

GOLF FACILITY USE AGREEMENT

Between the City of Madison and the Madison Metro Youth Golf Initiative, Inc.

THIS GOLF FACILITY USE AGREEMENT (the "Agreement"), entered into by and between the Madison Metro Youth Golf Initiative, Inc., a Wisconsin nonprofit corporation, doing business as The First Tee of South Central Wisconsin (the "Chapter"), and the City of Madison, a municipal corporation (the "City"), is effective as of the date by which all parties have signed hereunder.

WHEREAS, the City is the owner of the golf facilities at Monona Golf Course, located at 111 E. Dean Ave. in the City of Madison, Dane County, Wisconsin (the "Golf Facility");

WHEREAS, the Chapter is a licensee of The First Tee, a division of World Golf Foundation, Inc. ("The First Tee"), pursuant to which the Chapter is responsible for introducing the game of golf to young people in Madison, Wisconsin and the surrounding area by combining affordable access to golf together with The First Tee Life Skills brand of curriculum which emphasizes golf's unique ability to instill and develop essential values such as honesty, integrity, sportsmanship, self-discipline, respect and a solid work ethic, and to give those young people the confidence and skills to pursue broader goals in life; and

WHEREAS, the Chapter desires to establish The First Tee Life Skills Education Program (the "First Tee Program" or the "Program") at the Golf Facility, and the City is willing to provide the Chapter access to and use of its Golf Facility for the Program in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein below, the receipt and sufficiency of which is hereby acknowledged, the City and the Chapter agree and covenant as follows:

1. City agrees to provide the Chapter access to and use of the Golf Facility for The First Tee Program participants ("Program Participants" or "Participants") in accordance with the minimum access and program use requirements set forth by The First Tee. In particular, the Chapter's use of the Golf Facility shall include, but not be limited to the following: (a) up to sixteen (16) rounds of golf at the golf course for each qualified Program Participant wishing to obtain certification under the Program (rounds of golf will be defined as either nine or eighteen holes of golf depending on the level of certification being sought by the Participant); and (b) green fees for the golf course for rounds played by Program Participants at an appropriate discounted price and time of day as agreed to by the City and the Chapter. Green fees and range ball fees will be paid by Program Participants before play or otherwise will be subsidized by the Chapter or by a third party. Such green fees and range ball fees shall not be the property of the Chapter. The City agrees to set a fee for greens fees that will not exceed the rate in effect for High School Golf Programs. All fees subsidized by the Chapter shall be paid in full on a monthly basis.

2. City further agrees to permit access to and use of the Golf Facility to the Chapter in order that the Chapter may: (i) provide a minimum of 250 hours annually of programming at the Golf Facility; (ii) organize the scheduling of all programming for

Program Participants; (iii) coordinate the certification process for all interested Participants; (iv) prepare youth participants for The First Tee's National Life Skills Academy or other Participant opportunities, as applicable; (v) coordinate all documentation for Participants eligible for college scholarships; (vi) and coordinate all necessary transportation for Participants, if required. The Chapter will use ongoing best efforts to secure donations of golf equipment, office equipment, and volunteers to assist with golf instruction, mentoring, fundraising events and other necessary tasks volunteers can complete. The Chapter may also provide and administer The First Tee Life Skills curriculum at other locations in Madison and South Central Wisconsin to reach out to young people living near other golf courses.

3. Chapter and City will work cooperatively to schedule the Program hours of operation at the Golf Facility. In determining reasonable access to and use of the Golf Course, the parties will consider, among other things, the Program's desire to fully integrate Chapter Participants into the rhythm of play of the other patrons at the Golf Facility.

4. The initial term of this Agreement shall begin on January 1, 2011 and shall continue until May 31, 2025. This Agreement shall automatically renew for two (2) additional five-year renewal terms. Upon written notification no later than September 1, this agreement may be terminated without cause by either party effective January 1 of the following year.

5. The Chapter shall pay to City, as a usage fee, the sum of \$1.00 per year.

6. The Chapter shall provide all operational funds necessary for all Chapter activities, except as provided herein. City shall pay the cost of all utilities serving the Golf Facility. City shall pay all maintenance and management costs associated with operating the Golf Facility. City may assist the Chapter with applying for grants from funding sources or conducting fundraising events to help offset the financial responsibilities of the Chapter.

7. Chapter may display such Chapter logos and marks at the Golf Facility in recognition of the Golf Facility as The First Tee facility and permit the Chapter to comply with all requirements imposed upon the Chapter by The First Tee, provided that the City retains approval authority for the display of such logos and marks, which approval shall not be unreasonably withheld, conditioned or delayed. The use of such logos and marks is carefully circumscribed in the Chapter License Agreement between the Chapter and The First Tee. The City may promote and market Monona Golf Course as "Home of the First Tee of South Central Wisconsin" during the term of this agreement, except during the formal development phase between the Madison Metro Youth Golf Initiative, Inc. and the World Golf Foundation, Inc., by and through its division, The First Tee, which is a required stage preceding the Initiative's official recognition as a Chapter of The First Tee. Chapter and City will work together to display Chapter logos or marks in accordance with the Chapter Agreement.

8. The Chapter shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting

therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Chapter's acts or omissions, or the Chapter's contractors or subcontractors acts or omissions, in the performance of this agreement.

9. The Chapter will insure itself and require all contractors and subcontractors that perform services at the Golf Facility to insure themselves, as indicated, against the following risks to the extent stated below. The Chapter shall not commence any activity under this Agreement, nor shall the Chapter allow any Contractor or Subcontractor of the Chapter to commence activity under this Agreement, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability

The Chapter shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. The Chapter's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. The Chapter shall require all contractors and subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Worker's Compensation

The Chapter shall procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Chapter shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. The Chapter shall require all contractors and subcontractors under this Contract (if any) to procure and maintain such insurance, covering each contractor and subcontractor.

Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Chapter shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing activities under this Agreement. The Chapter shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. The Chapter shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Chapter and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

10. **Non-Discrimination.** In the performance of work under this contract, the Chapter agrees not to discriminate against any employee or applicant for employment

because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. The Chapter further agrees not to discriminate against any contractor or subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin.

11. **Nondiscrimination Based on Disability.** The Chapter shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless assurance of compliance with Section 39.05 is provided by the Chapter prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, "City financial assistance" includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

The Chapter assures that, in providing any service at the Golf Facility, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- A. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- B. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
- C. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- D. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- E. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- F. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- G. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Permittee shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

12. Neither party may assign its rights under the Agreement without the express written consent of the other party. This Agreement shall be governed by Wisconsin law and shall be binding upon and inure to the benefit of the Chapter, City and their duly authorized successors and assigns. This Agreement shall not be modified or amended except by a writing signed by all parties. This agreement constitutes the entire agreement of the parties and supersedes all prior written and oral agreements and understandings related to the subject matter herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

FOR THE CITY OF MADISON

David Cieslewicz, Mayor _____ Date

Maribeth Witzel-Behl, City Clerk _____ Date

Countersigned:

Approved as to form:

Dean Brassler, City Comptroller _____ Date

Michael P. May, City Attorney _____ Date

Eric Veum, Risk Manager _____ Date

FOR MADISON METRO YOUTH GOLF INITIATIVE, INC., doing business as The First Tee of South Central Wisconsin

John Flesch, Chairman of the Board

Date