

LEASE AND USE AGREEMENT  
BETWEEN  
THE CITY OF JACKSONVILLE AND  
LUTHERAN SERVICES FLORIDA, INC.  
FOR CONSTRUCTION AND OPERATION OF A  
THERAPEUTIC EARLY LEARNING CENTER IN  
VICTORY PARK

THIS LEASE AND USE AGREEMENT (the "Agreement") for construction and operation of a therapeutic early learning center in Victory Park is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, (the "**Effective Date**") by and between the CITY OF JACKSONVILLE, a municipal corporation whose address for the purpose of this Agreement is the Office of the Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202 (hereinafter "Jacksonville"), and LUTHERAN SERVICES FLORIDA, INC., a Florida non-profit corporation whose address for the purpose of this Agreement is 3027 San Diego Road, Jacksonville, Florida 32207 (hereinafter "Lessee").

WITNESSETH:

WHEREAS, Jacksonville owns certain real property consisting of approximately 12 acres, commonly known as Victory Park (the "Park") within Jacksonville's Arlington neighborhood with a general address of 3781 University Club Boulevard, Jacksonville, Duval County, Florida and more particularly described and delineated on **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, Lessee was organized in 1982 as a Florida non-profit corporation; and

WHEREAS, in 2014, the Federal Government designated the Lessee as the Head Start provider for Duval County for five years and therefor responsible for managing and operating federally funded high-quality children's programming to low-income Duval County residents; and

WHEREAS, in 2019, the Federal Government extended the Lessee's federal contract to provide Head Start services in Duval County for an additional five-year term; and

WHEREAS, Lessee has identified the neighborhood and area surrounding the Park as an area of high need within the established service area for the Lessee's Duval Head Start Program and desires to build a therapeutic early learning center in Victory Park; and

WHEREAS, total project cost are estimated at \$3,856,151.20 and Lessee has committed through federal and state grants to contribute the full project costs to construct, within the Park, the Victory Park Early Learning Center which, when fully constructed, will house eight Head Start classrooms, with accompanying age-appropriate playgrounds, plus a therapy room, a multi-purpose training and meeting room, STEM exploration space and a clinic; and

WHEREAS, Jacksonville believes that leasing and allowing the Lessee to use that part of the Park which will support the construction and operation of a therapeutic early learning center will prove beneficial to its citizens and its surrounding areas by, among other things, promoting the welfare, health, and interests of all, by reaching out to low-income children and families, and by promoting therapeutic early learning and STEM education in a safe and wholesome environment without discrimination as to age, religion, disability, marital status, national or ethnic origin, gender, creed, color, or race; now therefore

IN CONSIDERATION of One and 00/100 dollars (\$1.00) in hand paid each respective party to the other and other good and valuable consideration, including but not limited to the covenants, conditions, and terms hereof,

the sufficiency and receipt of said good and valuable consideration being herewith acknowledged by the respective parties, Jacksonville and Lessee stipulate and agree as follows:

1. Recitals. The recitals set forth herein are accurate, correct, and true and are incorporated herein by this reference.

2. Definitions. As used in this Agreement, the words defined immediately below shall have the meaning stated next to same. Words imparting the singular number include the plural number and vice versa, and the male gender shall include the female gender and vice versa unless the context clearly requires otherwise.

(a) "Agreement" means collectively this Lease and Use Agreement and any and all exhibits thereto including any amendments or addenda that may supplement, modify, or amend same now or in the future.

(b) "Development Floor Plan" means the design specifications for the Subject Parcel, which have been approved by Jacksonville, as further described in **Exhibit B**.

(c) "Governmental Requirement" means any permit, law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, franchise, condition, certificate, license, authorization, or other direction or requirement of any governmental and/or regulatory national, state, or local entity with jurisdiction over Jacksonville, Lessee, and the Park. Governmental Requirements shall include all applicable, relevant, or appropriate Florida statutes and Jacksonville ordinances, including without limitation any regulation found in the Florida Administrative Code or regulations, and all Florida statutes, Jacksonville ordinances, and regulations or rules now existing or in the future enacted, promulgated, adopted, entered, or issued, both within and outside the present contemplation of the respective parties to this transaction.

(d) "Hazardous Materials" means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, asbestos, radon, petroleum products, hazardous or toxic substances, or related materials, including without limitation those defined in:

(i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (Title 42 U.S.C. Sections 9601, *et seq.*);

(ii) the Hazardous Materials Transportation Act, as amended (Title 42 U.S.C. Sections 1808, *et seq.*);

(iii) the Resource Conservation and Recovery Act of 1976, as amended (Title 42 U.S.C. Sections 6901, *et seq.*);

(iv) regulations adopted and publications promulgated pursuant to the foregoing;

(v) any other Governmental Requirement; and

(vi) any other material the use, release, disposal, or presence of which may result in liability under any Government Requirement or common law action.

(e) "Lease" means the lease of the Subject Parcel to Lessee pursuant to the terms and conditions of this Agreement.

(f) "Section" means the numerical sections of this Agreement and the respective subsections thereof. Each respective section begins with a numerical number and a capitalized heading of the section which is underlined to indicate the subject matter thereof.

(g) "Sponsorship" or "Sponsor" means a for profit or not for profit corporation, general or limited partnership, joint venture, sole proprietorship, association, person, or entity which contributes services, goods, or funds in support of any one or more activities at the Victory Park Early Learning Center, or in support of an organization which contracts for, promotes, or otherwise sponsors, in whole or in part, any one or more activities at the Victory Park Early Learning Center.

(h) "Subject Parcel" means that certain portion of Jacksonville real property located within the Park, consisting of 1 acre, plus or minus, more specifically shown on **Exhibit B**, and all real property interests and rights therein and thereto, and all existing improvements located thereon, and all improvements constructed or installed thereon by or on behalf of Jacksonville or Lessee during the Term, which Subject Parcel is the footprint of the Victory Park Early Learning Center.

(i) "Victory Park Early Learning Center" means the facility to be built by Lessee for the use of children and families participating in the Lessee's programs.

(j) "Term" means the term of this Agreement, which is a period commencing on the **Effective Date** and terminating on September 30, 2053, and the Term may be extended as set forth herein.

(k) "Vending" is defined as the exchange of goods, foodstuffs, and/or services for monetary gain or services-in-kind.

3. Lease/Use. In consideration of the representations, agreements, and covenants contained herein, Jacksonville shall (a) lease the Subject Parcel to Lessee for the Term, and (b) grant to Lessee the right to use the Subject Parcel for the Term, all in accordance with all the provisions, covenants, conditions, and terms herein. This Agreement may be extended for one (1) additional five (5) year period under the same terms and conditions as are set forth herein. Notice of the Lessee's request for an additional term must be given to Jacksonville in writing at least six (6) months prior to the end of the then current term. Renewals, if agreed upon by the parties and properly requested in writing by the Lessee, will be processed by via City Council Approval under the authority of the legislation authorizing this Agreement.

4. Rent. Lessee agrees to pay to Jacksonville annually during the Term, without notice or demand, at Jacksonville's address referenced herein, a rent and use fee of \$1.00 per year, together with all applicable tax payable and due thereon. Said rent and use fee shall be payable on or before the 1st day of the Term and shall continue for each consecutive year of the Term thereafter unless otherwise terminated as described herein. At its election, Lessee may prepay all or part of such rent and use fee.

5. Taxes and Other Charges. Lessee shall bear, pay, and discharge, on or before the last day on which payment may be made without penalty or interest, all ad valorem real estate taxes or other taxes, if any, which shall or may during the Term be charged, laid, levied, assessed, imposed, become payable and due, or become liens upon, or arise in connection with, the use, occupancy, or possession of the Subject Parcel or any part thereof by Lessee. Any and all real estate taxes for the calendar year in which the Term ends shall be paid in full by Lessee (whether or not the tax bill has been issued at the date of termination) and shall not be pro-rated between the respective parties.

6. Use of Subject Parcel.

(a) Lessee shall only use the Subject Parcel for the purpose of constructing, operating, and maintaining the Victory Park Early Learning Center. No other use of the Subject Parcel is permitted without the prior written consent of Jacksonville, which consent may be withheld in the sole discretion of Jacksonville.

(b) Lessee shall have exclusive use of Victory Park Early Learning Center at all times. Lessee agrees to consider reasonable requests from Jacksonville to use the Victory Park Early Learning Center for Jacksonville-sponsored events. Such requests shall be made in writing not less than forty-five (45) days prior to the proposed date of use. Lessee agrees to respond to such requests within (15) days. Lessee reserves the right to deny such requests for any reasonable cause. In no event shall the Lessee have any obligation to allow use of the Victory Park Early Learning Center at any time or in any manner that will interfere with its programs in any way. Lessee shall have the right to require Jacksonville to provide security adequate, in Lessee's sole reasonable discretion, to protect the Lessee, the Victory Park Early Learning Center, and its contents and equipment, against any loss or damage during Jacksonville's use of the Victory Park Early Learning Center, and to provide maintenance and cleaning of the Victory Park Early Learning Center after any such allowed use by Jacksonville. In no event shall any fee or charge be imposed by Lessee upon Jacksonville for its use of the Victory Park Early Learning Center.

7. Improvements to Subject Parcel.

(a) Lessee shall, at its own cost and expense, prepare the Subject Parcel for construction, including all site work, mitigation (if applicable) and other site requirements in accordance with applicable federal, state and local laws and in accordance with the Development Plan. Lessee shall, at its own cost and expense, construct and/or provide as a minimum the following facilities on the Subject Parcel: Victory Park Early Learning Center and other related improvements in accordance with the Development Plan and applicable Government Requirements.

(b) Jacksonville shall, allow Lessee to construct the Victory Park Early Learning Center on property owned by Jacksonville in accordance with the Development Plan and applicable Government Requirements. Jacksonville shall landscape the exterior of the building consistent with landscape in the Park. Once constructed, Jacksonville shall allow use of portions of the Park and the Victory Park Early Learning Center in accordance with the terms set forth in this Agreement.

(c) Lessee has prepared the Development Floor Plan for all of the improvements which is attached as Exhibit B. The Parties acknowledge and agree that time is of the essence in this Agreement, and that all construction, improvements, equipment, and landscaping, if any, must be made and/or completed in accordance with the requirements stated herein and in conformity with applicable Governmental Requirements. Approvals given Jacksonville shall not constitute a representation or warranty as to such conformity; responsibility for compliance with all legal requirements, therefore, shall at all times remain with the party responsible for constructing improvements. Lessee shall commence construction of the Victory Park Early Learning Center on or before January 1, 2024, and achieve substantial completion of the Victory Park Early Learning Center on or within 15-months from the beginning of construction. Upon request, the Director of Parks, Recreation and Community Services has the authority to extend the construction period up to an additional (6) six months.

(d) Lessee shall not, during the Term hereof, without submitting the appropriate plans to Jacksonville for review and receiving the prior written approval of Jacksonville, which shall not be unreasonably withheld, conditioned, or delayed, erect any additional structures, make any other improvements, or do any other construction work on the Subject Parcel, or alter, modify, or make additions, improvements, or repairs to or replacements of, any structure now existing or ~~built~~ <sup>built</sup> at any time

during the Term hereof on the Subject Parcel, or install any fixtures other than trade fixtures. This subsection shall not apply to furniture or other items of personal property or other interior modifications or additional removals without material damage to the structure or building. Notwithstanding the foregoing, Lessee shall have the right, without the prior approval of, but with written notice to, Jacksonville to replace or repair floor and wall coverings and to make nonstructural repairs and additions to the Victory Park Early Learning Center, the total cost of which does not exceed Ten Thousand Dollars (\$10,000) per year.

(e) Lessee shall, at its sole cost and expense, be responsible for providing security for the Victory Park Early Learning Center during any period of use by Lessee, as deemed necessary by Lessee. Jacksonville shall, at its sole cost and expense, be responsible for providing security for the Victory Park Early Learning Center during use by Jacksonville, as deemed necessary by Jacksonville.

(f) Before starting and until the completion of the construction of any improvements over the value of \$3,000.00, Lessee shall require its contractor(s) to procure and maintain insurance of the types and in the minimum amounts set forth in **Exhibit D**. At all times during the term of this Agreement Lessee shall maintain at its sole cost and expense insurance in the type and in amounts not less than those listed in **Exhibit E**. At all times during the term, contractor(s), if any, and Lessee shall comply with the indemnification terms of **Exhibit F**.

(g) It is the intent of the parties that Jacksonville shall be an intended beneficiary of all warranties relating to the construction of any improvements, and Lessee shall require all warranties to so designate Jacksonville to the extent practicable. Prior to substantial completion, Lessee shall require all contractors to give reasonable notice to Jacksonville in order that Jacksonville may participate in final walk-through and punch list inspection. Prior to completion and close-out of the construction work, Lessee shall require its contractors to give reasonable notice to Jacksonville of all close-out training, including but not limited to start-up of equipment and operations and maintenance procedures in order that Jacksonville may participate. Lessee shall cause the contractors to deliver to Jacksonville all warranties upon completion of the construction work.

(h) Lessee shall require any contractor or contractors performing work valued over \$50,000 at the Subject Parcel to furnish a Construction 100% Performance and Payment Bond in an amount not less than the full amount of the contract price for completing the build-out of any improvements, as surety for the faithful performance of the contract by the contractor, and for the payment of all persons performing labor and furnishing materials in connection with the work. Lessee shall, before the commencement of any construction, furnish Jacksonville with evidence of the Construction Bond as outlined herein. If at any time during the continuance of the contract, a surety on the contractor's bond or bonds becomes irresponsible, Jacksonville shall have the right to request additional and sufficient sureties, which Lessee shall require the contractor to furnish within ten (10) days after receipt of written notice from Jacksonville to do so.

(i) (i) In the event Lessee fails to complete the construction of any improvements, Jacksonville shall have the right, but not the obligation, to complete the construction of the improvements at the sole cost and expense of Lessee.

(j) Lessee shall obtain, at its own expense, any applicable permits, changes to existing permits, architectural approvals, and zoning approvals as may be required by federal, state, and local laws and regulations for the construction of any improvements and Lessee's use of the Subject Parcel.

(k) It is understood and agreed between the parties that all improvements constructed by or on behalf of Lessee shall become the property of Jacksonville at the expiration or earlier termination of

this Agreement, free and clear of all construction or other liens. Lessee shall deliver to Jacksonville prime contractor(s) affidavits and waivers of lien from all those who have filed "Notice to Owner" on the project.

(l) Lessee agrees to comply. and to require any contractor, subcontractor, or supplier to comply, with all applicable federal, state, and local laws, rules, ordinances, and regulations.

(m) Subject to the provisions and limitations of Section 768.28, Florida Statutes, Jacksonville shall be responsible for contaminated media or Hazardous Materials, as defined in Section 16, that were in or on the Subject Parcel before Lessee's entering into this Agreement, and shall defend and hold harmless Lessee for any costs, losses, and damages (including all attorney's fees and court costs) arising out of or resulting from any contaminated media or Hazardous Materials that were in or on the Subject Parcel before this Agreement. If, because of the construction of any improvements, any federal, state, or local regulatory or grant authority requires remediation of contaminated media or Hazardous Materials that were in or on the Subject Parcel on the beginning date of the Term, then Jacksonville shall be responsible for proper removal, handling, and disposal or other lawful remediation of such contaminated media or Hazardous Materials which requires removal because of the construction of improvements. Lessee shall provide Jacksonville immediate written notice of any communication from regulatory or grant authorities concerning contamination or remediation requirements.

(n) Lessee shall indemnify, defend, and hold harmless Jacksonville and its officers, employees, agents, invitees, guests, and contractors from and against all claims, costs, losses, and damages (including, but not limited to, all attorney's fees and all court costs) caused by, arising out of, or resulting from Lessee's construction of improvements, provided that any such claim, cost, loss, or damage: (1) is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property; and (2) is caused by acts or omissions of Lessee or any of its contractors, subcontractors, suppliers, or any persons or organizations employed by any of them in the performance of or furnishing of the construction of any such improvements. The provisions of this Subsection 7(n) shall survive the expiration or termination of this Agreement

8. Maintenance, Repairs and Utilities. Lessee and Jacksonville shall have shared responsibility to maintain and keep in good repair the Victory Park Early Learning Center.

(a) Jacksonville shall be responsible for major maintenance and repair of the Victory Park Early Learning Center, including maintenance of the exterior walls, structural components, roof, plumbing system, electrical system, and HVAC systems. The term "major maintenance and repair" shall mean individual instances (or a series of related instances occurring within a six-month period) where the expense of maintenance, repair, or replacement exceeds \$500. Any repair over \$500 should receive prior approval and follow proper City procurement procedures. Jacksonville shall be responsible for payment of all water and electric utilities. Jacksonville shall provide mowing and landscaping of grounds. In no event shall Jacksonville be responsible for any cosmetic or aesthetic repair or replacement to the Victory Park Early Learning Center. Maintenance shall be performed in accordance with MODE II standards set forth in **Exhibit C**, attached hereto and made a part hereof.

(b) Lessee shall provide regular facility cleaning including dusting, vacuuming or mopping of all floors, windows and windowsills. Lessee shall perform waxing of all VCT as needed. Lessee shall perform regular restroom cleaning to include sanitizing toilets, sinks and water dispensers (including water faucets and water fountains), cleaning stall walls, doors and partitions. Lessee shall stock and supply paper towels, toilet paper and soap and other restroom supplies as needed. Lessee shall provide all cleaning materials necessary to perform all cleaning jobs in the Victory Park Early Learning Center. Lessee shall be responsible for providing chairs, tables, light bulbs and other furniture, fixtures, appliances, equipment needed to operate the facility. Lessee shall provide trash removal of all restrooms,

kitchen, offices and community rooms and keep lawn, grounds and parking lot around the facility free of debris and litter at all times. Lessee, at its sole cost and expense, shall pay all charges related to the building's security system including installation, monthly charges, all maintenance and any upgrades. Lessee shall be responsible for all charges resulting from false alarms. Lessee, at its sole cost and expense, shall pay all communication cost including phone and internet charges.

9. Insurance. Before entering the Subject Parcel, and without limiting its liability under this Agreement, Lessee shall procure and maintain, at its sole cost and expense, during the Term of this Agreement, insurance coverages of the types and in the amounts no less than those set forth in **Exhibit E**.

10. Indemnification.

Indemnification by Lessee. Lessee shall indemnify the City as set forth in **Exhibit F**.

(a) Indemnification by Jacksonville. Jacksonville shall indemnify, defend, and save harmless Lessee against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims, and demands of every kind or nature, including reasonable attorney's fees and costs arising out of Jacksonville's negligent use, or the negligent use by its employees or agents, of the Subject Parcel, subject to the provisions and limitations of Section 768.28, Florida Statutes, and shall not be nor shall it be construed as a further waiver of sovereign immunity beyond the limited legislative waiver thereof in Section 768.28, Florida Statutes, as authorized by Article 10, Section 13, Florida Constitution .

11. Compliance with Governmental Requirements. During the Term, Lessee shall comply with all Governmental Requirements as defined herein that govern or affect the Subject Parcel and the use thereof for any reason. Lessee shall notify Jacksonville of its violation of any Governmental Requirement immediately after Lessee's knowledge thereof, and Lessee shall diligently and prudently take requisite action to correct any violations of Governmental Requirements as soon as reasonably possible after the discovery of same. Lessee shall assure Jacksonville from time to time, in written certifications, that Lessee and the Subject Parcel are in compliance with Governmental Requirements affecting same.

12. Title. Title to the Victory Park Early Learning Center constructed by Lessee shall be vested in Jacksonville, subject to the covenants, conditions, and terms of this Agreement, and Lessee shall have no interest therein other than the leasehold interest described in this Agreement. Title to the Subject Parcel and all improvements constructed thereon shall remain vested with Jacksonville, subject to the covenants, conditions, and terms of this Agreement. Lessee shall accept the Subject Parcel "as is."

13. Personal Property. No personal property placed by or on behalf of Lessee in or on the Subject Parcel shall become Jacksonville's property by virtue of this Agreement, but shall instead be considered herein as property of Lessee. Lessee may place its personal property on or within the facility during the License Term from time to time at its discretion; however, all Lessee's personal property that may be on the facility during the License Term shall be thereon at the Lessee's sole risk.

14. Destruction or Damage. In the event the Victory Park Early Learning Center or any part thereof is destroyed or damaged from any casualty, Lessee shall, to the extent of available insurance proceeds, repair the damage and restore the Victory Park Early Learning Center to the extent reasonable and practical under the circumstances then existing; provided, however, Lessee shall not be required to restore and repair the Victory Park Early Learning Center and shall be entitled to terminate this Agreement by giving written notice to Jacksonville of its intent to terminate this Agreement and the time frame therefor in the event, in Lessee's discretion and decision, (a) the Victory Park Early Learning Center

Center is damaged or destroyed from any casualty of a type then generally excluded from conventional all risk property insurance and as a result, no insurance proceeds are available, or if coverage exists but, in the reasonable estimation of Lessee, there is an insufficient amount of insurance proceeds available to permit adequate reconstruction and repair of the Victory Park Early Learning Center and Lessee decides not to provide sufficient funds to cover the amount of the deficiency, or (b) such destruction or damage occurs during the last year of the Term of this Agreement. In either event, Lessee shall be entitled to retain any proceeds of insurance carried by Lessee; provided, however, Lessee shall, at its sole cost and expense, upon the request of Jacksonville, demolish the Victory Park Early Learning Center and remove all debris from the Subject Parcel.

15. Hazardous Materials

(a) Lessee shall not knowingly use, handle, store, or permit the use, handling, or storage of Hazardous Materials on the Subject Parcel. Lessee shall not dispose of or permit or allow the disposal, leakage, spillage or discharge on or upon the Subject Parcel of any Hazardous Material. If any Hazardous Material should be used, handled, or stored by Lessee (except in accordance with this Section) or if any Hazardous Material is disposed of or permitted to leak, spill, or discharge on or upon the Subject Parcel by Lessee by accident or otherwise, Lessee shall provide immediate written notice thereof to Jacksonville and Lessee shall immediately commence and diligently pursue the removal of any such Hazardous Material and Lessee shall remediate, clean, and restore the Hazardous Material area in accordance with all applicable Governmental Requirements, and pay all fines, fees, assessments, and penalties arising therefrom. Lessee shall furnish Jacksonville periodically at Jacksonville's request, certification that Lessee is in compliance with the provisions of this section.

(b) Lessee shall provide written notice to Jacksonville within three (3) days of:

(i) Any change in Lessee's utilization and operation of the Subject Parcel involving the use, handling, or storage of Hazardous Materials;

(ii) Receipt of any warning, notice, notice of violation, lawsuit, or the like from any governmental agency or regulatory authority relating to environmental compliance;

(iii) Receipt of any complaint, claim, or lawsuit filed by any third party relating to environmental compliance; or

(iv) Releases, spillage, leakage, or disposal of any Hazardous Material at the Subject Parcel.

(c) If Lessee shall fail to comply with any of the provisions of this section, Jacksonville shall have the right, but shall not be obligated, to enter into and go upon the Subject Parcel without thereby causing or constituting a termination of this Agreement or eviction of Lessee, either constructive or otherwise, in whole or in part, from all or any portion of the Subject Parcel, or an interference with Lessee's possession and use of the Subject Parcel, and take such steps and incur such expenses as Jacksonville shall deem necessary to correct Lessee's default, including, without limitation of the generality of the foregoing, the making of all replacements or repairs for which Lessee is responsible and Lessee shall reimburse Jacksonville on demand for any expense incurred by Jacksonville as a result thereof.

16. Default. Each of the following events shall be a default hereunder by Jacksonville or Lessee, as the case may be, and shall constitute a breach of this Agreement:



(a) If Lessee shall fail to pay Jacksonville any rent or any other charge or amount due hereunder as and when the same shall become payable and due and the same remains unpaid for thirty (30) days after Jacksonville's written notice for payment; or

(b) If Lessee shall fail to perform any of the covenants, conditions, and terms of this Agreement on Lessee's part to be performed and such non-performance shall continue for a period of sixty (60) days after written notice thereof by Jacksonville to Lessee; or if Lessee shall fail to act in good faith to commence and undertake performance within such sixty (60) day period to cure a non-performance which cannot be cured within the initial sixty (60) day period and Lessee shall designate in writing the reasonable time period to cure such non-performance and its intent to do so, or, Lessee, having commenced to undertake such performance within the initial sixty (60) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such non-performance; or

(c) If Jacksonville shall fail to perform any of the covenants, conditions, and terms of this Agreement on Jacksonville's part to be performed and such non-performance shall continue for a period of sixty (60) days after written notice thereof by Lessee to Jacksonville; or if Jacksonville shall fail to act in good faith to commence and undertake performance within such sixty (60) day period to cure a non-performance which cannot be cured within the initial sixty (60) day period and Jacksonville shall designate in writing the reasonable time period to cure such non-performance and its intent to do so, or, Jacksonville, having commenced to undertake such performance within the initial sixty (60) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such non-performance.

(d) If an event of default shall occur, then Jacksonville shall have the right to terminate and cancel this Agreement by giving Lessee not less than thirty (30) days' written notice of such termination and cancellation, and upon the expiration of the time fixed in such notice, this Agreement shall terminate, and the parties shall be released from all obligations under this Agreement which do not specifically survive its termination. The foregoing remedy shall not be the exclusive remedy for Jacksonville.

(e) If an event of default shall occur, then Lessee shall as its sole exclusive remedy have the right to (a) terminate and cancel this Agreement by giving to Jacksonville not less than ten (10) days' written notice of such termination and cancellation, and upon the expiration of the time fixed in such notice, this Agreement shall terminate and the parties shall be released from all obligations under this Agreement which do not specifically survive its termination, or (b) pursue an action for specific performance. In no event will Jacksonville be liable to Lessee for any damages whatsoever, including without limitation business, punitive, or consequential damages.

17. Lessee Termination. Lessee shall retain an absolute right to terminate and cancel this Agreement at any time during the Term in the event Lessee determines that its financial condition and/or operating funds are not sufficient for Lessee to maintain and operate the Victory Park Early Learning Center as described herein upon giving Jacksonville at least ninety (90) days' written notice of Lessee's need to terminate and cancel its obligations hereunder and designating the termination date. In such event, this Agreement shall terminate and cease as of the effective date of Lessee's termination and the parties shall be released from all obligations hereunder which do not specifically survive termination.

18. Improvements upon Termination. Upon any termination of this Agreement, title to any unfinished or finished construction within the Subject Parcel initiated by Lessee shall immediately vest in Jacksonville unless Jacksonville, at its option, requires Lessee to remove the unfinished construction from the Subject Parcel and restore the Subject Parcel to its pre-removal condition, subject to Jacksonville's review and approval. All warranties involving Lessee's construction or other activities under this Agreement shall be deemed assigned by Lessee to Jacksonville; furthermore, unless otherwise specified in this

Agreement, all agreements, contracts, or other rights between Lessee and other third parties in existence at the time of such termination shall terminate and cease as of the effective date of the termination hereunder.

19. Licenses and Permits. Lessee will be responsible for obtaining, in the name of Jacksonville, Lessee, or otherwise, all licenses, permits, inspections, and other approvals necessary for the operation of the Victory Park Early Learning Center. Jacksonville shall cooperate with Lessee in obtaining all such licenses, permits, inspections, and other approvals, including, but not limited to, supplying information and executing applications, forms, or other documents necessary for same. Any and all licenses, permits, inspections, and other approvals shall be deemed to apply to Lessee or its use of the Subject Parcel in accordance with the covenants, conditions, and terms of this Agreement.

20. Subletting and Assignment. Lessee shall not transfer, hypothecate, mortgage, pledge, assign, or convey its interest in this Agreement or sublet the Subject Parcel or any part thereof without the written consent of Jacksonville, which consent shall not be unreasonably withheld if the transferee is an organization into which Lessee has merged or is a not-for-profit corporation authorized to do business in the State of Florida assuming the obligations of Lessee hereunder.

21. Expiration of Term. At the expiration of the Term, Lessee shall peaceably return to Jacksonville the Subject Parcel, including all improvements located thereon, and shall transfer title of any improvements still owned by Lessee in or on the Subject Parcel to Jacksonville. It is understood and agreed between Jacksonville and Lessee that Lessee shall have the right to remove from the Subject Parcel all personal property of Lessee placed in or on the Subject Parcel by Lessee, provided Lessee receives written permission from Jacksonville prior to removing any such item which may cause injury to the Subject Parcel or any improvement at the Subject Parcel in the removal process. Lessee shall restore the Subject Parcel to its pre-removal condition, subject to Jacksonville's review and approval.

22. Right of Jacksonville to Inspect. Jacksonville at all times may enter into and upon the Subject Parcel for the purpose of inspecting same and/or for making necessary repairs and/or improvements, and for any other purposes permitted in this Agreement. Lessee shall provide Jacksonville keys to the Victory Park Early Learning Center.

23. Annual Report. On an annual basis, on a date established by the Community Programming Division Chief, the Lessee shall present an Annual Report to the Department. Such Report shall illustrate and explain:

- i. Name and contact information of Corporate Officers,
- ii. Hours of operation,
- iii. Prior year's successes (and challenges if any) and synopsis of prior year's programming and activities to include the number of clients served,
- iv. Goals and objectives for the upcoming year,
- v. Statement to the Department signed by an Officer of the organization confirming the organization is in compliance with Jacksonville's Background Screening Policy,
- vi. Statement to the Department signed by an Officer of the organization confirming the organization is in compliance with Governmental Regulations,
- vii. a list of fees and charges to the public for the upcoming year,
- viii. proof of insurance,
- ix. verification of corporate status, and
- x. such other information as requested by Jacksonville.

24. Naming Rights and Signage.

Naming rights for the Victory Park Early Learning Center and any signage reflecting same will be subject to Jacksonville's approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

Otherwise, to the extent necessary for Lessee to raise additional funds, Lessee may grant naming rights to the Victory Park Early Learning Center, including but not limited to individual rooms within the Victory Park Early Learning Center and other readily identifiable areas, and may identify such naming rights grant by appropriate signage.

(a) All signage and signage graphics which advertise, designate or locate any portion of the Victory Park Early Learning Center shall further incorporate in its content, either in written type designation or logo designation, recognition of Jacksonville or its Department of Parks, Recreation and Community Services in reasonable form. All signage and banners for advertising, sponsorships, and/or donors are excluded from this requirement. No signage making reference to Jacksonville, or its Department of Parks, Recreation and Community Services shall be placed on or about the Victory Park Early Learning Center until such signage has been reviewed and approved by Jacksonville. All signage placed on or about the Subject Parcel shall be in compliance with all Governmental Requirements.

25. Force Majeure. If Jacksonville or Lessee shall be delayed in, hindered in, or prevented from the performance of any act required hereunder (other than performance requiring the payment of a sum of money) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations or actions, riots, insurrection, the act, failure to act, or default of the other party, war, or other reason beyond such party's reasonable control (excluding the unavailability of funds or financing), then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act as required herein shall be extended for a period equivalent to the period of such delay.

26. Condemnation. If any part of the Subject Parcel is taken by eminent domain or condemnation or voluntarily transferred to such authority under the threat thereof, and either party's operation on the Subject Parcel is substantially and materially impaired, either party may terminate this Agreement by giving written notice to the other party within thirty (30) days after the taking or transfer. Lessee shall be entitled to that portion of proceeds attributable to the value of the portion of the Victory Park Early Learning Center taken or transferred. Said value shall be the lesser of (i) amount awarded by the court for the portion of the Victory Park Early Learning Center taken or (ii) \$250.00 per square foot for the square footage of the Victory Park Early Learning Center taken. The value shall then be reduced by 2% for each full year following the date of this Agreement. Lessee shall also be entitled to such awards as are separately and specifically awarded to Lessee for its separate personal property, moving expenses, and business damages.

27. Mechanics Liens. Lessee shall immediately after it is filed or claimed, have released (by bonding or otherwise) any mechanics', materialmen, or other lien filed or claimed against any or all of the Subject Parcel or any other property owned or licensed by Jacksonville, by reason of labor or materials provided for Lessee or any of its contractors or subcontractors, or otherwise arising out of Lessee's use or occupancy of the Subject Parcel. Nothing in the provisions of this Agreement shall be deemed in any way to give Lessee any right, power, or authority to contract for or permit to be furnished any service or materials which would give rise to the filing of any mechanics' or materialman's lien against Jacksonville's estate or interest in and to the Subject Parcel, it being expressly agreed that no estate or interest of Jacksonville in and to the Subject Parcel shall be subject to any lien arising in connection with any alteration, addition, or improvement made by or on behalf of Lessee. At Jacksonville's request, Lessee shall execute a written instrument to be recorded for the purpose of providing notice of the existence of the provisions of the preceding sentence in accordance with Section 713.10, Florida Statutes.

28. Vending. Vending shall be permitted in the Victory Park Early Learning Center. Before vending is permitted at the Victory Park Early Learning Center, Lessee must receive the written approval

of Jacksonville. In its request for vending privileges, Lessee must propose in writing the proposed vending item and/or service and its charge and/or service in kind. If said vending item and/or service changes its charge and/or service in kind, said charge or service in kind must be approved in writing by Jacksonville. In addition, Lessee must comply with all Government Requirements while vending at the Victory Park Early Learning Center. Jacksonville's approval of a special use permit for special events shall constitute approval for vending set forth in such permit.

29. Miscellaneous

(a) Notices. Any and all notices that are permitted or required in this Agreement shall be in writing and shall be duly delivered and given when personally served or mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail - return receipt requested. Notice shall be deemed given on the date of personal delivery or mailing and receipt shall be deemed to have occurred on the date of receipt; in the case of receipt of certified or registered mail, the date of receipt shall be evidenced by return receipt documentation. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten ( 10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein.

If to Jacksonville:           Office of the Director  
  City of Jacksonville  
  Department of Parks, Recreation and Community Services  
  214 North Hogan Street, 4th Floor  
  Jacksonville, Florida 32202

With Copy To:               Office of the Mayor  
  City Hall  
  117 West Duval Street, Suite 400  
  Jacksonville, Florida 32202

If to Lessee:                 Maria McNair, Program Director  
  Lutheran Services Florida, Duval Head Start Program  
  3017 San Diego Road, Ellis Building  
  Jacksonville, Florida 32207

or such other address either party from time to time specify in writing to the other.

(b) Legal Representation. Each respective party to this Agreement has been represented by counsel in the negotiation of this Agreement and accordingly, no provision of this Agreement shall be construed against a respective party due to the fact that it or its counsel drafted, dictated, or modified this Agreement or any covenant, condition, or term thereof.

(c) Further Instruments. Each respective party hereto shall, from time to time, execute and deliver such further instruments as any other party or parties or its counsel may reasonably request to effectuate the intent of this Agreement.

(d) Severability of Invalid Provision. If any one or more of the agreements, provisions, covenants, conditions, and terms of the Agreement shall be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such agreements, provisions, covenants, conditions, or terms shall be null and void with no further force or effect and shall be deemed separable

from the remaining agreements, provisions, covenants, conditions and terms of the Agreement and shall in no way affect the validity of any of the other provisions hereof.

(e) No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation, or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation, or agreement of any member, officer, employee, or agent of Jacksonville or Lessee in his or her individual capacity and none of the foregoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(f) Third Party Beneficiaries. Nothing herein express or implied is intended or shall be construed to confer upon any entity other than Jacksonville and Lessee any right, remedy, or claim, equitable or legal, under and by reason of this Agreement or any provision hereof, all provisions, conditions, and terms hereof being intended to be and being for the exclusive and sole benefit of Jacksonville and Lessee.

(g) Successors and Assigns. To the extent permitted by Section 19, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(h) Survival of Representations and Warranties. The respective indemnifications, representations, and warranties of the respective parties to this Agreement shall survive the expiration or termination of the Agreement and remain in effect.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the ordinances of the City of Jacksonville. Wherever possible, each provision, condition, and term of this Lease shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision, condition, or term of this Agreement or any documentation executed and delivered hereto shall be prohibited by or invalid under such applicable law, then such provision, condition, or term shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, condition, or term or the remaining provisions, conditions, and terms of this Agreement or any documentation executed and delivered pursuant hereto.

(j) Section Headings. The section headings inserted in this Agreement are for convenience only and are not intended to and shall not be construed to limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provision, condition, or term hereof.

(k) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same document.

(l) Entire Agreement. This Agreement contains the entire agreement between the respective parties hereto and supersedes any and all prior agreements and understandings between the respective parties hereto relating to the subject matter hereof. No statement or representation of the respective parties hereto, their agents or employees, made outside of this Agreement and not contained herein shall form any part hereof or bind any respective party hereto. This Agreement shall not be supplemented, amended, or modified except by written instrument signed by the respective parties hereto.

(m) Attorneys' Fees and Costs. In any litigation arising out of or pertaining to this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees and costs, whether

incurred before, after, or during trial, or upon any appellate level.

(n) Time. Time is of the essence of this Agreement. When any time period specified herein falls upon a Saturday, Sunday, or legal holiday, the time period shall be extended to 5:00 P.M. on the next ensuing business day.

(o) Waiver of Defaults. The waiver by either party of any breach of this Agreement by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this Agreement.

(p) Radon Disclosure. The following disclosure is required to be made by the laws of the State of Florida:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

(q) Recording. This Agreement may be recorded in the public records of Duval County, Florida by either party.

(r) Jacksonville's Representative. Whenever in this Agreement Lessee is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with Jacksonville, Lessee shall deal with Jacksonville's authorized representative, and unless or until Jacksonville shall give Lessee written notice as to the contrary, Jacksonville's authorized representative shall be the Director, Department of Parks, Recreation and Community Services.

(s) Funding. Any reference in this Agreement to funding or payment of costs or expenses to be borne by Jacksonville shall be contingent upon the availability of lawfully appropriated funds by Jacksonville for such purpose.

IN WITNESS WHEREOF, the respective parties hereto have hereunto executed this Agreement for the purposes expressed herein effective the day and year first above written.

Attest:

CITY OF JACKSONVILLE

\_\_\_\_\_

LUTHERAN SERVICES FLORIDA, INC.

\_\_\_\_\_

Form Approved:

CITY OF JACKSONVILLE OFFICE OF GENERAL  
COUNSEL

\_\_\_\_\_  
Title: \_\_\_\_\_

Content Reviewed By:

DEPARTMENT OF PARKS,  
RECREATION AND COMMUNITY  
SERVICES

IN COMPLIANCE with the Charter of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation to cover the foregoing contract, and provision has been made for the payment of moneys provided therein to be paid.

CITY OF JACKSONVILLE  
DIRECTOR OF FINANCE

STATE OF FLORIDA COUNTY OF DUVAL  
[print or type name]  
Notary Public, State of Florida at Large

| |

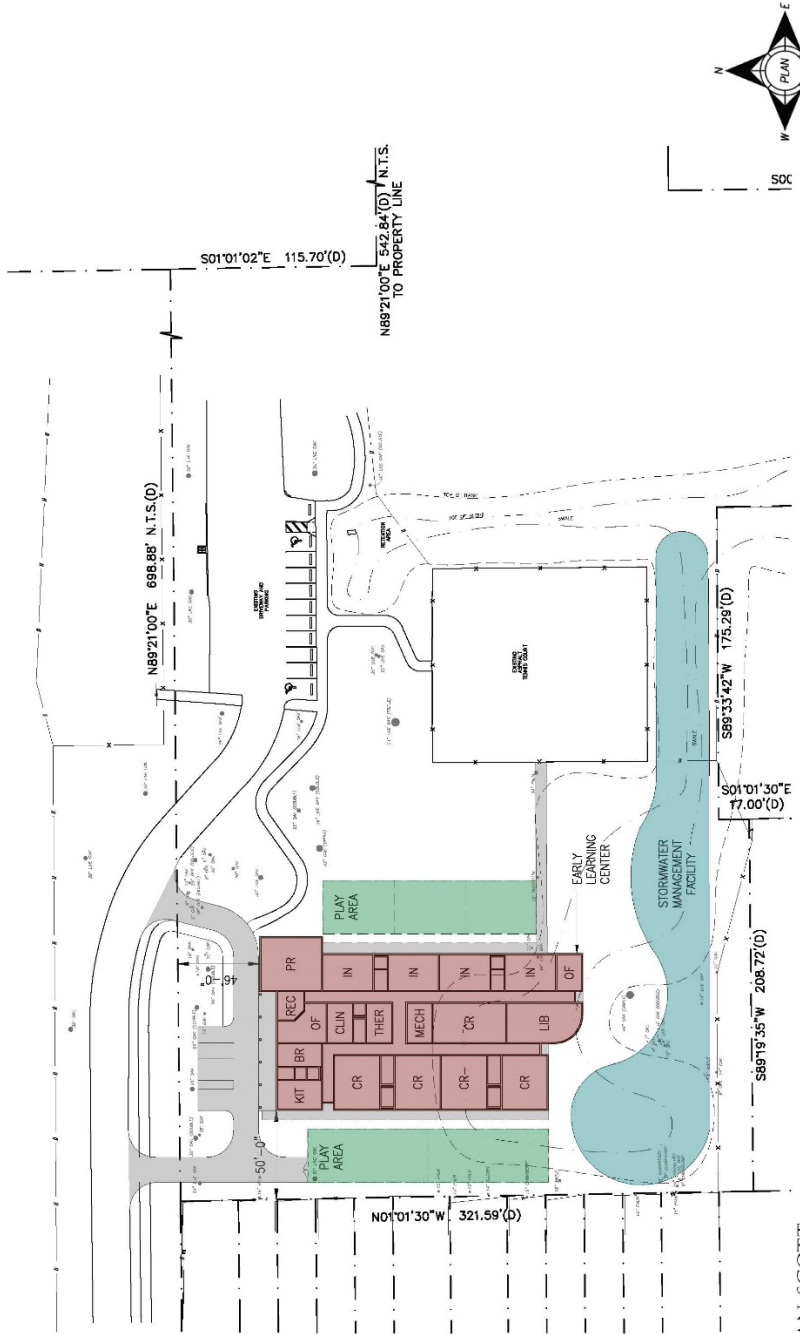


EXHIBIT A  
LEASE PARCEL



# EXHIBIT B

## DEVELOPMENT FLOOR PLAN



CONCEPT SITE PLAN  
**LUTHERAN SERVICES OF FLORIDA**  
**EARLY LEARNING CENTER**  
 ARLINGTON - VICTORY PARK  
 JACKSONVILLE, FLORIDA

**R-DEAN SCOTT**  
 ARCHITECT, INC.

126 W. ADAMS STREET - SUITE 692  
 JACKSONVILLE, FLORIDA 32202  
 TELEPHONE: 904.588.9972  
 WEBSITE: WWW.RDEANSCOTT.COM  
 LICENSE NUMBER: AR301480





## Exhibit C

### MODE II STANDARDS

Moderate level maintenance, associated with locations with moderate to low levels of development, moderate to low levels of visitation or with agencies that, because of budget restrictions, can't afford a higher intensity of maintenance.

1. Turf Care - Cut once every 10 working days. Normally not aerated unless turf quality indicates a need or in anticipation of an application fertilizer. Reseeding or re-sodding done only when major bare spots appear. Weed control measures normally used when 50 percent of small areas is weed infested or general turf quality is low in 15 percent or more of the surface area.
2. Fertilizer - Applied only when turf vigor seems to be low. Low level application done on a once per year basis. Rate suggested is one-half the level recommended on page 14 for species and variety.
3. Irrigation - Dependent on climate. Rainfall locations above 25 inches a year usually rely on natural rainfall, with the possible addition of portable irrigation during periods of drought. Dry climates below 25 inches normally have some form of supplemental irrigation. When irrigation is automatic, a demand schedule is programmed. Where manual servicing is required, two to three times per week operation could be the norm.
4. Litter Control - Minimum service of two to three times per week. High use may dictate higher levels during warm season.
5. Pruning - When required for health or reasonable appearance. With most tree and shrub species this would not be more frequent than once every two or three years.
6. Disease and Insect Control - Done only on epidemic or serious complaint basis. Control measures may be put into effect when health or survival of the plant material is threatened or where public's comfort is concerned.
7. Lighting - Replacement or repair of fixtures when report filed or when noticed by employees.
8. Surfaces - Cleaned on complaint basis. Repaired or replaced as budget allows.
9. Repairs - Should be done whenever safety or function is in question.
10. Inspections - Once per week.

11. **Floral Planting** - Only perennials or flowering trees or shrubs.
12. **Rest Rooms** – When present, serviced a minimum of 5 times per week. Seldom more than once each day.
13. **Special Features** - Minimum allowable maintenance for features present with function and safety in mind.

Exhibit D  
INSURANCE REQUIREMENTS - CONTRACTORS

Without limiting its liability under this Contract, Contractor shall procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits and in amounts no less than those stated below:

Insurance Coverages

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

This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its 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	\$2,000,000	General Aggregate
	\$2,000,000	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 project via a form no more restrictive than the most recent version of ISO Form CG2503

Contractor shall continue to maintain products/completed operations coverage for a period of three (3) years after the final completion of the project. The amount of products/completed operations coverage maintained during the three-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 Risk Management.

Automobile Liability \$1,000,000 Combined Single Limit  
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)

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, and must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Design Professional Liability \$1,000,000 per Claim  
\$2,000,000 Aggregate

Any entity hired to perform professional services as a part of this contract 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 Contract and with a three-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 project. Named insureds shall be: Contractor, the City, and respective members, officials, officers, employees and agents, the Engineer, and the Program Management Firms(s) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees, and agents are to be named as loss payee.

Pollution Liability \$2,000,000 per Loss  
\$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this contract 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





### Additional Insurance Provisions

A. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, and for Automobile Liability in a form no more restrictive than CA2048.

8. 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 and its members, officials, officers, employees, and agents.

C. Contractor's Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees, and agents.

D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.

E. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor or its subcontractors, employees, or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees, or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.

F. Waiver/Estoppel. Neither approval by City of, nor its failure to disapprove, the insurance furnished by Contractor shall relieve Contractor of its full responsibility to provide insurance as required under this Contract.

G. Certificates of Insurance. Contractor shall provide the City Certificates of Insurance that show the corresponding City Contract 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.

H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, 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.

I. Notice. The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including through expiration or non-renewal. If such endorsement is not provided, the Contractor shall provide thirty (30) days written notice of any change in the above coverages or limits, or of coverages' being suspended, voided, or cancelled, including through expiration or non-renewal.

J. Survival. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract 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 may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.

L. Special Provisions: Prior to executing this Agreement, Contractor shall present this Contract and Attachment E & F to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Contract 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. Design-Builder shall not perform or commence any construction services for a Project until the following performance bond and labor and material payment bond or other performance security have been delivered to Owner: Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Design-Builder shall provide to Owner, on forms furnished by Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond for each Project performed under this Agreement, each in an amount not less than the GMP as defined in Article 6 and inclusive of Design-Builder fees. No qualification or modifications to the Bond forms are permitted.

To be acceptable to Owner 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 \$500,000, 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		CLASS IX
	A	CLASS X
-		
\$50,000,000 TO \$75,000,000		
	A	
-		

- 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 E  
INSURANCE REQUIREMENTS - LESSEE

Without limiting its liability under this **Agreement**, **Applicant** shall at all times during the term of this **Agreement** procure prior to commencement of work and maintain at its sole expense during the life of this **Agreement** (and **Agreement** 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**

<b>Worker's Compensation</b>	Florida Statutory Coverage
<b>Employer's Liability</b>	\$ 100,000 Each Accident
	\$ 500,000 Disease Policy Limit
	\$ 100,000 Each Employee/Disease

This insurance shall cover the **Applicant** (and, to the extent they are not otherwise insured, its 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.

<b>Commercial General Liability</b>	\$2,000,000 General Aggregate
	\$2,000,000 Products & Comp. Ops. Agg.
	\$1,000,000 Personal/Advertising Injury
	\$1,000,000 Each Occurrence
	\$ 50,000 Fire Damage
	\$ 5,000 Medical Expenses

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. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

<b>Sexual Molestation</b>	\$1,000,000 Per Claim
	\$2,000,000 Aggregate

(Only if program includes direct supervision of children, special needs, and/or senior citizens)  
Sexual Molestation Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract. If provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

**Automobile Liability** \$500,000 Combined Single Limit  
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)

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).

**Accident Medical, Death & Dismemberment** \$10,000 Per Participant  
(if Athletic Activities are included in the program)

**Excess Accident Medical** \$50,000  
(if Athletic Activities are included in the program)

### **Additional Insurance Provisions**

- A. Certificates of Insurance. **Applicant** shall deliver the City of Jacksonville Certificates of Insurance that shows the corresponding **City Contract or Bid Number** in the Description, **Additional Insureds, Waivers of Subrogation, and statement** as provided below. 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.
- B. Additional Insured: All insurance **except** Worker's Compensation and AD&D shall be endorsed to name the City of Jacksonville and their respective members, officers, officials, employees, and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and, if products and completed operations is required, CG2037, Automobile Liability CA2048.
- C. 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 and their respective members, officers, officials, employees, 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. **Applicant** Insurance Primary. The insurance provided by the **Applicant** shall apply on a primary basis to, and shall not require contribution from, any other insurance or self- insurance maintained by Jacksonville and their respective members, officers, officials, employees, and agents
- F. 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 **Applicant**. Under no circumstances will the City of Jacksonville and their respective members, officers, officials, employees, and agents be responsible for paying any deductible or self-insured retention related to this **Agreement**.

- G. **Agreement Insurance Additional Remedy.** Compliance with the insurance requirements of this **Agreement** shall not limit the liability of the **Applicant** or its Subcontractors, employees or agents to the City of Jacksonville and their respective members, officers, officials, employees and agents shall be in addition to and not in lieu of any other remedy available under this **Agreement** or otherwise.
- H. **Waiver/Estoppel.** Neither approval by City of Jacksonville nor its failure to disapprove the insurance furnished by **Applicant** shall relieve **Applicant** of **Applicant's** full responsibility to provide insurance as required under this Contract.
- I. **Notice.** The **Applicant** shall provide an endorsement issued by the insurer to provide the City of Jacksonville thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including through expiration or non-renewal. If such endorsement is not provided, the **Applicant**, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, or of coverages being suspended, voided, cancelled, including through expiration or non-renewal.
- J. **Survival.** Anything to the contrary notwithstanding, the liabilities of the **Applicant** under this Agreement 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 of Jacksonville may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City of Jacksonville and their respective members, officers, officials, employees and agents also be named as an additional insured.
- L. **Special Provision:** Prior to executing this Agreement, **Applicant** shall present this **Agreement** and insurance requirements to its Insurance Agent Affirming: 1) That the Agent has Personally reviewed the insurance requirements of the Contract Documents, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of **Agreement**.

Exhibit F  
INDEMNIFICATION – CONTRACTORS AND LESSEE

**Applicant** and its subcontractors (the “Indemnifying Party”) shall hold harmless, indemnify, and defend the City of Jacksonville and their respective members, officers, officials, employees and agents (collectively the “**Indemnified Parties**”) 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 Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness, or intentionally wrongful conduct on the part of the Indemnifying Party that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party’s performance of the **Agreement**, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this **Agreement** 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 **Agreement**; and

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

If an Indemnified Party exercises its right under this **Agreement**, the Indemnified Party will (1) provide reasonable notice to the Indemnifying Party of the applicable claim or liability, and (2) allow Indemnifying Party, at its own expense, to participate in the litigation of such claim or liability to protect its 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 Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

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.