

# CITY COUNCIL REPORT



Meeting Date: July 11, 2023  
General Plan Element: *Preservation & Environmental Planning*  
General Plan Goal: *Protect the natural environment*

## ACTION

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**McDowell Sonoran Conservancy Agreement.** Adopt Resolution No. 12851 authorizing and approving Contract No. 2023-081-COS, an agreement between the City of Scottsdale and the McDowell Sonoran Conservancy regarding the Scottsdale McDowell Sonoran Preserve.

## BACKGROUND

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The McDowell Sonoran Conservancy (MSC) was established in 1991 as an Arizona 501(c)(3) non-profit corporation and helped champion the preservation of the McDowell Mountains and surrounding Sonoran Desert, resulting in the creation of the Scottsdale McDowell Sonoran Preserve (MSP or Preserve). Historically, the City has taken the lead on acquiring land for the Preserve and worked with the MSC on stewardship and maintenance of the land as the City's primary partner in the Preserve.

The initial agreement between the City and MSC was Contract No. 2009-191-COS. Adopted by the City Council in 2009, this agreement formalized and clarified the roles, responsibilities, and expectations of the City and MSC. Then, in 2011, the City Council approved Contract No. 2011-101-COS, authorizing the MSC to continue to provide volunteer services to assist and support the City in the important work of protecting, promoting, and managing the Preserve. In 2018, the City Council approved Contract No. 2018-171-COS, which continued these services through June 30<sup>th</sup>, 2023.

Since its inception, MSC has pursued its mission, and will continue to do so, by providing a variety of services for the community in and on behalf of the Preserve. Between May 2022 and May 2023, the MSC provided 68,474 volunteer hours from 544 steward volunteers to help promote the protect the Preserve.

The MSC acknowledges and greatly appreciates the City's commitment to and success in land acquisition and its oversight of the many stewards working in the Preserve. This successful partnership has been instrumental in securing substantial funds and land, and in connecting the

community to the Preserve through public and private partnerships, environmental education, and stewardship, and serves as a model for community-based preservation.

The City and MSC desire to enter Contract No. 2023-081-COS (Agreement) to supersede the 2018 agreement and set forth their agreement for use of the City's facilities, the responsibilities of the MSC, and the monetary consideration provided by the City.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

Staff met several times with MSC leadership to discuss and receive input about the agreement.

### **Policy Implications**

All volunteers regularly working within the Preserve will be required to complete Scottsdale's volunteer screening and background check process. All expenditures will be in accordance with the Agreement's Exhibit "A" and back-up documentation will be required.

## **RESOURCE IMPACTS**

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### **Available funding**

The City of Scottsdale's proposed FY2023/2024 budget includes \$49,500 in the Preserve operating budget for payment to the MSC as prescribed by Contract 2023-081-COS, Exhibit "A."

### **Staffing, Workload Impact**

The implementation of Contract No. 2023-081-COS will be completed using existing staff resources.

### **Future Budget Implications**

Future funding requests will be submitted through the City's annual budget development process for consideration by the City Council.

## **OPTIONS & STAFF RECOMMENDATION**

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**Recommended Approach: Adopt Resolution No. 12851** authorizing and approving Contract No. 2023-081-COS, agreement between the City of Scottsdale and the McDowell Sonoran Conservancy regarding the Scottsdale McDowell Sonoran Preserve.

### **Proposed Next Steps**

With the approval of Contract No. 2023-081-COS, the City's Preserve staff will continue to work with the McDowell Sonoran Conservancy on the protection, promotion, maintenance, and operation of the Preserve as well as monitor all disbursements to ensure compliance with the agreement.

**RESPONSIBLE DEPARTMENT(S)**

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Community Services Division, McDowell Sonoran Preserve

**STAFF CONTACT(S)**

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William B. Murphy, Assistant City Manager, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

**APPROVED BY**

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\_\_\_\_\_  
William B. Murphy, Assistant City Manager  
(480) 312-7954

6/22/2023  
Date

**ATTACHMENTS**

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- 1. Resolution No. 12851
- 2. Contract No. 2023-081-COS
- 2. Exhibit "A"

RESOLUTION NO. 12851

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND APPROVING CONTRACT NO. 2023-081-COS, AN AGREEMENT BETWEEN THE CITY OF SCOTTSDALE AND THE MCDOWELL SONORAN CONSERVANCY REGARDING THE MCDOWELL SONORAN PRESERVE.

WHEREAS, the City of Scottsdale owns, operates, and maintains the McDowell Sonoran Preserve (Preserve);

WHEREAS, Under a prior agreement, the McDowell Sonoran Conservancy (Conservancy) provided staff and volunteers to assist and support the City in the important work of protecting, promoting and managing the Preserve, that agreement expired on June 30, 2023.

WHEREAS, from May 2022 to May 2023, , the Conservancy provided 68,474 volunteer hours from 544 steward volunteers to the City to help promote the Preserve.

WHEREAS, the City, similar to its supports of volunteers throughout the organization, desires to support the steward volunteers and the Conservancy's education efforts and to increase efficiency and communication between the City and the Conservancy;

WHEREAS, the City has considered the value of the Conservancy's volunteer hours, donated amenities, and supplies and has determined that the City will receive a clearly identified direct public benefit from the Conservancy's services and in consideration agrees to provide use of City facilities by the Conservancy for functions related to supporting the Preserve and, when possible, to offset some of the Conservancy's costs in citizen and Preserve user outreach, education and communication, training and other programs for steward volunteers, and technology to ensure effective communication between the City and the Conservancy;

WHEREAS, the City and the Conservancy wish to enter into Contract No. 2023-081-COS setting forth their agreement for use of the City's facilities, the responsibilities of the Conservancy, and the consideration provided; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council hereby authorizes, approves, and directs the Mayor to execute, on behalf of the City, Contract No. 2023-081-COS, an Agreement between the City of Scottsdale and the McDowell Sonoran Conservancy regarding the McDowell Sonoran Preserve.

Section 2. The City Council hereby authorizes the City Manager or designee to execute such documents, provide for use of City facilities or take such other actions necessary to carry out the intent of this resolution and contract.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 11th day of July, 2023.

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

\_\_\_\_\_  
Ben Lane, City Clerk

\_\_\_\_\_  
David D. Ortega, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY



\_\_\_\_\_  
Sherry R. Scott, City Attorney

By: Joe Padilla, Deputy City Attorney

**AGREEMENT BETWEEN THE CITY OF SCOTTSDALE AND THE MCDOWELL SONORAN CONSERVANCY REGARDING THE MCDOWELL SONORAN PRESERVE**

This agreement is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Scottsdale, an Arizona municipal corporation (hereinafter the "City") and the McDowell Sonoran Conservancy, an independent 501(c)(3) nonprofit organization, doing business as the McDowell Sonoran Conservancy (hereinafter the "Conservancy").

**WHEREAS**, the City owns and, acting through the Preserve Director or his or her designee, or through such other City employees as the City Manager or City Council may direct, operates and maintains certain lands designated pursuant to Article 8, § 8 of the Charter of the City of Scottsdale as the McDowell Sonoran Preserve (hereinafter the "Preserve");

**WHEREAS**, the City and Conservancy have been operating under prior agreements whereby the Conservancy provides services to the City and Preserve;

**WHEREAS**, the Conservancy has provided and wishes to continue to provide staff and volunteers to assist and support the City in the important work of protecting, promoting and managing the Preserve;

**WHEREAS**, from May 2022 through May 2023, the Conservancy provided 68,474 volunteer hours from 544 steward volunteers to the City;

**WHEREAS**, in fiscal year 2022/2023, the City provided over \$100,000 in waived facility use fees in support of the Conservancy programs that provide education and benefits to Scottsdale residents and Preserve users;

**WHEREAS**, the Conservancy has been and will continue to be the City's primary partner in the Preserve during the term of this Agreement; the City similar to its support of volunteers throughout the organization intends to support the steward volunteers and the Conservancy's science and education efforts and to increase efficiency and communication between the City and the Conservancy;

**WHEREAS**, the City has considered the value of the Conservancy's volunteer hours, donated amenities and supplies and has determined that the City will receive a clearly identified direct public benefit by entering into this Agreement and in consideration agrees to provide use of City facilities by the Conservancy for functions related to supporting the Preserve and, when possible, to offset some of the Conservancy's costs in citizen and Preserve user outreach, education and communication, training and other programs for steward volunteers, and technology to ensure effective communication between the City and the Conservancy; and

**WHEREAS**, the City and the Conservancy wish to set forth their agreement for use of the City's facilities, the responsibilities of the Conservancy and the consideration provided herein.

**NOW, THEREFORE**, the City and the Conservancy agree as follows:

1) **SERVICES PROVIDED BY THE CONSERVANCY:** The Conservancy, as authorized by the City, will provide staff and trained volunteers to assist the City in operations, community outreach, maintenance, public safety and outreach-related services and activities, in or directly related to the Preserve. The exact priorities of the services and programs conducted will be determined in accordance with this Agreement on an annual basis and may include, but are not limited to, the following:

- a) A comprehensive volunteer stewardship program patrol, including volunteer recruitment and training.
  - i. Citizen and Preserve User Outreach, Education and Communication using:
    - (1) Trailhead Ambassadors/educators
    - (2) Roving Trail Ambassadors/patrol/educators
    - (3) Education programs for citizens and Preserve users ("Education Programs")
      - (a) Such programs may include classes and lectures by volunteers; neighborhood and community program opportunities; trailhead and trailside programs; guided hikes/rides; nature events; and an education festival.
  - ii. Maintenance/Protection of the Preserve
    - (1) Trailhead area caretaking and stocking
    - (2) Trails
    - (3) Work Projects for trails, trailheads and other agreed upon priorities
  - iii. Public safety
    - (1) July 4<sup>th</sup> and New Year's fire/fireworks watch plans
    - (2) Storm watch
    - (3) In field reporting of users in need
- b) Website and print resources - link between City and Conservancy websites.
- c) Advertising, promotion, special events, and membership activities, each with the sole purpose of promoting the use, protection and enhancement of the Preserve, which may include, but is not limited to, providing financial support for Preserve amenities, maintenance, or activities, provided that all net proceeds derived from such activities are utilized to support programs and activities that protect and enhance the Preserve.
- d) Facilitating Preservation, habitat, and cultural resource protection, and other services.
  - i. Certain of these activities also are performed in accordance with the separate contracts described in Section 2(b) below.

2) **CONSIDERATION PROVIDED BY THE CITY:** In exchange for the above services, which the City regards as providing a valuable public purpose and constituting fair and direct consideration that is at least substantially equal to the City's expenditure under this Agreement, the City will provide:

- a) The Scottsdale City Council will consider yearly funding as outlined on the attached Exhibit A for programs that are sponsored by the City or directly benefit the City and the Preserve or equipment that directly benefits the City and the Preserve. Council will consider funding thru its yearly budget process (example

22/23 budget proposes \$50K for this support of volunteers, similar to support of other volunteers)

- b) The City and Conservancy have and may in the future enter into individual habitat and resource preservation monitoring, study and capital projects contracts for work in the Preserve and such work, deliverables and compensation will be reflected in such contracts.
- c) The Conservancy will be permitted to use the Preserve in its advertising, promotion, special events and other membership activities. The Conservancy at its cost, will provide or update donor and volunteer recognition plaques and materials ("Conservancy Recognition Signage") at trailheads. The term "Conservancy Recognition Signage" does not include any signage at trailheads that describes the Conservancy's preservation efforts and historic role in the Preserve. The selection of the trailheads and location of the Conservancy Recognition Signage will be subject to City policies and regulations<sup>1</sup> and will be subject to the final approval of the City Contract Administrator (as defined in Section 11), which approval will not be unreasonably withheld.

The Conservancy may apply for temporary signage for "sponsors/event sponsors" at trailheads, upon such terms and conditions negotiated by the Conservancy and the City but subject to the final approval of the City Contract Administrator, and in compliance with City regulations. Any funds received shall be used by the conservancy to support the Preserve ("Conservancy and Preserve Sponsorship"). Any costs associated in producing the Conservancy and Preserve Sponsorship shall be reimbursed from the sponsor proceeds and the method and manner of securing and approving such sponsors will be in accordance with all existing City rules and regulations and an executed sponsorship agreement between the Conservancy and sponsor. The City shall have the right in its sole discretion to reject any sponsorship agreement. Further, the Conservancy and Preserve Sponsorship may remain in the Preserve for up to one (1) year. If this Agreement expires or is terminated, the Conservancy shall remove any Conservancy and Preserve Sponsorship signage from the Preserve within thirty (30) days after the City Contract Administrator's request.

The Conservancy has installed donor collection boxes ("Collection Boxes") and adjacent signage at the Preserve trailheads. The locations and installation of the Collection Boxes may be adjusted and will be mutually and reasonably agreed upon by the Conservancy and the City.

The cost to produce, install and maintain the Conservancy Recognition Signage and Collection Boxes will be the sole responsibility of the Conservancy with the approval of the City Contract Administrator. If this Agreement expires or is terminated, the Conservancy shall remove the Collection Boxes and Conservancy Recognition Signage from the Preserve within thirty (30) days

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<sup>1</sup> Such policies and regulations include without limitation Scottsdale Revised Code Chapter 21 (McDowell Sonoran Preserve), Scottsdale Revised Code, Appendix B, Article VIII (Sign Requirements), and City administrative regulation relating to sponsorships (AR 156), all as may be amended from time to time.

after the City Contract Administrator's request.

- d) The Conservancy shall be permitted to use space at the City's community centers or library facilities depending on availability and at no cost to the Conservancy pursuant to signed City facility use permits, for functions related to supporting the Preserve as the City and the Conservancy determine to be reasonably necessary and appropriate to carry out the terms of this Agreement. If there is no scheduling conflict with other users or events City community facilities may also be available for two annual large Steward education events, generally held in November and January, and one annual Steward recognition event generally held in April.

3) **CONSERVANCY INDEPENDENCE:** The Conservancy, as an independent organization, will continue to offer other programs and services and conduct other activities relating to its mission that are not subject to this Agreement, including, but not limited to, advocacy and fundraising. Upon the issuance of a Preserve permit for the sale of merchandise, the Conservancy shall be entitled to sell any of its Preserve-related materials at the Preserve.

4) **DUTIES OF THE CITY:** The City, acting through such City employees as the City Manager may direct, will provide the onsite supervision, tools and materials, training or training design, authorization, fee reservations, direction and materials, reporting forms and permit formats, other support as mutually and reasonably agreed.

5) **PERIODIC JOINT PLANNING, REVIEW AND BUDGET PROPOSAL:** Regular meetings are held throughout the year between COS Staff and MSC staff/volunteers and deemed appropriate by both parties. As often as required, but at a minimum at least annually, the Preserve Director or his or her designee will meet with the designees of the Conservancy to discuss existing and proposed Preserve-related services and activities, . Each year of this Agreement, the Conservancy will present an annual draft report (focusing on the preceding peak season activities) at the joint meeting with City and the Conservancy by May 30, with the final report (with completed year-end numbers and budget implications) completed by September 30, setting forth the specific services it provided for which the City provided financial or in-kind assistance and its activities performed in the prior year of this Agreement and its plans for the next year of this Agreement.

The Contract Administrators shall then meet to discuss the plans for the next year of the Agreement, including the possibility of any City financial or in-kind assistance for programs that are sponsored by the City or directly benefit the City and the Preserve or equipment that directly benefits the City and the Preserve. Any such assistance is subject to City procurement regulations and the City budget process. If the Contract Administrators agree on a proposal for such City assistance, the City will submit such request for consideration in the City's budget process.

6) **VOLUNTEER SCREENING, INDEMNITY:** The Conservancy will ensure that its staff and volunteers, who work in the Preserve, complete the City's volunteer screening process through the City's Human Resources Office. The City will provide the Conservancy's volunteers with the insurance and indemnity available to other volunteers working with the City when such Conservancy volunteers are on duty and acting in accordance with direction and under the control of authorized City employees as follows ("On-Duty Conservancy Volunteer"):

- a) **Trailhead Ambassadors:** While scheduled, wearing badge and uniform shirt, and on duty at the trailheads.
- b) **Roving Trail Ambassadors/Patrol Program Volunteers:** While following the City's current procedures for tracking and reporting patrol routes, wearing badge and uniform shirt, and patrolling alone or with, at most, three other authorized volunteers on mapped and signed Preserve trails (no mountain biking to occur on technical trails).
- c) **Education:** While providing Education Programs (as defined in Section 1) that have been scheduled and approved by City staff and while wearing badge and uniform shirt.
- d) **Maintenance:** While wearing badge and uniform shirt and either is: (i) a general volunteer working on a City maintenance or repair project that has been approved by City staff or (ii) an authorized "maintenance crew leader"<sup>2</sup> volunteer working on a maintenance or repair project in the Preserve.
- e) **Research & Field Institute Activities:** While performing research and field institute activities in the Preserve on a volunteer basis pursuant to a City- issued permit and wearing badge and uniform shirt.

The City-provided insurance and indemnity is limited to authorized volunteers performing the above activities and will not be extended to volunteers working at Conservancy fundraisers or special events, except as expressly authorized above.

- 7) **TERM AND EXTENSION:** The initial term of this contract shall be for a period of two (2) years. The City and Conservancy may mutually agree to extend this contract for three (3) additional one (1) year periods, upon recommendation of the Contract Administrator, and concurrence from the Purchasing Director.
- 8) **MINOR ADJUSTMENTS:** Responsibility of the Parties under this agreement may be updated by mutual consent of the Parties provided there is no additional cost to the City.
- 9) **INSURANCE REPRESENTATIONS AND REQUIREMENTS:**
  - a) **General.** The Conservancy agrees to comply with all applicable City ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of Conservancy, Conservancy shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City. Failure to maintain insurance as specified may result in termination of this Agreement at City's option.
  - b) **No representation of coverage adequacy.** By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Conservancy. The City reserves the right to review all the insurance policies

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<sup>2</sup> A "maintenance crew leader" volunteer is a Conservancy volunteer who has received special training by the City to be the independent lead on maintenance crew projects.

and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements stated in this Agreement or failure to identify any insurance deficiency will not relieve the Conservancy from, nor be construed or considered a waiver of, its obligation to maintain the required insurance always during the performance of this Agreement.

- c) **Coverage term.** All insurance required by this Agreement shall be maintained in full force and effect throughout the entire term of this Agreement.
- d) **Use of subcontractors.** If any work under this Agreement is subcontracted, the Conservancy shall execute a written agreement with its subcontractors containing the Insurance Requirements to protect the City and the Conservancy. The Conservancy is responsible for executing the agreements with its subcontractors and obtaining Certificates of Insurance verifying the insurance requirements.
- e) **Evidence of insurance.**
  - i. On or before the effective date of this Agreement, the Conservancy shall furnish the City Contract Administrator with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by the Conservancy's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Agreement and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City shall reasonably rely upon the Certificate of Insurance as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificates shall identify the title of this Agreement and contract number to relate the insurance to this Agreement, and shall be sent to the designated City Contract Administrator. Certificates of Insurance submitted without referencing the title and number of this Agreement will be subject to rejection and may be returned or discarded. If any of the above-cited policies expire during the life of this Agreement, it is the Conservancy's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the insurance provisions.
  - ii. Certificates shall contain the specific provisions that follow:
    - (1) City of Scottsdale, its agents, representatives, officers, directors, officials and employees are endorsed onto the insurance as an Additional Insured under the following policies:
      - (a) Commercial General Liability.
  - iii. Conservancy insurance and that of any Conservancy subcontractor shall be primary insurance for performance of this Agreement unless the activity that is the subject of a third-party claim arises out of the activity of an On-Duty Conservancy Volunteer as defined in Section 6.

- iv. All policies required under this section shall waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Conservancy or their subcontractors except those arising out of the On-Duty Conservancy Volunteer activities.
- v. If the Conservancy receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be the Conservancy's responsibility to provide prompt notice of same to the City Contract Administrator, unless such coverage is immediately replaced with similar policies.

f) **Required coverage.**

- i. **Commercial general liability.** The Conservancy shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors; products-completed operations, personal injury, advertising injury, bodily injury, property damage, and contractual liability. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- ii. **Worker's compensation insurance.** If the Conservancy has employees, Conservancy shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Conservancy employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.
- iii. **Other Insurance.** The Conservancy shall maintain any other insurance City may reasonably require for the protection of City and City employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds"). Likewise, City may elect by written notice to reduce or increase the amount of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided. Any modification or variation from these insurance requirements must be made by the City Risk Manager, whose decision is final. Such action will not require a formal amendment but may be made by administrative action.

10) **NOTICE:** All notices provided for by this Agreement shall be made in writing and shall be deemed received by the intended recipient: on the business day that such notice is sent by facsimile or email to the intended recipient provided that such notice is also sent by United States Mail; or the third business day after the date placed in United States Mail, certified mail, return receipt requested and postage paid thereon. All notices shall be delivered to the

address indicated below, unless the party giving any such notice has been notified, in writing, of a change of such address:

**CONSERVANCY:**

McDowell Sonoran Conservancy  
Attn: Chief Executive Officer  
15300 N. 90<sup>th</sup> St., Suite 400  
Scottsdale, AZ 85260  
[kelly@mcdowellsonoran.org](mailto:kelly@mcdowellsonoran.org)

**CITY OF SCOTTSDALE**

City of Scottsdale  
Attn: Preserve Manager  
7447 E. Indian School Road, Suite 300  
Scottsdale, AZ 85251  
[shamilton@scottsdaleaz.gov](mailto:shamilton@scottsdaleaz.gov)

**COPY TO:**

Margie Traylor  
[mtraylor@audaciousstudios.com](mailto:mtraylor@audaciousstudios.com)

**COPY TO:**

Office of the City Attorney  
Attn: Sherry R. Scott  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

11) **CANCELLATION:** Either party may terminate this agreement by delivering at least one (1) year's prior written notice of cancellation to the other party. The City reserves the right to cancel this Agreement immediately, or to cancel or disallow any activity undertaken pursuant to the Agreement, if the City, in its sole discretion, determines that such activity, or the continuance of this Agreement, is detrimental to the health, safety or welfare of the City, its citizens or others. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511. To the extent this Agreement requires the City to provide any funds for the performance of its obligations, the Agreement is subject to cancellation if in any fiscal year funds are not appropriated for the performance of the Agreement.

12) **CONTRACT ADMINISTRATORS:** The contract administrator for the City ("City Contract Administrator") is the Preserve Director, who at the time of the execution of this Agreement is Kroy Ekblaw, or designee. The contract administrator for the Conservancy ("Conservancy Contract Administrator") and together with the City Contract Administrator, the "Contract Administrators") is the Contract Administrators will be the primary contacts for the respective parties for matters relating to the performance of this Agreement.

13) **NO THIRD-PARTY BENEFICIARIES:** The City and the Conservancy are the only parties to this Agreement and it is not intended to confer any rights, or to impose upon the City and the Conservancy any obligations, with respect to any third parties.

14) **COUNTERPARTS AND FACSIMILE SIGNATURES:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one agreement. The parties may execute this Agreement and transmit their signature by facsimile, which shall, for all purposes, be deemed to be an original.

15) **AUTHORITY TO EXECUTE:** The person or persons signing this Agreement on behalf of the parties warrant that they are duly and legally authorized to enter into this Agreement and are authorized to act on behalf of and bind the parties, and all persons claiming by or through them, to the terms of this Agreement.

16) **BOYCOTT OF ISRAEL:** The Conservancy certifies that it is not currently engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel as defined in A.R.S. § 35-393.

17) **COMPLIANCE WITH LAW:** The Conservancy shall perform its obligations under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended.

18) **ARIZONA LEGAL WORKERS ACT:** To the extent applicable, under the provisions of A.R.S. § 41-4401, the Conservancy warrants to the City that the Conservancy and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Conservancy and all its subcontractors now comply with the E-Verify Program under A.R.S. § 23-214(A).

A breach of this warranty by the Conservancy or any of its subcontractors will be considered a material breach of this Agreement and may subject the Conservancy or subcontractor to penalties up to and including termination of this Agreement or any subcontract. The Conservancy will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Conservancy's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Agreement by the City.

The City retains the legal right to inspect the papers of any employee of the Conservancy or any subcontractor who works on this Agreement to ensure that the Conservancy or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Conservancy and any of its subcontractors to ensure compliance with this warranty. The Conservancy agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

19) **SEVERABILITY:** If any provision of this Agreement is rendered or declared to be illegal or unenforceable by reasons of any existing or subsequently enacted statute, rule, or regulation, or by order of or judgment of a court, then notwithstanding that illegality or unenforceability, this Agreement will remain in full force and effect and that provision will be deemed to be deleted. In accordance with A.R.S. § 41-194.01, should the Attorney General give notice to the City that any provision of this agreement violates, or may violate, state law or the Arizona Constitution, and the Attorney General submits the offending provision(s) to the Arizona Supreme Court, the offending provision(s) will be immediately severed and struck from this agreement, and the City and Conservancy must, within ten (10) days after that notice, negotiate in good faith to resolve any issues related to the severed provision(s). If the parties are

unable to negotiate a resolution to any issues related to the severed provision(s), the City may terminate this Agreement immediately.

20) **EXHIBITS:** All Exhibits referred to in this Agreement are incorporated by this reference.

21) **ENTIRE AGREEMENT; MODIFICATION:** Except as may be provided under any additional work contracts executed in accordance with Section 2(b) hereof, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matter. Except as provided in Section 8, this Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Conservancy.

McDowell Sonoran Conservancy

By: 

Print Name: Kelly M. McCullough

Its: CEO

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

Ben Lane, City Clerk

David D. Ortega, Mayor


APPROVED AS TO FORM:

  
Sherry R. Scott, City Attorney

By: Joe Padilla, Deputy City Attorney

REVIEWED BY:

  
George Woods, Jr.  
Risk Management Director

  
William B. Murphy,  
Assistant City Manager

**EXHIBIT A  
City Cost Offsets**

**Expedition Days Events –**

- The City and the Conservancy will co-host this event and include Title 1 schools that City uses for after-school programs.
- City may reimburse the Conservancy for printed punch booklets/notebooks for event participants.
- City in-kind or as reimbursement, for event tents, tables, chairs and security to cover 16 stations.

**New Stewards Orientation & Training**

- The Conservancy and the City will co-host an annual Fall kick-off event to welcome stewards back prior to season starting in October. At the event, the City and the Conservancy will outline planned programs and updates to new trailhead construction.
- provision of t-shirts for the new stewards

**Steward Recognition & Education Programs**

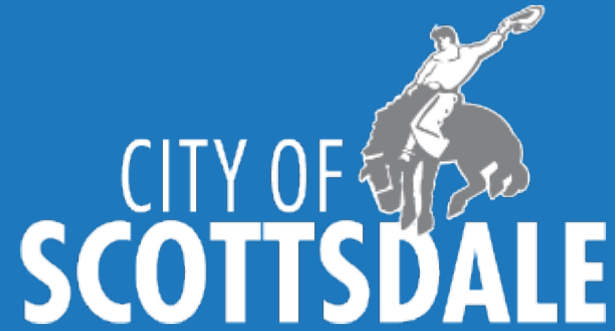
- The Conservancy and the City will co-host a Winter Steward Education event to provide ongoing education for the stewards. At the event, the City and the Conservancy will outline program updates.
- The Conservancy and the City will co-host an annual Spring Steward Recognition event to recognize and thank the stewards for their work over the last season. At the event, the City and the Conservancy will present awards and recognize outstanding achievement.

**Printing support -Mountain Lines Printed Magazine, Explorer Guide & Activity Guides**

- The Conservancy Mountain Lines, providing education and articles relating to the Preserve. In each issue, the City will receive at least a 1/2-page advertisement promoting the Scottsdale Community Services Department, and acknowledging the City's ownership of the Preserve and its management and care in cooperation with the Conservancy.
- Explorer Guide, providing educational information for children about the Preserve and its environment. This booklet is distributed at all of the Trailheads that have distribution opportunity.
- Bi-monthly Activity Guides, providing educational information and information on activities taking place within the Preserve. This guide is distributed at all of the Trailheads that have distribution opportunity, Scottsdale Fashion Square, REI retail stores and numerous resorts around Scottsdale.
- The City will regularly include a one-page insert about the Conservancy in the Scottsdale Community Services program guide. Additionally, the City will provide an insert about the Conservancy in one City water bill distribution per year. Content is subject to approval by City publication/marketing staff.

**Software License & Reporting System**

- Volunteer Reporting System to better be able to track Steward Contributed Hours for the City.



City Council, July 11<sup>th</sup>, 2023  
Agenda Item #11

McDowell Sonoran Conservancy Agreement

# Background

- Relationship spans more than 30 years
  - City owns and operates the Preserve
  - Conservancy supports the City in protecting, promoting, and managing the Preserve
- Prior Contracts – 2009, 2011, 2018
- Contract establishes the roles and responsibilities of the parties

# Services Provided by the Conservancy

- Comprehensive Stewardship program
  - Trailhead ambassadors
  - Roving trail patrollers
  - Education programs for citizens and visitors
  - Trail maintenance
  - Special assignments - e.g. July 4<sup>th</sup> Fire Watch
- 2022-2023 Season stats:
  - 68,474 hours
  - 544 individual Stewards
  - \$2.05 Million (68,474 hours X \$29.95/hour, per the IRS)

# Consideration Provided by the City

- Consider funding in the annual budget to support volunteer training, education, recognition, and print resources
- Donation collection boxes at trailheads
- Use of space at City facilities for functions that support the Preserve
- Donor recognition signage at trailheads
- Temporary sponsorships at trailheads



# Questions

Scottsdale City Council Meeting – July 11<sup>th</sup>, 2023