

PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into by and between The Metropolitan Government of Nashville and Davidson County and the Tennessee Golf Foundation ("TGF").

WHEREAS, the Metropolitan Government owns and operates two golf courses in Shelby Park; and

WHEREAS, both courses are in need of renovation; and

WHEREAS, pursuant to the terms hereof, TGF proposes to professionally design and construct renovations necessary to improve and enhance the playability of both courses; and

WHEREAS, all design and construction work will be subject to approval by the Metropolitan Government.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Plans. The parties have agreed upon a general scope of work ("Scope"), which is attached to this Agreement as Exhibit 1. On or before December 15, 2023, TGF, subject to TGF Board of Directors approval, will submit construction plans (the "Initial Plans"), consistent with the Scope, for the renovations (the "Work") and an estimate for the cost of the Work, including a schedule of values for the two Shelby Park golf courses to the Department of Parks and Recreation. The Metropolitan Government shall have 14 days after receipt to review the Initial Plans, such estimate, and the schedule of values and approve them or notify TGF of any requested changes. The parties shall work together in good faith to incorporate such changes into final plans (the "Final Plans"), which TGF, subject to TGF Board of Directors approval, shall submit to the Department of Parks and Recreation for approval along with a revised estimate and schedule of values for the cost of the Work. The Metropolitan Government shall have 14 days to approve the Final Plans, cost estimate, and schedule of values, such approval not to be unreasonably withheld.
2. Payment. The Metropolitan Government shall pay TGF a total of two million dollars (\$2,000,000) (such amount being the "Metro Contribution") for the successful completion of all of the Work, including the design thereof, and the Metropolitan Government's liability under this Agreement shall not exceed such amount. The Metropolitan Government ("Metro") agrees that TGF shall not be required to use its own funds to pay for Work unless the total Work costs exceed two million dollars (\$2,000,000). The

Metropolitan Government shall make a disbursement ("Disbursement") to TGF in the amount of \$500,000 within 21 days after execution of this Agreement (approximately August 21, 2023) and such Disbursement, and all future Disbursements, shall be deposited by TGF into a designated Shelby Park Courses Account. Thereafter, TGF shall submit applications to Metro for Disbursements based on the approved Schedule of Values in a timely manner that ensures TGF shall have in its TGF Shelby Park Courses Account sufficient funds to pay in full all forecasted Work expenses for the following ninety (90) days. Such TGF applications for Disbursements shall be promptly reviewed and paid within twenty-one (21) days after receipt. TGF shall provide the Metropolitan Government with copies of all paid Work invoices and a monthly statement for its Shelby Park Courses Account on the 10th day of each calendar month commencing the first calendar month after receipt of the initial Disbursement and each calendar month thereafter for the term of this Agreement. TGF shall be solely responsible for all costs incurred in completing the Work to the extent such costs exceed the Metro Contribution.

3. **Audit Rights.** The Metropolitan Government may audit the TGF Shelby Park Courses Account anytime during the term of this Agreement on five days' prior written notice to TGF to audit such account. In the event such audit discovers any material irregularity, Metro shall give TGF detailed written notice of the irregularity ("Notice"). If TGF does not cure the irregularity with ten days of receiving such Notice, Metro may terminate this Agreement and pursue all available legal remedies.
4. **The Work.** TGF agrees to complete fully all improvements shown on the approved Final Plans or reasonably inferable therefrom. All Work shall be completed in a good and workmanlike manner using new materials. The Metropolitan Government shall have the right to inspect the Work at all reasonable times and to reject Work that is not in substantial compliance with the Final Plans (Work that is not in substantial compliance with the Plans being "Unacceptable Work.") All Work shall be completed by November 30, 2024 (the "Completion Date"), subject to reasonable extension by the Parties, or on account of force majeure or material delays caused by the Metropolitan Government's unjustified failure to approve the Final Plans or issue necessary permits.
5. **Right of Entry.** The Metropolitan Government hereby grants TGF a right of entry to Shelby Park for the purpose of preparing for and completing the Work.
6. **Rejection of Unacceptable Work.** The Metropolitan Government shall notify TGF of any Unacceptable Work within 10 days after discovery, and TGF shall promptly make such corrections as are necessary to remedy the material deviations from the Final Plans.

7. Changes. Either party may request changes to the Final Plans. No such change shall be made without the approval of the other party, such approval not to be unreasonably withheld. The party requesting the change shall bear all additional costs incurred in modifying the Final Plans and in performing the changed Work if such costs are in excess of the Metro Contribution. Any change in the Work, and all other modifications of this Agreement, shall be in writing and signed by authorized representatives of both parties.
8. Termination. In the event TGF fails to fully complete the Work by the Completion Date, as it may be extended pursuant to Paragraph 4, the Metropolitan Government shall have the right to terminate this Agreement upon 30 days' written notice. For purposes of this paragraph, the "Remaining Sum" means the portion of the Metro Contribution not previously paid to TGF at the time of termination of this Agreement. If the Agreement is terminated as contemplated by this paragraph, the Metropolitan Government may complete the Work with its own forces or by engaging one or more contractors to do so. If the Metropolitan Government completes the Work, TGF shall reimburse the Metropolitan Government for the amount by which the cost of completion exceeds the Remaining Sum. If the cost of completion by the Metropolitan Government is less than the Remaining Sum, TGF shall be entitled to payment for the reasonable value of Work successfully completed by TGF and not previously paid to TGF.
- In the event the Metropolitan Government fails to carry out any of its material obligations under the terms of this Agreement, and further fails to initiate a cure with 30 days after receiving 30 days' written notice of such failure, TGF shall be entitled to terminate this Agreement and recover any unpaid portion of the Metro Contribution reasonably attributable to work performed at the time of termination.
9. Payment Bond. TGF shall provide to the Metropolitan Government a payment bond guaranteeing payment for all labor and materials used in completing the Work. The bond shall provide for a penal sum in an amount at least equal to the Metro Contribution and incorporate by reference the terms of this Agreement. The bond shall be in a form acceptable to Metro and shall be executed by a surety licensed to do business in Tennessee and reasonably acceptable to Metro.
10. Insurance. At all times while any portion of the Work is underway and while TGF is responsible for any obligations under this Agreement, TGF shall obtain and maintain

polices of general commercial and automobile liability insurance, naming the Metropolitan Government as an additional insured and having policy limits of at least \$2,000,000. No Work shall be undertaken under this Agreement until satisfactory proof of insurance has been provided to and approved by the Metropolitan Government.

11. Metro Golf Advisory Committee. Not later than December 1, 2023, the Metropolitan Government, through the Department of Parks and Recreation, will create a standing advisory committee consisting of ten members for the purpose of advising on the operating and capital needs of the Metropolitan Government's golf courses facilities and recommending improvements for such facilities. TGF shall be entitled to appoint three members to the committee, which shall meet at least quarterly. The Metropolitan Government shall consider in good faith the recommendations made by the committee.
12. Property Not To Be Used As Security. TGF shall not permit the site (the "Property") where the Work is to be performed to be used as security for any debt or other purpose. In the event any lien is filed against the Property on account of the performance of the Work, TGF shall promptly cause the removal of such lien by bond or otherwise.
13. Transfer/Ownership of Improvements. Upon completion of the Improvements, and upon approval by the Metropolitan Government, TGF will convey ownership of all completed improvements to Metro by bill of sale at no cost. TGF will provide reasonable evidence that all contractors and suppliers having performed Work or supplied materials in connection with the Work have been paid in full at the time of the conveyance.
14. Merger, Venue, Choice of Law. This Agreement contains all the understandings of the parties with respect to the Work. The exclusive forum of any dispute arising from this Agreement shall be the Chancery or Circuit Court of Davidson County, Tennessee, and the laws of Tennessee shall apply.
15. Assignment. TGF may not assign this Agreement without the Metropolitan Government's written consent.
16. Notices. Notices required under this Agreement shall be sent as appropriate as follows:

Director,
Metropolitan Department of Parks and Recreation
511 Oman Street
Nashville, TN 37203
with a copy to:

Director of Law
108 Metro Courthouse

Nashville, Tennessee 37201

President
Tennessee Golf Foundation
400 Franklin Rd
Franklin TN 37069

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

METROPOLITAN GOVERNMENT:

Tennessee Golf Foundation

Recommended By:

By:



Metropolitan Department of Parks
and Recreation

Name: Whit Turnbow

Title: President

Approved as to Availability of Funds:

Metropolitan Department of Finance

Approved as to Form and Legality:

Metropolitan Department of Law



EXHIBIT 1
GENERAL SCOPE OF WORK ("SOW")
SHELBY PARK GOLF COURSES
JUNE 22, 2023

The primary goal of this project is to improve and enhance the playability of the Shelby Park Golf Courses, referred to herein as "Shelby" and "Vinny Links".

In furtherance of such goal, TGF improvements for Shelby will include but are not limited to rebuilding the greens, installing new irrigation around the greens, constructing or repairing all cart paths, and upgrading the water pump that brings water to Shelby from the Cumberland River, together with such improvements it is determined are required after completion of the due diligence inspections below, to be completed by TGF on or before October 30, 2023 (the "Shelby Work"); TGF improvements for Vinny Links will include rebuilding all teeing areas and improvements to its driving range (the "Vinny Links Work"); collectively the Shelby Work and the Vinny Links Work is herein referred to as the "Work".

Due Diligence Inspections Shelby Park Courses August 21-October 31, 2023):

1. Physical Inspections. TGF and its licensed experts including but not limited to engineers, geologists, architects, agronomists, contractors, surveyors, and arborists, may inspect the Shelby Park Golf Courses for any structural or nonstructural conditions.
2. Environmental Phase 1 Assessment Report. TGF may engage AAI Environmental or other such expert to conduct a Phase 1 Environmental assessment of the subject property to determine if "Recognized Environmental Conditions" exist, as the term is commonly defined.

The Metro Contribution to the successful completion of the Work is two million dollars (\$2,000,000). In the event the above due diligence inspections find extraordinary costs will be incurred to complete the Work, Metro agrees to in good faith determine whether it will increase its contribution to the Work. In the event Metro determines not to increase its contribution, notwithstanding anything to the contrary in the Participation Agreement, TGF may in its sole discretion either agree to pay such extraordinary costs or terminate this Participation Agreement.

Detailed initial construction plans for the Work shall be completed on or before December 15, 2023 and TGF intends to commence construction of the Work on or about March 2024 and complete the Work on or about November 30, 2024, subject to reasonable extension agreed to in writing between the parties, or on account of force majeure or material delays caused by metro's unjustified failure to approve the final plans, issue necessary permits and agree to reasonably requested work order changes.

