon the completion of said work according to the terms hereof, and the inspection and approval thereof by said engineer having charge thereof, and the surrender of the certificate of acceptance thereof to be issued to said first part.....by said engineer with the approval thereof by the Board of County Commissioners of said County indorsed thereon, to the County Auditor of said County, according to law, said party of the second part hereby agrees to pay to said part.....of the first part the contract price herein specified, out of the general ditch fund of said County, if said fund shall then be sufficient to pay the same; and in case said fund shall not then be sufficient to pay the same that it will pay the same as soon as said fund shall be sufficient to pay the same, with interest at the rate of six per cent per annum from the date such certificate shall be presented for payment until the same shall be called in for payment by the County Treasurer or the County Auditor of said County.

IN WITNESS WHEREOF, the part.....of the first part hereto ha..... hereunto set..... hand....., and the party of the second part has caused the same to be signed in its name by its County Auditor and his seal of office to be hereto affixed.

.....County, Minnesota.

By.....  
County Auditor.

The foregoing contract, and the specifications thereto attached and made a part thereof, and the form thereof, are hereby approved this..... day of..... A. D. 19.....

.....  
Civil Engineer.

.....  
County Attorney,  
.....  
County, Minnesota.