

# **SHELBY FARMS MANAGEMENT AGREEMENT**

This Shelby Farms Management Agreement ("Agreement") made and entered into this 13 day of JULY, 2007, by and between Shelby Farms Park Conservancy, a Tennessee nonprofit corporation, ("SFPC"), and Shelby County, Tennessee ("County"). The effective date of this Agreement shall be August 1, 2007 (the "Effective Date").

In consideration of their mutual promises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## **ARTICLE 1. DESCRIPTION AND USE OF THE PARK**

For purposes of this agreement, Shelby Farms Park ("Park") shall mean those areas which are described by metes and bounds in Exhibit A, which is attached hereto and incorporated by reference. The Park shall at all times be managed, operated and used for the benefit of the citizens of Shelby County, Tennessee, and shall be used in accordance with the Conservation Easement between the County, The Shelby County Agricenter Commission, and the Land Trust for Tennessee, Inc., recorded as instrument number 07021070 in the Shelby County Register's Office in Shelby County, Tennessee on February 1, 2007, which is hereby incorporated by reference. Furthermore, the parties will work together to develop, adopt, and implement a Master Plan for the Park ("Plan"), and SFPC and the County will carry out their responsibilities in accordance with the Plan.

## **ARTICLE 2. MANAGEMENT**

The County hereby appoints SFPC as Manager of that portion of the Park described by metes and bounds in Exhibit B, which is attached hereto and incorporated herein by reference, ("Managed Area"), with the full and exclusive authority and responsibility to manage, operate, lease, rent, preserve, protect, enhance, and develop that Area, to promote the Park, and to carry out all of its other duties as set forth in more detail herein.

## **ARTICLE 3. TERM**

The initial term of this Agreement shall be ten (10) years and will commence upon the Effective Date and end on July 31, 2017. Either party may terminate this agreement on prior written notice given at least one year prior to the expiration of the initial term or any renewal term. This Agreement shall be automatically extended for additional terms of ten (10) years unless, not less than one year prior to the expiration of any term, either party shall give written notice to the other party electing to terminate this Agreement at the expiration of the then current term. Hereinafter, all references to the "term" of this Agreement shall mean the initial term and any extensions or renewals thereof.

#### **ARTICLE 4. COUNTY FUNDS AND SUPPORT**

(a) It is the intention and agreement of the parties that the County will continue to provide to Shelby Farms at least the same levels of financial support and in-kind support that it has provided in the past. Attached hereto as Exhibit C are lists of the amounts expended by the County for the management and operation of Shelby Farms, the revenues received by the County from Shelby Farms, and the in-kind goods and services provided by the County to Shelby Farms. The County will continue, throughout the term of this Agreement and any renewal or extension thereof, to provide to SFPC annual funding in the amount of at least \$575,848, to be paid to SFPC in quarterly installments on or before the first day of January, April, July, and October of each year of this agreement. On the Effective Date, the County will pay the first pro-rata quarterly installment to SFPC as adjusted herein. The County will also continue, throughout the term of this Agreement and any renewal or extension thereof, to provide to SFPC the same in-kind goods and services it has provided to Shelby Farms in the past, as described in Exhibit C, including the use of work lines through the Shelby County Correction Center as discussed below. The County represents and warrants that Exhibit C is an accurate and complete description of the financial support and in-kind contributions provided by the County. In addition the County will make all reasonable efforts, at County's cost, to maintain the water level in Patriot Lake at appropriate levels to fully support aquatic and recreational activities.

(b) In accordance with the guidelines provided in County policies and procedures, T.C.A. § 41-2-148 and any other applicable law, the County agrees to continue assignment of two work lines (ranging between six and ten trustees from the Adult Offender Center) to augment and support grounds maintenance operations in the Managed Area through the work week. These services are generally scheduled Monday through Friday from 7:00 a.m. to 5:00 p.m., depending on weather and needs of the park. Additional support for special events may be provided subject to availability of manpower.

(c) The County agrees to coordinate communication with the Memphis City Police Department and/or the Shelby County Sheriff's Department, as appropriate, regarding requests for security for both day-to-day security needs and for large scale events.

(d) SFPC shall reimburse the County the County's cost for all utilities (water, sanitary sewer, electricity, and natural gas) arising from the operation of the Park.

(e) The County, as owner of the Park, including the Managed Area, shall retain responsibility for any environmental conditions on or under the Managed Area, including but not limited to the exclusive responsibility for any necessary monitoring and maintenance of hazardous materials, if any, which may be present under those portions of the Managed Area on the south side of Walnut Grove Road which were previously used as a county landfill, and that additional portion of the Managed Area previously used as a fire arms range, it being understood and agreed that the SFPC shall have no responsibility or authority to investigate, remediate or otherwise deal with any such hazardous materials present anywhere within the Managed Area as of the effective date of this Agreement.

## **ARTICLE 5. SFPC FUNDS**

(a) All revenues generated by or in the Managed Area of the Park, and any activities, facilities, events, or programs in the Managed Area of the Park, by rental, lease, or otherwise, or raised by or donated to or for the SFPC for the Managed Area of the Park, shall be paid to the SFPC for use in carrying out its duties set forth herein.

(b) SFPC will raise and collect, from both private and public sources, all additional funds, (over and above the amounts provided by the County to SFPC as provided in Section 4, above, and the other revenues referred to in elsewhere in this Agreement), necessary to carry out its responsibilities set forth herein, including without limitation the management, operation, protection, enhancement, and development of the Managed Area and the promotion of the Park, the development of the Master Plan for the Park, and the implementation of that Plan.

(c) All funds raised by, or donated to SFPC, or received by it in its role as Manager of the Park, through special events, exhibits, sales of goods or services, memberships, advertising, naming rights, sponsorships, private donations, or otherwise, shall be the sole and exclusive property of SFPC, subject to any restrictions imposed on the use of such funds by the Charter and Bylaws of SFPC and/or the terms of the donation. No such funds will be used in a manner which will cause SFPC to lose its status as a charitable organization under the Internal Revenue Code, and SFPC will engage in no activities which would cause it to lose its status as a charitable organization under the Internal Revenue Code.

## **ARTICLE 6. AUTHORITY**

SFPC intends to operate the Park in a manner that will encourage broad public use of the Park, in accordance with the terms of the Conservation Easement and the Management Agreement. SFPC will have the sole authority to determine what activities, events, programs, projects, concessions, facilities, buildings, construction, improvements, landscaping, and changes therein, shall take place in the Managed Area during the term of this Agreement, and to establish rules and regulations governing same.

## **ARTICLE 7. FEES**

(a) SFPC will have the sole authority to determine the amounts to charge for use of or admission to any facility, event, or activity in the Managed Area and shall have control of all concessions in that Area, with the right to operate any such concessions itself or to contract with independent concessionaires to do so; provided, however, that no fee shall be charged for entrance to the Park.

(b) The County agrees to assign its rights under all existing contracts described in Exhibit D, which is attached hereto and incorporated by reference, to SFPC. SFPC agrees to accept and honor the terms of these contracts. Upon the Effective Date of this Management Agreement,

revenues collected pursuant to the terms of said contracts shall be paid to SFPC regardless of whether the contracts have been assigned to SFPC.

(c) SFPC shall allow the County use of the Managed Area free of charge for one day per year for purposes of holding the annual County picnic, on a date agreed upon by the County and SFPC.

#### **ARTICLE 8. LICENSE TO USE EQUIPMENT; MAINTENANCE**

(a) Attached hereto as Exhibit E is a list of Personal Property and Equipment which, at the time of the execution of this Agreement, is used by or in connection with the management, operation, and maintenance of Shelby Farms. The County warrants that this is a complete and accurate list thereof. The County hereby grants and conveys to SFPC licenses to use said Personal Property and Equipment during the term of this Agreement, but ownership of such Personal Property and Equipment shall remain with the County. At the end of the useful life of each piece of equipment, said equipment shall be returned to Shelby County for disposal.

(b) The County shall, during the term of this Agreement, continue to provide maintenance and repair of said Personal Property and Equipment, and shall replace said Personal Property and Equipment, upon the request by SFPC for such replacement, when and if any of it requires replacement due to ordinary wear and tear or for any other reason not the fault of SFPC, its agents or employees to the extent that same is not covered by insurance; provided, that the determination when such replacement is necessary shall be made jointly by SFPC and the County upon a reasonable basis. SFPC shall reimburse the County for any maintenance in accordance with published Fleet Shop rates charged to county agencies and departments within thirty (30) days of invoice.

(c) The County hereby grants a license to SFPC for the term of this agreement for use of the Storage Barn located in Area 10 of the Park and described in greater detail on Exhibit F, which is attached hereto and incorporated by reference, to store the equipment and personal property described herein.

(d) The County hereby grants a license to SFPC for the term of this agreement for use of the structure located at 6489 Mullins Station Road in Area 10 of the Park and described in greater detail on Exhibit F, which is attached hereto and incorporated by reference, to use for office space for park purposes.

(e) SFPC shall be solely responsible for the care and maintenance of the Bison Herd ("livestock"), described on Exhibit G, which is attached hereto and incorporated by reference. SFPC agrees to ensure that said livestock is provided with required veterinary services as well as the appropriate timely disposition of sick or dead animals. The County agrees to provide dead animal pick-up to SFPC on an as-needed basis at no cost to SFPC. SFPC has the authority to carry out appropriate herd management practices to ensure that optimum herd size is maintained for the health and safety of the herd and other animals.

## **ARTICLE 9. CAPITAL IMPROVEMENTS & MAINTENANCE; SIGNAGE**

(a) The Managed Area is and shall remain the property of Shelby County. SFPC shall have the right, at its sole expense, to make such changes in and additions and improvements to the Real Property in the Managed Area as it may deem necessary in order to carry out its duties as Manager; provided, however, that any such changes shall be consistent with the Master Plan and the Conservation Easement. All proposed capital additions to the Real Property in the Managed Area shall be submitted to the County Engineer for review to ensure compliance with applicable state and local regulations relative to public health and safety; provided, however, that approval thereof shall not be unreasonably withheld. All capital additions to the Real Property in the Managed Area paid for in part or in whole by SFPC shall be the property of the County, which accepts ownership of and title to such property.

(b) SFPC shall have the right, at its sole expense, to erect or display, or permit or cause to be erected or displayed, any signs within the Managed Area it may deem appropriate in accordance with the Master Plan, the Conservation Easement, and applicable state and local laws and regulations.

(c) The County agrees to consult and coordinate with SFPC regarding the design and construction of any capital improvements other than those initiated by SFPC as referred to in 9(a).

## **ARTICLE 10. INTELLECTUAL PROPERTY RIGHTS/SPONSORSHIP AND ADVERTISING**

(a) The County hereby grants to SFPC, for the term of this Agreement, an exclusive, worldwide, fully paid up and irrevocable license in and to any and all Intangible Property related to Shelby Farms and owned by the County, including any and all names, trade names, marks, trademarks, and other intellectual property, and all of the goodwill and reputation of Shelby Farms; provided, however, that any use of the name "Shelby County Government" or use of the official seal of Shelby County, Tennessee, requires prior approval of the County. The County agrees to execute and deliver to SFPC such assignments, licenses and other instruments and documents as needed to effectively grant said license in and to all such Intangible Property. SFPC is authorized to grant such sub-licenses in any item of Intangible Property as it deems in the best interest of the Park.

(b) SFPC shall have the right to sell naming rights, sponsorships and advertising relating to the Managed Area or any portion thereof, or facility, activity, or event therein; provided, however, that all any naming rights, sponsorships or advertising relating to tobacco or sexually oriented businesses shall be prohibited and the sale of naming rights related to alcohol shall be prohibited.

## **ARTICLE 11. PERSONNEL**

For a period of no longer than ninety (90) days after the Effective Date (the "Transition Period"), the current County employees assigned to the Park shall continue to be employed by the County but shall be under the joint supervision of the County and SFPC. During the Transition Period, the County shall be responsible for all compensation, benefits and worker's compensation insurance for such employees. The actual amount of such compensation paid during the Transition Period to the County employees assigned to the Park shall be deducted from the quarterly installment(s) to be paid to SFPC during the Transition Period. During the Transition Period, SFPC and the County shall notify the employees who are to be hired by SFPC. SFPC shall have the sole authority, in its sole discretion, to select the persons it chooses to employ and to determine the terms and conditions of their employment, provided however that SFPC shall be an equal opportunity employer and shall not discriminate in its employment practices on the basis of race, sex, age, color, religion, national origin, or disabilities. SFPC shall be solely responsible for all compensation, employee benefits and expenses of its employees after the Transition Period.

## **ARTICLE 12. COMPLIANCE WITH LAWS**

SFPC shall manage the Park in compliance with all applicable laws and regulations.

## **ARTICLE 13. SUBJECT TO FUNDING**

The funding provisions herein are subject to annual appropriation by the County of the funds provided herein. If the County fails to appropriate sufficient funds for the operation of properties, such failure shall not be deemed an event of default but shall entitle SFPC to terminate this Agreement immediately upon notice from the County of the County's failure to appropriate such funds.

## **ARTICLE 14. CONTRACT AUTHORITY**

SFPC shall have full authority to negotiate and execute all contracts, agreements, permits, leases, and licenses as may be necessary for the management and operation of the Managed Area and to carry out its duties as Manager under this Agreement. Such agreements shall include, but not be limited to, contracts, agreements, leases, and licenses, with suppliers, tenants, exhibitors, concessionaires, joint venturers, promoters, advertisers, television and radio media, other media, and other parties.

## **ARTICLE 15. RELATIONSHIP OF PARTIES**

The parties agree that the only relationship created by this Agreement is and shall be that between the County and SFPC and that SFPC is an independent contractor, providing

management, operation, and other services to the County, not an agent, agency, employee, joint venturer, partner, division or department of the County.

## ARTICLE 16. INSURANCE

(a) County will continue to carry insurance coverage on existing building structures in the managed area and will carry insurance on future buildings resulting from the implementation of the Master Plan.

(b) As of the Effective Date, SFPC shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the parties from claims which may arise out of or result from SFPC's operations under the agreement, whether such operations are performed by SFPC or by anyone directly or indirectly employed by SFPC, or by anyone for whose acts SFPC or subcontractor may be liable. SFPC shall also require insurance coverage as outlined herein of any entity or individual that leases or uses the Managed Area for any event(s).

(c) The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. The County, its elected officials, appointees and employees will be named as additional insured. SFPC will maintain throughout the life of this agreement insurances, through insurers rated A- or better by A.M. Best, in the following minimum requirements:

-Commercial General Liability coverage with minimum limits of \$1,000,000.00 per occurrence/\$2,000,000.00 annual aggregate premises/operations coverage, \$2,000,000.00 annual aggregate products/completed operations.

-Workers Compensation coverage, including coverage for sole proprietors, partners, and officers, regardless of requirement by Tennessee State Statute.

-Commercial Auto Liability with minimum limit of \$1,000,000 for all owned, hired and non-owned autos.

SFPC shall provide County with a current copy of the Certificate of Insurance or other acceptable evidence of insurance as of the Effective Date and shall maintain said insurance during the entire agreement as well as provide renewal copies on each anniversary date of the Effective Date. SFPC shall not be required to provide the Workers Compensation coverage until the expiration of the Transition Period.

Upon termination or cancellation of insurance currently in effect under this agreement, SFPC shall purchase an extended reporting endorsement and furnish evidence of the same to the County.

## **ARTICLE 17. RECORDS/INSPECTION**

(a) SFPC will establish and maintain accurate records and accounts which sufficiently and properly reflect all direct and indirect revenues and expenditures in the performance of this Agreement. Such records and accounts shall conform to generally accepted accounting principles. Upon request by the County, SFPC will make available, at SFPC's principal place of business, for inspection and audit, SFPC's books and records relating to the performance of this Agreement.

(b) Within one-hundred and twenty (120) days of the end of each fiscal year (June 30<sup>th</sup>), SFPC shall submit to the County financial audited financial statements regarding the SFPC's management and operation of the Park, including, without limitation, a statement of income, expenses and surplus (or deficit) and the results of operation during such year, such financial statement to be certified by an officer of the SFPC as true, accurate, and complete and fairly reflecting the results of operations of the Park.

(c) Pursuant to Resolution Number 37, enacted by the Board of County Commissioners of Shelby County, Tennessee on March 26, 2007, and Exhibit A attached to said resolution and incorporated by reference, the SFPC shall submit quarterly reports to the County Administration, and the County Commission's Committee #9-Conservation, Chickasaw Basin and Shelby Farms detailing the progress of implementing the Master Plan and raising the necessary funds to pay for the improvements and ongoing public policy matters regarding the governance of Shelby Farms Park.

## **ARTICLE 18. DEFAULT**

Anything in this Agreement to the contrary notwithstanding, it is understood and agreed that in the event of a default, the non-defaulting party shall give notice of default and the party in default shall have 30 days after receipt of the notice to cure any monetary default and 60 days after receipt of the notice to cure any non-monetary default, provided that as to a non-monetary default, if such default cannot reasonably be cured within said 60 days, the party in default shall have such additional time as is reasonably necessary to cure the default, provided that the party in default begins curing the default within said 60 days and diligently prosecutes to completion the curing of the default. A party shall not exercise any right or remedy for default unless and until such notice has been given and the opportunity to cure default has expired.

## **ARTICLE 19. WAIVER**

No waiver of any term, condition, default, or breach of this Agreement, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Agreement or of such document. No delay or failure to enforce any provision in this Agreement or in any document executed pursuant hereto shall operate as a waiver of such



provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

#### **ARTICLE 20. CONSTRUCTION**

All words used herein shall be construed according to their proper gender and number, as the context shall require. Unless specifically designated otherwise, a reference to "including" shall mean "including, but not limited to."

#### **ARTICLE 21. ENTIRE AGREEMENT**

This Agreement sets forth the entire understanding of the parties, replacing any and all prior agreements relating to the subject matter hereof. This Agreement may be changed, amended, or terminated only by similar written instrument executed by the parties.

#### **ARTICLE 22. SUCCESSORS**

All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by and against, the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

#### **ARTICLE 23. ASSIGNMENT**

No party may assign or delegate its rights or duties under this Agreement without the prior written consent of the other parties in each instance.

#### **ARTICLE 24. SEVERABILITY**

If any provision of this Agreement is held to be unlawful, invalid, or unenforceable under any present or future laws, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid, or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such unlawful, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable.

**ARTICLE 25. NOTICES**

Any and all notices, requests, communications, or demands required or permitted to be given pursuant hereto (a) shall be in writing, (b) shall be delivered either (i) in person or by electronic facsimile, (ii) by an established overnight delivery service, such as Federal Express, or (iii) mailed by registered or certified mail, return receipt requested, and (c) shall be addressed as follows:

Shelby County                                        Shelby County Public Works Department  
Attn: Ted Fox, Director  
160 N. Main Street Suite 801  
Memphis, Tennessee 38103

Copy to:    Shelby County Government  
Contract Administration  
160 N. Main St., Suite 550  
Memphis, Tennessee 38103

Shelby Farms Park Conservancy:                Shelby Farms Park Conservancy  
130 North Court Avenue  
Memphis, Tennessee 38103

Copy to:    Burch, Porter & Johnson, PLLC  
130 North Court Avenue  
Memphis, Tennessee 38103  
Attention: Charles F. Newman, Esq. and  
Milton L. Lovell, Esq.

or to such other address or addresses as any party may designate to the others, by notice in writing, given as above provided. Notices delivered in person or by electronic facsimile shall be deemed to have been given on the date of delivery; notices delivered by overnight delivery service shall be deemed to have been given on the business day following the date of deposit with such overnight delivery service; and notices given by mail shall be deemed to have been given three (3) days after the date of mailing.

**ARTICLE 26. APPLICABLE LAW**

This Agreement has been accepted, executed and delivered, and is intended to be performed, in the State of Tennessee. The rights and duties of the parties, and the validity, construction, enforcement, and interpretation of this Agreement, shall be governed and construed according to the laws of such state.

**ARTICLE 27. EXHIBITS**

All of the Exhibits attached to this Agreement are a part of this Agreement when so attached, and are incorporated herein by reference as fully as if copied herein verbatim. The County represents and warrants that all such Exhibits are complete and accurate descriptions of the matters referred to therein.

**ARTICLE 28. FURTHER ASSURANCES**

Each of the parties, at all times and from time to time hereafter, and upon reasonable written request to do so, shall make, do, execute, deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, instruments, assurances, and things as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement.

**(SIGNATURES APPEAR ON THE FOLLOWING PAGE)**

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on this 13 day of JULY, 2007.

APPROVED AS TO FORM  
AND LEGALITY:

SHELBY COUNTY GOVERNMENT

[Signature]  
Contract Administrator/  
Assistant County Attorney

[Signature]  
A C Wharton, Jr., Mayor

SHELBY FARMS PARK CONSERVANCY

BY: Calvin Anderson

TITLE: Chairman | PRESIDENT

CORPORATE ACKNOWLEDGMENT

STATE OF TENNESSEE

COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared CALVIN ANDERSON in whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the SHELBY FARMS PARK CONSERVANCY the within named bargainor, a corporation, and that he as such PRESIDENT, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as PRESIDENT.

WITNESS my hand and official seal at office this 6<sup>TH</sup> day of JULY, 2007.

[Signature]  
Notary Public

My Commission Expires: March 18, 2009

