

INTRODUCED: February 27, 2023

AN ORDINANCE 2023-070

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute an Exercise of Renewal Option and Second Amendment to Operating and Maintenance Agreement between the City of Richmond and Richmond First Tee, for the purpose of providing for the use by Richmond First Tee of City-owned real estate known as the Elson Redmond Memorial Driving Range located at 400 School Street to provide golf, learning facilities, and educational programs for area youth.

\_\_\_\_\_  
Patron – Mayor Stoney

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: MAR 27 2023 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute an Exercise of Renewal Option and Second Amendment to Operating and Maintenance Agreement between the City of Richmond and Richmond First Tee, for the purpose of providing for the use by Richmond First Tee of City-owned real estate known as the Elson Redmond Memorial Driving Range located at 400 School Street to provide golf, learning facilities, and educational programs for area youth. The Exercise of Renewal

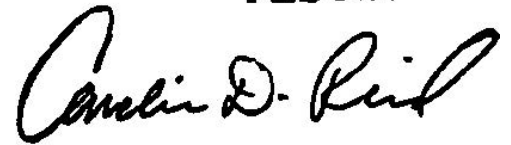
AYES: 9 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: MAR 27 2023 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

Option and Second Amendment to Operating and Maintenance Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

**A TRUE COPY:  
TESTE:**

A handwritten signature in black ink, appearing to read "Candice D. Reed". The signature is written in a cursive, flowing style.

**City Clerk**



# City of Richmond

## Intracity Correspondence

### O&R REQUEST

**DATE:** January 31, 2023 **EDITION:** 1

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor

**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer

**THROUGH:** Sharon Ebert, DCAO for Economic and Community Development

**THROUGH:** Reginald E. Gordon, DCAO for Human Services

**FROM:** Christopher E. Frelke, Director of Parks, Recreation and Community Facilities

**RE:** Richmond First Tee Golf Operation and Maintenance Agreement.

**ORD. OR RES. No.** \_\_\_\_\_

**PURPOSE:** To authorize the Chief Administrative Officer to renew an agreement by and between the City of Richmond, and the Richmond First Tee for the Operation Maintenance of the golf facility and property known as the Elson Redmond Memorial Driving Range (and adjacent city-owned land located off School Street in Richmond, Virginia) for the common purpose to better impact the lives of area youth and community by providing golf, learning facilities, and educational programs that promote character and skill development and life-enhancing values through the games of golf.

**REASON:** To renew an Operation and Maintenance Agreement adopted March 20, 2002, and May 1, 2008. The Agreement will be used to continue providing program instruction, scholarships for participants into the Richmond First Tee Golf Program and currently is set to expire April 30, 2023.

**RECOMMENDATION:** The Department of Parks, Recreation and Community Facilities recommends approval of this request.

**BACKGROUND:** The City and Richmond First Tee has entered into an Operation Maintenance Agreement dated March 20, 2002, and May 1, 2008, and July 1, 2013, with the City of Richmond to develop and manage, a youth golf center providing capital improvements, Operational and Maintenance Services for the Elson Redmond Memorial Golf Driving Range, consisting of a three (3) hole par three (3) course, a three (3) hold tot course, a clubhouse and storage facility.

**FISCAL IMPACT / COST:** N/A.

**FISCAL IMPLICATIONS:** None

**BUDGET AMENDMENT NECESSARY:** No.

**REVENUE TO CITY:** None.

**DESIRED EFFECTIVE DATE:** Upon adoption

**REQUESTED INTRODUCTION DATE:** February 27, 2023

**CITY COUNCIL PUBLIC HEARING DATE:** March 13, 2023

**REQUESTED AGENDA:** Consent Agenda

**RECOMMENDED COUNCIL COMMITTEE:** Land Use, Housing and Transportation Committee

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** None

**AFFECTED AGENCIES:** Parks, Recreation and Community Facilities

**RELATIONSHIP TO EXISTING ORD. OR RES.:** 99-R84-89; 2010-139-133; 2013-114-111.

**REQUIRED CHANGES TO WORK PROGRAM(S):** None.

**ATTACHMENTS:** First Tee Golf Operations and Maintenance Agreement.

**STAFF:** Christopher Frelke, Director – Parks, Recreation and Community Facilities

646-1128

**EXERCISE OF RENEWAL OPTION AND SECOND AMENDMENT TO OPERATING  
AND MAINTENANCE AGREEMENT  
CITY OF RICHMOND AND RICHMOND FIRST TEE**

THIS EXERCISE OF RENEWAL OPTION AND SECOND AMENDMENT TO OPERATING AND MAINTENANCE AGREEMENT (the "Second Amendment"), effective as May 1, 2023, is by and between the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia (the "City") and Richmond First Tee, a Virginia non-stock corporation ("RFT"). Collectively, referred to as the "Parties".

**RECITALS**

- A. The City and RFT have previously entered into a certain Operating and Maintenance Agreement on the first day of June, 2013 (the "Agreement"), attached hereto as Schedule A and a Renewal and First Amendment to Operating and Maintenance Agreement on the 5<sup>th</sup> day of July, 2016 ("First Amendment"), attached hereto as Schedule B.
- B. The First Amendment provides that the Parties may renew the Agreement for "up to three (3) additional five-year periods" and as such exercises one such renewal option, set to expire on April 30, 2023.
- C. The Parties wish to exercise their right to execute one of the two (2) remaining renewal periods as described in the First Amendment.
- D. Furthermore, the Parties wish to amend such certain sections of the Agreement as outlined below.

**TERMS AND AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises set forth in the Agreement, the First Amendment, and this Second Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Each party's execution of this Second Amendment shall constitute written notice of its interest to renew the Agreement for one Renewal Term pursuant to Section 2.1 of the Agreement. As a result, the term of the Agreement is hereby extended through April 30, 2028.

2. In light of the exercise of one renewal option pursuant to the First Amendment, Section 2.1 of the Agreement shall be amended as follows: The words "one (1) additional five-year period" are hereby replaced with the words "up to two (2) additional five-year periods". For the avoidance of doubt, one of the two additional five-year periods is exercised by this Second Amendment so one (1) additional five-year period remains.
  
3. Section 6.7 of the Agreement shall be replaced in its entirety with the following:  
  
6.7 City of Richmond's Chief Administrative Officer (or the Chief Administrative Officer's designee) shall serve on RFT's board of directors. Additionally, the City shall have the right to appoint up to two citizen representatives to the RFT Board of Directors; prior to appointment, a citizen representative shall be subject to approval by the City and RFT.
  
4. Except as amended by this Second Amendment and the First Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

Signatures found below:

**For the City:**

\_\_\_\_\_  
Lincoln Saunders                      Date  
Chief Administrative Officer

**For Richmond First Tee:**

\_\_\_\_\_  
Brent Schneider                      Date  
Executive Director

Approved as to Terms:

\_\_\_\_\_  
Christopher Frelke                      Date  
Director, Parks, Recreation &  
Community Facilities

Approved as to Form:

  
\_\_\_\_\_  
Alexandra Griffin                      Date  
Assistant City Attorney

# SCHEDULE A

## **OPERATING AND MAINTENANCE AGREEMENT**

This Operating and Maintenance Agreement (the "Agreement") is entered into as of the 1<sup>st</sup> day of June, 2013, by and between the City of Richmond, Virginia (the "City") and Richmond First Tee, a Virginia non-stock corporation ("RFT"), for the operation and maintenance of the golf facility known as the Elson Redmond Memorial Driving Range ("Facility"), located at 400 School Street in the City of Richmond, Virginia (the "Property").

**WHEREAS**, RFT previously developed a golf course facility in the City known as "The First Tee of Richmond"; and

**WHEREAS**, RFT has represented to the City that it is a 501 (C) (3) not for profit organization and has formed a Board of Directors and staff capable of providing the financial and professional support necessary to sustain the successful operation of a golf course facility in the City; and

**WHEREAS**, The City and RFT have previously entered into a Construction, Operating and Maintenance Agreement dated March 20, 2002, based on RFT's positive history with the City and its Board of reputable community leaders, as renewed by an Operating and Maintenance Agreement dated May 1, 2008 (collectively, the "Original Agreement"); and

**WHEREAS**, The First Tee, a division of the World Golf Foundation, Inc. ("TFT"), supports and endorses the operations of RFT as a local chapter of the TFT and has entered into an agreement with RFT establishing high quality standards of operation and maintenance of the Facility; and

**WHEREAS**, the City and RFT have created a unique leisure and public golf learning facility in the City to make golf available to people of all diversities and social strata, particularly children and young people who otherwise may not have any opportunity to learn to play the game; and

**WHEREAS**, the City and RFT desire to enter into a new operating agreement to continue the high quality standards of operation and maintenance of the Facility; and

**WHEREAS**, RFT has constructed the facility and has been operating and maintaining the facility in accordance with the Original Agreement; and

**WHEREAS**, the Original Agreement has expired; and

**WHEREAS**, the City and RFT desire to continue the mission and purpose encapsulated in the Original Agreement through the creation of a new Agreement;

**NOW, THEREFORE**, for the premises and conditions set forth herein, the parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

- 1.1 For the purposes of this Agreement, the following defined terms shall hereinafter have the meanings specified below:

"City" shall mean the City of Richmond, Virginia, a Virginia municipal corporation.

"RFT" shall mean Richmond First Tee, a Virginia non-stock corporation and a not for profit entity pursuant to Section 501 (C) (3) of the Internal Revenue Code.

"TFT" shall mean The First Tee, a division of World Golf Foundation, Inc., a Florida Non Profit Corporation.

"Property" shall mean that certain real estate located in the City of Richmond, Virginia, at 400 School Street, with a parcel identification of N0000366002 and generally consisting of the City of Richmond's former Transfer Station and Elson Redmond Memorial Driving Range sites.

"Facility" shall mean a six (6) – hole golf course facility driving range with appropriate irrigation, which includes, without limitation, a tot course, practice green and clubhouse/pro shop and concession facilities, located on the Property.

## **ARTICLE II**

### **TERM, PURPOSE AND GOVERNING EFFECT**

- 2.1 The initial term of this Agreement shall be for five (5) years from the date of this Agreement (the "Commencement Date") and may be renewed for one (1) additional five-year period provided that RFT has, during the initial and renewal terms, consistently operated and maintained the Facility in compliance with the terms of this Agreement. Each party shall provide written notice of its interest to renew this Agreement for an additional term at least ninety (90) days prior to the expiration of the current term. The City's consent to any renewal shall be subject to the approval of the Richmond City Council.
- 2.2 The RFT represents that it has inspected the Property, determined that it is suitable for its intended purposes. This Agreement is contingent upon RFT maintaining necessary zoning, building, environmental and other approvals from appropriate agencies.
- 2.3 Except as otherwise may be provided herein, the Property shall be used solely in connection with the operation and maintenance of "The First Tee" public golf facility and related programs, consistent with the terms and conditions of a certain First Tee Facility



Development Agreement, dated March 20, 2002 by and between the RFT and TFT (the "The First Tee Agreement").

### ARTICLE III

#### OPERATION AND MAINTENANCE OF THE PROPERTY

- 3.1 RFT shall operate and maintain the Facility on the Property at its sole cost and expense. The design of the Facility and the construction of the improvements have now been completed in accordance with the final approved plans and specifications.
- 3.2 RFT acknowledges the City's right and obligation, at the City's sole cost and expense, to continue to maintain, monitor, improve, extend or replace existing utilities, methane gas lines, manholes, monitoring stations and burn pad on the Property in accordance with applicable laws.
- 3.3 Any future construction at or on the Facility shall be performed by a contractor selected by RFT after the project approval by the City. Prior to any construction, RFT shall provide a standard contractor's payment bond, letter of credit, or other surety in amount and form acceptable to the City, in its reasonable discretion, which shall guarantee any future construction on the Facility and which shall be released following the City's receipt of evidence of payment and verification that all payments for work performed have been made.
- 3.4 RFT shall be responsible, at its sole expense, to secure all necessary approvals and permits for any future construction on the Facility, and all related fees for such approvals and permits.
- 3.5 RFT shall be responsible for, at its sole expense, for the payment of all necessary utility services, including, but not limited to, services to provide natural gas, water, wastewater, stormwater and electricity on the Property and for the Facility for the duration of this Agreement.
- 3.6 During any future construction of the Facility, RFT shall cooperate with the City's Director of Parks, Recreation and Community Facilities and allow the Director and other City officials to inspect the site at any time.
- 3.7 Regarding any future construction, RFT shall not be responsible for delays due to acts of God, stormy or inclement weather, delays in the issuance of timely requested environmental or construction permits, or acts by others or circumstances which are reasonably beyond its control.
- 3.8 RFT shall maintain or cause to be maintained the Facility at its sole expense in good order, in sanitary and safe condition, and in high-quality industry standards. All work shall be performed by qualified staff or contractors in a professional manner. RFT shall

utilize a qualified Golf Course Superintendent who is a member of the Golf Course Superintendent's Association of America and who is a licensed chemical applicator.

- 3.9 During the term of this Agreement RFT covenants and agrees to maintain the Facility and grounds at all times so that (i) there are no "Hazardous Substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C Section 9601, et seq. as amended, at or on the Facility, except pre-existing Hazardous Substances and those listed on an inventory furnished to and approved by the City, if any, which shall be kept current by RFT and shall identify the type, quantity and location of each such Hazardous Substance; (ii) there is not a release or threat of release of any Hazardous Substance caused or knowingly permitted by RFT; (iii) the City shall not be subject to liability to any person because of the presence of (A) stored, leaked or spilled petroleum products, (B) underground storage tanks or (C) an accumulation of rubbish, debris, or other solid waste, or because of the presence, release, threat of release, discharge, storage, treatment, generation or disposal of any "hazardous waste" (as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; as amended). Notwithstanding any other provision in this Agreement to the contrary it is expressly understood, and the parties agree, that RFT shall be responsible for the release of Hazardous Substances it may cause or knowingly permit and shall not be responsible for the existence of Hazardous Substances that occurred on the Property before the effective date of the Original Agreement or any release of such Hazardous Substances. Further, it is expressly understood, and the parties agree, that the City shall be responsible for the existence of any Hazardous Substances that occurred on the Property before the effective date of the Original Agreement or any release of such Hazardous Substances. The City reserves the right to monitor the environmental condition of the Property during the term of this Agreement to ensure that RFT complies with federal, state and local environmental regulations and laws.

#### ARTICLE IV

##### CITY ASSISTANCE WITH DEVELOPMENT AND OPERATIONS

- 4.1 The City will assist RFT to maintain in existence current existing directional signage for the Facility adjacent to nearby freeways and major roadway locations. The City shall permit RFT to maintain in existence current entrance signage for the Facility. The City agrees to include and feature the Facility in all marketing materials the City deems appropriate. RFT agrees to acknowledge the City's support and sponsorship in its marketing materials.
- 4.2 The City will cooperate with RFT to potentially realize any opportunities for reducing RFT's operation maintenance costs of the Facility, without incurring any additional cost to the City.
- 4.3 The City will cooperate with RFT to address any security issues such as security lighting, fencing and increased police patrol of the Facility. Any cost sharing of such security

improvements by the City will be subject to the future appropriation of necessary funds by City Council.

- 4.4 The City will assist, to the extent possible, in providing public transportation to the Facility.
- 4.5 The City will seek to improve adjoining and surrounding public properties and rights-of-way, subject to the appropriation of necessary funds by City Council.
- 4.6 The City staff will strive to coordinate the City's Golf Training Programs for children with RFT's programs for maximum efficiency of staff and the facility utilization.

## ARTICLE V

### INSURANCE AND INDEMNIFICATION

- 5.1 The RFT shall provide and keep in full force and effect during the period that this Agreement is in effect the kinds and amounts of insurance prescribed in this paragraph, and shall comply with all other provisions of this paragraph. Such insurance shall be provided and kept in full force by insurance companies authorized to do business in the Commonwealth of Virginia and acceptable to the City. All premiums and other costs of such insurance shall be paid by RFT. The insurance policy and Certificate of Insurance shall be signed by duly authorized representatives of such insurance companies in the Commonwealth of Virginia and shall be countersigned by duly authorized local agents of such companies. All Certificates of Insurance shall show the name of location "First Tee of Richmond." RFT shall not be required to furnish the City with copies of the insurance contracts required by this paragraph unless requested by the City. RFT shall provide a Certificate of Insurance issued by such insurance companies in which the company shall irrevocably warrant that the insurance is provided to enable the RFT to comply with and provide the required insurance. The insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies. Within five (5) business days after the Commencement Date, RFT shall furnish the Director of Parks, Recreation and Community Facilities with an original Certificate of Insurance for each of the following:
  - A. Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence.
  - B. Statutory Worker's Compensation and Employer's Liability with the Alternate Employers Endorsement WC 000301. If any employee of the contractor is not subject to the provisions of the Virginia Workers' Compensation Act, the contractor shall nevertheless insure payment of the same compensation to such employee as is provided for by the Virginia Workers' Compensation Act.

- C. Other insurance as may be reasonably required based upon the nature of this Agreement.
  - D. All insurance contracts shall be written or endorsed so as to preclude the exercise of the right of subrogation against the City.
- 5.2 All insurance required under this Article and as may required in the future shall name the City as an additional insured, and RFT shall require the insurer (s) of such insurance to provide for a thirty (30) day notice to be sent to the Director of Parks, Recreation and Community Facilities prior to cancellation or any changes in the policies. A copy of the insurance certificate (s) shall include this requirement.
- 5.3 All certificates of insurance required under this Article and any which may be required in the future must be reviewed and approved by the City.
- 5.4 RFT agrees to defend, save harmless and indemnify the City from and against all claims for damages against the City including, but not limited to, environmental claims caused, or contributed to, by the intentional failure of RFT or by the negligent act or omission by its agents or employees to perform the terms and conditions of this Agreement that they are obligated to perform.

## **ARTICLE VI**

### **OPERATIONS AND MANAGEMENT OF THE FACILITIES AND THE PROPERTY**

RFT agrees that the Property and the Facility will be operated, managed and utilized as follows:

- 6.1 RFT shall guarantee that the Facility shall be open to the general public on a schedule approved by the City with business hours and tee times dedicated for children in accordance with the goals and standards of The First Tee program. RFT shall provide the City with details of programs targeted for children and provide the City with annual reports which reflect its financial strength and the level of success the program reached in meeting its targeted goals.
- 6.2 A published fee schedule (including, without limitation, green fees, driving range fees, event fees and similar charges) shall be established by RFT, in consultation with the City, and with the intent of having the lowest youth fees available in the local market for comparable facilities. Children 17 years old and younger and adults 55 years or older residing in the City of Richmond will receive discounted rates off the published fee schedule.
- 6.3 RFT's operation of the Facility shall be on a "not-for-profit" basis and its books and records shall be kept in accordance with generally accepted accounting principles. RFT shall be allowed to establish reasonable capital and operational reserves consistent with the operation of a "first-class" golf course facility. Any revenues generated from

fundraising, sponsorships and other sources other than Facility use or Facility usage fees may be designated for use by RFT for such other nonprofit purposes as RFT deems appropriate and consistent with its corporate purpose. Sponsorships shall be sought and conducted under, and subject to, TFT's national program guidelines.

- 6.4 (a) RFT shall conduct an annual audit of the entire operation of the Facility in accordance with generally accepted auditing standards. The audit shall be conducted by a certified public accountant licensed to practice in the Commonwealth of Virginia who is acceptable to the City.
- (b) The annual audited financial report shall be prepared in accordance with generally accepted accounting principles for non-profit corporations. Generally accepted accounting principles for non-profit corporations and generally accepted auditing standards are as defined by the American Institute of Certified Public Accountants.
- (c) RFT shall provide copies of all annual audit reports to the City within thirty (30) days of the receipt of such reports from its auditors.
- (d) RFT shall address any adverse finding (s) of such audits in a prompt and diligent manner within ninety (90) days of the receipt of the audit reports.
- 6.5 The Facility, range balls and available pull carts and clubs will be made available to the City to operate and program the "Hook a Kid on Golf" program plus two (2) additional City sponsored events at no cost each year. At such events, the City shall be responsible for any costs associated with use of the concession stand, merchandise sales and any other special needs. Scheduling such events shall be coordinated between the City and RFT no later than ninety (90) days prior to any scheduled event. City sponsored events shall not interfere with any of TFT Facility sponsored events and each such event shall not require more than two (2) operational days of the Facility's schedule. Additionally, such events shall not include or promote any events or facilities in competition with the Facility, TFT program, or TFT or Facility sponsored events.
- 6.6 The Facility golf course, tot course, practice green and driving range shall be made available free of charge for the City's Parks & Recreation instructional programs and to Richmond public schools for physical education classes and school tournaments during non-peak hours, subject to Facility capacity restrictions and on a schedule to be agreed upon between the City and RFT. Adult-only private golf lessons shall be allowed and coordinated through the City's Department of Park, Recreation and Community Facilities (DPRCF), provided that such adult lessons shall not exceed eight (8) one-hour lessons per week, with no more than three (3) adult students per lesson. All golf instructors representing (DPRCF) will be trained employees of the City of Richmond and supervised by the Department's Golf Supervisor. RFT's golf professionals will be considered for consulting and instructional purposes at an agreed upon hourly rate if additional expertise is believed to be beneficial based on participation numbers and skill levels of the registered participants. No DPRCF golf lessons will be scheduled without advance

notification and arrangements made with Richmond First Tee. Golf course facilities shall be made available to Virginia Commonwealth University Golf Team in accordance with that certain Memorandum of Understanding and Agreement dated June 2010, by and between RFT, the City and Virginia Commonwealth University, subject to the Facility's availability and an advance notification request of forty-eight (48) hours to be approved by Golf Course Manager. RFT agrees to make golf classes or programs available free of charge to minors who meet RFT's then-current eligibility requirements.

- 6.7 The Richmond Chief Administrative Officer (or the Chief Administrative Officer's designee) and a citizen representative appointed by the Chief Administrative Officer shall serve on RFT's Board of Directors for three-year terms. In addition, the Director shall have the right to confirm a second citizen representative from the City of Richmond to be appointed by RFT for three (3)-year terms. The Chief Administrative Officer's term on the Board of Directors shall commence no later than the second Board of Directors meeting following the execution of this Agreement by RFT and the City. If the Board of Directors is increased from fifteen (15) to eighteen (18) members, RFT shall appoint an additional citizen member to the Board of Directors with the approval of the Chief Administrative Officer.
- 6.8 The Facility and the Property shall be subject to the rules and regulations of City parks except as otherwise provided in this Agreement.
- 6.9 RFT shall operate the Facility in compliance with all applicable federal, state and local laws and regulations, including conditions of zoning and applicable civil rights and accessibility legislation.
- 6.10 RFT shall continue to identify the driving range at the Facility as "Elson Redmond Memorial Driving Range" by maintaining appropriate signage near the driving range.

## ARTICLE VII

### Miscellaneous Provisions

7.1 City's Right to Inspect

Upon reasonable notice and during normal weekday working hours, the City shall have the right to inspect the Facility, and to inspect or audit the records of the Facility, for the purpose of determining compliance with the terms and conditions of this Agreement. In addition, RFT shall provide the City annually by December 31 with a business plan for the succeeding three (3) years which contains projections of revenues, expenses, capital improvements, or other financial planning information the City may reasonably request.

7.2 Default by Richmond First Tee

In the event that RFT fails to develop, maintain or operate the Facility in accordance with the terms and conditions of this Agreement or The First Tee Agreement, the City will

give RFT written notice and ninety (90) days from the date of receipt of such notice to cure the default, or if a cure cannot be made within ninety (90) days, to initiate a cure within ninety (90) days and diligently pursue a cure thereafter, failing which the City will have the right to terminate this Agreement and/or enter the Property and to operate and maintain the Facility, and RFT shall reimburse the City for all expenses reasonably incurred by the City in entering the Property and in operating and maintaining the Facility. Notwithstanding anything in this Agreement to the contrary, in the event that RFT fails to develop, maintain or operate the Facility in accordance with the terms and provisions of this Agreement or the First Tee Agreement as a result of which the City assumes operation and maintenance of the Facility for continued use as a program sponsored by TFT, it shall be subject to the prior approval of TFT as a chapter and, to the extent legally permissible, to the terms, conditions and provisions of The First Tee Agreement.

**7.3 End of Term Reversion of the Property**

The Property and any other improvements thereon will revert to and become the property of the City upon the expiration or termination of this Agreement. Furthermore, the City shall compensate RFT for the original cost of the improvements constructed with RFT funds on a Pro-rata basis according to the following formula:

$\text{Amount Owed RFT} = (\text{Original Cost in Dollars} / 20 \text{ Years}) \times (20 \text{ Years} - \text{Total Number of Years the Original Agreement and this Agreement Are Performed}).$

No such compensation shall be provided to RFT if the expiration or termination of this Agreement takes place after April 30, 2023. RFT shall be responsible for the removal of its personal property at the expiration or termination of this Agreement, provided that RFT shall be responsible for the cost of repair of any damage caused during such removal.

**7.4 Use of "The First Tee" Name By Authorization Only**

Notwithstanding any provision in this Agreement to the contrary herein, in the event RFT fails to conform to the standards required of the Facilities in The First Tee Agreement or other agreements between TFT and RFT, or in the event the City or some other entity takes possession or ownership of the Facility or interest of RFT, the City and the Facility shall not be entitled to, and shall not, utilize the name of "The First Tee" or a logo thereof in marketing or identifying the Facility without obtaining the express prior written consent of TFT.

**7.5 No Sublease, Assignment or Subcontract of the Property**

The rights and obligations under this Agreement are personal, and RFT shall not assign or subcontract this Agreement, the Property, the Facility, or its rights under this Agreement, without the prior written consent of the City.

**7.6 Notices**

Any notices to be provided to a party under this Agreement shall be given in writing by first class mail directed to:

City

Norman C. Merrifield  
Director, Parks, Recreation and Community Facilities  
900 East Broad Street, Suite 407  
Richmond, Virginia 23219

with a copy to:

City Attorney  
Allen L. Jackson, Esquire  
900 East Broad Street, 3<sup>rd</sup> Floor  
Richmond, Virginia 23219

Richmond First Tee

Brent Schneider  
Executive Director  
Richmond First Tee  
7501 Boulders View Drive, Suite 120  
Richmond, Virginia 23225

**7.7 Dispute Resolution**

**7.7.1 Governing Law**

All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and RFT in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

**7.7.2 Construction and Interpretation**

Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. Neither the form of this Agreement, nor any language herein, shall be construed or interpreted in favor of or against either party hereto as the sole



drafter thereof.

**7.7.3 Forum and Venue Choice**

Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. RFT accepts the personal jurisdiction of any court in which an action is brought pursuant to this article for purposes of that action and waives all jurisdiction- and venue-related defenses to the maintenance of such action.

**7.8 Severability**

If any provision of this Agreement is deemed unenforceable by the Circuit Court of the City of Richmond or any other court with jurisdiction to hear matters raised by this Agreement, the remainder of this Agreement shall not be affected thereby.

**7.9 Non-Appropriation**

The City shall be bound under this Agreement only to the extent that there are funds available to perform its obligations hereunder.

**7.10 Representatives Not Individually Liable**

No member, commissioner, trustee, officer, official, representative, employee, director or partner or their respective successors or assigns of the City or RFT shall be personally liable in the event of any default or breach of any obligation under the terms of this Agreement. However, the provisions of this paragraph shall not release the parties thereto from any of their obligations hereunder.

**7.11 Non-Waiver**

No party hereto shall be deemed to have waived the exercise of any right hereunder unless such waiver is made expressly and in writing, and no such waiver of any such right in any one instance shall be deemed a waiver as to any other instance of any other right.

**7.12 No Third-Party Beneficiaries**

Notwithstanding any other provision of this Agreement, the City and RFT hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City or RFT; (iii) no individual or entity shall obtain any right to make any claim against the City or RFT under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or

entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.

**7.13 Incorporation of Exhibits**

All of the Exhibits attached hereto are hereby incorporated into this Agreement and made a part hereof.

**7.14 Headings**

The headings in this Agreement are for purposes of convenience only and shall not modify or enlarge the interpretation of the text of this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import shall refer to this Agreement as a whole and not to a particular Article, Section, Subsection or Paragraph.

**7.15 Completeness: Modification**

This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto, including, but not limited to, the Memorandum of Understanding (the "M.O.U.") dated March 12, 1999, and the Original Agreement. In the event of any conflicts or inconsistencies between this Agreement, the M.O.U. and the Original Agreement, the provisions of this Agreement shall control. The parties hereto hereby acknowledge, agree and confirm that the Original Agreement has expired and is of no further force or effect. This Agreement may be modified only by a written instrument duly executed by the parties hereto.

**7.16 No Partnership**

This Amendment does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship specifically established hereby.

**7.17 Consents and Approvals**


Wherever in this Agreement a party has the right to consent to or approve a proposed action by the other party, such consent, or approval or denial thereof shall be provided in writing in a timely manner.

**7.19 Force Majeure**

If either party is unable to perform its obligations under this Contract due to acts of God or circumstances beyond its reasonable control, such obligations shall be suspended as long as those circumstances persist, provided that the delayed party promptly notifies the other party of the delay and the causes. Except where the delay is caused by an act or

omission of the other party, any costs arising from such delay shall be borne by the delaying party.

**CITY OF RICHMOND**

By:   
Byron Marshall  
Chief Administrative Officer

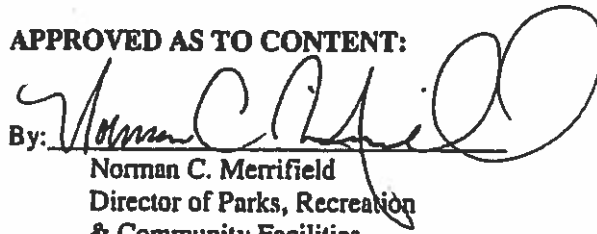
**RICHMOND FIRST TREE**

By:   
Brent Schneider  
Executive Director

**APPROVED AS TO FORM:**

By:   
Sarah M. Denham  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

By:   
Norman C. Merrifield  
Director of Parks, Recreation  
& Community Facilities

## SCHEDULE B

### EXERCISE OF RENEWAL OPTION AND FIRST AMENDMENT TO OPERATING AND MAINTENANCE AGREEMENT

THIS EXERCISE OF RENEWAL OPTION AND FIRST AMENDMENT TO OPERATING AND MAINTENANCE AGREEMENT (the "First Amendment") is entered into this 5<sup>th</sup> day of July, 2016, by and between the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia, acting by and through its duly authorized representative (the "City") and Richmond First Tee, a Virginia non-profit corporation ("RFT").

#### RECITALS

A. The City and RFT entered into that certain Operating and Maintenance Agreement on the first day of June, 2013 (the "Agreement").

B. The Agreement provides that the parties may renew the Agreement for one additional five-year period beyond the initial term (a "Renewal Term") upon written notice at least 90 days prior to the expiration of the initial term.

C. The City and RFT desire to exercise the option to renew the Agreement for a Renewal Term and to amend the Agreement to include the option of up to two additional Renewal Terms and to facilitate the completion of improvements by RFT.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in the Agreement and in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Each party's execution of this First Amendment constitute written notice if its interest to renew the Agreement for one Renewal Term pursuant to Section 2.1 of the Agreement. As a result, the term of this Agreement is hereby extended through April 30, 2023.

2. Section 2.1 of the Agreement shall be amended as follows. The words "one (1) additional five-year period" are hereby replaced with the words "up to three (3) additional five-year periods". For the avoidance of doubt, one of the three additional five-year periods is exercised by this First Amendment, so two (2) additional five-year periods remain.

3. Section 6.6 of the Agreement shall be amended as follows. The second to last sentence, which sentence begins "Golf course facilities . . .", is hereby replaced in its entirety with the following: "Golf course facilities shall be made available to Virginia Commonwealth University ("VCU") Golf Team in accordance with that certain Memorandum of Understanding and Agreement dated June 2010, by and between RFT, the City and VCU, as may be amended from time to time in writing upon mutual

agreement of the City, via signature of its Chief Administrative Officer, RFT, and VCU, subject to the Facility's availability and an advance notification request of forty-eight (48) hours to be approved by Golf Course Manager."

4. Section 7.3 of the Agreement shall be replaced in its entirety with the following.

7.3 **Reversion of Property; Improvements; Personal Property**

(a) **Improvements.** The Property and any other improvements thereon shall revert to and become the property of the City upon the expiration or termination of this Agreement. If this Agreement expires or terminates on or before April 30, 2033, the City shall compensate RFT for the costs incurred by RFT in completing those certain improvements pursuant to the plans approved by the City's Planning Commission on May 16, 2016 (the "Improvements" and the "Cost of Improvements") on a pro-rated basis in accordance with the formula set forth in Section 7.3(b) below (the "Formula"). Provided, however, if RFT's actual incurred costs for the Improvements exceed \$1,000,000 then the Cost of Improvements for the purposes of this Agreement shall be \$1,000,000. Within six (6) months of completing the Improvements, RFT shall provide the City with written notification of the total Cost of Improvements and written documentation showing RFT incurred such costs. If the City reasonably believes RFT did not incur costs in the amount submitted by RFT or the City needs further documentation showing such costs, the City shall notify RFT in writing within sixty (60) days of RFT's notification.

(b) **Improvements' Cost Compensation Formula.** .

**Amount Owed to RFT = (Cost of Improvements / 20) X (20 – Total Number of Years this Agreement is in Force and Effect).**

For the purposes of the Formula, a year shall be deemed in force and effect as of May 1 of such year. By way of illustration, the Agreement commenced on June 1, 2013 and was in force and effect for one year as of May 1, 2014 and so on.

(c) **Personal Property.** RFT shall be responsible for the removal of its personal property at the expiration or termination of this Agreement and shall repair any damage caused during such removal or pay the cost for such repair.

5. The notice address for RFT set forth in Section 7.6 of the Agreement is changed to the following:

Brent Schneider  
Executive Director

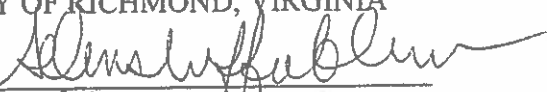
The First Tee Richmond & Chesterfield  
9211 Forest Hill Avenue, Suite 104  
Richmond, Virginia 23235

6. Except as amended by this First Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

(Signatures on following page)

WITNESS THE FOLLOWING SIGNATURES:

CITY OF RICHMOND, VIRGINIA

By: 

Name: Selena Cuffe Allen

Title: Chief Administrative Officer

Pursuant to Ord. No. 2016-184

Approved as to form:



Assistant City Attorney

RICHMOND FIRST TEE, a Virginia non-profit corporation

By: 

Brent Schneider, Executive Director