

AGREEMENT
BY AND BETWEEN
CITY OF SALINAS
AND
FUTURE CITIZENS FOUNDATION,
A CALIFORNIA NON-PROFIT CORPORATION
RELATED TO TWIN CREEKS MUNICIPAL GOLF COURSE SUBLEASE

This **SERVICES AGREEMENT** ("Agreement") is made by and between the **CITY OF SALINAS**, a California municipal corporation ("CITY"), and the **FUTURE CITIZENS FOUNDATION**, a California non-profit corporation and licensee of the First Tee division of the World Golf Foundation, dba **THE FIRST TEE OF MONTEREY COUNTY** ("TFTMC").

RECITALS

A. Pursuant to a Sublease Agreement for operation of Youth Golf Learning Center executed by TFTMC on November 5, 2004 ("Sublease Agreement") TFTMC subleases and operates the City's Twin Creeks Municipal Golf Course ("Twin Creeks") for a youth character development program through the operation of a youth golf facility and learning center and fee based public golf course.

B. Pursuant to the Sublease Agreement, TFTMC agrees to provide a youth golf facility and learning center operation which compares favorably to the services, standards and practices of similar youth character development programs as set forth in the Sublease Agreement.

C. Pursuant to Section 15.03 of the Sublease TFTMC may terminate the Sublease Agreement on twelve months prior notice (the "Termination Right") and has given notice of such termination to be effective June 30, 2012, based on financial hardship associated with the Sublease Agreement.

D. In exchange for the agreement of TFTMC to rescind its current notice of termination and to not exercise its right to give notice of termination of the Sublease Agreement prior to July 1, 2014 for any period on or after July 1, 2015 the CITY wishes to agree that the payments under the Sublease shall be reduced to \$125,000 per year for the period from July 1, 2012 through June 30, 2015, as set forth below.

NOW, based on the Recitals, which are a substantive part of this Agreement, and agreed mutual consideration, CITY and TFTMC agree as follows:

1. **FORBEARANCE TERMINATION.** (a) In exchange for the adjustment for the rental payment described in subsection (b) hereof, TFTMC agrees that it shall not exercise its right to terminate the Sublease Agreement pursuant to Section 15.03 of the Sublease Agreement for any period prior to July 1, 2015. (b) In exchange for the forbearance described in subsection (a), pursuant to Section 4.02 of the Sublease Agreement, for the period from July 1, 2012 through June

30, 2015, rent shall be payable in semi-annual installments at the rate of \$62,500 twice annually (and not at the rate of \$287,500.00 as set forth in Section 4.02).

2. IMPACT ON SUBLEASE AGREEMENT. This Agreement is in addition to and separate from the Sublease Agreement and except as Sections 4.02 and 15.03 are expressly modified herein, no other terms or conditions of the Sublease shall be affected hereby. Except as modified hereby, the parties hereunder shall remain bound by the terms of the Sublease Agreement to the full extent thereof.

3. REPRESENTATIONS AND WARRANTIES OF TFTMC. TFTMC makes the following representations and warranties to CITY. These representations and warranties are ongoing and TFTMC shall advise ADMINISTRATOR in writing if there is any change pertaining to any matters set forth or referenced in the following Subparagraphs 10.1 through 10.6, inclusive.

3.1 No Conflict. To the best of TFTMC's knowledge, TFTMC's negotiation, consideration and action on this Agreement and TFTMC's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which TFTMC is a party or by which it is bound.

3.1.1 TFTMC agrees that no officer, employee, agent or assignee of CITY having direct or indirect control of any monies allocated by CITY, inclusive of the subject funds, shall serve as an officer or director of TFTMC without the express written acknowledgement of CITY.

3.1.2 Further, any conflict or potential conflict of interest of any officer or director of TFTMC shall be fully disclosed in writing prior to the execution of this Agreement and shall be attached to and become a part of this Agreement.

3.1.3 TFTMC is in full compliance with its obligations under the Sublease Agreement and no event has occurred which, but for the giving of notice or lapse of time, or both would constitute an event of default thereunder.

4. GENERAL TERMS AND CONDITIONS.

4.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance in accordance with the laws of the State of California. Legal actions concerning any default, dispute, interpretation, declaration of rights, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Monterey, State of California, or any other appropriate court in the county, and TFTMC covenants and agrees to submit to the personal jurisdiction of the court in the event of any action.

4.2 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or at equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

4.3 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the non-prevailing party.

4.4 Time of Essence. Time is of the essence in the performance of this Agreement.

4.5 No Broker or Finders Fee. TFTMC warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

4.6 No Bankruptcy. TFTMC is not the subject of any current or threatened bankruptcy.

4.7 No Pending Legal Proceedings. TFTMC is not the subject of a current or threatened litigation that would or may materially affect TFTMC's performance under this Agreement.

4.8 No Pending Investigation. TFTMC is not aware that it is the subject of any current or threatened criminal or civil action investigation by any public agency, including without limitation a police agency or prosecuting authority, related, directly or indirectly, to the provision of Services under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS, CITY and TFTMC have executed this Agreement in the County of Monterey,
State of California.**

CITY

CITY OF SALINAS, a municipal corporation

Dated: _____ By: _____
Mayor

Attest:

By: _____
City Clerk

APPROVED AS TO FORM:

Vanessa Vallarta, Esq.

By: _____
City Attorney

[Signature block for TFTMC on next page.]

[Signature block continued from previous page.]

TFTMC

_____,
a California non-profit corporation

Dated: _____

By: _____

Its: _____

By: _____

Its: _____

Accepted and Acknowledged:

By: _____

Monterey Peninsula Foundation
as Sublease Agreement Guarantor

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