

**AGREEMENT BETWEEN
THE CITY OF LINCOLN, NEBRASKA,**

**on behalf of the Lincoln-Lancaster County Health Department, ("City"),
and the VILLAGE OF MALCOLM, NEBRASKA, having an address of 137 E 2, P.O. Box
228, Malcolm, NE 68402, for the purpose of providing health regulation inspection and
enforcement within the corporate limits and one-mile zoning jurisdiction of the Village of
Malcolm.**

WHEREAS, the Village of Malcolm is desirous of contracting with the City, through the Lincoln-Lancaster County Health Department, in the interest of:

- Protecting the public's health and the environment from pollution;
- Providing minimum standards regulating design, construction, installation, maintenance, and operation of individual sewage disposal systems within Lancaster County;
- Providing investigation of public health nuisance conditions as defined by the Village of Malcolm Code Chapter 4:
- Reviewing transfers of properties that are served by individual domestic water wells or onsite wastewater treatment systems to assure they meet minimum standards regulating design, construction, installation, maintenance, and operation established in the Village of Malcolm ordinances and code as applicable; and
- Reviewing newly proposed subdivisions that will not be served by public water supply or community wastewater treatment for water, wastewater and environmental hazards.

WHEREAS, the City is agreeable to rendering such services on the terms and conditions hereinafter set forth; and

WHEREAS, such services shall be provided within the Village of Malcolm's zoning jurisdiction;

WHEREAS, such agreements are authorized and provided for by the provisions of Neb. Rev. Stat. §13-901 et. seq. hereinafter referred to as the Interlocal Cooperation Act; and

WHEREAS, the parties to this agreement enter into this cooperative agreement for the mutual benefit of the parties and to provide services in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. Each party agrees that it shall remain a distinct and separate entity with its own rights and authorities and that no separate board shall be created to fulfill the obligations of this Agreement.

NOW, THEREFORE, it is agreed as follows:

1. SERVICES

i) The Village of Malcolm and the City enter into this Agreement for the Village of Malcolm to:

- (1) Provide to the City any and all ordinances and regulations duly adopted by the Village of Malcolm related to individual sewage disposal systems, water supply

systems, solid wastes, nuisances, air quality, open burning, and other health and safety hazards; and

- (2) Act as the party primarily responsible for enforcement of the Village of Malcolm's ordinances, rules, and regulations related to the health and safety of the public.
- ii) The Village of Malcolm and the City enter into this Agreement for the City to:
- (1) Investigate complaints presented by the Malcolm Village Clerk related to public health nuisance conditions, and other health and safety hazards;
 - (2) Generate necessary reports related to the findings of investigations conducted pursuant to this Agreement and provide such reports to the Malcolm Village Clerk upon completion of each investigation;
 - (3) Cooperate with the Malcolm Village Attorney in any enforcement actions brought by the Village of Malcolm involving any investigation conducted by the City according to the terms of this Agreement;
 - (4) Appear as requested as a witness regarding the findings of investigations conducted according to the terms of this Agreement. Notwithstanding the foregoing, the City's employees shall not be asked to testify as experts by the Village of Malcolm in said proceedings.
 - (5) Review and permit all newly built or repaired on-site wastewater treatment systems within the corporate limits and the extra-territorial jurisdiction of the Village of Malcolm, assuring they meet minimum standards for design, construction, installation, maintenance, and operation as adopted by Ordinance No. 2013-05
 - (6) Review transfers of properties within the corporate limits and the extra-territorial jurisdiction of the Village of Malcolm, that are served by individual domestic water wells or onsite wastewater treatment systems to assure they meet minimum standards regulating design, construction, installation, maintenance, and operation as adopted by Ordinance No. 2013-05.
 - (7) Review newly proposed subdivisions within the corporate limits and the extra-territorial jurisdiction of the Village of Malcolm, that will not be served by public water supply or community wastewater treatment for water, wastewater and environmental hazards.
 - (8) Review and permit open burning requests within the corporate limits and the extra-territorial jurisdiction of the Village of Malcolm, to assure they do not create health risks and meet minimum standards as adopted by Ordinance No. 2013-05.
 - (9) The City retains the right to limit the amount of staff time and other resources it expends to provide services identified in this agreement.
2. **TERM** – The term of this Agreement shall commence upon execution and shall continue until completion all obligations of this Agreement but in no event longer than ten (10) years after the date of execution by the City.
3. **TERMINATION FOR CONVENIENCE** – Either party may terminate this Agreement for any reason for its own convenience. If either party elects to terminate this Agreement prior to its expiration, the terminating party shall provide the other party with sixty (60) days written notice of the termination.

4. **DUTIES GENERALLY** – Both parties to this Agreement agree as follows:
- i) To timely and professionally complete the services as described for both parties above, and to furnish their labor and pay all their own costs, including any taxes, required to complete their services.
 - ii) To furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement.
 - iii) To apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the services.
 - iv) To conduct all activities related to the services in a lawful manner.
 - v) To provide and perform all necessary labor in a professional and workmanlike manner and in accordance with the provisions of this Agreement.
5. **INDEPENDENT ENTITIES** – City has sole and exclusive charge and control of the manner and means of performance of the tasks required of it by this Agreement. The City shall perform as an independent contractor, and it is expressly understood that neither the City nor any of its staff are employees of the Village of Malcolm and, thus they are not entitled to any Village of Malcolm benefits including, but not limited to, overtime, retirement benefits, workers' compensation insurance, sick leave, or injury leave. The City shall be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for all federal, state, local, and any other payroll taxes with respect to the City or its employees' compensation.
6. **INSURANCE**
- i) The Village of Malcolm shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting the Village of Malcolm and the City of Lincoln, its officials, employees, and volunteers as insured, against claims for damages resulting from (1) all acts or omissions, (2) bodily injury, including wrongful death, (3) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations are by the Village of Malcolm and its employees, or those directly or indirectly employed by the Village of Malcolm. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:
 - (1) All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
 - (2) Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
 - (3) Personal Injury Damage - \$1,000,000 each Occurrence; and
 - (4) Contractual Liability - \$1,000,000 each Occurrence; and
 - (5) Products Liability and Complete Operations - \$1,000,000 each Occurrence; and
 - (6) Medical Expenses (any one person) - \$10,000.
 - ii) The following shall be provided and attached to this Agreement by the Village of Malcolm:
 - (1) A Certificate of Insurance for its General Liability Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance Policy. The Village of Malcolm may present evidence of equivalent self-insurance in place of a certificate of insured for General Liability Insurance.

The City of Lincoln shall be treated as an additional insured as if the Village of Malcolm possessed General Liability Insurance.

(2) Proof of Workers' Compensation Insurance, where appropriate.

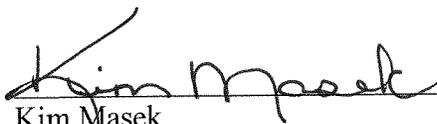
- iii) The Village of Malcolm is required to provide the City of Lincoln with thirty (30) days notice of cancellation, non-renewal, or any material reduction in insurance as required by this Agreement. Further any General Liability Insurance Policy maintained in order to comply with this Agreement shall specifically provide that the company from whom the policy is purchased will also provide the City of Lincoln thirty (30) days notice of cancellation, non-renewal, or any material reduction in insurance on the part of the Village of Malcolm.
- iv) If the Village of Malcolm obtains General Liability Insurance during the term of this Agreement, it shall add the City of Lincoln as an additional insured and provide a copy of the Certificate of Insurance and specific endorsement on the policy naming the City of Lincoln as an additional insured.

- 7. **INDEMNIFICATION** – To the fullest extent permitted by law, the Village of Malcolm shall indemnify, defend, and hold harmless the City of Lincoln, its officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of the Village of Malcolm, or anyone for whose acts any of them may be liable. This section will not require the Village of Malcolm to indemnify or hold harmless the City of Lincoln for any losses, damages, claims, and expenses arising out of or resulting from the sole negligence of the City of Lincoln. The City of Lincoln does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives termination of this Agreement.
- 8. **AUDIT PROVISION** – The Village of Malcolm shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance records and materials germane to this Agreement, as allowed by law.
- 9. **FAIR EMPLOYMENT** – The Village of Malcolm shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. §48-1122, as amended.
- 10. **FAIR LABOR STANDARDS** – The Village of Malcolm shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.
- 11. **NEBRASKA LAW** – This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.
- 12. **INTEGRATION, AMENDMENTS, ASSIGNMENT** – This Agreement represents the entire agreement between the parties and all prior negotiations and representations are

hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

13. **NEW EMPLOYEE VERIFICATION** - In accordance with Neb. Rev. Stat. 4-108 through 4-114, the Village of Malcolm agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as 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. Village of Malcolm shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The Village of Malcolm shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.
14. **SEVERABILITY & SAVINGS CLAUSE** – Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.
15. **CAPACITY** – The undersigned persons representing the Village of Malcolm and the City of Lincoln do hereby agree and represent that he or she is legally capable and authorized to sign this Agreement and to lawfully bind the Village of Malcolm or the City of Lincoln to this Agreement.

IN WITNESS WHEREOF, the Village of Malcolm and the City of Lincoln do hereby execute this Agreement.



Kim Masek
Chairman of the Malcolm Board of Trustees
137 E 2, P.O. Box 228
Malcolm, NE 68402

Chris Beutler
Mayor of Lincoln
555 South 10th Street
Lincoln, Nebraska 68508

8/7/2013

Date of Execution

Date of Execution



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/31/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Zimmer Insurance Group 3230 S. 13th St. Lincoln NE 68502-4595	CONTACT NAME: Jodi Newman-Schliefert	
	PHONE (A/C, No, Ext): (402) 423-6262	FAX (A/C, No): (402) 423-1293
	E-MAIL ADDRESS: jschliefert@zimmerinsure.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Employers Mutual Casualty	21415
INSURED Village of Malcolm 137 East 2nd St P. O. Box 228 Malcolm NE 68402-0228	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 2013-2014 Policy Term REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>		8D95028	2/1/2013	2/1/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		8E95028	2/1/2013	2/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ 10,000		8J95028	2/1/2013	2/1/2014	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	8H95028	2/1/2013	2/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Public Official E & O		8K95028	2/1/2013	2/1/2014	Limit 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
CITY OF LINCOLN IS LISTED AS AN ADDITIONAL INSURED ON THE GENERAL LIABILITY.

CERTIFICATE HOLDER (402) 441-3894 CITY OF LINCOLN LINCOLN-LANCASTER CO HEALTH DEPARTMENT 555 S 10TH ST LINCOLN, NE 68508	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE J Newman-Schliefert/J <i>Jodi Newman Schliefert</i>