

**VILLAGE OF WATERLOO  
RESOLUTION NO. 04-26-16-04**

**WHEREAS**, the Board of Trustees of the Village of Waterloo feel it is in the best interest of the Village of Waterloo to modify the Donahue Drainageway; and

**WHEREAS**, Yong Construction submitted the lowest bid at a total cost of \$34,491 to perform these modifications.

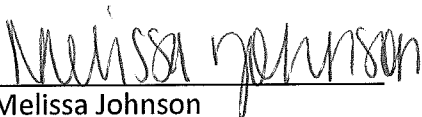
**WHEREAS**, on March 8, 2016, the Village Board of Trustees approved the bid submitted by Yong Construction upon recommendation of the project engineer.

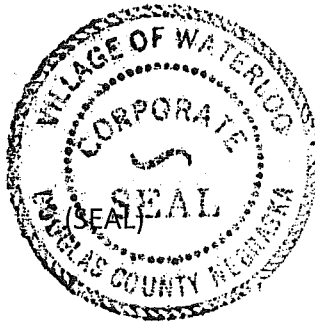
**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF WATERLOO, NEBRASKA, AS FOLLOWS:**


**THAT**, the contract with the Yong Construction, attached hereto as Exhibit "A", is hereby adopted.

PASSED AND APPROVED this 26 day of April, 2016.

ATTEST:

  
Melissa Johnson  
Clerk



  
Ken Hitchler  
Chairperson

AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between the Village of Waterloo, Nebraska ("Owner") and  
Yong An DBA Yong Construction ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**Construction of a concrete drainage liner, regrading the site and miscellaneous appurtenances to provide a complete and working system shown in the drawings.**

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

**Donahue Drainage Improvements  
Waterloo, Nebraska  
JEO Project No. 140737.00**

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by JEO Consulting Group, Inc.

3.02 The Owner has retained JEO Consulting Group, Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The start date for the Work will be **June 1, 2016** and the Work will be substantially completed on or before **July 1, 2016**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **July 15, 2016**.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any

extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner **\$250.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$250.00** for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

#### ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. ~~For all Work other than Unit Price Work, a lump sum of: \$ \_\_\_\_\_.~~

~~All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.~~

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

| Item No.        | Quantity | Unit | Description                                       | Unit Price     | Total              |
|-----------------|----------|------|---------------------------------------------------|----------------|--------------------|
| <b>BASE BID</b> |          |      |                                                   |                |                    |
| 1               | 1        | LS   | Mobilization                                      |                | <b>\$1.00</b>      |
| 2               | 1        | LS   | Bonding and Insurance                             |                | <b>\$3,000.00</b>  |
| 3               | 1        | LS   | Site Grading                                      |                | <b>\$5,000.00</b>  |
| 4               | 112      | SY   | Build PCC Low Flow Liner without Curb             | <b>\$60.00</b> | <b>\$6,720.00</b>  |
| 5               | 260      | SY   | Build PCC Low Flow Liner with Curb                | <b>\$61.00</b> | <b>\$15,860.00</b> |
| 6               | 1        | LS   | Install 36" CMP Flared End Section with Bar Grate |                | <b>\$1,000.00</b>  |
| 7               | 91       | LF   | Straw Wattle                                      | <b>\$10.00</b> | <b>\$910.00</b>    |

| Item No.              | Quantity | Unit | Description                   | Unit Price | Total              |
|-----------------------|----------|------|-------------------------------|------------|--------------------|
| 8                     | 1        | ACRE | Seeding, Fertilizer and Mulch | \$2,000.00 | \$2,000.00         |
| <b>TOTAL BASE BID</b> |          |      |                               |            | <b>\$34,491.00</b> |

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) **\$34,491.00.**
- ~~D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.~~

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the **second (2nd) Tuesday** of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 125 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

## **ARTICLE 7 – INTEREST**

- 7.01 All amounts not paid when due shall bear interest at the rate of 12 percent per annum.

## **ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
  - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
  - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 8, inclusive).
  2. Performance bond (pages 1 to 2, inclusive).
  3. Payment bond (pages 1 to 2, inclusive).
  4. ~~Other bonds.~~
    - a. ~~\_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).~~
  5. General Conditions (pages 1 to 65, inclusive).
  6. Supplementary Conditions (pages 1 to 10, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings (not attached but incorporated by reference) consisting of 8 sheets with each sheet bearing the following general title: Donahue Drainage Improvements, Waterloo, Nebraska.
  9. ~~Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).~~
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 1 to 6, inclusive).
  11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
  12. **Equipment Assessment Certification**
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## ARTICLE 10 – MISCELLANEOUS

### 10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

#### 10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

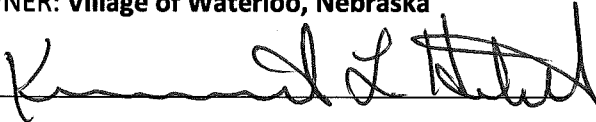
- B. If Owner is a public entity in the State the Project is located, then Contractor shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the State of the Project is located. Contractor shall require the same of each subcontractor.


IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **March 8, 2016** (which is the Effective Date of the Contract).

OWNER: Village of Waterloo, Nebraska

CONTRACTOR: Yong An DBA Yong Construction





By: Kenneth L. Hitchler

By: Scott Klippert

Title: Board Chairperson

Title: project Mgr.

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: Melissa Johnson

Attest: Scott Klippert

Title: Village Clerk

Title: estimator

Address for giving notices:

Address for giving notices:

PO Box 127

12 Ginger Cove Rd

Waterloo, NE 68069-0127

Valley, NE 68064-3000

License No.: \_\_\_\_\_  
*(where applicable)*





**EQUIPMENT ASSESSMENT CERTIFICATION**

BY REQUIREMENT OF NEBRASKA STATE STATUTE 77-1323, THE FOLLOWING INFORMATION MUST BE FURNISHED BY ALL CONTRACTORS AND SUBCONTRACTORS UTILIZING ANY EQUIPMENT ON ANY AND ALL PUBLIC IMPROVEMENT CONTRACTS.

This is to certify that all equipment to be used on JEO Project No. 140737.00, except that acquired since assessment, has been assessed for the current year in Douglas County.

Name of Company Yong Const.

Authorized Official Scott Wekhorst  
(Signature)

Title Project Mgr

STATE OF NEBRASKA

COUNTY OF SARPIY

On the 15<sup>th</sup> day of April, 2016, before me personally appeared the above named Scott Wekhorst and being first duly sworn stated that the above statement is correct and true.



Dawn M. Wagner  
Notary Public