

AGREEMENT

THIS AGREEMENT is entered into by and between the Village of Malcolm, Nebraska, a village and political subdivision of the State of Nebraska, hereinafter referred to as "the Village," and the County of Lancaster, Nebraska, a county and a political subdivision of the State of Nebraska, hereinafter referred to as "the County." Collectively the County and the Village may be referred to as "the Parties," and individually each may be referred to as a "Party."

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et seq. (Reissue 2012), permits units of local government in the State of Nebraska to cooperate with other localities on a basis of mutual advantage and thereby provide services in a manner that will best serve local communities;

WHEREAS, the County and the Village are responsible for providing road improvement and maintenance to the streets and roads located within their respective jurisdictions;

WHEREAS, the County and the Village agree that it is mutually beneficial to perform pavement resurfacing on Malcolm Road and East Third Street Road from Education Drive to State Spur 55M;

WHEREAS, a portion of the proposed maintenance is located within the Village, and the County seeks the approval of the Village to proceed with the Project; and

WHEREAS, the Village desires that the County complete the Project within the Village;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the Parties as follows:

- 1) Length. The length of this Agreement shall be from the date of execution until the completion and acceptance of the Project, estimated to be the Fall of 2019.
- 2) Purpose. The purpose of this Agreement is to provide for completion of the following Project, all of which lies within the corporate limits of the Village: pavement construction on Malcolm Road and East Third within the corporate limits of the Village of Malcolm between Education Drive to State Spur 55M, as diagramed in Attachment "A", which is attached hereto and incorporated herein by this reference.
- 3) Responsibilities.

A. The Village will have the following duties and responsibilities:

- i. The Village hereby permits the County to perform pavement construction work within the Village's corporate limits as diagramed in Attachment "A".

- ii. The Village will be responsible for paying to the County a total amount equal to the Actual Cost of the Project.
- iii. No later than ~~June 1~~ ^{June 30th}, 2019, the Village shall pay the County the Estimated Cost of the Project. The Estimated Cost of the Project is \$178,218.40, as calculated in Attachment "B".
- iv. Except for the duties contained in Paragraph 3)B.i of this Agreement, the County's performance under this Agreement is expressly conditioned on the following condition precedent, which must be exactly performed and may not be excused except by a written amendment dated subsequent to the date of this this Agreement executed by both Parties: the Village shall pay the County the Estimated Cost of the Project pursuant to Paragraph 3)A.iii of this Agreement. If the Village fails so to pay the County, then the Project shall be removed from the scope of the County's overall resurfacing project; and the County shall have no obligation to perform any duties contemplated under this Agreement except for those duties pursuant to Paragraph 3)B.i of this Agreement.

B. The County will have the following duties:

- i. The County shall bid the Project as part of the County's overall resurfacing project, shall select a contractor to complete the Project, and shall contract with the selected contractor to complete the Project.
- ii. The County shall provide the Village with a copy of the selected contractor's accepted bid prior to performing the Project.
- iii. The County shall be responsible for paying the selected contractor for the entire cost of the Project.
- iv. The County shall calculate the Actual Cost of the Project once the Project has been constructed and accepted.
 - a. To the extent that the amount of Actual Cost of the Project exceeds the amount of the Estimated Cost of the Project that has been prepaid to the County pursuant to Paragraph 3)A.iii of this Agreement, the County will invoice the Village for the amount that the Actual Cost of the Project exceeds the Estimated Cost of the Project. The Village shall pay that invoice not later than sixty (60) days following receipt of that invoice.
 - b. To the extent that the amount of Estimated Cost of the Project that has been prepaid to Lancaster County pursuant to Paragraph 3)A.iii of this Agreement exceeds the amount of Actual Cost of the Project, the

County will reimburse the Village for the amount that the Estimated Cost of the Project exceeds the Actual Cost of the Project no later than sixty (60) days following the determination of the Actual Cost of the Project by the County.

- v. The County shall be responsible for ensuring that the Project is completed as described herein and according to the bid documents and contract with the selected contractor. The Project shall be completed upon the County's final sign-off on completion of the Project according to the terms of the contract with the selected contractor.
- 4) Consideration. The Village permits the County to perform the Project. The County shall be responsible for contracting and managing the Project. The Village shall be responsible for payment to the County as described in Sections 3 and 4 of this Agreement.
- 5) Ongoing Maintenance. The Village shall continue to be responsible for maintenance of the Project, all of which lies within the corporate limits of the Village, as described in Attachment "A". The Parties agree that the County expressly does not assume responsibility for any future maintenance of any portions of the Project, all of which lies within the corporate limits of the Village, as described in Attachment "A".
- 6) Independent Contractor. It is the express intent of the Parties that this Agreement shall not create an employer-employee relationship. Employees of the Village shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the Village.
- 7) Assignment. Neither the County nor the Village shall assign its duties and responsibilities under this Agreement without the express written permission of the other Party to this Agreement. Any assignment without the express written permission of the County shall be absolutely void. However, it is expressly understood and agreed to by the Parties that the County may subcontract the pavement construction services outlined herein.
- 8) Hold Harmless. Each Party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other Party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each Party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in

conjunction with any such claims. Nothing in this Agreement shall require either Party to indemnify or hold harmless the other Party from liability for the negligent or wrongful acts or omissions of said other Party or its principals, officers, or employees.

- 9) Subcontractors. The County agrees to require any contractors or subcontractors, providing services under this Agreement, to indemnify and hold the Village harmless to the same extent and as provided in Section 8, of this Agreement.
- 10) Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- 11) Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, neither the County nor the Village shall discriminate against any bidder, employee, applicant for employment, or any other person because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.
- 12) Termination. This Agreement may be terminated at any time by either Party giving sixty (60) days written notice. However, such termination shall not affect obligations that have been incurred prior to the notice of termination or money owed by either Party for work performed under this Agreement prior to termination.
- 13) Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written amendment dated subsequent to the date of this Agreement and signed by all Parties.
- 14) Forbearance Not Waiver. County's failure or neglect to enforce any of its rights under this Agreement will not be deemed to be a waiver of County's rights.

EXECUTED this 7th day of May, 2019, by
the Village.

Village of Malcolm

By: D. Kole
Village of Malcolm

APPROVED AS TO FORM:

This 7TH day of May, 2019.



Village Attorney

EXECUTED this _____ day of _____, 20____, by
the County.

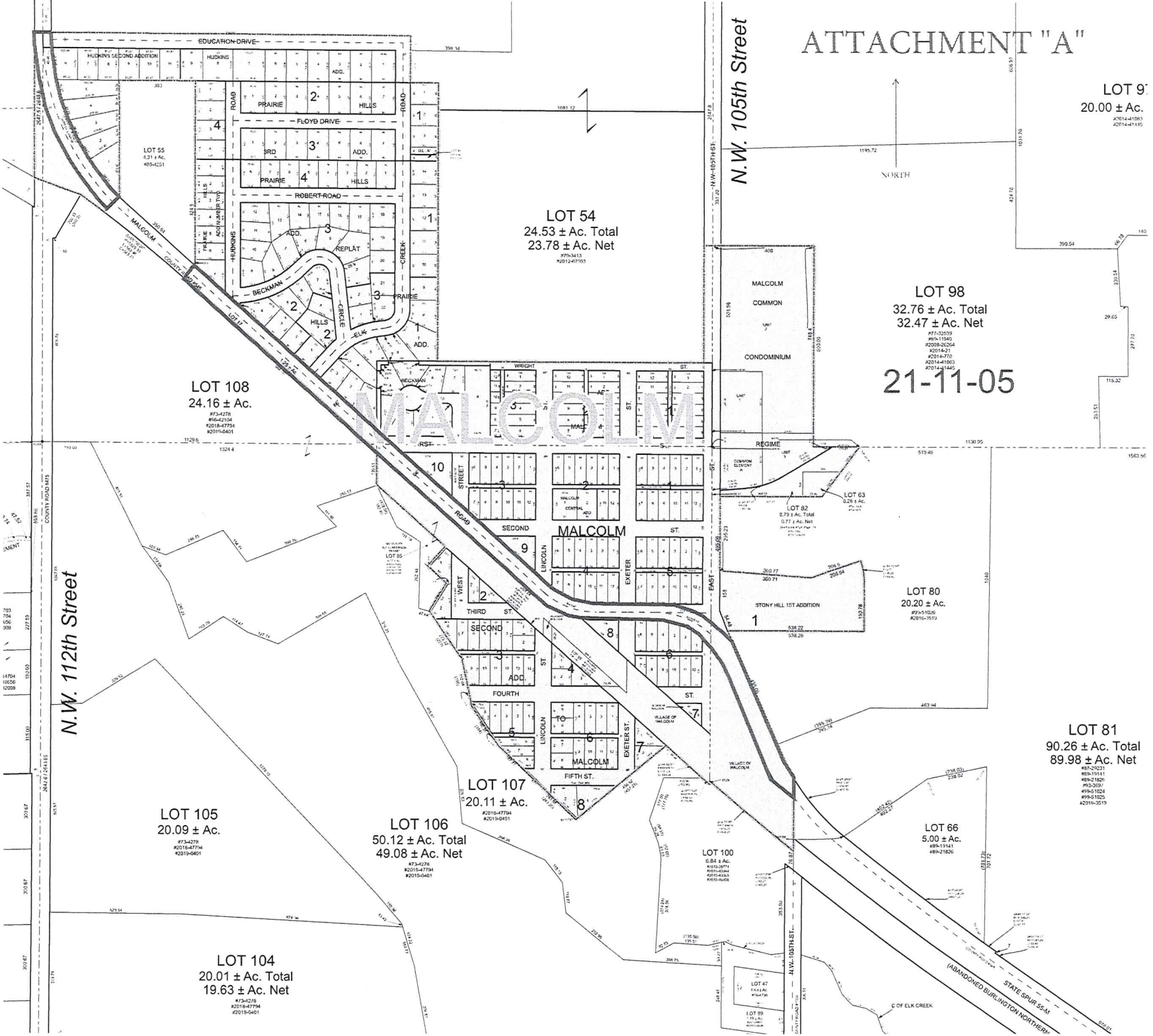
By: _____
Chair
Lancaster County Board of Commissioners

APPROVED AS TO FORM:

This _____ day of _____, 20____.

Deputy County Attorney
For PATRICK CONDON
County Attorney

ATTACHMENT "A"



LOT 9¹
20.00 ± Ac.
#701-41083
#2011-41145

LOT 54
24.53 ± Ac. Total
23.78 ± Ac. Net
#775-3413
#2013-40763

LOT 98
32.76 ± Ac. Total
32.47 ± Ac. Net
#773-32539
#915-11940
#2008-26204
#2014-421
#2014-4770
#2014-41083
#2014-41445
21-11-05

LOT 108
24.16 ± Ac.
#724-4278
#866-2134
#2018-47734
#2016-0401

LOT 80
20.20 ± Ac.
#7431028
#2016-19510

LOT 81
90.26 ± Ac. Total
89.98 ± Ac. Net
#87-28231
#88-19141
#89-13026
#93-26397
#95-10224
#99-81025
#2016-32519

LOT 105
20.09 ± Ac.
#73-4278
#2018-47734
#2019-0401

LOT 106
50.12 ± Ac. Total
49.08 ± Ac. Net
#73-4278
#2018-47734
#2019-0401

LOT 107
20.11 ± Ac.
#2018-47734
#2019-0401

LOT 66
5.00 ± Ac.
#88-19141
#89-21826

LOT 104
20.01 ± Ac. Total
19.63 ± Ac. Net
#73-4278
#2018-47734
#2019-0401

N.W. 105th Street

N.W. 112th Street

NORTH

**LANCASTER COUNTY ENGINEERING DEPARTMENT
ENGINEERS ESTIMATE**

DATE: April 29, 2019
 PROJECT NO. .
 PROJECT LENGTH (Mi): 4083 FT. (.77 Mi.)

PROJECT Part. VIII
 PROJECT Location: Malcolm Road
 PROJECT Descript: Malcolm Portion Only

2" Deep class III milling for 2" SLX Inlay with 3 New SPR Returns.

ITEM NO.	ITEM	ESTIMATED Quantities	UNIT	UNIT PRICE (Enter Engineers Est.)	AMOUNT
Malcom Road		Asphaltic Concrete Resurfacing and Paving			
1	Cold Milling, Class III 2" Inlay	10,894.00	Sq. Yds	\$1.60	\$17,430.40
2	Preparation of Intersections (3 Returns)	750.00	Sq. Yds	\$4.50	\$3,375.00
3	Water, Applied	0.50	M.Gal	\$350.00	\$175.00
4	Asphaltic Concrete, Type "SLX" 2" Inlay	1,184.00	Tons	\$73.00	\$86,432.00
5	Tack Coat	1,634.00	Gal	\$1.85	\$3,022.90
6	Asphaltic Concrete, Type "SPR" Patching & Returns	165.00	Tons	\$95.00	\$15,675.00
7	Rental of Skid Loader, Fully Operated	25.00	Hours	\$85.00	\$2,125.00
8	Rental of Dump Truck, Fully Operated	25.00	Hours	\$85.00	\$2,125.00
9	Rental of Cold Mill Head, Fully Operated-(Patching)	40.00	Hours	\$100.00	\$4,000.00
10	Traffic Grabber Cones	270.00	Cone days	\$0.55	\$148.50
11	Furnishing and Operating Pilot Vehicle	6.00	Days	\$530.00	\$3,180.00
12	Flagging	12.00	Days	\$430.00	\$5,160.00
13	Temporary Sign Day	36.00	Sign Days	\$2.00	\$72.00
14	Barricades, Type III	112.00	Barr Days	\$3.15	\$352.80
15	Construction Signs	112.00	Sign Days	\$2.00	\$224.00
16	5" Permanent Pavement Marking Paint	16,340.00	LF	\$0.12	\$1,960.80
17	Mobilization	0.91	Lump Sum	\$36,000.00	\$32,760.00
ENGINEERS ESTIMATE				Total	\$178,218.40