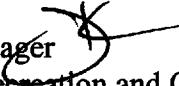



PARKS, RECREATION AND CULTURAL SERVICES MEMORANDUM
#07-04

June 6, 2007

TO: Honorable Mayor Kathleen M. Novak and City Council Members

FROM: A. J. Krieger, City Manager 
Steven Zoet – Parks, Recreation and Cultural Services Director 

SUBJECT: Maintenance Agreement with the Fox Run Homeowners Association
CR-57

RECOMMENDATION: Approve the proposed Maintenance Agreement with the Fox Run Home Owners Association (HOA) for the performance of certain grounds maintenance and related practices along the Fox Run Parkway rights-of-way from 104th Ave. to 112th Ave. that are currently the responsibility of the City.

In recognition of their incurring additional expenses to maintain the identified areas, staff recommend a financial contribution of \$5,000 to be considered and appropriated annually by City Council if desired. The City will realize a far greater savings than this amount in staff time by no longer having to direct resources to these areas and will, in turn, redirect that time and resource savings to improved maintenance within the sub-division's three publicly owned parks and elsewhere in the City as may apply.

BACKGROUND: Representatives from the Fox Run HOA contacted staff the end of last year to consider a proposal whereby the HOA would contract out for and assume the maintenance responsibilities associated with the Fox Run Parkway rights-of-way in its full expanse. Their primary desire in doing so is to be able to invest and apply a portion of the HOA's financial resources towards greater landscaping treatments within the rights-of-way area to help beautify the development and to have maintenance control and responsibilities associated with that investment. Staff have no objection to this approach and will continue to work closely with the HOA and representatives from their retained property management and grounds maintenance companies to assure that high standards are sought and maintained within the development and that good communication occurs.

POTENTIAL OBJECTION: Staff is not aware of there being any public opposition to this agreement or the expenditure of contributory funds as proposed.

BUDGET/TIME IMPLICATIONS: Although funds were not anticipated for this expense at the time of budget adoption, staff feels this to be an appropriate expenditure in the amount proposed and will realize far more value than the amount stipulated due to freed up staff time and resources that can be redirected elsewhere within the City.

STAFF REFERENCE: If Council members have any comments or questions, they may contact Steven Zoet, szoet@northglenn.org.

SPONSORED BY: COUNCIL MEMBER PAIZ

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-57
Series of 2007

Series of 2007

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

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

Section 1. The Maintenance Agreement between the City of Northglenn and Fox Run Community Association, attached hereto as **Exhibit 1**, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2007.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT is made and entered into this ___ day of _____, 2007, to be effective July 1, 2007, 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.

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. **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** which is attached hereto and incorporated herein by this reference.

2. **COMPENSATION.** In consideration for the completion of the services specified herein by the Association, the City shall pay the Association the amount of Five Thousand Dollars (\$5,000.00) per year, subject to the provisions of Paragraph 11 below. The maximum fee specified herein shall include all fees and expenses incurred by the Association in performing all services hereunder.

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 \$150,000 per persons and \$600,000 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.

4. UTILITIES. The City shall continue to pay all charges for water, electric power and other utilities assessed, levied or incurred on the Maintained Property during the term of this Agreement or any renewal thereof.

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. 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 is 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.

6. PROFESSIONAL RESPONSIBILITY. The Association hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The Association further agrees that the work performed by it shall be in accordance with generally accepted landscaping practices and the level of competency presently maintained by other practicing landscaping firms in the same or similar type of work in the applicable community.

7. LIABILITY AND INDEMNIFICATION. The City shall not be liable for any loss, injury, death or damage to any person or personal property which may arise from the use or condition of the Maintained Property including, but not limited to, loss, injury, death, or damage resulting from ice, water, rain, gas, electrical wires, fire, theft, burst pipes or plumbing failures during the term of the Agreement or any renewal thereof. The Association hereby expressly agrees, to the extent permitted by law, to defend, indemnify and hold harmless the City, its officers, agents, employees and insurers against any liability, loss, damage, demand, action, cause of action or expense of whatever nature (including court costs and attorney fees) which may result from any loss, injury, death or damage allegedly sustained by any person, firm, corporation or other entity which arises out of or is caused by reason of the Association's negligent use of the Maintained Property or the Association's failure to fulfill the terms and conditions of this Agreement.

8. TERM; TERMINATION.

A. Term. This Agreement will continue in effect until December 31, 2007, 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, 2007, 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. 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.

9. INDEPENDENT CONTRACTOR. The Association is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by the Association to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of the Association for all purposes. The Association shall make no representation that it is the employee of the City for any purposes.

10. NOTICE. Any notice required under this Agreement shall be in writing and mailed by certified mail to the respective parties at the address hereinabove given. The Parks Foreman shall be the representative of the City to accept or give any approval, notice or the like provided hereunder. In the event the Association should change the address hereinabove given during the term of this Agreement, the Association shall notify the City in writing of such change of address:

The City: Parks and Recreation Director
City of Northglenn
P.O. Box 330061
Northglenn, CO 80233-8061

Association: _____

11. SUBJECT TO ANNUAL APPROPRIATION. Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligations of the City not to be performed during the current fiscal year are subject to annual appropriation. In the event the City determines not to appropriate in any fiscal year, the City shall give the Association notice as set forth in Section 8, subsection C. of this Agreement.

12. ASSIGNMENT OR SUB-LEASE. The Association covenants and agrees not to assign this Agreement without first obtaining the written consent of the City.

13. VENUE. For the resolution of any dispute arising hereunder, venue shall be in the courts of Adams County, State of Colorado.

14. NO WAIVER. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

15. ENTIRE AGREEMENT. This Agreement and the attached Exhibits A and B are the entire Agreement between the Association and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

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

CITY OF NORTHGLENN, COLORADO

By: _____
Kathleen M. Novak, Mayor

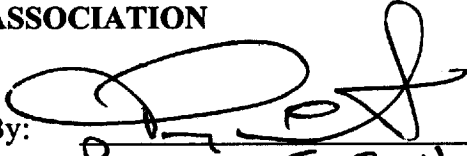
ATTEST:

Diana Lentz, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

ASSOCIATION

By: 

Title PRESIDENT - FOX RUN HOA JUNE 7, 2007
Date

ATTEST:

Title Date



City owned - HOA maintained

City owned - HOA maintained

City owned - HOA maintained

Legend

- City Responsibility
- HOA Responsibility
- trails
- Detention Pond



City and HOA Maintenance Areas

DISCLAIMER OF WARRANTY

The City expressly disclaims any and all warranties, either express or implied regarding the accuracy of any data contained in the GIS Map and any related documents. Any user of the map acknowledges that it assumes and accepts responsibility for the use of the GIS Map and any related documents, and assumes all such risks. The user further agrees to hold the City of Northglenn, and its officers, employees, and agents harmless for any loss, damage or injury arising out of the use of the GIS Map and any other related documents. The user further understands the GIS Map and any other related documents constitute a compilation of information, and, as such, any of the individual information compiled within the GIS Map and any related documents is subject to this Warranty and Disclaimer both individually and when compiled as part of the GIS Map and any related documents.

Prepared: June 5, 2003
File: foxrunmaint.mxd

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 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 must be reported by the agency discovering the damage to the other party. City will determine if Northglenn police need to be notified. City will also notify the Association President of the issue.**
- **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.**
- **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.**
- **City maintenance crews will assist in clean up and removal of broken glass on trail, gutter, turf, and street areas when observed.**
- **At any time that the irrigation main lines must be shut down for repair, the Foreman for the initiating agency must notify the Foreman for the other agency immediately.**
- **At any time that the irrigation controllers are entered, shut down or put in standby mode, the Foreman of the agency initiating the work must notify the Foreman of 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's Foreman or any immediate available field crew.**
- **At any time when vandalism or graffiti is observed in the subdivision by either agency, the agency discovering the issues must report same to the party responsible for that area. Northglenn police must be notified to log and photograph all instances involving graffiti or defacing of public grounds and amenities.**
- **City staff request an initial meeting with the responsible party of the Association's maintenance contractor to discuss the aforementioned issues before any type of maintenance begins.**