

AGREEMENT
BETWEEN
THE CITY OF NEWTON
AND
THE NEWTON COMMONWEALTH FOUNDATION

This Agreement dated this 27th day of June, 2024 by and between the **City of Newton** a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts with an address of 1000 Commonwealth Avenue, Newton Centre, MA 02459, acting by and through the Mayor of the City of Newton, but without personal liability to her (hereinafter "the City"), and the **Newton Commonwealth Foundation**, a public instrumentality of the City of Newton and a Massachusetts charitable corporation organized under Chapter 180 of the Massachusetts General Laws, with a principal place of business of c/o the City of Newton Parks and Recreation Department, 246 Dudley Road, Newton, MA 02459 (hereinafter "the Foundation"); collectively "the Parties".

WHEREAS, the City owns the real property known as the Newton Commonwealth Golf Course, as described in the deed dated October 27, 1981 and recorded with the Middlesex South Registry of Deeds in Book 14456, Page 557 (the "Golf Course");

WHEREAS, the Foundation was created, in part, to operate the Golf Course for the benefit of the City of Newton, and the Foundation is to be operated, supervised, or controlled by or in connection with the City of Newton, within the meaning of Section 509(a)(3)(B) of the Internal Revenue Code;

WHEREAS, the Foundation has operated the golf course pursuant to authorization granted under the Letter of Intent entered into by the City and the Foundation dated January 30, 1992, and written agreements dated March 2, 2004, and March 2, 2014; and,

WHEREAS, the City wishes to have the Foundation continue to oversee the operation of the Golf Course in accordance with the terms of this Agreement; and

WHEREAS the City wants to ensure that the Foundation has the resources needed to continue that stewardship so as to assure the continued operation of a first class golf course for the City.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Operation of the Golf Course:

a. The City hereby grants the Foundation a license to operate and maintain the Golf Course for the term of this Agreement. The Mayor designates the Commissioner of Parks, Recreation and Culture (the "Commissioner") as their agent authorized to grant any approval of the City required herein and to receive notices and submissions of all documents required to be

furnished to the Mayor under this Agreement.

As more fully-set forth herein, the Foundation shall be required to maintain a contract with an entity with sufficient experience and expertise in golf course operation and management to oversee and conduct the day to day operations of the Golf Course (the "Operator") during the term of this Agreement. The Parties agree and acknowledge that the Foundation has entered into Management Contract C- 4118 with a qualified Operator to operate the Golf Course as a public golf course in accordance with this Agreement. Contract C-4118 expires on December 31, 2024. The Foundation shall timely adhere to the procurement requirements set forth herein to ensure that the Foundation will have a valid contract with a qualified Operator during the entire term of this Agreement, including any extensions, without interruption.

b. The Foundation agrees to oversee the operation of the Golf Course and to ensure its operation as a first class public Golf Course at no expense to the City. The responsibilities of the Foundation shall include the following:

- i. Prepare an estimate of the total amount of operating expenditures for the upcoming fiscal year and submit the same to the Mayor no later than March 1st, each year.
- ii. Prepare and submit to the Mayor a five (5) year Master Plan of Capital Improvements ("Master Plan") to be made at the Golf Course and a corresponding Annual Plan to implement particular capital improvements, both of which shall be due no later than five (5) days following the Foundation's regularly scheduled meeting in June of the given year.
- iii. Prepare bid specifications as required by applicable provisions of Massachusetts General Laws and/or City Ordinances for all work that is not required to be completed at the Golf Course by the Operator as further provided herein.
- iv. Establish all rules, regulations and policies relating to the operation of the Golf Course provided that any annual increase of any fee by 40% or greater shall be subject to the prior written approval of the Mayor.

2. Golf Course Consultants:

a. The parties recognize three roles for consultants: 1) review of budget or capital plans; 2) regular oversight of the Operator and independent evaluation of Operator and 3) preparation of bid specifications.

The Foundation agrees to select qualified persons or entities to assist the Foundation in carrying out its responsibilities pursuant to this Agreement. Unless stated elsewhere in this Agreement, the determination of whether to hire a consultant shall be made in the sole discretion of the Foundation. The Operator may not act as a consultant. The Foundation shall execute a written agreement setting forth the scope of consulting services and related fees with any consultant engaged by the Foundation.

Consultants shall be paid for by the Foundation from the revenues generated from the operation of the Golf Course.

3. Financial Management, Procedures for Expenditures:

- a. Single Operating Account, Authorization of Expenditures: The Foundation agrees to maintain a single operating account for the sole purpose of maintaining the Golf Course ("Golf Course Fund"). The Foundation shall deposit all funds paid to the Foundation by the Operator into the Golf Course Fund. The Foundation will pay all bills for the Golf Course from the Golf Course Fund. The Foundation Treasurer shall authorize (in writing) all expenditures from said Fund.
- b. Saving Account(s) – The Foundation may, in its sole discretion, deposit monies paid to the Foundation by the Operator in federally insured Certificates of Deposit or U.S. Treasury Bonds. Payments for expenditures may not be made from such accounts.
- c. Bond:, The Foundation Treasurer shall provide the City with a fidelity bond, in a form approved by the City Comptroller and the City Solicitor, in an amount equal to \$100,000.
- d. Accounting System: The Foundation agrees to:
 - i. Establish a procedure that sufficiently monitors cash management by the Operator. The Foundation shall furnish a written copy of such procedure to the City upon request.
 - ii. Establish an accounting system that includes the preparation of quarterly Golf Course Fund financial statements, including, but not limited to, a balance sheet, an operating statement, a statement of cash flows, and a budget-to-actual operating statement. The Foundation shall furnish a written copy of such procedure to the City upon request.
 - iii. File each quarterly statement with the Commissioner and the City Comptroller within thirty (30) days after the end of each fiscal quarter.
 - iv. Contract with a qualified GAA certified public accountant to perform an annual financial audit of the Golf Course Fund financial statements.
 - v. Submit the annual audited financial statements to the Commissioner and the City Comptroller not later than July 31 in each year.
 - vi. Require the Operator to submit annual reports of the Golf Course financial operations by November 30th of a given year.
 - vii. Make available all books, records, reports, data and any and all information related to the operation of the Golf Course to the Mayor upon request.

4. Term:

a. The Term of this Agreement shall be five (5) years commencing on the date hereof and terminating on May 2, 2029 unless terminated prior to said expiration date as provided in paragraph 13; provided, however, that the City may, at its sole option, extend the Agreement for one (1) additional five (5) year term.

5. Payments to the City:

a. The Foundation agrees to make an annual payment to the City in an amount equal to the greater of: 10% of the annual gross revenue generated from the operation of the Golf Course in the prior fiscal year; or \$50,000. The Foundation's payment to the City shall be used for conservation and/or recreation purposes. The annual payment shall be invoiced no later than January 1st and shall be due to the City on or before January 30th each year of this Agreement.

b. In addition, the Foundation shall require that the Operator pay directly to the City of Newton \$15,000 annually on or before September 30th.

c. The Foundation shall require that the Operator provide access and assistance for the following community programs, and other such programs and agreed to by the Foundation and the City:

SNAG PROGRAM Ages 4-5 (Sat program and Sun program)	SNAG= Starting New AT Golf
SNAG Transition/Beginner Programs Sat + Sun Ages 6-10	transition/beginner
Weekend Jr Sat + Sun PROGRAMS Ages 8-14	some experience
After school PROGRAM Ages 8-14	some experience
Ladies beginner lessons	beginner
April school Vacation program Ages 8-14	some experience
Junior summer sports program Ages 8-14	some experience
Over 55 Golf league, with tournaments	
Over 55 Lessons	
"Youth on Courses" - State Program	expand hours

6. Preparation of the Annual Operating Budget:

a. No later than March 1 each year, the Foundation shall prepare and submit to the Mayor an estimate of the total amount of the Foundation's operating expenditures for the upcoming fiscal year ("Annual Budget"). The Mayor shall have final approval of the Annual Budget in consultation with the Foundation.

b. Revisions to the Annual Budget: The Foundation shall not exceed the expenditure amount for a given year set forth in the Annual Budget without the prior written approval of the Mayor.

7. Capital Improvements:

a. Capital improvements to the Golf Course shall be made in accordance with the schedule outlined in the Master Plan and the Annual Plan. Changes and/or additions to the Master Plan and/or Annual Plan of fifty thousand dollars (\$50,000) or greater shall be subject to the prior written approval of the Mayor.

b. The Foundation shall prepare and submit to the Mayor all bid documents and/or estimates pertaining to work to be performed at the Golf Course which will not be completed by the Operator. Work estimated to cost fifty thousand dollars (\$50,000) or greater shall be subject to the prior written approval of the Mayor.

8. Purchasing, Bid Solicitations:

a. The Foundation shall comply with the provisions of M.G.L. Chapter 30B as well as M.G.L. Chapter 30 and Chapter 149 and the provisions of the City's Charter and ordinances governing the award and execution of contracts. In particular, with respect to bids pertaining to goods and services, the following procedures will apply:

i. For goods and services in the amount of ten thousand dollars (\$10,000) or greater but less than fifty thousand dollars (\$50,000) the Foundation shall prepare written quotations based on at least a letter bid outlining the minimum terms for such supply or service.

ii. For goods and services in the amount of fifty thousand dollars (\$50,000) or greater, the Foundation, with the assistance of a consultant, shall prepare written specifications in accordance with the requirements of Chapter 30B or Chapter 30 and shall submit the same for approval to the Mayor.

iii. Goods and services for an amount less than ten thousand dollars (\$10,000) shall be in accordance with City Ordinances.

b. Bid awards and contracts for goods and services in the amount of fifty thousand dollars (\$50,000) or greater shall be subject to the approval of the Mayor. The City Purchasing Department shall have charge of the bid process, in coordination with the Foundation. The Foundation shall adhere to the following process to submit required bid materials to the City Purchasing Department for goods and services in the amount of fifty thousand dollars (\$50,000) or greater:

i. The Foundation shall provide the bid materials prepared with the assistance of a consultant to the Commissioner.

ii. Bid materials for the Operator contract must be furnished to the Commissioner on or before September 1st of the year in which the contract will be procured. Bid materials for any other contract must be furnished to the Commissioner at least

four (4) weeks in advance of the deadline for advertising.

- iii. The Commissioner shall assist the Foundation with submitting the bid materials to the Purchasing Department.
- iv. The Foundation shall provide such additional information or modifications to the bid materials as may be required by the Commissioner or the Purchasing Department.

9. Insurance:

a. **Public Liability Insurance Policy:** The Foundation shall require the Operator to maintain at all times a public liability insurance policy in a form and amount satisfactory to the City Solicitor covering the operation of the Golf Course, any golf carts, and all facilities, including but not limited to the clubhouse and the parking lot. The City and the Foundation shall be named as additional insured parties on the public liability insurance policy.

b. **Fire, Theft, Vandalism Policy:** The Foundation shall require the Operator to maintain at all times a fire, theft and vandalism insurance policy in a form and amount satisfactory to the City Solicitor covering all golf carts used on the Golf Course.

c. **Property Loss Insurance:** The Foundation shall require the Operator to maintain at all times a property loss insurance policy in a form and amount satisfactory to the City Solicitor covering all facilities at the Golf Course (including the clubhouse and any building or structure used to house the golf carts). The City shall be named as the loss payee on such policy.

10. **Indemnification:** The Foundation agrees to require the Operator to hold harmless, indemnify and defend Foundation and City from and against all claims of every kind. The indemnification and hold harmless provisions shall be included in the agreement between the Operator and the Foundation and shall be in a form approved by the City Solicitor.

11. **Faithful Performance Bond:** The Foundation agrees to require the Operator to provide a bond for the faithful performance of the obligations of the management contract. Said bond shall be in a form and amount deemed satisfactory by the City Solicitor.

12. **Compliance with Laws:** The Foundation shall comply with all federal, state and local laws and ordinances applicable to the operation of the Golf Course or any facilities thereon. The Foundation shall cause all contractors, including the Operator, it engages to conduct work on the Golf Course to comply with all federal, state and local laws and ordinances in carrying out the contractors' duties and shall include such obligation in the written agreement between the Foundation and such contractors. The Foundation shall comply with the provisions of M.G.L. Chapter 30B as well as M.G.L. Chapter 30 and Chapter 149 and the provisions of the City's Charter and ordinances governing the award and execution of contracts. The Foundation shall comply with all other applicable laws, including but not limited to, the Public Records Act, the Open Meeting Law and applicable municipal finance controls.

13. Termination:

a. The Foundation shall be in default of this Agreement in the event that the Foundation fails to perform in a timely manner or by the date specified in this Agreement any of the following:

- i. Hire a consultant where required in this Agreement.
- ii. Establish the Accounting Systems as required by paragraph 3 above.
- iii. Make required payments to the City as required by paragraph 5 above.

b. The City further reserves the right to declare the Foundation in default of this Agreement for any of the following:

- i. For whatever reason, the Foundation determines that the operation of the Golf Course is no longer financially viable.
- ii. In the sole discretion of the City, the Foundation's management of the Golf Course fails to secure for the City the operation of a first class public golf course without incurring expense to the City.
- iii. If the City, in its sole discretion, determines that the Foundation has failed to comply with its obligations set forth herein or the Foundation's performance has been otherwise materially unsatisfactory.

c. If the Foundation's default of this Agreement is due to the reason set forth in paragraph 13(b)(i) herein, this Agreement shall automatically terminate upon the Foundations receipt of such default notice. If the Foundation's default of this Agreement is due to any other reason, the Parties shall comply with the following process:

- i. Upon a determination by the City that the Foundation is in default, the City shall send written notice of such default to the Foundation;
- ii. Within fourteen (14) days of the date of the notice of default, the Foundation shall either cure the default, or the Parties shall meet to discuss the necessary steps for the Foundation to cure the default;
- iii. If the meeting occurs within the time prescribed, the Foundation shall cure the default within thirty (30) days of the date of the meeting, or such further time as approved in writing by the City.

If the Foundation fails to cure the default within the time prescribed in paragraph 13(c)(ii) and the Parties fail to meet as set forth in said paragraph, or if the City and the Foundation meet and

the Foundation fails to cure the default within the time prescribed in paragraph 13(c)(iii), the City may terminate this Agreement.

c. The Foundation may terminate this Agreement by providing no less than ninety (90) days prior written notice to the Mayor.

14. Notices.

Any notice and submissions required under this Agreement shall be sent by USPS first class mail, certified mail, electronic mail, or hand-delivered, and addressed as follows:

The City: Commissioner of Parks, Recreation and Culture
246 Dudley Road
Newton, MA 02459
Email: parks@newtonma.gov

The Foundation: Newton Commonwealth Foundation
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459
Email:

15. Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. This Agreement may be electronically signed and transmitted, which electronic signature shall be binding on the signing party.

IN WITNESS WHEREOF the parties have executed this Agreement as a sealed instrument.

NEWTON COMMONWEALTH FOUNDATION, INC.

By: 
Arlene Franklin, Treasurer

Approved as to legal form and character:

By: 

Andrew Lee, Senior Assistant City Solicitor

CITY OF NEWTON:

By: 

Ruthanne Fuller, Mayor