

**Parks, Recreation and Cultural Services
Memorandum #07-2014**

DATE: May 12, 2014

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: John Pick, City Manager *JP*
Amanda J. Peterson, Director of Parks, Recreation & Cultural Services *APP*

SUBJECT: CR-42 First Amendment to the Fox Run Maintenance Agreement

RECOMMENDATION: Staff recommends approval of the attached Resolution, which would amend the Fox Run Maintenance Agreement to more accurately reflect current maintenance activities conducted by the Fox Run Homeowners Association (HOA) and the City.

BACKGROUND: The Fox Run HOA and the City entered into a maintenance agreement in 2007 for portions of city-owned rights of way within Fox Run, specifically those along Fox Run Parkway. Since that time, it has become apparent that some of the language within Exhibit B is not in line with current practices, and that some areas within Exhibit A (the map) are contradictory to Exhibit B. As an example, the original agreement states "...the Association desires to assume maintenance responsibilities on the Maintained Property, specifically the public rights-of-way areas along Fox Run Parkway from 104th Ave. to 112 Ave.," though the map coded this area as being "City" responsibility. This amendment fixes those contradictions, as well as adds language in Exhibit B to further clarify maintenance expectations.

In addition, the amendment includes the City's current standard language outlining insurance requirements and terms of agreement.

The Fox Run HOA is already maintaining the area in accordance with the language in the amendment. The amended agreement and supporting materials have been provided to the HOA, and they are in support of the proposed amendment.

BUDGET/TIME IMPLICATIONS: There are no new anticipated financial impacts associated with this amendment. The City will continue to pay the HOA \$5,000 annually for the maintenance of city-owned property, contingent upon annual budget appropriation. Funding for this expenditure was approved in the 2014 Parks Division budget.

STAFF REFERENCE: Please contact Amanda Peterson at apeterson@northglenn.org or by phone at 303.450.8950 for any further questions.

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-42
Series of 2014

Series of 2014

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE MAINTENANCE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND THE FOX RUN COMMUNITY ASSOCIATION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Amendment No. 1 to the Maintenance Agreement between the City of Northglenn and the Fox Run Community Association, attached hereto, is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2014.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

FIRST AMENDMENT TO MAINTENANCE AGREEMENT

THIS FIRST AMENDMENT TO MAINTENANCE AGREEMENT is made and entered into this ___ day of _____, 2014, to be effective June 1, 2014, by and between the CITY OF NORTHGLENN, COLORADO, (the "City") and the FOX RUN COMMUNITY ASSOCIATION (the "Association").

WHEREAS, pursuant to certain approvals granted by the City related to the Fox Run Planned Unit Development and the Fox Run Planned Unit Development Master Subdivision Improvements Agreement dated July 27, 1995, the City owns and maintains certain improvements located within City right-of-way, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Maintained Property");

WHEREAS, the Association desires to assume maintenance responsibilities on the Maintained Property, specifically the public rights-of-way areas along Fox Run Parkway from 104th Ave. to 112th Ave., inclusive of islands, including, but not limited to, weed control, mowing, plantings, and other enhanced landscaping activities and landscape maintenance pursuant to this Agreement;

WHEREAS, the City and the Association entered into a Maintenance Agreement dated _____, 2007, regarding the Maintained Property (the "Original Agreement"); and

WHEREAS, the City and the Association now seek to enter into this First Amendment to accomplish the maintenance of the Maintained Property consistent with the amended design standards being as approved by the City.

NOW, THEREFORE, in consideration of the mutual premises and benefits contained herein and for other good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the City and the Association covenant and agree as follows:

1. Section 1 of the Original Agreement is amended to read as follows:

1. **MAINTENANCE AGREEMENT.** The Association shall furnish all labor and materials to perform the work and services contemplated by this Agreement, specifically including weed control and other enhanced landscaping activities and landscape maintenance as more particularly described in **Exhibit B**, as amended by this First Amendment, which is attached hereto and incorporated herein by this reference.

2. Section 3 of the Original Agreement is amended to read as follows:

3. INSURANCE. The Association shall obtain for itself, its agents, successors, assigns, lessees, Associations and agents, necessary and adequate worker's compensation insurance, personal injury insurance, and property damage insurance, with limits commensurate with the hazards and risks associated with the use of the Maintained Property, but in no event less than the liability limits established by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* (currently \$350,000 per person and \$990,000 per occurrence), as now in effect or as hereinafter amended. Neither the Association nor its agents, successors and assigns shall commence any landscape installation or maintenance on the Maintained Property until it has obtained all insurance required under this section and shall have filed a certificate of insurance or a certified copy of the insurance policy with the City. Each insurance policy shall list the City as an additional named insured and shall contain a clause providing that coverage shall not be cancelled by the insurance company without thirty (30) days written notice to the City of intention to cancel.

3. Section 5 of the Original Agreement is amended to read as follows:

5. INSTALLATION, MAINTENANCE, REPAIR AND ALTERATIONS.

The Association shall be required to apply for and receive all necessary permits, including, but not limited to, right-of-way permits and building permits, prior to commencing any work on the Maintained Property; provided however, the insurance requirements set forth in Section 3 of this Agreement shall be deemed to satisfy the insurance requirements necessary for the Association to obtain a City right-of-way permit

The Association shall at its discretion install additional landscaping and any necessary irrigation on the Maintained Property according to landscape plans approved by the City.

Further, the Association shall not without prior approval of the City remove any mature and/or perennial trees, shrubs, or other landscaping on the Maintained Property unless such removal is necessary because the trees, shrubs, or other landscaping are diseased, dead, or dying. After any initial construction and/or installation, the Association covenants and agrees not to make or permit to be made any alterations in, or additions to, the Maintained Property without the prior written consent of the City and to keep the Maintained Property and any improvements thereon including, plumbing, wiring, and fencing, if appropriate, in good repair at the expense of the Association; to properly irrigate and care for all trees, shrubbery and the lawn upon or about the Maintained Property in good order and condition upon the expiration or termination of this Agreement, ordinary wear and tear and loss by fire, flood, or act of God excepted.

Nothing in this Paragraph 5 shall be construed to assign any responsibility of the City or otherwise obligate the Association to undertake snow removal on the Maintained Property.

4. Section 8 of the Original Agreement is amended to read as follows:

8. TERM; TERMINATION.

A. Term. This Agreement will continue in effect until December 31, 2014, and shall be renewed automatically thereafter for successive one (1) year

periods. Notwithstanding the foregoing, however, either party may terminate this Agreement without cause after December 31, 2014, by giving at least six (6) months' written notice thereof to the other party of the determination not to renew this Agreement. Either party may elect to waive the period of notice of non-renewal at its sole discretion.

B. Termination for Cause. This Agreement may also terminate for cause at such time as the City provides the Association with sixty (60) days' advance written notice of the Agreement's termination, which notice shall contain an opportunity to cure said cause as stated in the written notice. For purposes of this Agreement, cause shall include the Association's failure to maintain the Maintained Property to the standards set forth in Exhibit B, as amended. If the Association has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity.

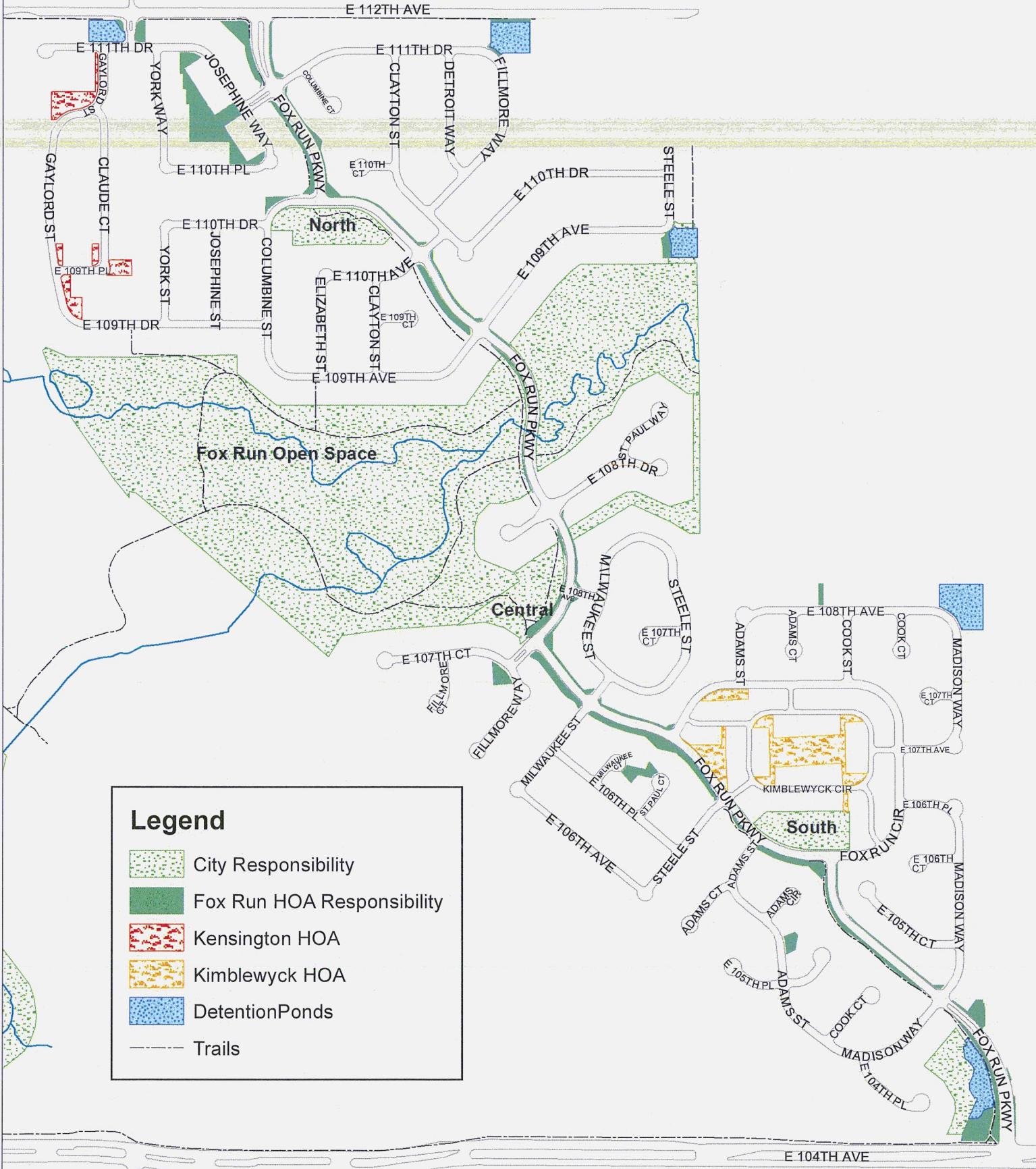
C. Non-Appropriation by the City. In the event that the City determines not to appropriate funds for any fiscal year as set forth in Section 11 of this Agreement, the City shall provide thirty (30) days' written notice of said non-appropriation; provided however, the determination by the City not to appropriate shall not automatically terminate the remaining obligations of the parties pursuant to this Agreement, and the Association may elect to continue this Agreement without the compensation set forth hereunder, or may elect to terminate this Agreement within the thirty (30) day notice period set forth in this subsection C.

5. INTEGRATION. Except as modified herein, the Maintenance Agreement is in full force and effect and is hereby ratified by the City and the Association. In the event of any conflict between the Maintenance Agreement and this First Amendment, the terms and conditions of this First Amendment shall control.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate.

CITY OF NORTHGLENN, COLORADO

EXHIBIT A



Legend

-  City Responsibility
-  Fox Run HOA Responsibility
-  Kensington HOA
-  Kimblewyck HOA
-  Detention Ponds
-  Trails

THE CITY OF NORTHGLENN MAKES NO WARRANTIES, EXPRESSED OR IMPLIED CONCERNING THE ACCURACY, COMPLETENESS, RELIABILITY OR SUITABILITY OF THIS DATA. THE CITY OF NORTHGLENN DOES NOT ASSUME ANY LIABILITY ASSOCIATED WITH THE USE OR MISUSE OF THIS INFORMATION, AND THE USER FURTHER AGREES TO HOLD THE CITY OF NORTHGLENN HARMLESS FOR ANY LOSS, DAMAGE, OR INJURY ARISING OUT OF THE USE OF THE GIS MAP AND ANY OTHER RELATED DOCUMENTS.

EXHIBIT B

- Trash must be removed in a timely and reasonable manner from all areas identified and contained herein as the responsibility of the Association (except park areas).
- Rocks that are displaced from shrub and flower beds identified as the responsibility of the Association must be removed from trails, streets and turf areas and replaced into the beds in a timely manner.
- Structural damage to shrubs, trees, signs, irrigation components, chain link fences or any other amenities within the area identified as the responsibility of the Association must be reported by the agency discovering the damage to the other party. A determination will be made by the involved parties if Northglenn police need to be notified.
- Irrigation controllers and back flow devices must be locked at all times when they are not being serviced
- Irrigation sprinkler heads and stations must be occasionally checked for damage, misdirected spray and failure and corrected when necessary. Expenses associated with maintenance to the irrigation system related to normal wear and tear shall be the responsibility of the Association. In the case of severe vandalism or the need for significant system upgrades on city-owned, association maintained properties, the association may submit a funding request to the City for consideration.
- All turf trimming must be done the same day as mowing, and all walks, gutters, trails and street areas must be blown off to clear and remove turf cuttings.
- Any time broken glass is observed on trail, gutter, turf and street areas, the identifying party shall assist in the clean up and removal, regardless of which party has general responsibility for that area.
- At any time that the irrigation main lines must be shut down for repair the the initiating agency must notify the other agency immediately.
- At any time that the irrigation controllers are entered, shut down or put in standby mode, the agency initiating the work must notify the other agency immediately.
- At any time that either agency's field crews or Foreman discovers a water leak or irrigation break in any area of the Fox Run subdivision, that party must immediately report the issue and the exact location to the other agency or any immediately available field crew.
- At any time when vandalism or graffiti is observed in the subdivision by either agency, the agency discovering the issue must report same to the party responsible for that area. Northglenn police or the graffiti hotline must be notified to log and photograph all instances involving graffiti or defacing of public grounds and amenities.
- Snow removal in the area of community mailboxes will be completed by the Association's maintenance crew. Snow removal on trails will be the responsibility of the City, and will be conducted as per the Department of Parks, Recreation & Cultural Services snow removal standards and prioritization.
- Green waste resulting from maintenance on any city-owned, Association maintained property may be disposed of at the City's green waste center, during regular operating hours.
- Responsibility for all detention pond areas is the responsibility of both the City and the HOA. The HOA shall have primary responsibility for the aesthetics of the detention pond areas, while the City shall be responsible for the functional aspects. Generally speaking, the HOA is responsible for mowing, weed management, trash/debris removal and removal of small "volunteer" trees (seedlings) in the area outside of the stormwater

detention “basin.” The City is responsible for formal inspections as related to stormwater capacity, which shall be conducted on a schedule determined by the City’s Public Works Department.

- An annual meeting between the City’s responsible party and the responsible party for the Association’s maintenance contractor shall be scheduled to discuss the aforementioned issues by March 31 of each year.
- All contact with the City shall be directed to the Administrative Assistant for Parks, Recreation & Cultural Services. All invoices shall be submitted to the attention of the same. Updated contact information, including the name and phone of a specific individual, will be provided each year at the abovementioned annual meeting.