

APN: 027-011-12

When Recorded Mail To:

Washoe County Community Services Department  
1001 East Ninth Street  
Reno, Nevada 89512

AND

Robert F. Enzenberger, Board Chair  
Northern Nevada Youth Golf Foundation  
c/o First Tee Northern Nevada  
3550 Barron Way, Suite 10B  
Reno, Nevada 89511

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040.

**ORR DITCH AT WILDCREEK MAINTENANCE AGREEMENT**

**Article 1 PARTIES AND RECITALS**

**1.1 Parties**

This Orr Ditch at Wildcreek Maintenance Agreement ("Maintenance Agreement") is between Washoe County, a political subdivision of the State of Nevada ("County"), and Northern Nevada Youth Golf Foundation, a Nevada non-profit corporation doing business as First Tee Northern Nevada ("Youth Golf Foundation"). County and Youth Golf Foundation shall be hereinafter collectively referred to as the "Parties."

**1.2 Recitals**

WHEREAS, Orr Ditch and Extensions Water Company, a Nevada domestic corporation, ("Company") is the owner of that certain ditch system and waterway commonly known as the Orr Ditch (the "Orr Ditch") within the greater Truckee Meadows within easements, the location of which has been established by eminent domain, statutory dedication, prescription or grant, including underground easements for seepage and the scope of which variously includes the channel of the ditch and ditch banks, bank slopes, adjacent access roads or trails (collectively, the

“Orr Ditch Easement”), which in its current and historical alignment includes easements or rights-of-way traversing portions of the Washoe County School District Parcel and the County Parcel. The typical period of use and operation of the Orr Ditch by Company for irrigation purposes is from April 1st through November 1st (the “Irrigation Season”);

WHEREAS, Youth Golf Foundation is responsible for operating and maintaining the Wildcreek Golf Course (the “Golf Course”) for charitable and affordable golf purposes under the terms of the Golf Course Development Agreement dated July 25, 2022;

WHEREAS, the County deeded to the Youth Golf Foundation Assessor Parcel Number 027-011-12, located at 3500 Sullivan Way, Sparks, Nevada (the “YGF Parcel”) on September 29, 2022;

WHEREAS, the maintenance of the Orr Ditch is essential to the proper functioning of the Golf Course and surrounding areas, and the Parties desire to establish their respective responsibilities for the maintenance of the Orr Ditch; and

WHEREAS, the County’s Orr Ditch maintenance and cleaning responsibilities are defined in an Agreement with the Orr Ditch Company, Washoe County recorded document number 4923462 (“2019 Maintenance Agreement”);

WHEREAS, the County desires to meet the obligations of the 2019 Maintenance Agreement by entering into this Maintenance Agreement. As owner and operator of the YGF Parcel, Youth Golf Foundation shall complete the responsibilities defined herein as contractor for the County. This agreement does not deobligate the County as the ultimately responsible party; and

WHEREAS, the County will continue to be solely responsible for maintaining the siphon infrastructure per the Siphon Facility and Access Easement and Notice of Description of Relocated Easement Area, Washoe County recorded document number 5320429, (“Siphon Facility Agreement”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Youth Golf Foundation agree as follows:

## **Article 2      RIGHTS AND DUTIES**

### **2.1    The County.**

**2.1.1** The County owns the Siphon Facilities as defined in the 2019 Maintenance Agreement and does not intend to contract its obligations regarding the Siphon

Facilities through this Agreement. As used in this Agreement, the “Siphon Facilities” shall have the same meaning as set forth in the Siphon Facility Agreement.

**2.1.2** The County shall be solely responsible for the performance and for payment of all costs incurred in connection with performing all maintenance, cleaning, repairs, and replacement of the Siphon Facilities, cleaning all debris, trash, garbage, silt, sand, dirt, or other foreign materials from any intake facilities, and keeping the Siphon Facilities in good condition and operating at their intended flow capacity, such that they do not impair or impede the conveyance of water through the Orr Ditch.

**2.1.3** Upon written request from the Company, the County shall provide technical guidance and oversight for any major repairs or modifications to the Orr Ditch adjacent to or relating to the Siphon Facilities that may materially impact the use of the Siphon Facilities and public infrastructure or compliance with applicable federal, state, or local regulations. For the sake of clarity, this Section does not and shall not be deemed to create any obligation in which the Company is required to seek County guidance or oversight for any repairs or modifications to the Orr Ditch.

## **2.2 Youth Golf Foundation.**

**2.2.1** Youth Golf Foundation shall be solely responsible for the performance and for payment of all costs incurred in connection with performing maintenance and cleaning of the Orr Ditch on the YGF Parcel, to the satisfaction of the Company, including:

- A. Cleaning all debris, trash, garbage, silt, sand, dirt, or other foreign materials which may collect in or along the Orr Ditch, including, without limitation, the banks, sides and bottom, which may impede water flow of the Orr Ditch;
- B. Trimming and removing vegetation above and below the water line of the Orr Ditch so as not to impede water flow of the Orr Ditch which may include the removal of roots or portions thereof, while ensuring that removal of any roots do not impact the structural integrity of the Orr Ditch bank or wall;
- C. Repairing cave-ins or leaks along banks of the Orr Ditch and removing such cave-ins where repair is impossible to perform;

- D. Removing all rocks 4 inches or larger in diameter which may fall into the Orr Ditch which may impede the water flow in the Orr Ditch; and
- E. Taking reasonable steps to prevent any washouts at bridge cross sites which may occur during times when there is high water flow in the Orr Ditch.

If Youth Golf Foundations fails to perform its obligations under this Section to the Company's satisfaction, the County will perform such obligations on behalf of and at Youth Golf Foundation's cost and expense.

**2.2.2** Youth Golf shall employ, at its own expense, such staff or subcontractors as necessary to perform its duties under this Agreement. Youth Golf Foundation shall furnish all equipment and materials used to provide the services required by this Agreement.

**2.2.3** To the extent Youth Golf Foundation uses any hazardous substances or materials to carry out its obligations under this Agreement, Youth Golf Foundation shall:

- A. Maintain on-site, Material Safety Data Sheets (MSDS), as defined and prescribed in 29 C.F.R. Section 1910.1200, for all hazardous substances purchased by Contractor for use under this Agreement.
- B. Apprise its personnel of the hazards to which they may be exposed in using, handling, transporting, or disposing of hazardous substances, and to obtain medical treatment for those who may be affected by the substance.
- C. Immediately report all spills of hazardous substances to the Washoe County Health District; the Community Services Department; and the Washoe County Risk Manager or Safety Officer.

## **2.3 Shared Responsibilities**

**2.3.1** The Parties accept responsibility for the respective duties described above and shall perform all such work with its employees, contractors or other agents in a workmanlike manner to the reasonable satisfaction of the Company. Except in the event of an emergency, the Parties shall not perform any maintenance, repairs, replacement or other work on the Siphon Facilities or Orr Ditch during the Irrigation Season without the Company's prior written consent.

**2.3.3** The Parties shall recognize and abide by all easement(s) across the YGF Parcel.

- 2.3.4 The Parties shall not authorize, **nor to the extent within their control, the Parties shall not** ~~or~~ permit any other person to discharge or convey storm water into or dump or release any hazardous materials into the Orr Ditch.
- 2.3.5 The County agrees to indemnify, defend and hold harmless the Company from and against any and all losses, claims, liabilities, damages, penalties, fees, fines, costs and expenses, including reasonable attorneys' fees, made against or incurred by the County or Company resulting or arising from:
- A. death or injury or damage to persons or property in or around the YGF Parcel or otherwise arising from the Parties' performance of their respective obligations under this Agreement;
  - B. any breach of this Agreement by the Parties;
  - C. any willful or negligent act or omission of the Parties relating to or affecting the use, operation, repair or maintenance of the Siphon Facilities or the Orr Ditch;
  - D. water seeping or otherwise escaping from the Orr Ditch caused by or attributable to the Party's intentional or negligent act or omission, breach of this Agreement, or any other improvement constructed by the Parties' or their agents, contractors, successors or assigns on or around the YGF Parcel;
  - E. any point source pollution or any water quality issues attributable to or arising from either Party's work or operations on the Siphon Facilities or YGF Parcel; and
  - F. asserted by any person as a result of an incident on the YGF Parcel which is the result of the intentional or negligent act or omission of a Party.
- 2.3.6 As to the Company only, the Parties expressly waive, acknowledge and agree that the Parties shall not assert against the Company any liability limitation otherwise available to the Parties under NRS Chapter 41 or other similar sovereign immunity provisions of Nevada law, including without limitation NRS 41.032 and NRS 41.033. The Parties acknowledge and agree the foregoing indemnification is a material inducement to Company to enter this Agreement. The foregoing shall not benefit any third party, and the Parties expressly reserve all rights to assert NRS Chapter 41 or other similar sovereign immunity provisions of Nevada law against all persons other than the Company. The foregoing shall be construed at all times for the benefit of Company, and unless Company agrees otherwise shall not be severable from this Agreement for any reason, including any determination that any portion of the foregoing release and indemnity is unenforceable or invalid.

2.3.7 No Party will cause or permit any encroachment of the Orr Ditch Easement, including, without limitation, any construction, improvements or utility work on or adjacent to the Orr Ditch, without the Company's prior written approval and satisfaction of the Company's encroachment application process then in effect.

### **Article 3      GENERAL TERMS**

**3.1      TERM.** This Agreement shall remain in effect so long as Youth Golf Foundation owns or operates the YGF Parcel.

**3.2      TERMINATION.**

**3.2.1** Parties may terminate this Agreement upon mutual agreement or automatically in the event of YGF Parcel ownership reversion to the County.

**3.2.2** In the event either Youth Golf Foundation or the County breaches or otherwise defaults in the performance of any of the terms, covenants, or conditions of this Agreement, the nonbreaching party shall be entitled to terminate this Agreement upon written notice to the party in breach or default describing both the nature of the alleged breach or default and date of termination. If the default is one capable of being cured, the defaulting party shall have thirty (30) days from receipt of the notice of termination in which to cure the stated default provided, however, that an excessive number of breaches may constitute grounds for termination, whether cured or not.

**3.2.3** With or without cause, County may terminate this Agreement and all rights granted hereby by giving ninety (90) days' written notice, unless there is an immediate danger to health and/or safety, in which case termination may be immediate.

**3.2.4** Upon any termination, the Parties shall coordinate to ensure the continued maintenance of the Orr Ditch and Siphon Facilities in accordance with the Parties' collective maintenance obligations hereunder to the satisfaction of the Company.

**3.3      LIMITED LIABILITY.** Except as expressly set forth in this Agreement, the County does not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages.

**3.4      INSURANCE AND INDEMNIFICATION.**

**3.4.1** Youth Golf Foundation shall maintain liability insurance as follows:

- A. Youth Golf Foundation shall, at its sole cost and expense, secure and maintain in full force and effect during the term of this Agreement, a policy or policies of Workers' Compensation, General Liability and Auto Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by Youth Golf Foundation, its agents, representatives, employees or sub-contractors. The cost of all such insurance shall be borne by Youth Golf Foundation.
- B. It is understood and agreed that there shall be no Industrial Insurance coverage provided for Youth Golf Foundation or any sub-contractors by County. Youth Golf Foundation agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the County to make any payment under this Agreement to provide County with a certificate issued by an insurer in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.
- C. Should Youth Golf Foundation be self-funded for Industrial Insurance, Youth Golf Foundation shall so notify the County in writing at least sixty (60) days prior to the signing of any agreement. The County reserves the right to approve said retentions and may request additional documentation, financial or otherwise for review prior to the signing of any agreement
- D. Youth Golf Foundation shall be deemed to satisfy the provisions of this Section 3.4 if it maintains limits no less than:
  - (i) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
  - (ii) Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.
- E. The policies are to contain, or be endorsed to contain, the following provisions:
  - (i) General Liability Coverages
    - (1) County, its officers, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Youth Golf Foundation, including the insured's general supervision of Youth Golf Foundation; products and completed operations of Youth Golf Foundation; or premises owned, occupied or used by Youth Golf Foundation. The coverage shall contain no special limitations on the

scope of protection afforded to additional insureds, nor shall the rights of the additional insureds be affected by the insured's duties after an accident or loss.

(2) Youth Golf Foundation's insurance coverage shall be primary insurance as respects County, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, agents, employees or volunteers shall be excess of Youth Golf Foundation's insurance and shall not contribute with it in any way.

(3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its officers, agents, employees or volunteers.

(4) Youth Golf Foundation's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) The Company will be named as an additional insured.

F. Youth Golf Foundation shall furnish County with certificates of insurance and with original endorsements affecting coverage required by this agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms approved by County. All certificates and endorsements are to be addressed to the specific County contracting department and be received and approved by County before work commences. County reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Youth Golf Foundation agrees to indemnify, defend, and hold the County harmless from any and all claims, damages, or liabilities, including from Youth Golf Foundation members or their invitees, arising from its maintenance activities, which may arise from or in connection with the performance of this Agreement by Youth Golf Foundation, its agents, representatives, employees or sub-contractors, except to the extent caused by the County's willful misconduct. Youth Golf Foundation agrees to accept the responsibility for losses or liabilities related to their activities.

**3.6 ASSIGNMENTS AND SUBLEASES.** Youth Golf Foundation shall neither assign, sublease, nor otherwise convey any interest of any sort granted by this Agreement to any person or persons, entity or entities, whatsoever without written consent and approval of the conveying document by County. It is acknowledged that this requirement does not create an obligation on County to approve any such assignment, sublease or other conveyance.

**3.8 ENTIRE AGREEMENT.** There are no agreements, warranties, or representations, express or implied, except those expressly set forth herein. All agreements, representations, and warranties contained in this Agreement shall apply as of the date of this Agreement. This



Agreement constitutes the Parties' entire understanding concerning the subject matter of this Agreement and these understandings supersede all prior oral or written understandings or discussions of any kind relating to this subject matter

**3.9 APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. Venue for any dispute related to this Agreement shall be the Second Judicial District Court of the State of Nevada for the County of Washoe. County does not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both Parties shall not be subject to punitive damages.

**3.10 MODIFICATION.** No modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective parties hereto. The parties may temporarily or permanently waive any of the obligations contained in this Agreement, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

**3.11 SEVERABILITY.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the provision shall be deleted and the Parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not determined to be illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

**3.12 AUTHORITY.** Youth Golf Foundation represents and warrants that the signature block below for Youth Golf Foundation accurately describes Youth Golf Foundation's current ownership, partnership, agencies or representatives and capacities, that each such entity, including Youth Golf Foundation, has by proper action pursuant to each entity's respective formation documents duly authorized the execution of this Agreement or duly delegated such authority to a lawful representative, and that there exists no contractual or legal impediments to the execution and performance required hereunder by Youth Golf Foundation.

**3.13 INDEPENDENT CONTRACTOR.** For purposes of this Agreement, Youth Golf Foundation is an independent contractor, not a County employee. Youth Golf Foundation's employees, representatives, volunteers, or contract personnel are not County employees.

**3.14 WAIVER; BREACH.** Any failure on the part of either Party to take action against the other for any breach of covenant herein shall not be construed to constitute a waiver of any other or subsequent breach.

**3.15 NOTICES.** All notices to be given with respect to this Agreement must be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, and return receipt requested, to the Party or Parties to be notified at the address or addresses set forth herein, or at such address as either Party may, from time to time, designate in writing.

Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained shall be construed to preclude personal service of any notice in the manner prescribed for personal service of summons or other legal process.

Address for Youth Golf Foundation:

Robert F. Enzenberger, Board Chair  
Northern Nevada Youth Golf Foundation  
c/o First Tee Northern Nevada  
3550 Barron Way, Suite 10B  
Reno, Nevada 89511

Address for County:

Washoe County Community Services Department  
Attn: Director  
1001 E. 9<sup>th</sup> Street  
Reno, NV 89512

**3.16 DRAFTING PRESUMPTION.** The parties acknowledge that this Agreement has been agreed to by all Parties, that all of the Parties have consulted or have had the opportunity to consult with attorneys with respect to the terms, and that no presumption shall be created against any party as the drafter of the Agreement.

**3.17 FULL PERFORMANCE.** This Agreement and the terms and conditions hereof shall apply to and are binding upon the successors and assigns of County and Youth Golf Foundation.

**3.18 COMPANY ACKNOWLEDGEMENT.** The Company's acknowledgement of this Agreement shall act only as an approval of the form and content of this Agreement. Notwithstanding anything contained in this Agreement, neither the Company's acknowledgement of this Agreement nor anything contained in this Agreement shall be deemed (a) a waiver or release of any of the County's obligations or responsibilities under the Siphon Facility Agreement; or (b) to create an obligation or other liability of the Company. Nothing contained in this Agreement shall restrict or prohibit the Company from performing any maintenance or repairs of the Orr Ditch from time to time, as the Company may desire.

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EXECUTED on the dates indicated:

WASHOE COUNTY

By \_\_\_\_\_ Date \_\_\_\_\_  
Chair, Board of County Commissioners

Attest:

By \_\_\_\_\_ Date \_\_\_\_\_

NORTHERN NEVADA YOUTH GOLF FOUNDATION, doing business as FIRST TEE  
NORTHERN NEVADA

By \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Representative

Attest:

By \_\_\_\_\_ Date \_\_\_\_\_

Approved as to form and content:

ORR DITCH AND EXTENSIONS WATER COMPANY

By \_\_\_\_\_ Date \_\_\_\_\_  
President

Attest:

By \_\_\_\_\_ Date \_\_\_\_\_