

AGREEMENT FOR TRANSFER AND ONGOING MAINTENANCE OF ROADS WITHIN THE PLAT OF EAST OKOBOJI BEACH

WHEREAS, this agreement is entered into by and between Dickinson County, hereinafter referred to as the “County”, and East Okoboji Beach Inc., (the Home Owners Association) hereinafter referred to as “Association”;

WHEREAS, the Association now has responsibilities for the road system located throughout the Plat of East Okoboji Beach; and

WHEREAS, it is the intention of Dickinson County to upgrade said roads to county standards through the implementation of a tax-increment financing district (hereinafter referred to as the “Project”), and

WHEREAS, the County and Association agree that ownership of said road system should be transferred to the County before to January 20, 2009, and prior to beginning the upgrade project designed to bring those roads into compliance with County engineering standards. Until such time, both parties agree that responsibility for maintenance and upkeep of the roads shall be as set forth herein.

IT IS THEREFORE MUTUALLY AGREED AND PROVIDED AS FOLLOWS

- A. Transfer of Roadways:** All platted roads within the Plat of East Okoboji Beach are hereby transferred and conveyed to the Dickinson County *Secondary Roads Department*, subject to the rights and restrictions outlined herein. (Cynthia Lane not included –was sold)
- B. Maintenance:** Until construction is started on a section of the phased construction of the road portion of the upgrade project, the Association shall be responsible for maintenance of the road system within the Plat of East Okoboji Beach. Maintenance shall be considered as routine upkeep of the road system and will include any item that is a concern to the safety and access of the public.
 - 1. Mowing & Weed Control** – The Association will be responsible for all mowing and weed control on road right of way only until construction is started on a section of the phased construction of the road portion of the upgrade project.
 - 2. Road Surface Repairs** – are to be considered any type of work that is needed to repair surface irregularities including preventative surface maintenance.
 - i. Road repairs and preventative surface maintenance will be the responsibility of the Association on all designated roadways with the Plat of East Okoboji Beach until construction is started on a section of the phased construction of the road portion of the upgrade project.
 - ii. All needed surface repairs to roadways will be the responsibility of the Association until construction is started on a section of the phased construction of the road portion of the upgrade project.
 - iii. Except in emergencies, the governmental authority issuing any Permit requiring excavation or damage to any part of the road system shall notify the Association and the Dickinson County Engineer at least five (5) days in advance of the need for the excavation indicating the location and estimated start and completions dates. The Permit issuer shall also notify the Permit Holder of his/her responsibilities and liability.
 - iv. Restoration of Roadways following Excavation or damage: Repair of any damage to a road or road right of way shall be the responsibility of the Permit Holder, and that party will be liable for restoring the roadway. The Permit Holder shall also be responsible for any injuries caused on the damaged areas of the road or right of way and permit holder shall indemnify and hold the Association and County harmless from any and all liability for injuries and/or related damages.
 - v. The Association agrees to carry liability insurance on the roadways until substantial completion of the road portion of the upgrade project in an amount no less than that in place on December 31, 2008.
 - vi. Extensive Low Impact Development (LID) practices will be incorporated in the “Project”. As additional consideration for this agreement, East Okoboji Beach, Inc. agrees to take responsibility for safeguarding all LID practices within the Plat of East Okoboji Beach. This

responsibility does not entail maintenance of the LID practices located within County right-of-way as that maintenance will be the responsibility of Dickinson County, but it is the expectation that the Association contact the Dickinson County Engineer whenever any of the LID practices are not working as intended, or need maintenance to continue operating correctly. The Association agrees to annually advise the Dickinson County Engineer on all LID practices within the Plat of East Okoboji Beach, and their current status and condition.

- vii. The Association agrees that they shall be financially responsible in the event any of the LID practices incorporated within the Plat of East Okoboji Beach are damaged by residents within the Plat up to an amount of \$2,000 per incident or a maximum of \$5,000 per calendar year. The Association is encouraged to protect their risks in the regard by the maintenance of an insurance policy covering such contingencies.
- 1. **Snow Removal** – The Association agrees to remove snow from any designated roadway within the Plat of East Okoboji Beach until construction is started on a section of the phased construction of the road portion of the upgrade project. The Association reserves the right to undertake snow removal, at its discretion, on any other Lane, route or Sidewalk under its jurisdiction, and not transferred to the County.
- 2. The duration of this Agreement shall become effective when approved by the Association and when approved by the Dickinson County Board of Supervisors.
- 3. This agreement may be amended or supplemented from time to time, and any such amendment or supplement shall be first reduced to writing and signed by the appropriate representative of each party. Any such amendment or supplement shall refer to this Agreement and shall be construed in accordance with the objectives hereof.
- 4. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa and the venue for any dispute regarding this matter shall be in the Iowa District Court for Dickinson County.
- 5. This Agreement and any amendment or supplement hereto may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one in the same instrument. The signature pages of each counterpart may be combined to form one final recordable version of this Agreement.
- 6. If any provision of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision entered into, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such provision shall be deemed to be effective in the manner and to the full extent permitted by law.
- 7. **Agreement Authority** – This contract and agreement shall supersede all previous agreements for road maintenance, verbal or written, between the Association and Dickinson County.

FOR: EAST OKOBOJI BEACH, INC. (EAST OKOBOJI BEACH OWNERS ASSOCIATION)

By: _____

Date: _____

FOR DICKINSON COUNTY:

By: _____

Date: _____