

CITY COUNCIL REPORT



Meeting Date: April 28, 2026
General Plan Element: *Neighborhood Preservation & Revitalization Element*
General Plan Goal: *Preserve neighborhood character*

ACTION

Authorize Contract No. 2026-057-COS. Adopt Resolution No. 13645 authorizing Contract No. 2026-057-COS with the Scottsdale Ranch Community Association for median maintenance and funding reimbursement.

BACKGROUND

On May 19, 1986, the City of Scottsdale first entered into an agreement with the Scottsdale Ranch Community Association concerning the maintenance and reimbursement of 25.37 acres of medians. This program was identified as a means to allow developments the opportunity to upgrade their dedicated medians and rights-of-way, with the City paying the annual minimum maintenance costs. The developers would accept all landscaping construction costs in the identified areas. Additionally, the developer would assume all maintenance costs over and above the base cost that would have been the City's responsibility. The current maintenance cost for the City's semi-arid designed medians averages \$.08 per sq. ft. annually. The City has agreed to reimburse the developers for the annual cost of median maintenance at the rate the City would have paid for the identified areas.

The City of Scottsdale approved Contract #2006-031-COS with the Scottsdale Ranch Community Association, which is set to expire May 19, 2026, after 20 years. Scottsdale Ranch Community Association is requesting to enter into a new contract that continues to provide the same basic maintenance responsibilities and to increase reimbursement funding from the City. The reimbursement rate for the second contract was \$ 0.06 per sq. ft. The recommended rate for the new agreement is \$.08 sq. ft.

IMPACT ANALYSIS

The original median and rights-of-way program has allowed Community Associations in Scottsdale to upgrade the landscaping design in their individual communities, without shifting the costs to maintain upgrades to the City.

Contract stipulations also require that the developer must fund the redesign and reconstruction to City standards if the maintenance responsibility were returned to the City. This would result in no additional cost to the City.

Annual reimbursement payments to the Scottsdale Ranch Community Association will be calculated based on the average current square-footage cost the City pays for annual contractual maintenance of City medians and rights-of-way. The reimbursement amount will be adjusted annually based on any changes in the City's costs.

Available Funding

The FY 2026/2027 requested budget includes funding to support the \$.08 per sq. ft. reimbursement costs to the Scottsdale Ranch Community Association.

The agreement will fund \$.08 per sq. ft. for a total of 25.37 acres, which totals approximately \$88,409.38 annually.

Future Budget Implications

Increases in annual maintenance costs will result in additional reimbursement costs, which would be requested in future budget years.

Staffing, Workload Impact

None

OPTIONS & STAFF RECOMMENDATION

Adopt Resolution No. 13645 approving Contract No. 2026-057-COS with the Scottsdale Ranch Homeowners Association for reimbursement of median maintenance costs at the City's semi-arid average median maintenance expense.

RESPONSIBLE DEPARTMENT(S)

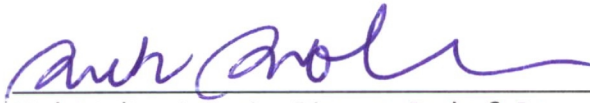
Parks and Recreation Department

STAFF CONTACTS (S)

Chris Walsh, Deputy Parks & Rec Director, cwalsh@scottsdaleaz.gov

Hezekiah Allen, Parks & Recreation Manager, hallen@scottsdaleaz.gov

APPROVED BY



Nick Molinari, Senior Director Parks & Rec

(480) 312-1011, nmolinar@scottsdaleaz.gov

4/14/26

Date

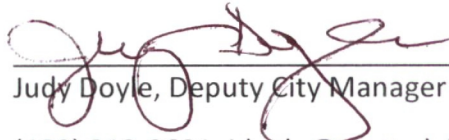


Chris Walsh, Deputy Parks & Rec Director

(480) 312-2551, cwalsh@scottsdaleaz.gov

4/14/26

Date



Judy Doyle, Deputy City Manager

(480) 312-2691, jdoyle@scottsdaleaz.gov

4.14.2026

Date

ATTACHMENTS

1. Exhibit A
2. Resolution 13645 (Copy)
3. Proposed Contract No. 2026-057-COS (Copy)

EXHIBIT A

Maintained and Reimbursable Areas:

96 th Street Medians	2.00 acres	87,120.0 sq.ft.	= \$ 6,969.60
Via Linda Median	2.67 acres	116,305.2 sq.ft.	= \$ 9,304.42
Shea Blvd. Corridors	20.40 acres	888,624.0 sq.ft.	= \$ 71,089.92
Mountain View Road	0.30 acres	13,068.0 sq.ft.	= \$ 1,045.44
Total	25.37 acres	1,105,117.2 sq.ft.	\$ 88,409.38

RESOLUTION NO. 13645

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2026-057-COS, AN AGREEMENT WITH THE SCOTTSDALE RANCH COMMUNITY ASSOCIATION FOR MAINTENANCE OF MEDIANS.

WHEREAS, the City of Scottsdale is responsible for maintenance of street medians commencing with their dedication to, and acceptance by, the City.

WHEREAS, the developer of Scottsdale Ranch, in accordance with its approved development plans, landscaped certain medians in a manner which exceeded in coverage by live plantings the standards established by the City for semi-arid median plantings.

WHEREAS, in 1986, the Scottsdale Ranch Community Association (the "Association") and the City entered into an agreement concerning maintenance of the medians.

WHEREAS, in 2006, the Association and the City entered into Contract No. 2006-031-COS concerning maintenance of the medians, which will expire on May 19, 2026.

WHEREAS, the Association desires, in keeping with the landscaping standards established throughout Scottsdale Ranch, to continue to maintain the medians in a manner that will exceed in coverage by live plantings the standards established by the City for semi-arid medians.

WHEREAS, the City's costs, were it to maintain the medians, would exceed the maintenance costs for medians landscaped in accordance with the City's standards for semi-arid medians.

WHEREAS, the City will reimburse the Association at the initial rate of eight (8) cents per square foot of medians maintained, which equals the City's average cost of maintaining a standard semi-arid City median.

WHEREAS, the term of this agreement will be for a period of ten (10) years, with one ten (10) year extension.

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

Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City, Contract No. 2026-057-COS, an agreement with the Scottsdale Ranch Community Association for maintenance of medians.

Section 2. The City Manager or designee is hereby authorized to execute such other documents and take such other actions as necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this _____ day of _____, 2026.

CITY OF SCOTTSDALE,
an Arizona municipal corporation

Lisa Borowsky, Mayor

ATTEST:

Ben Lane, City Clerk

APPROVED AS TO FORM:

Lindsay Hampshire
Luis E. Santaella, Interim City Attorney
By: Lindsay Hampshire, Assistant City Attorney

MEDIAN MAINTENANCE AND REIMBURSEMENT AGREEMENT

This Agreement is made, entered into and effective on the ____ day of _____, 2026, by and between the **SCOTTSDALE RANCH COMMUNITY ASSOCIATION**, an Arizona non-profit corporation (the "Association"), and the **CITY OF SCOTTSDALE**, an Arizona municipal corporation (the "City") (individually, a "party;" collectively, the "parties"), and is based upon the following recitals:

RECITALS

WHEREAS, Scottsdale Ranch is a Planned Unit Development located on the south side of Shea Boulevard between 96th Street and 112TH Street in Scottsdale, Arizona; and

WHEREAS, the Association is comprised of members who are property owners in Scottsdale Ranch; and

WHEREAS, the Association was formed for the purposes, among others, of maintaining, managing, and operating certain medians and right of way corridors within Scottsdale Ranch; and

WHEREAS, the developer of Scottsdale Ranch landscaped certain medians in a manner which exceeded in coverage by live plantings the standards established by the City for semi-arid medians; and

WHEREAS, the subject medians are more particularly described and/or depicted in **Exhibit A**, attached hereto and encompass one million one hundred five thousand one hundred seventeen and two tenths (1,105,117.2) square feet (collectively, the "Medians"); and

WHEREAS, the City is responsible for maintenance of street medians commencing when the streets and medians in Scottsdale Ranch are dedicated to and accepted by the City; and

WHEREAS, the Medians have been dedicated to and accepted by the City; and

WHEREAS, on May 19, 1986, Scottsdale Ranch and the City entered into an agreement (the "1986 Agreement") concerning maintenance of the Medians; and

WHEREAS, the term of the 1986 Agreement expired on May 19, 2006; and

WHEREAS, on July 10, 2006, Scottsdale Ranch and the City entered into an agreement (the "2006 Agreement"); and

WHEREAS, the 2006 Agreement will expire on May 19, 2026; and

WHEREAS, the Association desires, in keeping with the landscaping standards established throughout Scottsdale Ranch, to continue to maintain the Medians in a manner

that will exceed in coverage by live plantings the standards established by the City for semi-arid medians; and

WHEREAS, the City's costs, were it to maintain the Medians, would exceed the maintenance costs for medians landscaped in accordance with the City's standards for semi-arid medians; and

WHEREAS, the Association and the City desire to set forth herein a new agreement concerning responsibility for, and the sharing of costs associated with, maintenance of the Medians and related matters.

NOW, THEREFORE, in consideration of the above recitals and agreements contained herein, it is mutually agreed upon by and between the parties hereto, as follows:

1.0 Incorporation of Recitals. The recitals to this Agreement are hereby affirmed by the parties as true and correct and are incorporated herein by this reference.

2.0 Agreement to Maintain Medians. The Association agrees to maintain the Medians to the satisfaction of the Contract Administrator. The Contract Administrator shall not exercise his or her discretion arbitrarily and the City shall not subject the Association to maintenance standards inconsistent with section 5.0 hereof.

3.0 Plant Types, Density and Water Conservation. The City shall not require the Association to modify the density or type of plants, shrubs, bushes or trees existing on the Medians on the effective date of this Agreement. However, the Association shall not increase the density of plantings on the Medians and, in planting new or replacing existing plants, shrubs, bushes or trees, the Association shall only use low water use plants, shrubs, bushes and trees as defined by the City and/or the Arizona Department of Water Resources. Under no circumstances shall the Association install turf on the Medians.

4.0 Maintenance Expenses.

(a) The City shall, in accordance with subsection (b) below, reimburse the Association in an amount equal to the costs that would have been incurred by the City in maintaining the landscaping on the Medians if such landscaping had been installed pursuant to the City's standards for semi-arid medians. The City's reimbursement obligation shall commence immediately on the effective date of this Agreement.

(b) The City shall reimburse the Association on an annual, calendar year basis, in accordance with the following provisions:

(1) The City's reimbursement obligation ("Reimbursement Obligation") during the first calendar year of this Agreement shall equal eighty eight thousand four hundred nine and 38/100 dollars (\$88,409.38), which is eight cents (\$.08) multiplied by the total square footage of the Medians. The annual reimbursement obligation shall be proportionally reduced during the first calendar year of this Agreement to provide reimbursement to the Association for only those periods that maintenance is actually

performed pursuant to this Agreement and during which the City's reimbursement obligation has become effective.

(2) The City's first year Reimbursement Obligation, as determined in subsection (b)(1) above, shall be adjusted upward or downward on January 1st of the second and each subsequent year of this Agreement on the basis of the annual change, if any, in the then current costs that would have been incurred by the City in maintaining the landscaping on the Medians if such landscaping had been installed pursuant to the City's standards for semi-arid medians.

(c) Reimbursements by the City to the Association shall be paid annually, on or before February 15 for the preceding calendar year.

5.0 Maintenance Standards.

(a) Except as otherwise expressly set forth in this Agreement, the Association shall at all times, in satisfying its obligations under this Agreement, comply with the City's Design Standards and Policy Manual ("DS&PM"), as amended from time to time (a copy of which is available at the City's web site, <http://www.scottsdaleaz.gov/design/dspm/>). Additionally, the Association shall comply with any and all standards established or adopted by the City, either formally or as a matter of operational practice, of which the Contract Administrator gives notice to the Association, in writing, relating to: the maintenance of the Medians; safety procedures to be followed in accomplishing the maintenance including, without limitation, traffic safety; aesthetic considerations; and water usage guidelines and limitations. These standards shall be the same as are applicable to semi-arid medians maintained by the City. Without limiting the generality of the foregoing, the Association shall at all times comply with the following requirements:

(1) The Association shall maintain the Medians in a healthy, neat, clean, and litter and weed-free condition. Litter includes, without limitation, fallen leaves, trimmings, wind blown material, trash, cigarette butts, downed or broken tree limbs, or small dead animals (i.e., under 25 pounds). The Association shall immediately report large dead animals to the Contract Administrator, who shall arrange for disposal.

(2) In maintaining the Medians in a weed-free condition, the Association may use any combination of herbicides (pre and post-emergent) and physical means. The Association may use herbicides with the signal words "CAUTION" OR "WARNING." The Association shall not use any herbicides with the signal word "DANGER." All applicators must be licensed. The Association shall adhere to all federal and state requirements for weed control, as established from time to time by the Arizona Structural Pest Control Commission, or other regulatory authority. The Association shall provide the Contract Administrator with spray logs within one week after each herbicide application.

(3) The Association shall prune and maintain all plants, shrubs, bushes, trees and ground cover so as to prevent sign obstructions and sight distance hazards with traffic signs, or pedestrian or vehicular traffic. Failure of the Association to

comply with the sight distance and sign obstruction requirements specified herein and in the DS&PM shall constitute a material breach of this Agreement.

(4) The Association shall comply with the City of Phoenix Traffic Barricade Manual, as amended from time to time, for traffic control and work zone safety. Failure of the Association to comply with the Barricade Manual shall constitute a material breach of this Agreement.

(5) The Association shall maintain all plants, shrubs, bushes and trees at the heights specified in the DS&PM or as directed by the Contract Administrator in writing. The Association shall keep all plants, shrubs, bushes and ground cover off of and behind all sidewalks and curbs.

(6) The Association shall not permit any tarps, barrels or other maintenance equipment to remain on any walkways. The Association shall complete the maintenance of one area prior to moving on to the next area. Before leaving an area, the Association shall clean all curbs, gutters and sidewalks of all litter.

(7) The Association shall maintain the Medians to the level existing on the effective date of this Agreement, and as the same may be improved from time to time. For example, if a Median is planted with a mature Blue Palo Verde tree that is later destroyed by storm activity, the Association must replant a Blue Palo Verde tree or substantially similar species of similar maturity and size, but in all events a minimum twenty-four (24) inch boxed specimen. The Association's obligation under this subsection exists irrespective of the cause of the damage to the Medians and the plantings thereon.

(b) The Association shall insure that its activities and those of its employees, agents, contractors and subcontractors, as applicable, in respect to this Agreement, are conducted in a manner that fully complies with City safety standards in respect to work done in, on or about a public street, whether such standards are officially adopted by the City or are operationally preferred. The Association shall perform all maintenance of the Medians permitted or required pursuant to this Agreement at such times and in such a manner as to minimize any inconvenience to the public, consistent with required safety standards.

(c) The Association acknowledges that the conservation of water is an important policy of the City and State and, therefore, the Association shall use its best efforts to limit its water usage in maintaining the Medians. In no event shall any water usage on the Medians by the Association exceed any prevailing standards or limitations promulgated by the Arizona Department of Water Resources or any more stringent limitations that may be adopted by the City or other regulatory authority from time to time.

(d) If, in the opinion of the Contract Administrator, the maintenance of the Medians or the manner in which it is being performed, fails to meet the standards established by the City, then the Contract Administrator shall give the Association written notice of the deficiencies and the action required to correct them. The Contract Administrator shall not exercise his or her discretion arbitrarily.

(e) The Association shall have thirty (30) days from the time written notice is given to correct the deficiencies identified in the notice. Any corrective actions required by the provisions of this subsection shall be at the sole expense of the Association. Failure to take the required corrective action within the period stated herein shall constitute a material breach of this Agreement.

(f) In the event that the Association fails or refuses to comply with any request made pursuant to this section, the City may take any actions necessary to correct the deficiencies, using either City employees or private workers, at the City's sole discretion. The Association shall reimburse the City for any costs incurred by the City pursuant to this subsection and the full amount of such costs shall be due and payable thirty (30) days from receipt of written notice from the City. Any amounts that remain due and unpaid after said thirty (30) days shall accrue interest at the rate of one (1) percent per month until paid. In addition to any other remedies available to the City, failure of the Association to remit payment within the thirty (30) day period specified herein shall constitute grounds for the City to reduce the City's Reimbursement Obligation by any amounts that remain due and payable by the Association to the City.

6.0 Emergency Maintenance. Notwithstanding anything in this Agreement to the contrary, the City may, in the exercise of its sole and absolute discretion, perform emergency maintenance of the Medians for the protection of the public health, safety and welfare (including, without limitation, dangerous conditions caused by storm activity). The Association shall reimburse the City for any costs incurred by the City pursuant to this section within thirty (30) days of receipt of written notice from the City. Any amounts that remain due and unpaid after said thirty (30) days shall accrue interest at the rate of one (1) percent per month until paid. In addition to any other remedies available to the City, failure of the Association to remit payment within the thirty (30) day period specified herein shall constitute grounds for the City to reduce the City's Reimbursement Obligation by any amounts that remain due and payable by the Association to the City.

7.0 Term. Unless earlier terminated by either party in accordance with sections 14 or 15, below, the initial term of this Agreement shall be ten (10) years, commencing May 20, 2026, and terminating May 19, 2036. The initial term of this Agreement shall automatically renew for one additional (10) year period, commencing May 20, 2036, and terminating May 19, 2046. Upon termination of this Agreement at the expiration of the initial or renewal term, the Association shall immediately, at its sole expense, take all actions necessary to bring the Medians into full conformity and compliance with the City's then current standards for semi-arid medians including, without limitation, a reduction or change in the type and density of plantings.

8.0 Disputes. Any disputes arising under this Agreement that the Association and the Contract Administrator cannot resolve shall be presented to the City Manager of the City of Scottsdale or designee. The City Manager or designee shall meet and confer with the parties and shall use his or her best efforts to resolve the dispute. In the event that the dispute cannot be resolved to the mutual satisfaction of the parties with the assistance of the City Manager or designee, either or both of the parties may seek all of the remedies that may be available to them, whether legal or equitable.

9.0 General Insurance Requirements.

(a) General. Without limiting any of its obligations or liabilities, the Association, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed by the State of Arizona (admitted insurer),

possessing a current AM Best, Inc. rating of B++6, or an approved unlicensed insurer (non-admitted insurer) authorized to do business in the State of Arizona with policies and forms satisfactory to the City.

(b) Additional Insureds. The insurance policies, except Workers' Compensation, required by this Agreement shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

(c) Subcontractors. The Association shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

(d) Coverage Term. All insurances required herein shall be maintained in full force and effect until termination of this Agreement; failure to do so may, at the sole discretion of the City, constitute a material breach of this Agreement.

(e) Primary Coverage. The Association's insurance shall be primary insurance as respects the City; any insurance or self-insurance maintained by the City shall not contribute to it.

(f) Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.

(g) Waiver. All policies, including Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials and employees for any claims arising out of the subject matter of this Agreement.

(h) Deductible/Retention. The policies may provide coverage that contains deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Association shall be solely responsible for deductibles and/or self-insured retentions.

10.0 Required Insurance Coverages.

(a) Commercial General Liability. The Association shall provide Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Limit and a \$2,000,000

General Aggregate Limit. The policy shall include coverage for bodily injury, property damage, personal injury, products and completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement. Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

(b) [Intentionally omitted.]

(c) [Intentionally omitted.]

(d) **Other Insurance.** Any other insurance the City may reasonably require for the protection of the City as respects the subject Medians and the exercise of any rights or the discharge of any obligations by the Association hereunder. Likewise, the City may elect by notice to the Association, at each annual anniversary of this Agreement, to change the amount of any insurance or kinds of coverage to account for inflation, changes in risk, or any other factor that the City reasonably determines to affect the prudent amount of insurance or kinds of coverage to be provided.

11.0 Certificates of Insurance. Prior to exercising any rights granted it under the terms of this Agreement, the Association shall furnish the City with Certificates of Insurance, or formal endorsements as required by this Agreement, issued by the Association's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement and shall provide for not less than thirty (30) days advance Notice of Cancellation, Termination, or Material Alteration. In the event any insurance policy(ies) required by this Agreement is(are) written on a "claims made" basis, the reporting period for such claims shall be for not less than two (2) years, as evidenced by annual Certificates of Insurance.

12.0 Expiration Notice. If a policy expires during the life of this Agreement, a renewal Certificate of the required coverage must be sent to the City fifteen (15) days prior to the expiration date.

13.0 Indemnification.

(a) To the fullest extent permitted by law, the Association, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by the Association relating to work or services in the performance of this Agreement, including but not limited to, any contractor, subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of the Association's, contractors' and subcontractors' employees.

(b) Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

14.0 Termination for Convenience. Either party may terminate this Agreement for convenience upon ninety (90) days written notice of its intent to terminate.

(a) Should the City exercise its right to terminate pursuant to this section, it shall have the right, in its sole and absolute discretion, to take such actions as it deems necessary to bring the Medians into full conformity and compliance with the City's then current standards for semi-arid medians including, without limitation, a reduction or change in the type and density of plantings.

(b) Should the Association exercise its right to terminate pursuant to this section, it shall, at its sole expense, take all actions necessary to bring the Medians into full conformity and compliance with the City's then current standards for semi-arid medians including, without limitation, a reduction or change in the type and density of plantings. In the event the Association fails to comply with this subsection, the City may take any actions necessary to correct the deficiencies, using either City employees or private workers, at the City's sole discretion. The Association shall reimburse the City for any costs incurred by the City pursuant to this subsection and the full amount of such costs shall be due and payable thirty (30) days from receipt of written notice from the City. Any amounts that remain due and unpaid after said thirty (30) days shall accrue interest at the rate of one (1) percent per month until paid. In addition to any other remedies available to the City, failure of the Association to remit payment within the thirty (30) day period specified herein shall constitute grounds for the City to reduce the City's Reimbursement Obligation by any amounts that remain due and payable by the Association to the City.

15.0 Termination for Cause. Either party may terminate this Agreement immediately for cause. A material breach of this Agreement shall constitute cause for termination under this section.

(a) Should the City exercise its right to terminate pursuant to this section, the Association shall immediately, at its sole expense, take all actions necessary to bring the Medians into full conformity and compliance with the City's then current standards for semi-arid medians including, without limitation, a reduction or change in the type and density of plantings. In the event the Association fails to comply with this subsection, the City may take any actions necessary to correct the deficiencies, using either City employees or private workers, at the City's sole discretion. The Association shall reimburse the City for any costs incurred by the City pursuant to this subsection and the full amount of such costs shall be due and payable thirty (30) days from receipt of written notice from the City. Any amounts that remain due and unpaid after said thirty (30) days shall accrue interest at the rate of one (1) percent per month until paid. In addition to any other remedies available to the City, failure of the Association to remit payment within the thirty (30) day period specified herein shall constitute grounds for the City to reduce the City's Reimbursement Obligation

by any amounts that remain due and payable by the Association to the City.

(b) Should the Association exercise its right to terminate pursuant to this section, it may pursue any and all available remedies against the City, whether legal or equitable.

(c) Upon termination by either party, the City shall assume all maintenance responsibilities with respect to the Medians and shall have the right, in its sole and absolute discretion, but not the obligation, to take such actions as are necessary to bring the Medians into full conformity and compliance with the City's then current standards for semi-arid medians including, without limitation, a reduction in the type and density of plantings.

16.0 Contract Administrator. The Contract Administrator for the City shall be the Parks, Recreation & Preserve Senior Director, or the Senior Director's designee, who shall be authorized to represent the City on all matters relating to the performance of this Agreement.

17.0 General Provisions.

(a) **Governing law and Venue.** The validity, construction, interpretation, administration and enforcement of this Agreement shall be governed by the laws of the State of Arizona without regard to any provisions of the laws of Arizona relating to the question of conflicts of laws. The parties agree that in the event any action is commenced in connection with this Agreement, venue for such action or proceeding shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the parties hereby waive any right to object to such venue.

(b) **Notices.** Except as otherwise indicated, all notices, waivers, demands, requests and other communications required or permitted by this Agreement (collectively, "Notices") shall be in writing and shall be effective only if sent by one or more of the following methods: (a) personal delivery; (b) generally-recognized overnight commercial courier regularly providing proof of delivery, with delivery charges prepaid or duly charged; or (c) United States registered or certified mail, return-receipt requested, postage prepaid, addressed to the Parties at the respective addresses set forth opposite their names below, or to any other address or addresses as either party shall designate from time to time by notice given to the other in the manner provided in this section:

If to the City: Parks & Recreation Department
City of Scottsdale
8055 E. Camelback Road, Suite 200
Scottsdale, Arizona 85251

Copies to: City Attorney
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, Arizona 85251

If to the Association: Scottsdale Ranch Community Association
10585 N. 100th St.
Scottsdale, Arizona 85258

Notices given or served by personal delivery shall be deemed to have been received upon tender to the respective party. Notices given or served by mail or commercial courier shall be deemed to have been given or served as of the date of delivery (whether accepted or refused) established by the United States Postal Service return-receipt or the overnight courier's proof of delivery, as the case may be.

(c) **Assignment.** Neither this Agreement nor any of the rights of the Association hereunder may be assigned or otherwise transferred without the City's written consent, which consent the City shall not unreasonably withhold.

(d) **Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and assigns.

(e) **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

(f) **Severability.** If any provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, that provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to the greatest extent possible. In any event, the remaining provisions of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

(g) **Waiver.** No consent or waiver, express or implied, by a party to or of any breach or default by the other party in the performance by such party of his obligations under this Agreement will be deemed or construed to be a consent or waiver of any other breach or default in the performance by such party of the same or any other obligations of such party. Failure on the part of a party to complain of any act or failure to act of another party or to declare such party in default, irrespective of how long such failure continues, shall not constitute a waiver. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

(h) **Exhibits.** The exhibits referred to in this Agreement are hereby incorporated into it, as if fully set forth.

(i) **Headings.** Headings, titles and captions in this Agreement are solely for ease of reference and are not intended to define or limit the scope of any provision of this Agreement.

(j) **Attorneys' Fees, Costs and Expenses.** In the event any action, suit or proceeding is brought in a court of law or forum of arbitration by either party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement, or to declare the rights of the parties to this Agreement, the party which does not prevail shall pay to the prevailing party all costs and expenses of such action, arbitration, suit or proceeding, together with such sum as the court or arbitrator (and not the jury), as applicable, may adjudge reasonable as attorneys' and/or arbitrators' fees to be allowed in said suit, action or proceeding, in addition to any other relief to which said party may be entitled.

(k) **No Third Party Beneficiaries.** Unless otherwise expressly provided in this Agreement, no person or entity shall be a third party beneficiary to this Agreement.

(l) **Other Necessary Acts.** In addition to the respective obligations required to be performed under this Agreement, the parties shall each perform from time to time, during and after the expiration of the term hereof, such other acts, and shall execute, acknowledge and/or deliver such other instruments, documents and other materials, as may be reasonably required in order to consummate the transactions described in this Agreement. The parties understand and agree that the provisions of this section shall not be deemed to require any party to perform any of the obligations of the other parties.

(m) **Survival of Liability.** All indemnities of the Association hereunder shall survive termination of this Agreement for any reason.

(n) **Statutory Cancellation Right.** In addition to its other rights hereunder, the City shall have the cancellation rights specified in A.R.S. § 38-511.

(o) **Non-appropriation of Funds.** If, for any reason, funds are not appropriated by the City Council to perform the City's obligations hereunder, the City may terminate this Agreement at the end of the then-current fiscal year (June 30). The City agrees to give written notice of termination to the Association at least thirty (30) days prior to the end of its then-current fiscal year.

(p) **Relationship Created.** Nothing contained within this Agreement shall be deemed or construed to create a partnership, joint venture, principal and agent, or any other relationship between the City and the Association.

(q) **Construction.** Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. The word

"including" shall mean "including, without limitation." Any reference to any federal, state, local or foreign statute, law or ordinance shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires.

(r) **Time Periods.** Unless otherwise expressly indicated, any reference to a period of time shall mean calendar time (e.g., "thirty (30) days" shall mean thirty (30) calendar days; "one (1) year" shall mean one (1) calendar year). Where any action in this Agreement is required on or by a date which is either a Saturday, a Sunday or a legal holiday, the party obligated to take such action shall be entitled to delay such action until the next succeeding day which is not a Saturday, a Sunday or a legal holiday.

(s) **Joint Participation in Negotiation of Agreement.** The parties have participated jointly in the negotiation and drafting of this Agreement. This Agreement has been negotiated at arm's length by parties of equal bargaining power. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this Agreement.

(t) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

(u) **Entire Agreement.** This Agreement, including all exhibits attached hereto, contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. There are no promises, agreements, conditions, undertakings, understandings, warranties, covenants or representations, oral or written, express or implied, between them with respect to this Agreement, other than as set forth in this Agreement. Any prior or contemporaneous representations or agreements, whether oral or written, express or implied, with respect to the subject matter of this Agreement are of no effect and void.

(v) **Amendments.** All amendments, modifications, revisions or additions to this Agreement must be in writing and signed by the parties.

(w) **Authority.** The parties represent and warrant to one another that the undersigned have full power and authority to enter into this Agreement on behalf of the entity for which each has signed and that all necessary actions have been taken to give full force and effect to this Agreement.

(x) **Authority of Signatories.** Any individual executing this Agreement on behalf of a party hereby represents and warrants that he or she is duly authorized to execute this Agreement on behalf of said party.

(y) **Survival.** Any and all provisions or obligations contained in this Agreement which by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement shall survive termination of this Agreement and remain binding on the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

SCOTTSDALE RANCH COMMUNITY ASSOCIATION,
an Arizona nonprofit corporation

By: _____
It: _____


CITY OF SCOTTSDALE,
an Arizona municipal corporation

ATTEST:

Lisa Borowsky, Mayor

Ben Lane, City Clerk

REVIEWED BY:



Nick Molinari
Senior Director, Parks & Recreation

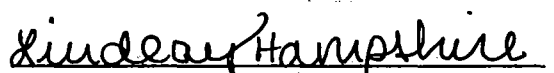


Chris Walsh
Deputy Parks & Recreation Director



George Woods
Safety and Risk Management Director

APPROVED AS TO FORM:



Luis E. Santaella, Interim City Attorney
By: Lindsay Hampshire, Asst. City Attorney