

**ROAD MAINTENANCE AGREEMENT  
TOWN OF CEDAR HIGHLANDS  
JUNE 1, 2019 – MAY 31, 2020**

**THIS AGREEMENT**, made and entered into this 1<sup>st</sup> day of June, 2019, is by and between CEDAR HIGHLANDS, a body corporate and politic of the State of Utah (hereinafter referred to as “the TOWN”) and CEDAR HIGHLANDS HOMEOWNERS ASSOCIATION, a nonprofit corporation under the Utah Revised Nonprofit Corporation Act, (hereinafter referred to as “the HOA”).

**WHEREAS**, the HOA incorporated in September of 1991 and has been a nonprofit corporation since that time with duly enacted Bylaws and a Declaration of Covenants and Restrictions (“Covenants”) of the Cedar Highlands Subdivision (containing 165 lots), located in Iron County, Utah; and

**WHEREAS**, the TOWN incorporated as a municipality in December, 2017 and is now functioning as a municipality, with a Mayor and Town Council elected by the people; and

**WHEREAS**, the TOWN has the authority to tax and collect property taxes and operates with an annual budget; and

**WHEREAS**, the HOA is located within the jurisdictional boundaries of the TOWN and;

**WHEREAS**, the majority of the roads within the TOWN’s municipal boundaries are in the Cedar Highlands Subdivision which is and always has been subject to the HOA’s Covenants and Bylaws; and

**WHEREAS**, the roads with the Cedar Highlands Subdivision have not been dedicated for public use and ownership of the roads remains with the HOA; and

**WHEREAS**, any dissolution of the HOA or transfer of assets requires a two-thirds vote of the lot owners in the Cedar Highlands Subdivision; and

**WHEREAS**, the TOWN and the HOA were unable to obtain the necessary votes to transfer the assets and dissolve the HOA, although both parties desire and agree to continue to work towards dedicating the roads in the HOA to the TOWN; and

**WHEREAS**, the TOWN is in the process of renting equipment for road maintenance and snow removal for the roads in the municipality that are not owned by the HOA; and

**WHEREAS**, the HOA does not have the equipment or the funding available to the TOWN; and

**WHEREAS**, it would be mutually beneficial to both the TOWN and the HOA for the TOWN to provide the road maintenance within the municipal boundaries of the TOWN;

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises herein, the parties agree as follows:

1. **DURATION.** This Agreement shall be one (1) year in duration commencing on June 1, 2019 and terminating on May 31, 2020. This Agreement may be renewed for an additional year by mutual written consent of the parties.
2. **ROAD MAINTENANCE.** The TOWN will maintain the roads within its municipal boundaries including those roads within the HOA. The roads will be maintained by the TOWN pursuant to the TOWN's specifications and standards:

a. Road Work Process Requirements:

- i. All road work or projects to be done must be approved by either the Town Engineer, Public Works Manager or the Mayor. Work requests shall include a detailed scope. The approving authority may request additional drawings, elevations, or engineered specifications depending on the scope of the work requested.
- ii. Any work, outside of or different from the minimum specifications listed below, must have prior approval from the Planning Commission.
- iii. Any work to be commenced must have all utilities in the area marked by Blue Stake Location Services before work commences.
- iv. All road work must be completed by the TOWN using only those individuals that are approved by the TOWN. The TOWN will use only insured operators, workers, and volunteers as approved by the TOWN. The TOWN may contract with a third party for road maintenance work at its discretion and subject to its approval.
- v. Only the TOWN equipment shall be used to perform work on the roads pursuant to this Agreement.

b. Minimum Road Specifications:

- i. All road surface widths must be cleared and rocked to no less than 30' in width, within the 66' road easement.
- ii. New road subgrades to be prepared by first removing/grinding/chipping large rock at least 4" below subgrade and then compacted and verified by a certified testing agency.
- iii. All road surfaces must be maintained to a minimum of 4" of ARC pit or other similar stable cut rock mix covering.

- iv. All roads must be rocked or sealed with a four-degree slope from the center of the road for water drainage, to the borrow ditch or shoulder, of each side of the road.

c. Minimum Street Culvert Specifications:

- i. All street culverts must be engineered to divert drainage or water runoff into existing street ditches or natural drainage routes or ditches. The culvert must meet the following requirements:

- 1. Only new culvert HDPE pipe with a minimum of 24" in diameter x 40 ft. (2x20') in length may be installed. No used pipe may be utilized.
- 2. Culvert pipe must be at least 3' deep or 1' below the grade of the street.

d. Minimum Driveway Culvert Specifications. To ensure the complete drainage and correct flow of runoff, in order to maintain the integrity of all road surfaces, all parcels with homes or roads on or into the lot must have culverts on each drive into the parcel. The property owner is responsible for the correct installation of all driveway culverts. The culvert must meet the following requirements:

- i. Only Culvert HDPE corrugated pipe may be used for driveways with a minimum diameter of 18". The length of pipe shall be wider than the driveway and shall extend a minimum of 6" on either side. The flow-line for the culvert shall be no higher than the flow-line of the corresponding drainage ditch.
- ii. Each end of the culvert pipe, on the street side, must have a snow pole driveway marker with a reflective end on the top.
- iii. The culvert ditch must be at least 14" deep, and no more than 22" deep, with no more than 4" of the culvert pipe above the grade of the street.
- iv. Any pipe surface top, at or above the grade of the street, must have at least 4" of rock and soil mix covering the pipe.

3. **SNOW REMOVAL.** The TOWN will be responsible for snow removal from the roads in the Cedar Highlands Subdivision during the relevant time period of this Agreement.

- a. The TOWN will determine when snow removal is necessary and will be responsible for its removal according to their policies and specifications. Snow removal provided by the TOWN will be completed only for roads in the HOA.

- b. Snow removal will start at the top of the mountain at the Meadow road and entry and proceed downward, clearing Greenslake Road/Cedar Highlands Drive entirely before secondary subdivision roads.
  - c. The TOWN will leave one (1) to two (2) inches of snow on the road surface when removing snow so as to protect and preserve the road structure.
  - d. The HOA agrees to require that homeowners mark with reflective poles all driveway culvert road edges so as to avoid culvert damage.
  - e. Ice treatment will be done whenever a dangerous accumulation is reported or directed by TOWN personnel at any snow depth.
  - f. The HOA will obtain the necessary permissions in writing for access to roads within the HOA by the TOWN.
4. **INSURANCE.** The HOA shall procure and maintain or cause to be maintained, at its sole cost and expense, insurance coverage acceptable to the TOWN on terms reasonably acceptable to the TOWN. If the HOA fails to maintain adequate liability insurance, the TOWN may take out insurance and charge all costs to the HOA.
5. **INDEMNIFICATION.** The HOA agrees to indemnify and hold harmless the TOWN, its directors, officers, employees, and agents from and against all claims, demands, causes of actions of every kind including death, bodily injury to person or damage to property arising out of or in connection with the performance of this Agreement, except where such injury, death, or damage has resulted from the negligence of the TOWN, its directors, officers, agents, servants, its employees, contractors, or sub-contractors. The HOA shall defend all suits brought upon such claims and pay all costs and expenses, including reasonable attorney's fees, incidental thereto.
6. **OWNERSHIP OF PROPERTY.** This Agreement shall not affect any title or ownership held by any of the parties in any real or personal property and is attempted only to provide a means by which to maintain the roads within the municipal boundaries of the TOWN.
7. **TERMINATION.** Either party may terminate this Agreement at any time for any reason by giving thirty days written notice to the other party. Termination of the Agreement shall be effective thirty days from the time that the written notice is served on the other party.
8. **ARBITRATION.** In the event of any dispute between the Parties which arises under this Agreement, such dispute shall be settled through the process of arbitration. The arbitration will be conducted under, and in accordance with, Utah law and shall be held at Cedar City, Utah or such other place as the parties may agree. In the event arbitration is needed, the costs will be divided evenly between the Parties.

9. **THIRD PARTIES.** This Agreement shall not be construed as, or deemed to be, an Agreement for the benefit of anyone not a party hereto, and anyone who is not a party hereto shall not have a right or action hereunder for any cause whatsoever.
10. **SEVERABILITY.** If any term or provision of this Agreement is judicially modified or found to be unenforceable, the remaining provisions will not be affected by the finding and will be honored and followed by the parties. To the extent they may do so, the parties waive any provision of law which would render any terms of this Agreement unenforceable.
11. **GOVERNING LAW.** All questions about interpreting and understanding this Agreement and the rights, responsibilities and liabilities of the parties shall be answered and governed by Utah law.
12. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement constitutes the entire agreement between the TOWN and the HOA , and may not be modified in any manner except by an instrument in writing signed by the governing bodies for both parties. Nevertheless, the parties hereto agree to execute such other and further documents and to do such other acts as may be reasonably necessary or proper in order to consummate the transaction contemplated by this Agreement. Statements or representations which may have been made by either party in the negotiation stages of this Agreement may in some way be inconsistent with the final written Agreement. All such statements are declared to be of no value to either party. Only the written terms of this Agreement will bind the parties.
13. **ASSIGNMENT.** The rights and obligations of the HOA as existing under this Agreement may not be assigned, in whole or in party, without the prior written consent of the TOWN.
14. **ENFORCEMENT.** Any failure of either party to enforce any of the terms, covenants and conditions in this Agreement does not infer or permit a further waiver of that right or benefit, nor does it infer or permit a waiver of any other right or benefit provided in this Agreement.
15. **BINDING EFFECT.** This Agreement will pass to the benefit of and be binding upon the Parties' respective heirs, executors, administrators, successors, and permitted assigns.
16. **HEADINGS.** The section headings contained in this Agreement are inserted only for convenient reference and do not define, limit or proscribe the scope of this Agreement.
17. **GOVERNMENTAL IMMUNITY.** The TOWN advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7, Utah Code Annotated, 1953, as amended) and does not waive any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative enactment, including without

limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. Any indemnity and insurance obligations incurred by the TOWN under this contract are expressly limited to the amounts identified in the Act.

**IN WITNESS WHEREOF**, the parties hereto have affixed their hands and seals on the date set forth hereafter.

TOWN:

HOA

\_\_\_\_\_  
By: Steven Swann, Mayor  
Date:

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By: Mike Brask, President  
Date: