

# Agreement Between Owner and Contractor For Construction Contract

This Agreement is by and between **Village of Ceresco** ("Owner") and \_\_\_\_\_ ("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: Mill and Asphalt Overlay to include 2-inch mill and 3-inch overlay of approximately 30,000 SF on Elm Street between 1<sup>st</sup> Street and 2<sup>nd</sup> Street with Hot Mix Asphalt SLX 3-inch.

## **ARTICLE 2—CONTRACT TIMES**

### *2.01 Time is of the Essence*

A. All time limits for completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

### *2.02 Contract Times: Dates*

- A. The Work not to commence until after **April 1, 2026** and be finally complete on or before **June 30, 2026**.
- B. Contractor shall notify Owner at least one week prior to commencement of work and coordinate traffic control device installation with Owner.
- C. If Work is delayed beyond the control of the Contractor, Contractor shall notify Owner immediately of the cause of such delay and the continuation of the delay, in writing.
- D. Change of contract times shall be changed only by Change Order. Any claim for a change of contract times shall be based on written notice submitted to the other party.

### *2.03 Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 2.01 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. Final Completion:** Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Final Completion, until the Work is finally complete.

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.

**ARTICLE 3—CONTRACT PRICE and INSURANCE**

3.01 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).

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
1	Mobilization		1	\$	\$
2	Asphalt Mill, 2"	SF	30,000	\$	\$
3	Asphalt Concrete Surface Course, 3" Type SLX	SF	30,000	\$	\$
4	Full Depth Asphalt Patch	SF		\$	\$
				\$	\$
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. Estimated quantities are not guaranteed.

- B. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) is \_\_\_\_\_ (\$\_\_\_\_\_).
- C. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.
- D. Owner shall provide traffic control for this project.

3.02 *Insurance and Liability*

- A. Contractor shall indemnify and hold harmless Owner, its officers, board, employees, and agents against all claims, costs, losses and damages arising out of or relating to the performance of the Work, whether it be property damage or bodily injury or death.
- B. Contractor shall furnish to Owner, upon the execution of this Contract, a Certificate of Liability Insurance naming Owner as an additional insured, with coverage of at least \$1,000,000.00 per person and \$1,000,000.00 per incident. In addition thereto, if Contractor has employees which subject Contractor to the Workers Compensation Laws of the State of Nebraska, Contractor shall furnish the statutory required Workers Compensation Insurance for said employees. Additionally, coverage shall also include Builder’s Risk coverage based on a completed value basis, in the amount of the full insurable replacement cost thereof. This insurance shall include the Owner and Contractor as named insureds as insureds or named insureds and shall be an “all risk” policy form that shall at least include insurance for

physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; vehicle impact; smoke; theft; vandalism and malicious mischief; mechanical breakdown, and artificially generated electric current; earthquake, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations. Proof of insurance shall be provided prior to commencement of work.

## **ARTICLE 4—PAYMENT PROCEDURES**

### **4.01 Final Inspection**

- A. Upon written notice from Contractor that the entire Work or an agreed upon portion is complete, Owner will promptly make a final inspection with Contractor and will notify Contractor in writing of the particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take measures as are necessary to complete such Work or remedy such deficiencies.

### **4.02 Submittal and Processing of Payments**

- A. Contractor shall submit Applications for Final Payment at the conclusion of the project, which shall be accompanied by certificates of evidence of insurance; any test results (if requested), operating instructions, schedules, guarantees, bonds, or other documents required by the contract.

### **4.03 Payment at final completion/acceptance**

- A. Upon final completion and acceptance of the Work by the Owner, Owner shall pay the Contract Price subject to any change orders, as approved by the Owner, as set forth in this contract, less any set off for liquidated damages. (If the final completion is delayed by no fault of the contractor, the same shall be substantiated in writing at the time of final completion if not excused by the Owner at a prior time).

### **4.04 Consent of Surety**

- A. Owner will not make final payment, unless Contractor submits written consent of the surety to such payment, return, or release.

## **ARTICLE 5—CONTRACT DOCUMENTS**

### **5.01 Contents**

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

1. This Agreement. (Attach evidence of authority to sign)
2. Bonds:
  - a. Performance bond (together with power of attorney).\*
  - b. Payment bond (together with power of attorney). \*

\* These must be the same or similar to Document A312-2010 suitable for public improvement projects.

3. Specifications and Drawings as listed in the attachment hereto.
4. Proof of Insurance naming Owner additional Insured pursuant to Article 3.

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. Warranty Bond, if any.
- B. There are no Contract Documents other than those listed above in this Article.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 6—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **6.01 Contractor 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 and the bid has been created based on the measurements and determinations made specifically by the contractor and not upon the estimates made by the Owner.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. 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; the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and Contractor's safety precautions and programs.
  5. 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.
  6. 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.
  7. Contractor has given Owner 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.

8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. 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.
10. **WARRANTY OF TITLE.** Upon Completion of the Contract, Contractor warrants and guarantees title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the Owner no later than the time of payment free and clear of all Liens.

#### **ARTICLE 7 – INSPECTIONS, DEFECTIVE WORK**

7.01 CONTRACTOR shall abide by the Laws, Regulations and the Standards of Construction of any and all public bodies having jurisdiction in the area of the project. In the event any inspections or testing are required, Contractors shall assume full responsibility for arranging and obtaining such inspections, tests and approvals. Contractor shall notify the Owner of the results.

7.02 Uncovering Work: If any Work is covered contrary to the request of the Owner prior to the Owner inspecting the same, if it is found that the Work is defective, the Contractor shall pay the costs of uncovering the work to inspect or test. If the uncovered work is not defective, the Contractors shall be allowed an increase in the Contract Price or extension of Contract Times, or both.

7.03 Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not installed, completed, or if Work has been rejected by the Owner, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses and damages arising out of or relating to such correction or removal, including to all costs of repair or replacement of work of others. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any.

7.04 Correction Period:

- A. If, within one year after the date of Final Completion, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated, is found defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  1. Repair such defects or areas;
  2. Correct such defective Work; or
  3. If the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. Satisfactorily repair, remove, correct or replace any damage to other Work, to the work of subcontractors.
- B. If not done by Contractor Promptly
  1. If Contractor does not comply with the terms of the Owner's written instructions or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective work corrected or repaired or may have the Work removed and replaced. All claims, costs, losses and damages, including charges for professions and

attorneys) arising out of or relating to such correction or repair or such removal and replacement will be paid by Contractor.

2. Where defective Work has been corrected or removed and replaced, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
3. Contractor's obligations under this Article are in addition to any other obligation or warranty.

## **ARTICLE 8 – TERMINATION**

8.01 At any time and without cause, Owner may suspend the Work and any portion for a period of not more than 60 consecutive days by notice in writing to Contractor which will fix a date on which work shall be resumed and Contractor shall resume the Work on said date. Contractor shall be granted an adjustment of the Contract Price or an extension of times, or both, which can be attributed directly to any such suspension if the Contractor makes a Claim therefor.

8.02 For Cause

- A. For cause: The following are grounds for termination:
  1. Contractor's disregard of Laws or Regulations of any public body with jurisdiction.
  2. Contractor's repeated disregard of the authority of the Owner;
  3. Contractor's substantial violation of any provisions of the contract;
  4. Contractor's failure to perform the Work according to the Contract Documents, including failure to provide suitable materials, equipment or personnel to complete the same.
- B. Upon the occurrence of one or more of the grounds specified, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of the Contractor:
  1. Exclude Contractor for the Site.
  2. Incorporate in the Work all materials stored at the site for which the Owner has paid Contractor but which are stored elsewhere; and
  3. Complete the Work as Owner may deem expedient. In the event Owner so proceeds, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance exceeds all claims, costs, losses and damages (including but not limited to all fees and charges of attorneys and other professionals, sustained by Owner arising from or related to completion of the Work, such excess will be paid to Contractor. If such claims, costs, losses and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. When Contractor's service have been terminated by Owner, the termination will not affect any rights or remedies of Owner against the Contractor then existing or which may thereafter accrue. Any payment of moneys due Contractor by Owner will not release Contractor from Liability.
  4. Contractor's service will not be terminated if Contractor begins within seven days of receipt of the notice of intent to terminate to correct its failure to perform and proceeds diligently to cure the failure within no more than 30 days of receipt of said notice.

5. To the extent the Contractor has provided a performance bond, the termination procedures of the bond supersede the provisions hereunder.

8.03 Termination for Convenience.

- A. Upon seven-days written notice to Contract, Owner may, without cause or without prejudice to any other right or remedy of Owner, terminate the Contract and in such case, the Contractor shall be paid for (without duplication) :
  1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of the termination, including fair and reasonable sums for overhead and profit on such Work;
  2. Expenses sustained prior to the effective date of the termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with the uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  3. All claims, costs, losses and damages (including but not limited to all fees and charges of attorneys, and other professionals and all court or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Supplier and others; and
  4. All reasonable expenses directly attributed or resulting from the termination.
  5. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from the termination.

**ARTICLE 9 – MISCELLANEOUS PROVISIONS**

9.01 NOTICE:

- A. Whenever any provision of the Contract Documents requires notice, it will be deemed to have been given if:
  1. It is delivered in person or sent by registered or certified mail, postage prepaid, to the last address set forth for Address and Designated Representative set forth below.
  2. In case of emergency, the following individual(s) shall be notified in person or at the phone number and Designated Representative set forth below.

9.02 JURISDICTION: This Contract is governed by the laws of the State of Nebraska and any disputes shall be resolved in the Saunders County Court System.

9.03 TIME COMPUTATION:

When any time period is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period, provided that if any period falls on a Sunday or Saturday or on a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

9.04 SURVIVAL OF COVENANTS AND OBLIGATIONS

All covenants, obligations, representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligation indicated in said documents will survive the final payment, completion and acceptance of Work or termination or completion of the Contract or termination of the services of the Contractor.

In Witness Whereof, Owner and Contractor have entered into this Agreement. This Agreement will be effective on **the dates last signed below:**

Owner:

Contractor:

\_\_\_\_\_  
*VILLAGE OF CERESCO*  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(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.)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone:

Email:

\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone:

Email:

\_\_\_\_\_

**SPECIFICATIONS:**

Asphalt Mill and Overlay (with asphalt patch where required)  
Elm Street between 1<sup>st</sup> and 2<sup>nd</sup> Street, Ceresco, Nebraska

1. Two-Inch Asphalt Milling (millings to be disposed of by Contractor)  
Three-Inch Asphalt Overlay, maintain current topography  
Asphalt Patch at needed
2. Owner will be responsible for Traffic Control Devices – Contractor to coordinate placement of devices and shall notify Owner at least 1 week in advance of commencement of work.
3. Millings shall not be placed upon any private property and if in sidewalk space, must be removed and space restored to pre-construction condition.
4. Storage of equipment and materials to be coordinated with the Owner prior to commencement of work and location determined.