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

This Agreement is by and between **Sanitary and Improvement District No. 390 of Sarpy County, Nebraska (SID 390)** ("Owner") and **_____** ("Contractor").

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

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: **SID 390 Village on Main – Phase 1 Storm Sewer and Paving**

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: construction of RCP gravity storm sewer pipes and PCC pavement with associated fittings, approved materials, structures, necessary appurtenances, and other work that is incidental and necessary for a completed improvement.

ARTICLE 3—ENGINEER

3.01 The Owner has retained **FoleyShald Engineering, LLC.** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by **FoleyShald Engineering, LLC.**

ARTICLE 4—CONTRACT TIMES

4.01 *Time is 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: Days*

A. The Work will be substantially complete within **65** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **65** days after the date when the Contract Times commence to run.

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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 Contract Times, as duly modified. 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 **$1,000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified 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 Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **$500** 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 Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.04 *Special Damages*

A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

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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 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	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	BID AMOUNT
	STORM SEWER				
1	MOBILIZATION	1	LS		
2	MAINTAIN SILT FENCE	650	LF		
3	DEWATERING	40	HR		
4	STABILIZE TRENCH (3" CRUSHED ROCK AGGREGATE)	100	TN		
5	MAINTAIN CONSTRUCTION ENTRANCE (3" CRUSHED ROCK AGGREGATE)	100	TN		
6	CONSTRUCT 18" RCP (CLASS III) W/ TYPE R2 AGGREGATE BEDDING	903	LF		
7	CONSTRUCT 24" RCP (CLASS III) W/ TYPE R2 AGGREGATE BEDDING	677	LF		
8	CONSTRUCT 30" RCP (CLASS III) W/ TYPE R2 AGGREGATE BEDDING	382	LF		
9	CONSTRUCT 48" RCP (CLASS III) W/ TYPE R2 AGGREGATE BEDDING	355	LF		
10	*DELETED*	-	-	-	-
11	CONSTRUCT 54" I.D. STORM MANHOLE (1 EA)	6	VF		
12	CONSTRUCT 60" I.D. STORM MANHOLE (2 EA)	13	VF		
13	CONSTRUCT 96" I.D. STORM MANHOLE (1 EA)	15	VF		
14	CONSTRUCT 48" I.D. AREA INLET – TYPE II (2 EA)	10	VF		
15	CONSTRUCT 18" CMP CULVERT	160	LF		
16	CONSTRUCT 24" R.C. FLARED END SECTION	1	EA		
17	CONSTRUCT 36" R.C. FLARED END SECTION	1	EA		
18	CONSTRUCT 48" R.C. FLARED END SECTION	2	EA		
19	*DELETED*	-	-	-	-
20	INSTALL REINFORCED CONCRETE PIPE COUPLERS	21	EA		
21	*DELETED*	-	-	-	-
22	INSTALL RIP-RAP, TYPE A	24	TN		
23	INSTALL RIP-RAP, TYPE B	146	TN		
24	INSTALL RIP-RAP, TYPE C	168	TN		
25	72" RCP CULVERT & GRADING REIMBURSEMENT	1	LS	$169,877.40	$169,877.40

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PAVING					
101	TRAFFIC CONTROL	1	LS		
102	COMMON EARTH EXCAVATION	4,484	CY		
103	CONSTRUCT 7-INCH CONCRETE PAVEMENT (OPW 3500)	13,451	SY		
104	CONSTRUCT 6-INCH CONCRETE MEDIAN	381	SF		
105	CONSTRUCT 6-INCH GRAVEL SURFACING	344	SY		
106	ADJUST MANHOLE TO GRADE	18	EA		
107	INSTALL EXTERNAL FRAME SEAL	14	EA		
108	CONSTRUCT THICKENED EDGE	238	LF		
109	CONSTRUCT CONCRETE HEADER	168	LF		
110	CONSTRUCT CURB INLET - TYPE I	9	EA		
111	CONSTRUCT CURB INLET - TYPE III	10	EA		
112	INSTALL CURB INLET PROTECTION	19	EA		
113	CONSTRUCT END OF ROAD BARRICADE	6	EA		
114	CONSTRUCT TEMPORARY TURNAROUND (4 EA)	1128	SF		
115	INSTALL SEEDING (SUBDIVISION MIX)	6	AC		
116	INSTALL MULCHING	6	AC		
117	INSTALL STREET NAME SIGNS	14	EA		
118	INSTALL REGULATORY SIGNS	12	EA		
119	INSTALL SIGN POSTS	12	EA		
120	INSTALL PAVEMENT TURN LANE MARKING, GROOVED, SOLID WHITE PERMANENT PAINT	4	EA		
121	INSTALL PAVEMENT STRIPING, GROOVED, 6" SOLID WHITE PERMANENT PAINT	92	LF		
122	JET EXISTING SANITARY SEWER	4,349	LF		
TOTAL					$

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 Unit Price Work (subject to final Unit Price adjustment) $_____.

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.

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6.02 *Progress Payments; Retainage*

A. Each month Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Engineer.

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 the value of the Work completed (with the balance being retainage).

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
    a. Performance bond (together with power of attorney).
    b. Payment bond (together with power of attorney).
3. General Conditions.
4. Supplementary Conditions.
5. Specifications as listed in the table of contents of the Specifications and Contract Documents.
6. Drawings (not attached but incorporated by reference) consisting of **24** sheets with each sheet bearing the following general title:

    SID 390 Village on Main – Phase 1 Storm Sewer and Paving

7. Addenda (numbers **___1_____** to **____2_____**, inclusive).

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8. Exhibits to this Agreement (enumerated as follows):
    a. **Contractor's Bid**
    b. Documentation submitted by Contractor prior to Notice of Award
    c. Certificate of Assessment
    d. Contractor NPDES Certification Statement
    e. Agreement for Transfer of Electronic Files
    f. Certification of Non-Segregated Facilities
    g. Certificate of Liability Insurance
9. 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.
    e. Warranty Bond, if any.

B. The Contract Documents listed in Paragraph 7.01.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 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

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4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. 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 Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. 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.

8. 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.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. 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.

8.02 *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 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

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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.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), 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.

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

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:	Contractor:
_____ *(typed or printed name of organization)*	_____ *(typed or printed name of organization)*
By: _____ *(individual's signature)*	By: _____ *(individual's signature)*
Date: _____ *(date signed)*	Date: _____ *(date signed)*
Name: _____ *(typed or printed)*	Name: _____ *(typed or printed)*
Title: _____ *(typed or printed)*	Title: _____ *(typed or printed)*
	*(If **[Type of Entity]** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*
Attest: _____ *(individual's signature)*	Attest: _____ *(individual's signature)*
Title: _____ *(typed or printed)*	Title: _____ *(typed or printed)*
Address for giving notices:	Address for giving notices:
_____	_____
_____	_____
_____	_____
Designated Representative:	Designated Representative:
Name: _____ *(typed or printed)*	Name: _____ *(typed or printed)*
Title: _____ *(typed or printed)*	Title: _____ *(typed or printed)*
Address:	Address:
_____	_____
_____	_____
_____	_____
Phone: _____	Phone: _____
Email: _____	Email: _____
*(If **[Type of Entity]** is a corporation, attach evidence of authority to sign. If **[Type of Entity]** is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*	License No.: _____ *(where applicable)*
	State: _____

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