

WHEREAS, the City is presently undertaking various projects to implement Grow South; and

WHEREAS, Grow South strives to rebrand Southern Dallas, debunk myths and focus investments; and

WHEREAS, providing professional sport venues can assist with urban redevelopment and provide economic growth in terms of job creation and income generation; and

WHEREAS, the proposed Trinity Forest Golf Course can serve as a catalyst for Southern Dallas and address various initiatives in Grow South; and

WHEREAS, it is necessary to further negotiations and refine the proposal for the Trinity Forest Golf Course; and

WHEREAS, it is the goal for the not for profit to complete fundraising in an amount not less than \$20 million and complete negotiations with the City by Spring 2013 such that construction can begin and the Trinity Forest Golf Course can open in late 2016; and

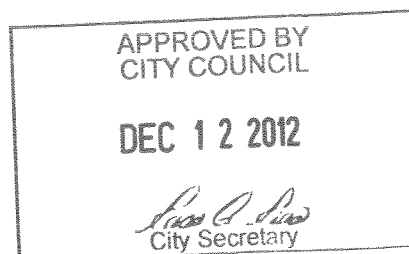
Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That a Letter of Intent to advance the Trinity Forest Golf Course with Trinity Forest Golf Course Partners, LLC be approved and negotiations completed.

Section 2. That the City Manager is authorized to execute the Letter of Intent, subject to the terms and conditions, after approval as to form by the City Attorney's Office.

Section 3. That this resolution shall take effect immediately from and after its passage in accordance with provisions of the Charter of the City of Dallas, and it is accordingly so resolved





CITY OF DALLAS

December 6, 2012
TFGC Partners, LLC
2101 Cedar Springs
Suite 1400
Dallas, Texas 75201

Dear Sir or Madam:

The following are terms offered in connection with the construction, lease and operation of the Trinity Forest Golf Course to be located at the Premises, as defined herein (the "Golf Course"). This letter supersedes any other correspondence about this project. This letter is not binding on any party to this letter. The purpose of this letter is to outline for the City Council the proposed terms for the construction, lease and operating agreement (the "Lease") of property relating to the Golf Course, and to use this letter as a basis for the preparation of a final Lease Agreement. However, unless and until (1) approved by the City Council, (2) the agreements with the Salesmanship Club of Dallas and SMU (both such agreements are more fully defined below) are obtained and (3) a mutually satisfactory Lease Agreement is executed and delivered, any party may discontinue negotiations hereunder and no party shall be bound.

Please note that the City requires specific agreement on the terms below prior to presenting the Lease Agreement to the Dallas City Council for consideration and final approval.

Parties: Owner – City of Dallas ("City")
Tenant – a not-for-profit entity acceptable to the City ("Tenant")

Lease Term: 40-year term with option to renew at the City's discretion.

Rent / Consideration: Base rent of \$1,000 at signing and \$10,000 per year thereafter beginning on the date the Landlord Improvements (defined below) are completed, the Premises remediated and Tenant takes possession.

Consideration for the Lease shall also include the following:

Tenant shall invest, or cause to be invested, a minimum of \$20 million into development of the Golf Course. In addition, Tenant shall be responsible for any development and construction cost overruns, and shall also be responsible for all utilities, operating and maintenance costs for the Golf Course as herein provided.

In addition to the minimum \$20 million investment in the Golf Course, Tenant shall commit, or cause to be committed, up to \$2.5 million for Trinity Trails Phase 3 (the "Trinity Trails Phase 3 Commitment"). If the

actual final costs of Trinity Trails Phase 3 are less than \$2.5 million, then the City may elect to use the remaining balance for other portions of the Trinity Trails project.

Tenant shall manage, for and on behalf of City, the construction contracts for the Landlord Improvements to the Premises as herein provided.

Tenant shall secure the following: (1) agreement of the Salesmanship Club of Dallas to relocate the Byron Nelson Championship to the Golf Course no later than 2019 (the “SCD Agreement”); (2) agreement from SMU to make the Golf Course the home course for the SMU golf teams and collegiate tournaments hosted by SMU (the “SMU Agreement”); and (3) agreement of First Tee to provide youth programs at the Golf Course.

Tenant shall pay any and all taxes or assessments in any way related to the Golf Course, including but not limited to ad valorem taxes on the Premises, if any.

Tenant shall procure and maintain at Tenant’s expense the insurance as herein required.

Tenant shall procure and pay for any utilities necessary or convenient to the operations of the Golf Course.

Premises: Real property located in the vicinity of Great Trinity Forest Blvd (Loop 12) and Elam Road, comprised of former landfill(s) and other City property as generally depicted on the attached **Exhibit A**.

Uses: The parties acknowledge that it is the fundamental intent and purpose of this arrangement to develop a world-class golf course. Tenant’s permitted use of the Premises shall be solely for the establishment and operation of the Golf Course and associated dining and hospitality activities.

The Golf Course will be available for charity tournaments, educational and youth programs, and the public, such that at least 25% of the annual rounds of golf are played or available for coordinated public play. Use by the members of the SMU golf teams and First Tee shall not count towards this 25% requirement.

Tenant shall establish, equip, staff and operate the Golf Course and related facilities. Tenant shall be responsible for all operating and maintenance costs of the Golf Course and shall be entitled to all revenues related in any respect to the Golf Course. Tenant agrees that any net profits (less capital and future operating reserves) from operation of the Golf Course shall be reinvested into Tenant’s operations, infrastructure, capital improvements, maintenance, golf and event programs and

charitable giving, at the discretion of Tenant.

To the extent included within the Premises, the Trinity Trail Phase 3 portions of the Premises shall be accessible at substantially all times for the use and benefit of the public as part of the City's park and trail system.

Tenant shall be responsible for obtaining and maintaining all permits, licenses, zoning and consents necessary for the Golf Course and any other activities of Tenant on the Premises, except those which are the responsibility of the City as stated below. The City will make commercially and legally reasonable efforts to assist Tenant regarding any such matters.

**Tenant
Improvements/
Commitments:**

Total costs for development of phase I of the Golf Course (including Landlord Improvements) are approximately \$33 million, including predevelopment, site remediation, design and construction of all public infrastructure and private improvements. The City's commitment of funding for development of the Premises, including the Landlord Improvements, shall not exceed \$12 million. Tenant shall be responsible for all other costs for development and construction of the Premises, including the Golf Course.

"Tenant Improvements" shall include (1) the design and construction of an 18-hole championship golf course, practice range, clubhouse, tournament facilities, short course, SMU academy, First Tee teaching facility (used to support Dallas youth), the Trinity Trails Phase 3 Commitment, necessary infrastructure and perimeter fencing and screening for all maintenance buildings and support facilities and amenity structures. Tenant shall endeavor to start construction by April 30, 2013, and complete the Tenant Improvements by October 1, 2016 (subject to force majeure), and (2) the activities and items listed below under the heading "Tenant Improvements/Commitments."

Tenant shall manage the construction of the Landlord Improvements and the Tenant Improvements.

Tenant shall design, fund and construct all water and wastewater lines (except the looped water main) required to support the Golf Course development and irrigation needs, including pumping systems, ponds, internal irrigation systems and any other public water and wastewater improvements required as a part of such systems.

Tenant shall prepare the fill plans (including mitigation plans) and prepare the plans and specifications for the internal roadways and driveways.

Tenant shall prepare the Subchapter T Plans, including the portion of the site remediation plans related to the final closure/landfill cover of applicable parts of the Premises, and shall otherwise cooperate with the City in the preparation of remediation plans.

Tenant shall modify a portion of the City's Trinity Trails Phase 3 plans to accommodate the new alignment.

Tenant shall pursue all necessary permits, applications or other approvals with any pertinent federal, state or local entity involved with the Golf Course, except for those that are a City responsibility as stated below. The City will make all commercially and legally reasonable efforts to assist Tenant regarding any such permits, applications and approvals.

**Landlord
Improvements/
Commitments:**

The City's commitment shall not exceed \$12 million. The City's commitment would only be used for the costs related to the preliminary site work (rough grading), surveying, platting, landfill remediation, wetland and floodplain mitigation, certain water, wastewater and other public infrastructure improvements, and other specified expenses that qualify as public works. Such public infrastructure improvements will include, but not be limited to, Highway 12 access to the Premises; improvements to the water main loop system from the Premises to the nearest existing or relocated water line and water and wastewater improvements; design and construction of roads, intersection, and signal improvements; and other public works improvements supporting development of the Golf Course (the "Landlord Improvements").

If required by TCEQ, the City will order a survey as needed to secure a new base aerial map with topography, and a full constraint analysis for the entire site. As part of this work, the City shall also provide a boundary survey and plat of the Premises, showing all property lines, easements and right-of-ways.

The City and Tenant shall coordinate development of the project with existing easements in favor of the City or on the Premises to the extent reasonably practicable to facilitate the development while preserving and protecting the integrity of easements and the uses being made of same.

Remediation of the Premises shall be completed in compliance with the Subchapter T permit from the Municipal Solid Waste Group with TCEQ and any other approvals required from TCEQ.

The City shall publicly bid the Landlord Improvements and award such construction contracts to the lowest responsible bidder and then assign same to Tenant, as City's construction manager, for all purposes including inspection, supervision and coordination of all construction work. All construction costs in excess of the City's commitment of \$12

million shall be paid by Tenant. The City and Tenant shall cooperate with each other throughout the public bid process to insure that no contract is assigned to Tenant that is not reasonably acceptable to Tenant.

The City will use all commercially reasonable efforts to assist Tenant with and support requests for other federal and state permits, grants or incentives for infrastructure, parks, trails, and other improvements which may benefit the Golf Course and the neighboring areas of the City and reduce costs for the project.

The City shall obtain all permits and approvals for the construction of the portion of the Trinity Trails Phase 3 project that Tenant will construct. The City shall be responsible for any and all mitigation work required and for the on-going maintenance of the trails.

If Tenant does not attain property tax-exempt status, City staff will present to City Council an incentive for ad valorem tax abatement equal to 90% of the maximum abatable property taxes for ten years for this project. Any such incentive shall be subject to state law and future City Council approval and shall be supported by additional consideration including local job creation commitments or other such economic development benefits to the community as required by law and the City's policies under its Public Private Partnership Programs and Guidelines.

**Construction –
Generally:**

Tenant shall submit plans, specifications, construction schedules, and budgets for all Tenant Improvements and Landlord Improvements to City for review and approval before performing any such activity.

The City shall have the right to review and approve the Tenant Improvements and Landlord Improvements to exist on the site upon the completion of phase I of the Golf Course, with such approval not being unreasonably withheld, delayed or conditioned. All construction activity shall be performed in a good and workmanlike manner, in conformity with the approved plans, specifications and schedules and in accordance with all applicable federal, state and local laws and regulations (including but not limited to building codes, ADA requirements, and any and all applicable environmental, health and safety requirements).

Tenant shall be liable for and promptly pay costs of development and construction, including cost overruns, in excess of the City's commitment.

Tenant shall use good faith efforts to abide by the City's Business Inclusion and Development policies for the completion of all Tenant Improvements and Landlord Improvements.

In no event shall Tenant allow any liens (that are not bonded over) to be

affixed to the Premises, the improvements made, equipment installed, and/or any interest in this Lease prior to the transfer of possession of such facilities to Tenant pursuant to the Lease.

Tenant shall secure and maintain payment and performance bonds and insurance (with City as co-insured and co-obligee) at least equal to that required on similar City construction projects and otherwise acceptable to City. Tenant shall use the City's form of construction contracts and bonds for all Landlord Improvements to be performed on the Premises subject to Tenant's reasonable approval.

**Construction
Management
Committee:**

Comprised of two representatives of Tenant and two representatives of City to meet quarterly during construction of the Landlord Improvements and the Tenant Improvements and at least annually during the remaining term of the Lease agreement to discuss M/WBE, construction and operational matters material to the City.

**Board of
Directors:**

Tenant shall establish a Board of Directors for the to-be-formed nonprofit with approximately 12 members with full fiduciary and governing powers over the Tenant. The Mayor shall appoint at least one member of the Board of Directors to serve throughout the term of the Lease Agreement, including any renewal periods.

**Maintenance and
Routine Repair
And Major
Repairs:**

After completion of the Landlord Improvements and Tenant Improvements, Tenant shall fund and provide all maintenance, routine repairs and capital improvements for the Golf Courses including, without limitation, all fencing, screening, buildings, lighting and fixtures, irrigation and janitorial and landscaping services (including maintenance of the ground below the Loop 12 underpass that is used by the Golf Course).

Tenant shall fund and provide all maintenance and repair of all major structural components (foundation, roof, foundation and exterior walls), major equipment and systems (electrical, mechanical, HVAC and plumbing) and parking lot paving.

The City shall have no obligation to fund any operating or maintenance expenses or future capital improvements for the Golf Course upon completion of the Landlord Improvements.

Security:

Tenant shall provide security for the Premises, including any security systems and monitoring of such systems.

Utilities:

Upon completion of the Landlord Improvements, Tenant will be responsible all utility costs with respect to the Golf Course, including telecommunication system expenses and any taxes or assessments.

In no event shall City in its capacity as lessor be liable to Tenant for loss or disruption of utility services.

HVAC/Lighting/Irrigation: Tenant shall bear the cost of accommodating any unique, specialized or differing heating, cooling, humidity, lighting or irrigation requirements that Tenant may have (whether involving level, nature and/or hours of service).

Termination: The parties contemplate terminating discussions with respect to the project if Tenant is unable to proceed with due diligence to fund, develop and operate the Golf Course and satisfy one or more the following conditions:

1. Tenant is unable to secure the SCD Agreement; or
2. Tenant is unable to receive commitments to contribute at least \$20 million by December 31, 2014; or
3. Tenant is unable to secure the SMU Agreement.

The parties contemplate that the Lease may be terminated by either party if Tenant or the City commits a material default under the Lease. Both parties shall have the opportunity to cure such default within 90 days (or longer reasonable time, if necessary to cure) after having received notice of such default.

Insurance and Taxes: Tenant shall maintain casualty, liability, and workers compensation insurance in form, and on such terms approved by the City. Such insurance shall be comparable to industry standard insurance coverage for a golf course of comparable quality.

Tenant shall be responsible for all taxes at the Project including but not limited to sales and ad valorem, if any. The City acknowledges that Tenant intends to seek tax exempt status. The City agrees not to take any actions inconsistent with such tax treatment for Tenant.

Major Casualty Loss: The parties will negotiate market major casualty provisions that are consistent with the City's policies.

Additional insurance provisions Tenant will agree to defend, indemnify, and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any persons or persons, that may arise out of or be occasioned by the Tenant's use, occupancy and maintenance of the Premises or Tenant's installations and improvements within the Premises, from any act or omission of any representative, agent, resident, and/or employee of

Tenant, by Tenant's breach of any of the terms or provisions of the Lease, or by any negligent or strictly liable act or omission of Tenant, its officers, agents, associates, employees or subcontractors in the use, occupancy and maintenance of the Premises or Tenant's installations and improvements within the Premises; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both Tenant and the City, responsibility and indemnity, if any shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**Assignment/
Sublease:**

Assignment and subleases only with City consent, except that City must be reasonable and timely in responding to requests for assignment. Tenant may sublease portions of the Golf Course to SMU, or to First Tee. All assignments and subleases are subject to the terms of the Lease with City. Notwithstanding the foregoing, Tenant may utilize as subcontractors and general contractor(s) affiliate and third party contractors without City consent.

**Miscellaneous
Provisions:**

Tenant shall provide City with periodic financial statements or other reports as City deems appropriate to document the public uses at the Golf Course.

City shall have the right to audit Tenant's financial records relevant to Tenant's compliance under the Lease.

Tenant shall screen all maintenance buildings/areas.

Tenant shall cooperate with the City and allow City staff access to the Premises at reasonable times to monitor the remediation on the Premises.

Upon completion of the Landlord Improvements, Tenant will take the Premises "AS IS, WHERE IS; WITH ALL FAULTS". Tenant disclaims and waives any and all warranties or representations, express or implied, concerning the Premises, including without limitation its suitability or fitness for any particular purpose and/or its commercial habitability.

Tenant will take the Premises subject to all matters of record in the real property records of Dallas County, Texas applicable thereto and all existing zoning.

The parties acknowledge that the terms outlined above are based on preliminary plans and estimates and that the final installation and placement of water and infrastructure improvements and the layout of the Golf Course will be determined at a later date.

The use of terms such as “agree” and “shall” and “will” (and similar terms) are not meant to (and do not) obligate either party in this letter of intent to be compelled to take any action and do not in any respect override the fact that this letter of intent is nonbinding in all respects on both parties to this letter of intent.

The City plans to present the terms outlined above for the Lease during a City Council Briefing on December 5, 2012, and to City Council for final approval by December 12, 2012. Please confirm your understanding and acceptance of these terms by signing a copy of this letter as indicated below and returning to me.

Sincerely,

CITY OF DALLAS
Mary K. Suhm
City Manager

APPROVED AS TO FORM
Thomas P. Perkins
City Attorney

By: _____
Assistant City Attorney

ACCEPTED BY:
TFGC Partners, LLC

By: _____

Attachments:

Exhibit A – Map of the Premises