

RFP Exhibit "A" - AGREEMENT BETWEEN OWNER AND CONTRACTOR

PROJECT: VyStar Ballpark Bullpen Relocation Project (the "Project")

OWNER: Jacksonville Baseball LLC ("Owner")

CONTRACTOR: [_____] ("Contractor")

ARCHITECT: OSPTS ("Architect")

This agreement between Owner and Contractor (hereinafter collectively, the "Parties") is made effective on the [__] day of [____], 20[__] (the "Agreement"). The Agreement is subject to the general conditions attached hereto and incorporated herein (the "General Conditions", and together with the Agreement, the "Contract").

1. **Scope of Work.** The scope of work for the Contract shall include the relocation of the bullpen areas at VyStar Ballpark (the "Work"), as more particularly set forth in the RFP dated [____], attached hereto and incorporated herein as **Exhibit B**. The Work includes all labor, materials, tools, equipment, permits and services provided or to be provided by Contractor to fulfill Contractor's obligations in the quantities, units, and prices as set forth herein. The Work may constitute the whole or a part of the Project whether on or off the Project site.
2. **Contract Documents.** The Contract is based on the drawings and specifications prepared by the Architect attached hereto and incorporated herein as **Exhibit C**. The Contract, along with any exhibits (all of which are expressly incorporated into the Contract), are collectively referred to herein as the "Contract Documents".
3. **Time for Completion.** The Work shall be performed in accordance with the Parties' mutually agreed upon Project schedule and sequence. Contractor shall achieve Substantial Completion of the Work (as defined in the General Conditions) by [_____] (the "Substantial Completion Date") and Final Completion of the Work (as defined in the General Conditions) by [____]. The time limits provided and agreed to by the Parties are of the essence of the Contract. By executing the Contract, Contractor confirms that the timing for completion, as set forth herein, is a reasonable period of time for performing the Work.
4. **Damages for Delay.** Contractor hereby acknowledges and agrees that if Contractor fails to achieve Substantial Completion of the Work on or before the Substantial Completion Date established above, Owner will sustain damages as a result of such failure; however, the exact amount of such damages is difficult to ascertain. Owner and Contractor therefore agree that if Contractor fails to achieve Substantial Completion of the Work on or before the Substantial Completion Date, Owner shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, Five Thousand Dollars (\$5,000) per day until Contractor achieves Substantial Completion of the Work. Such liquidated damages are not intended to cover and shall not limit the Owner's remedies against Contractor attributable to any cause other than delayed completion of the Work.
5. **Cost of the Work.** For performance of the Work, Owner agrees to pay Contractor a stipulated sum of \$[_____] (the "Contract Sum"). Contractor warrants and represents that the Contract Sum is adequate compensation for the performance of the entirety of the scope of Work. Except for increases or decreases in the Contract Sum made pursuant to Change Orders issued in accordance with the General Conditions, the Contract Sum shall not be subject to increase for any reason.

6. **City of Jacksonville Requirements.**

- a. City Lease. The Project and Contractor's services under the Contract are subject to the terms and conditions set forth in that certain Amended and Restated Sports Facility Lease Agreement dated April 1, 2019, between the City of Jacksonville, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the "City") and Owner (the "Lease") that pertain to construction, improvements or alterations by Owner at the Project site, which is attached hereto and incorporated herein as **Exhibit D**. For purposes of this Agreement, (i) the tenant under the Lease shall be referenced herein as "Owner" and the landlord under the Lease shall be referenced herein as "City." The City has engaged ASM Global ("ASM") to manage the Sports Facility (as defined in the Lease). Contractor shall cooperate fully with the City, ASM, and their representatives and provide full access to all parts of the Project and the Work to the City at all times during normal working hours. Contractor shall comply with all restrictions and conditions relating to use of the Project site and Contractor's work thereon as set forth in the Lease and shall cooperate with Owner's requests in regards to actions necessary for Owner's compliance with the terms of the Lease. Contractor also recognizes, accepts and acknowledges that it will submit its Applications for Payment to Owner. Owner and ASM will then review, certify and, as appropriate, pass such Application for Payment on to the City for flow through payment via Owner to Contractor and payment to Contractor from Owner shall be contingent upon and subject to receipt of funds by Owner from the City.
- b. Cooperation with Owner and City in Affecting the Terms of the Disbursement Agreement. Contractor shall cooperate with Owner's requests in regards to actions necessary for Owner's compliance with the terms of the Public Infrastructure Capital Improvements Costs and Disbursement Agreement between Owner and the City (the "Disbursement Agreement"). Accordingly, the City requires Owner's hiring of a "Construction Inspector" who shall be a construction engineering consultant performing standard and periodic inspections of the Work. Contractor shall cooperate fully with the Construction Inspector and provide full access to all parts of the Project and the Work to the Construction Inspector, the City and/or ASM at all times during normal working hours.
- c. City Approval. Notwithstanding anything to the contrary in the Contract Documents, the Contract and all of its terms and conditions are subject to approval or reasonable modification by the City. Contractor acknowledges that the Work is being financed by the City through the Disbursement Agreement and will use its best efforts to comply with the requirements of the City, including, without limitation, the following: (i) making the site of the Work available at reasonable times for inspection by the City; (ii) curing defaults existing under the Contract Documents; and (iii) executing any other documents the City may reasonably request. Contractor agrees to make such revisions to the Contract as may be reasonably required by the City provided that such revisions do not materially and adversely affect the rights, remedies and rights of recovery of Contractor and/or the economic terms of the transactions contemplated hereby, and Contractor agrees to comply with requirements of the City which may be imposed as a condition to payments due under the Contract Documents. The Parties acknowledge that the funds for the Project are subject to and contingent upon the availability of lawfully appropriated funds for the Project.
- d. Operating Sports Facility. Contractor acknowledges that the Work will be performed within an existing sports stadium that will be operating consistently throughout the performance of the Work. Contractor shall perform the Work in a manner that causes minimal disruption to the normal, day-to-day operations at the stadium. Contractor further acknowledges and agrees that during performance of the Work, the stadium may continue to host sporting

events, and other public and private events (“Events”). Within twenty-four (24) hours before and for the full duration of all Events, Contractor shall ensure that its performance of the Work does not interfere with the functions that are required for the Event (“Required Functionality”).

Jacksonville Baseball LLC

[_____]

By:_____

By:_____

Name: _____

Name: _____

Title:_____

Title:_____

GENERAL CONDITIONS TO THE AGREEMENT

1. **Scope of Work.** Contractor shall fully execute and perform all Work that is: (1) described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others; (2) reasonably inferable therefrom; and (3) necessary to produce the results intended by the Contract Documents. Without limitation, an item of work is hereby deemed reasonably inferable from the Contract Documents to the extent that such item of work: (i) would be provided or furnished by other contractors performing similar work as described herein; (ii) is customarily provided or furnished, or reasonably expected, in connection with work of a nature or of a quality similar to the Project, or which Contractor knows, or should know, is necessary or advisable given Contractor's work on similar projects; (iii) is needed for the proper operation or use of any item of work described, depicted or indicated in the Contract Documents; (iv) is needed to complete a system of which any part is described, depicted or indicated in the Contract Documents; or (v) if not depicted, described or indicated in the Contract Documents, cannot reasonably and rationally be assumed by Contractor to have been omitted intentionally from the Work. Unless otherwise specified, all materials shall be new and of good quality. Contractor shall employ a sufficient number of workers skilled in their trades to suitably perform the Work.

2. **Contractor Responsibilities.**

a. **Means and Methods.** Contractor shall be solely responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

b. **Taxes.** Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work. Contractor shall be entitled to an equitable adjustment to the Contract Sum if the cost of materials under this Agreement increases due to the imposition or enforcement of tariffs that were not known or reasonably foreseeable at the time of the execution of the Agreement ("**Tariff Costs**"). If such an event occurs, Contractor shall notify Owner in writing of the potential impact of Tariff Costs. Contractor and Owner shall cooperate in good faith to identify and implement commercially reasonable mitigation strategies. Such strategies may include, but are not limited to, sourcing materials from non-

tariff or less-impacted regions, adjusting procurement or delivery schedules, and evaluating alternate materials or suppliers. Further, Contractor shall not be responsible for delays or cost increases related to Tariff Costs caused by a governmental delay, restriction, or imposition at the point of entry (e.g., border detainment or denial of entry), provided that the materials were lawfully procured and such imposition or delay was not known or reasonably foreseeable at the time of procurement. In such cases, Contractor may be entitled to both an equitable adjustment in the Contract Sum and Project schedule.

c. **Coordination.** If Owner elects to perform work at the Project site directly or by others retained by Owner, Contractor and Owner shall coordinate the activities of all forces at and shall agree upon fair and reasonable schedules and operational procedures. Owner shall require each separate contractor to cooperate with Contractor and assist with the coordination of activities and the review of construction schedules and operations.

d. **Safety.** Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work and shall take necessary precautions for the safety of the Project and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. It is understood and agreed, however, that Contractor shall have no responsibility for the elimination or abatement of safety hazards created or otherwise resulting from Work at the Project site carried on by other persons or firms directly employed by Owner as separate contractors, by Owner or Owner's tenants, or by any other parties other than subcontractors engaged by Contractor to perform the Work, and Owner agrees to cause any such separate contractors, tenants and other parties to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations and to comply with all reasonable requests and directions of Contractor for the elimination or abatement of any such safety hazards at the Project site.

3. **Payment Terms.** On the twenty-fifth (25th) day of the month, Contractor shall submit to Owner a pencil requisition for review that will be followed by a properly prepared Application for Payment in accordance with this Agreement no later than the first

(1st) day of each month (an "Application for Payment"). All Applications for Payment shall be reviewed by Architect, Owner and ASM (and/or the City) pursuant to Florida Statutes 218.76 and 218.735. The City shall pay to Owner and Owner shall pass through to Contractor the amount of each Application for Payment submitted by Contractor to Owner in accordance with the applicable requirements of this Agreement within twenty-five (25) business days of the City's receipt of such Application for Payment as included in Owner's draw request, provided, however, that if the City reasonably disputes any portion of the Application for Payment, the City shall provide written notice to Contractor of such dispute within twenty (20) business days of the City's receipt of the disbursement request. Thereafter, Owner, Contractor and the City shall negotiate in good faith to resolve such dispute. Notwithstanding the City's rights to dispute an Application for Payment as set forth herein, in the event of such a dispute, the City shall, within such original twenty-five (25) business day period, disburse to Owner and Owner shall pass through to Contractor the non-disputed portion of the funds requested pursuant to such Application for Payment. Each Application for Payment shall be accompanied by forms titled "*Contractor's Lien Release*" and "*Subcontractor's Lien Release*" submitted, signed and certified by entities performing any Work stating that all previous payments due and owing to them have been paid if payment covering such Work has been made by Owner to Contractor. If any entity so required to submit a Subcontractor's Lien Release form, as set forth herein, fails to do so, then it must submit a certification stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, Contractor shall furnish its own written explanation to Owner and Owner shall determine whether payment should be made by Contractor. Receipt of said lien releases are a condition precedent to payment by Owner to Contractor. With respect to each progress payment based on an Application for Payment prior to Substantial Completion, Owner may retain five percent (5%) of the amount of the Contract Sum otherwise due. All withheld amounts shall be due and payable to Contractor thirty (30) days after Substantial Completion of the Work.

4. **Governmental Requirements.** Contractor represents and warrants that it is legally permitted to do business as a contractor in the State of Florida and that it is prequalified to do business with the City pursuant to the requirements and procedures set forth by the Chief of Procurement and the Jacksonville Ordinance Code. Contractor shall perform the Work

in compliance with any generally applicable permit, law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, franchise, or license of any governmental, quasi-governmental, or regulatory national, state, county, city, or other local entity with jurisdiction over the Work ("Governmental Requirements"). Governmental requirements shall include all generally applicable, relevant, or appropriate Florida Statutes and City of Jacksonville Ordinances including, without limitation, any regulation found in the Florida Administrative Code, and all Florida Statutes, City of Jacksonville Ordinances, and regulations on rules now existing or in the future enacted, promulgated, adopted, entered, or issued, whether by any national, state, county, city, or other local entity, both within and outside present contemplation of the respective parties to this transaction. Governmental Requirements shall also include, but not be limited to, all applicable Florida law for public projects (see Section 287.055 and 255.20, *Florida Statutes*) and Chapter 126 of the Jacksonville Ordinance Code. If Contractor performs the Work contrary to any Governmental Requirement, Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

5. **Jacksonville Small and Emerging Businesses.** Contractor acknowledges that Owner is required to, in accordance with Jacksonville Ordinance Code, Sections 126.601 et seq., use good faith efforts to enter into contracts with City certified Jacksonville Small and Emerging Businesses ("**JSEBs**") to provide materials or services in an aggregate amount of thirty percent (30%) of the total Contract Sum, provided such JSEBs are determined by Owner to be qualified and experienced in the design and construction of the Project. Contractor shall cooperate with Owner in its compliance with this requirement, including preparing the JSEB report required to be submitted on quarterly basis until Substantial Completion to the City, and reasonable costs incurred by Contractor in its cooperation with Owner under this provision shall be included in the Cost of the Work.

6. **Prohibition on Discrimination.** Contractor shall not discriminate against any person or group of persons on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of all or any part of the Project nor shall Contractor or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with the reference to

the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof.

7. **Allowances and Contingency.** If the Contract Sum includes allowances or contingencies, Contractor shall inform Owner and Architect prior to expending such allowance or contingency amounts. Contractor shall report to Owner and Architect on use of both allowance amounts and contingency with each Application for Payment and shall inform Owner and Architect in writing when allowance amounts are 75% expended. No sums may be charged to the contingency for costs that arise out of Contractor's gross negligence or intentional misconduct or the gross negligence or intentional misconduct of any subcontractor, consultant, or vendor. Upon completion of the Work, Contractor shall submit a deductive Change Order (or additive Change Order for allowance resolution) for unused allowance or contingency amounts included within the Contract Sum.

8. **Subcontractors and Material Suppliers.** All portions of the Work that Contractor does not perform with its own forces shall be performed by subcontractors and/or material suppliers retained by Contractor. No contractual relationship shall exist between Owner and any subcontractor. Contractor shall be responsible for the management and coordination of the subcontractors in the performance of their Work. Contractor shall not employ personnel, or contract with contractors or suppliers to whom Owner or the City has made reasonable and timely objection. If requested by Owner or the City, Contractor shall deliver a fully executed copy of each of the agreements between Contractor and its subcontractors, each of which shall be in form and substance reasonably satisfactory to Owner and the City. Owner's or City's approval of a contract is specifically conditioned upon the following: (a) the total contract price thereof does not exceed the fair and reasonable cost of the Work to be performed thereunder, (b) the subcontractor is of recognized standing in the trade and is otherwise reasonably acceptable to Owner and the City, and (c) approval of the City's Procurement Department based on its standard prequalification criteria for construction work on City property, provided such subcontractors are determined by Owner to be qualified and experienced in the design and construction of the Project. All subcontractors and suppliers will still have to comply with the state procurement process as specified in the agreement between Owner and the City.

9. **Liens.** Contractor agrees to turn the Work over to Owner free and clear of all claims, liens or other encumbrances by any subcontractor, sub subcontractor or vendor. In the event any such claim, lien or encumbrance is filed, Contractor agrees to indemnify, defend and hold harmless Owner therefrom, to cause any lien or other encumbrance to be removed by posting an appropriate bond or other procedure permitted by law at their own cost and expense (including attorneys' fees), to defend all proceedings or suits to establish such claim, liens or other encumbrances, and to pay any which are established. If, after seven (7) days' notice by Owner to Contractor of a lien or encumbrance, Contractor does not remove such lien or encumbrance by discharging it, posting an appropriate bond, or initiating another procedure permitted by law, then Owner at its sole option, may: (i) pay lienor amount of claim in full; (ii) post bond; or (iii) initiate other procedures permitted by law. In such event, Contractor and/or surety will be fully liable for all costs incurred by Owner. In the event Owner makes direct payment to lien claimant, Contractor will be estopped from contesting such payment and Owner will be entitled to withhold from payments otherwise due Contractor any payments so made.

10. **Architect.** Architect will provide administration of the Contract as described in the Contract Documents and will have authority to act on behalf of Owner to the extent provided in the Contract Documents. Architect will visit the Project site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work. Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility. Architect will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents. Based on Architect's observations and evaluations of Contractor's Applications for Payment, Architect will review and certify the amounts due the Contractor and certify that the Work is complete in accordance with the Contract Documents. Architect has the authority to reject Work that does not conform to the Contract Documents.

11. **Ownership and Use of Architect's Drawings.** Documents prepared by Architect are instruments of Architect's service for use solely with respect to this Project. Contractor and its subcontractors and suppliers are authorized to use

and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects without the specific written consent of the Architect and Owner.

12. **Insurance and Bond Requirements.** Contractor agrees to purchase and maintain in full force and effect all insurance and bonds set forth in **Exhibit A** (attached hereto and expressly incorporated herein) during the term of the Contract and, if required, for a designated period thereafter. Contractor shall be bound by the terms, limits and conditions set forth in **Exhibit A** with respect to the Project.

13. **Builder's Risk Insurance.** Owner shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in an amount equal to the total value for the entire Project on a replacement cost basis, including cost to cover professional fees without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered, whichever is later. This insurance shall include interests of Owner, Contractor and Contractor's subcontractors and material suppliers on the Project and Owner and Contractor shall be named insureds.

14. **Waiver of Subrogation.** Owner and Contractor waive all rights against each other, Architect and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by Owner as a fiduciary. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the property damaged.

15. **Warranty.** Contractor warrants to Owner, City and Architect that the Work will conform to the requirements of the Contract Documents and will be free from defects in material or workmanship and in accordance with the City's standards, specifications, and details to be provided by the City. Any material or equipment warranties related to the Work shall be

issued in the name of Owner, or shall be transferable to Owner, and shall commence upon Substantial Completion. These warranties exclude remedy for damage or defect caused by abuse, alterations to the Work not executed by Contractor or its subcontractors, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The warranties provided in this Section shall (a) apply to both patent and latent defects, (b) not be limited to the durations set forth in the Correction of Work provision (for clarification purposes, the corrective work period set forth below is separate from the warranties delineated in this Section), and (c) be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise provided by law. Upon completion of the Work, Contractor shall assign to Owner any and all manufacturer's and special warranties relating to materials and labor used in the Work, and further agrees to perform the Work in such a manner so as to preserve all such manufacturer and special warranties.

16. **Correction of Work.** Contractor agrees to be responsible for (a) the repair, replacement and/or removal, without additional charge, of any portion of the Work that is or becomes defective, in workmanship, materials or otherwise, on or before the date occurring one (1) year after Final Completion of the Work; and (b) the repair of any resulting from such repair, replacement and/or removal.

17. **Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, Architect, City of Jacksonville, Fast Forward Sports Group, FirstCoast Concessions LLC, any lender of Owner, and all of their respective affiliates, parents, subsidiaries, agents, managers, members, trustees, beneficiaries, partners, employees, shareholders, officers, officials and directors, and all of their respective successors and assigns (each an "Indemnitee" and, collectively, the "Indemnites") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnites for:

.1 **General Tort Liability,** for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of Contractor that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether

arising out of or incidental to Contractor's performance of the Contract, operations, services or work performed hereunder; and

.2 **Environmental Liability,** to the extent the Contract contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

.3 **Intellectual Property Liability,** to the extent the Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Work, any product generated by the Work, or any part of the Work as contemplated in the Contract, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Work, or any product generated by the Work, is held to constitute an infringement and its use is permanently enjoined, Contractor shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnites a license, authorizing the continued use of the Work or product. If Contractor fails to secure such a license for the Indemnites, then Contractor shall replace the Work or product with a non-infringing Work or product or modify such Work or product in a way satisfactory to Owner, so that the Work or product is non-infringing.

If Contractor exercises its rights under the Contract, Contractor will (1) provide reasonable notice to the Indemnites of the applicable claim or liability, and (2) allow Indemnites, at their own expense, to participate in the litigation of such claim or liability to protect their interests. The scope and terms of the indemnity obligations herein described are separate and apart from and shall not be limited by any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or

725.08 of the Florida Statutes will be modified to comply with said statutes. The City is an intended third-party beneficiary of the indemnifications set forth herein, which indemnifications shall survive the expiration or earlier termination of Contractor's agreement with Owner or its contractors and consultants.

The indemnification obligation under this Section shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

Each contract or subcontract entered into by Contractor in any way related to the performance of Work under the Contract shall contain an indemnification in favor of the Indemnitees, which indemnification shall offer no less protection to the Indemnitees than this Section (which shall be deemed incorporated by reference into any such contract to the extent necessary to achieve this result).

18. **Owner's Responsibilities.** Owner shall provide full information regarding its requirements for the Project, including, without limitation, if and as necessary, boundary surveys describing the physical characteristics of the Project site, legal limitations and utility locations. Owner shall render decisions promptly and furnish information expeditiously to avoid delay in the Work and Contractor shall be entitled to rely upon the accuracy and the completeness of all information provided by Owner.

19. **Owner's Right to Stop the Work.** If Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity. Owner's exercise of any rights under this Section shall not entitle Contractor to any increase in the Contract Sum or the time for completion. The rights of Owner under this Section are cumulative and not in limitation of any other rights of Owner contained in the Contract Documents, at law or in equity.

20. **Owner's Right to Carry Out the Work.** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to any other remedies Owner may have, correct such default or neglect. Owner may withhold payment for the reasonable cost of correcting such deficiencies, including Owner's expenses made necessary by such default, neglect, or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.

21. **Delays.** The time for completion shall be extended by Change Order, which shall be signed by Owner and Contractor, for such reasonable time as Owner may determine if Contractor is delayed at any time in the progress of the Work by: (i) wrongful or negligent acts of Owner or anyone for whom Owner is responsible; (ii) unilateral changes ordered in the Work by Owner; (iii) concealed or unknown physical conditions encountered at the site; (iv) labor disputes not directed at Contractor or a direct or lower tier subcontractor or anyone for whom Contractor is responsible; (v) fire; (vi) unusual delay in deliveries; (vii) abnormal adverse weather; and (viii) unavoidable casualties or other causes reasonably beyond Contractor's control, but only to the extent its impacts are unknown and reasonably unforeseeable at the time of execution of this Agreement.

22. **Hazardous Materials.** A "Hazardous Material" is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. If any Hazardous Material is discovered at the Project site, Contractor shall not be obligated to commence or continue Work until the Hazardous Material has been removed or rendered harmless by Owner as certified by an independent testing laboratory and, if applicable, approved by the appropriate government agency. If Contractor incurs additional costs or delays due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Sum and Project schedule.

23. **Concealed or Unknown Conditions.** If the conditions at the Project site are (1) subsurface or other physical conditions which are materially

different from those indicated in the Contract Document, or (2) unusual and unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in the Work, Contractor shall stop Work and give prompt written notice of the condition to Owner and Architect. Contractor shall not be required to perform any work relating to the differing or unknown condition without the written mutual agreement of the Parties. Contractor shall be entitled to an equitable adjustment to the Contract Sum or Project schedule as a result of the differing or unknown condition, and such adjustment(s) shall be memorialized in a Change Order.

24. **Changes in the Work.** Contractor may request, or Owner may require, changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Sum or the Project schedule. All such changes in the Work that affect the Contract Sum or Project schedule shall be formalized in a written change order (a "**Change Order**") signed by Architect, Owner and Contractor. Contractor shall not be obligated to perform changes in the Work that impact the Contract Sum or Project schedule until a Change Order has been executed or until Owner issues a unilateral change directive (a "**Change Directive**") in writing to Contractor. Owner may issue a Change Directive directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract Sum or the Project schedule. Owner and Contractor shall negotiate in good faith an appropriate adjustment to the Contract Sum and/or Project schedule arising out of Change Orders or Change Directives and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Sum or Project schedule shall not be unreasonably withheld. In the case of a Change Directive, as the changed Work is performed, Contractor shall submit its costs for the changed Work with its applications for payment. If there is a dispute as to the cost of the changed Work, Owner shall pay Contractor fifty percent (50%) of Contractor's estimated cost to perform the Work as a deposit while the Parties continue to negotiate the final adjustment. In such event, the Parties reserve their rights as to any disputed amount. No Change Order shall be made without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Contractor agrees to cooperate with the City's review and approval of all Change Orders.

25. **Completion.** Contractor shall achieve Substantial Completion and Final Completion of the

Work on the respective dates as set forth in the Agreement. "Substantial Completion" means that the Work is sufficiently complete in accordance with the Contract Documents such that only minor items, which can be completed without interference with the intended use of the Work, remain to be completed. Substantial Completion shall be deemed to occur the following conditions have been satisfied:

- .1 Contractor has provided to Owner for submission to the City a proper contractor's affidavit and conditional releases of liens from each contractor, subcontractor, and supplier, or other proof satisfactory to the City, confirming that payment has been made for all materials supplied and labor furnished in connection with the Work through the date of Substantial Completion; and Owner has advised Contractor within thirty (30) days of its provision of the information set forth in this Section the individual at the City responsible for issuing the Substantial Completion Letter to allow for coordination of same.
- .2 The Work shall have been completed in all material respects in substantial accordance with the Contract Documents, as verified by an inspection report reasonably satisfactory to the City from the Construction Inspector, certifying that the Work has been constructed in a good and workmanlike manner and that the improvements are in satisfactory condition and ready for use.
- .3 The City shall have issued a letter stating that the Work is substantially complete (the "**Substantial Completion Letter**") and that the improvements may be used for their intended purpose. The City shall be obligated to issue the Substantial Completion Letter if it is satisfied, in its reasonable discretion, with the inspection report from the Construction Inspector provided under subsection (2) above.

When Contractor believes that it has achieved Substantial Completion, it shall so notify Architect and Owner in writing and submit in connection with that writing its proposed "Punch List" of minor items to be completed in order to achieve Final Completion. Failure to include an item on the Punch List does not alter Contractor's responsibility to complete all Work in accordance with the Contract Documents. Architect and Owner shall then work with Contractor to review and finalize the Punch List

and, if Owner agrees that Substantial Completion has been achieved, shall release retainage – except for an amount equal to 150% of the value of the Punch List work – to Contractor. Final payment shall not thereafter become due until Contractor has completed all work required under the Punch List and the Contract Documents (“Final Completion”) and delivered to Owner lien releases in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to Owner to indemnify Owner against such lien. Acceptance of final payment by Contractor shall constitute a waiver of claims related to the Project.

26. **Owner’s Right to Terminate.** The performance of Work under the Contract may be terminated at Owner’s convenience. Any such termination shall be affected by delivery to Contractor of a “*Notice of Termination*” specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective. In the event the Work is terminated prior to completion for any reason other than a Default by Contractor (as defined below), Owner shall pay Contractor for all Work performed prior to termination and any costs incurred by reason of such termination. Owner may also terminate Contractor’s performance of Work under the Contract for any of the following reasons, which shall constitute a “Default by Contractor”: Contractor’s failure to fully and diligently perform all of the terms, conditions and covenants of these Contract Documents; Contractor’s failure to make prompt payment to any subcontractor, laborer or materialmen for materials or labor (whether or not a lien is filed against the Project); Contractor’s failure or refusal to supply enough properly skilled workers or materials to complete the Work in accordance with the Construction Schedule; Contractor’s failure to strictly abide by the Governmental Requirements; Contractor’s becoming insolvent or making a transfer in fraud of creditors or making an assignment for the benefit of creditors; and the appointment of a receiver or trustee for all of or a significant portion of the assets of Contractor.

27. **Contractor’s Right to Terminate.** If Owner fails to make payment as provided in the Contract or otherwise substantially breaches its obligations hereunder, Contractor may, upon five (5) business days’ written notice to Owner and opportunity to cure, terminate the Contract and recover from Owner payment for Work executed and any other damages allowed by the Governmental Requirements.

28. **Notice and Cure.** Owner will give Contractor written notice within five (5) business days of learning of a problem with the Work or potential back charge and will allow Contractor a reasonable period of time to correct the same.

29. **Dispute Resolution.** All claims, disputes and other matters in question (herein called “*Controversy*”) must be initiated by written notice within thirty (30) days after occurrence of the event giving rise to such Controversy or thirty (30) days after the claimant first recognizes the condition giving rise to the Controversy, whichever is later. The responsibility to substantiate a Controversy shall rest with the party making the claim. Owner and Contractor shall endeavor to resolve any Controversy through a meeting of the Parties’ principals conducted as soon as practicable after written notice of Controversy. Any Controversy not resolved by such meeting shall be subject to mediation administered by the American Arbitration Association, or any other mediation firm chosen by Owner. Any Controversy subject to, but not resolved by, mediation, shall be subject to resolution by arbitration or litigation at Owner’s sole discretion. Contractor shall continue to perform its obligations under this Contract throughout the duration of any Controversy and will continue to perform the Work until such Controversy is resolved or the Project is completed.

30. **Rubbish and Debris.** At all times Contractor shall keep the Project site, including all buildings under construction, surrounding areas, and all storage areas used by Contractor, free from rubbish, waste material, excess material, equipment and debris and each day shall remove from the Project site any such rubbish, waste material and debris. Prior to Final Completion of the Work, Contractor shall remove all tools, scaffolding, equipment, temporary works and materials used by Contractor and not incorporated into the completed Work and shall leave the Project site “broom clean” and free and clear of all obstructions, rubbish, debris and hindrances.

31. **Confidentiality.** Contractor acknowledges that the business to be conducted in the location where the Project will be constructed is highly confidential and proprietary. Contractor will advise its employees and its consultants and sub-consultants of the confidential and proprietary nature of the Work, the Project, and the business that is and will be conducted as a part of the Project. Information related to the design, construction, operation and function of the Project will be kept private,

confidential and will not be shared with individuals not working on or in relation to the Project.

32. **Governing Law and Venue.** The Contract shall be governed by the laws of the state in which the Project is located. Any disputes arising under the Contract shall have exclusive venue in the state or federal courts of competent jurisdiction located in the county in which the Project is located.

33. **Assignment.** Neither Owner nor Contractor shall assign or transfer, or permit the assignment or transfer, of the Contract or any interest therein or any rights or obligations thereunder, directly or indirectly, by operation of law or otherwise, without the prior written approval of the other party; provided, however, that no such approval shall be required in connection with a transfer of ownership interests in Owner or Contractor, whether by sale of equity, merger, reorganization, or otherwise, so long as the assigning party remains the legal entity that is party to this Contract and continues to be responsible for all obligations hereunder..

34. **Modification.** The Contract may not be modified except by a writing signed by Contractor and Owner.

35. **Severability.** Any provision or part thereof of the Contract held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties.

36. **Written Notice.** Written notice shall be deemed to have been duly served if delivered to the intended recipient in person at, or sent to the intended recipient by registered or certified mail or by prepaid overnight courier service providing proof of delivery to, the address first set forth above or such other addresses as the Parties may from time to time designate.

37. **Counterparts.** The Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. The Parties may rely upon facsimile, PDF, or other electronic signatures as originals.

EXHIBIT A
CONTRACTOR'S INSURANCE AND BOND REQUIREMENTS

Contractor shall at all times during the term of the Agreement procure prior to commencement of the Work and maintain at its sole expense during the life of the Agreement (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation Employer's Liability	Florida Statutory Coverage \$1,000,000 Each Accident \$1,000,000 Disease Policy Limit \$1,000,000 Each Employee/Disease

This insurance shall cover the City and Owner (and, to the extent they are not otherwise insured, their Contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$3,000,000	General Aggregate
	\$3,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$50,000	Fire Damage
	\$5,000	Medical Expenses

The policy shall be endorsed to provide a separate aggregate limit of liability applicable to the Work via a form no more restrictive than the most recent version of ISO Form CG 2503

Contractor shall continue to maintain products/completed operations coverage for a period of ten (10) years after the final completion of the project. The amount of products/completed operations coverage maintained during the ten-year period shall be not less than the combined limits of Products/ Completed Operations coverage required to be maintained by Contractor in the combination of the Commercial General Liability coverage and Umbrella Liability Coverage during the performance of the Work.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management.

Automobile Liability	\$1,000,000 Combined Single Limit (Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Design Professional Liability

\$5,000,000 per Claim
\$10,000,000 Aggregate

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a ten (10) year reporting option beyond the annual expiration date of the policy.

Builders Risk

100% Completed Value of the Project

Such insurance shall be on a form acceptable to the City's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the Improvements. Named insured's shall be: Owner, Contractor, the City, and respective members, officials, officers, employees and agents, ASM Global, Fast Forward Sports Group and FirstCoast Concessions LLC. The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Pollution Liability

\$5,000,000 per Loss
\$5,000,000 Annual Aggregate

Any entity hired to perform services as part of this Agreement for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

Pollution Legal Liability

\$5,000,000 per Loss
\$5,000,000 Aggregate

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

Umbrella Liability

\$5,000,000 Each Occurrence/ Aggregate.

The Umbrella Liability policy shall be in excess of the above limits without any gap. The Umbrella coverage will follow-form the underlying coverages and provides on an Occurrence basis all coverages listed above.

In the event that any part of the work to be performed hereunder shall require Contractor or Subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-way of a railroad or railroads, Contractor shall, before commencing any such work, and at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require.

The original of such policy shall be delivered to the railroad involved, with copies to the City, and their respective members, officials, officers, employee and agents, ASM Global, Fast Forward Sports Group and FirstCoast Concessions LLC.

Contractor shall not be permitted to enter upon or perform any work on the Project site until such insurance has been furnished to the satisfaction of the railroad. The insurance herein specified is in addition to any other insurance which may be required by the City, and shall be kept in effect at all times while work is being performed on or about the property, tracks, or right-of-way of the railroad.

Additional Insurance Provisions

- A. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville, Owner, ASM Global, Fast Forward Sports Group, FirstCoast Concessions LLC and their respective members, officials, officers, directors, employees, representatives and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville, Owner, ASM Global, Fast Forward Sports Group, FirstCoast Concessions LLC and their respective members, officials, officers, directors, employees, representatives and agents.
- C. Contractors' Insurance Primary. The insurance provided by Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City, Owner, ASM Global, Fast Forward Sports Group, FirstCoast Concessions LLC or any of their respective members, officials, officers, directors, employees, representatives and agents.
- D. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- E. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured. Under no circumstances will the City of Jacksonville, Owner, ASM Global, Fast Forward Sports Group, FirstCoast Concessions LLC and their respective members, officials, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- F. Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of Contractors, Subcontractors, employees or agents to the City, Owner, ASM Global, Fast Forward Sports Group, FirstCoast Concessions LLC or others. Any remedy provided to City, Owner or City of Jacksonville, Owner, ASM Global, Fast Forward Sports Group, FirstCoast Concessions LLC and their respective members, officials, officers, directors, employees and agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- G. Waiver/Estoppel. Neither approval by City nor Owner nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Agreement.
- H. Certificates of Insurance. Contractor shall provide the City and Owner Certificates of Insurance that shows the corresponding City Agreement Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202 and to Owner Jacksonville Medical Center, Inc. (Attention: Director of Construction Services), 655 W. 8th Street, Jacksonville, Florida 32209.
- I. Notice. Contractor shall provide an endorsement issued by the insurer to provide the City and Owner thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, Contractor shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

- J. Survival. Anything to the contrary notwithstanding, the liabilities of Contractor shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City or Owner may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City and Owner also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Contractor shall present this Agreement and this Exhibit B to its Insurance Agent affirming: (1) That the Agent has personally reviewed the insurance requirements of the Project Documents, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

Bonds and Other Performance Security. Contractor shall not perform or commence any construction services for the Improvements until the following performance bond and labor and material payment bond or other performance security have been delivered to City and Owner:

Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Contractor shall provide to City on forms furnished by the City, a 100% Performance Bond and a 100% Labor and Material Payment Bond for the Improvements performed under this Agreement, each in an amount not less than an amount at least equal to the amount of the Direct Costs for the construction of the Improvements no qualification or modifications to the Bond forms are permitted.

To be acceptable to City, as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
5. If the Contract Award Amount exceeds \$200,000, the Surety Company shall also comply with the following provisions:
 - a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

CONTRACT AMOUNT	RATING	RATING
\$ 500,000 TO \$1,000,000	A-	CLASS IV
\$1,000,000 TO \$2,500,000	A-	CLASS V
\$2,500,000 TO \$5,000,000	A-	CLASS VI
\$5,000,000 TO \$10,000,000	A-	CLASS VII
\$10,000,000 TO \$25,000,000	A-	CLASS VIII
\$25,000,000 TO \$50,000,000	A-	CLASS IX
\$50,000,000 TO \$75,000,000	A-	CLASS X

b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to conduct business in this state have been met.

2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

EXHIBIT B
RFP

[See attached]

EXHIBIT C
DRAWINGS AND SPECIFICATIONS

[See attached]

EXHIBIT D
LEASE

[See attached]