

Prepared by:
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**AGREEMENT FOR INSTALLATION OF PARK
IMPROVEMENTS AT LAKE LORNA DOONE**

THIS AGREEMENT FOR THE INSTALLATION OF PARK IMPROVEMENTS at Lake Lorna Doone, "Agreement", entered into this ____ day of _____, 2018, between **CITY OF ORLANDO**, a municipal corporation duly enacted under the laws of the State of Florida, whose address is 400 S. Orange Ave., Orlando, FL, 32801, "City" and **FLORIDA CITRUS SPORTS EVENTS, INC.**, a Florida not-for-profit corporation, whose address is One Citrus Bowl Place, Orlando, FL, 32805, hereinafter referred to as "FCSE".

WHEREAS, the City owns and operates Lake Lorna Doone Park, as a City park, located at 1519 W Church Street as generally shown in **Exhibit "A"**, attached hereto and by reference made a part hereof, "Park"; and

WHEREAS, FCSE is an organization dedicated to increasing community spirit and pride, promoting tourism, stimulating economic development and benefitting charities, educational institutions and quality of life in central Florida; and

WHEREAS, pursuant to this mandate, FCSE proposes to cause others to design and obtain a permit for certain improvements at the Park, "Improvements", as generally shown in **Exhibit "B"**, attached hereto and made a part hereof by reference; and

WHEREAS, in addition, FCSE proposes to cause others to construct a portion of the Improvements, "FCSE Improvements", which consist of the Improvements less the City Improvements, as that term is described below; and

WHEREAS, as part of the construction of the Improvements, the City in coordination with the Construction Manager (as defined below) proposes to install and construct or cause others to install and construct certain infrastructure within the Park, as generally described in **Exhibit "B"**, "City Improvements"; and

WHEREAS, the FCSE Improvements and the City Improvements together constitute the "Improvements"; and

WHEREAS, with the City's consent, FCSE has previously incurred design, permitting and construction costs related to the Multi-Use Field and attendant improvements as described in Exhibit "B", the "Field"; and

WHEREAS, the City recognizes the Field constitutes a portion of the FCSE Improvements and the design, permitting and construction costs incurred by FCSE in connection with the Field constitute a portion of the financial commitment towards the FCSE Improvements made by FCSE in this Agreement as set forth below; and

WHEREAS, the estimated cost to design, permit and construct the Improvements is Eight Million Dollars (\$8,000,000.00), "Estimated Cost"; and

WHEREAS, City and FCSE propose to share the cost of the design, permitting and construction of the Improvements as described herein; and

WHEREAS, the City and FCSE desire to memorialize their agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein described, the sufficiency of which is acknowledged, the parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated in the substantive body of this Agreement.

2. Improvements/FCSE Improvements. Subject to the terms of this Agreement, FCSE is solely responsible for the design and permitting of the Improvements and for construction of the FCSE Improvements, including the necessary construction, engineering, and inspection work (CEI) to ensure that construction of the Improvements is in compliance with the Plans, as hereinafter defined. FCSE will cause the construction of the FCSE Improvements, consistent with construction plans approved and permitted by the City, "Plans." FCSE will submit a copy of the contract, "Contract," between FCSE and the contractor, "Construction Manager" for construction of the FCSE Improvements, to the City prior to initiating construction of FCSE Improvements. Within ninety (90) days of completion of the FCSE Improvements, FCSE will submit to the City, for the City's review and approval, a final statement of costs, which statement will include the total cost of the design, permitting and construction of the FCSE Improvements, along with all necessary supporting documentation, such as payment applications from the Construction Manager. Because City is funding a portion of the costs to construct the FCSE Improvements, and as a condition thereof, FCSE must select the Construction Manager consistent with state laws and regulations applicable to public construction projects utilizing a contractor, including without limitation and as applicable, Section 255.20, Florida Statutes, Section 255.0525, Florida Statutes, Section 255.103, Florida Statutes and Section 287.055, Florida Statutes.

3. City Improvements. City is solely responsible for construction of the City Improvements including the necessary construction, engineering and inspection work (CEI) to ensure that the construction of the City Improvements is in substantial compliance with the Plans. City will construct the City Improvements in substantial compliance with the Plans. City and FCSE will cooperate and agree on the manner, cost and timing of construction of the City Improvements based on the requisites of their respective projects and the most reasonable strategy to harmonize them. In addition, City and FCSE will coordinate their planning and construction activities as necessary so that neither project is delayed or incurs additional costs. Prior to the City's construction of any portion of the City Improvements, FCSE will provide written certification to City that it has funds available to comply with its obligation to contribute up to Three Million Dollars (\$3,000,000.00) towards design, permitting and construction of the Improvements, as said contribution is described in Paragraph 7, below.

4. Design and Permitting of the Improvements. FCSE has completed and City has approved the Plans for the Field. FCSE is currently at 90% design completion for the Improvements and will diligently pursue completion of same. FCSE and City will work together to facilitate the City's review and approval of the Plans and ensure timely completion. The Plans will include every element of the Improvements as shown on Exhibit "B," unless otherwise agreed by the City in writing. FCSE will submit the Plans to the City's Public Works Director and Families, Parks and Recreation Director at 90% completion and 100% completion, for the City's review, comment and approval. City's review of the Plans will include, though not exclusively, a review of the specifications for all items. FCSE will incorporate the City's comments into the Plans except to the extent that doing so would cause the budget for the Improvements to exceed the Estimated Cost. Within twenty days of the completion of the Plans, FCSE or its Construction Manager will submit an application for permit(s) to the City and any other governmental authority with jurisdiction and diligently pursue or cause to be pursued said application(s) to permit(s) issuance. Upon the City's approval of the Plans as provided above, including, though not exclusively, the City's approval of the Maintenance of Traffic, "MOT," Plan associated with construction of the FCSE Improvements, and subject to the terms of this Agreement, the City hereby grants FCSE and its Construction Manager a right of entry to the Park site, as reasonably necessary to construct the FCSE Improvements within the Park.

5. Bid Package and Contingencies: The parties agree that the material consideration for entering into this Agreement is that all of the elements of the Improvements shown in Exhibit "B" can be designed, permitted and constructed for the Estimated Cost.

Accordingly, the parties agree that FCSE will proceed with completing the Plans, as provided herein, and then, upon 90% completion of the Plans, the Development Manager, as hereinafter defined, will prepare a Guaranteed Maximum Price Package, "GMP Package", for pricing and construction of the Improvements. To price the GMP Package, FCSE will enter into a contract with the Construction Manager to obtain a cost to construct the Improvements, "Cost." Preparation of the Cost will be coordinated by the Development Manager and will be finalized and submitted to the parties for review, comments and approval within sixty (60) days after the Effective Date of this Agreement.

In the event the Cost is equal to or less than the Estimated Cost, FCSE will diligently proceed with construction of the Improvements. In the event that the Cost exceeds the Estimated Cost, FCSE staff and City staff will meet to discuss strategies that would allow FCSE to proceed with construction of the Improvements. Those strategies may include, though not exclusively, (i) value engineering the Improvements, (ii) reducing the scope of the Improvements or (iii) providing additional funding. If the parties, through their respective staffs, cannot reach an agreement as to how proceed with construction of the Improvements within sixty (60) days after receipt of the Cost, either party may terminate this Agreement by giving the other party written notice, upon which notice, this Agreement will automatically terminate and neither party will have any further obligations hereunder except as to those matters expressly stated to survive termination. The final scope as approved by City and FCSE will be incorporated into the Construction Manager's Contract with a GMP Amendment to the Contract. The GMP Amendment (or portion thereof) will be executed prior to the start of Construction. Demolition, clearing and grubbing and preparation of the site may occur prior to execution of the final GMP Amendment.

Payment of the Development Manager's costs, the Construction Manager's costs and other preconstruction costs (including costs of design professionals and consultants) associated with preparation of the design or the Cost, will be shared by the parties pro rata in accordance with their relative commitment levels to fund the Estimated Cost. This obligation shall survive any termination of this Agreement.

6. Cooperation and Additional Changes. (a) The parties agree to cooperate and work in good faith to expedite and facilitate completion of the design, permitting and construction of the Improvements; (b) The parties acknowledge that during construction of the FCSE Improvements and the City Improvements, the City, FCSE, or the City and FCSE jointly, may determine that relocation of certain portions of the Improvements or a revision to specifications is necessary and the parties will work together to expedite implementation of the necessary changes and revise the Plans accordingly. Based on Construction Manager's estimates, as reviewed and approved by the City and FCSE, if the proposed change causes an increase in the estimated cost of the FCSE Improvements, then the party or parties requesting the revision or relocation are responsible for such additional costs, including construction, design, Development Manager and CEI costs. In the event of a City initiated change or a City/FCSE jointly initiated change, City will pay FCSE its share (i.e., 100% of the added construction, design, Development Manager and CEI related costs for City initiated changes and pro-rata with FCSE for any City/FCSE jointly initiated changes) within twenty (20) days of the receipt of an invoice from FCSE with supporting documentation showing additional costs actually incurred by FCSE for construction, design, Development Manager and CEI services necessary to implement the requested change. If a requested change under this subparagraph involves FCSE processing a change order with its Construction Manager, FCSE agrees to do so as expeditiously as possible unless City and FCSE agree that the change order would expose FCSE to liability for delay claims, in which case FCSE will not implement the requested change; (c) the parties acknowledge that there may be cost overruns during construction not caused by a party initiated change and in such event FCSE and City agree to share such cost overruns, if any, pro rata in accordance with their relative commitment levels to fund the Estimated Cost; **FCSE will provide written notice to the City within five (5) business days upon FCSE becoming aware of any unforeseen conditions encountered during construction of the Improvements, or non-party initiated changes, that have the potential to cause cost overruns;** (d) To ensure full communication regarding the terms of this Paragraph, each party hereby designates a point of contact:

City: _____ ph: _____ email: _____;

FCSE: _____ ph: _____ email: _____.

7. City Contribution. Subject to increase as contemplated by this Agreement (e.g., City initiated changes, City/FCSE initiated changes or non-party initiated cost overruns), City agrees to contribute up to Five Million Dollars (\$5,000,000.00) towards the cost to construct the Improvements, "City Contribution." A portion of the City Contribution will consist of the cost the City incurs to construct certain City Improvements via City staff or contractors ("City Improvements Cost"). The parties acknowledge that the City Contribution, less the City Improvements Cost, is the "Final Revised City Contribution." Prior to commencement of the City Improvements, City and FCSE will meet to review the proposed costs to be incurred by the City and reach agreement on an estimated City Improvements Cost. The Final Revised City Contribution will be based on the actual costs incurred to construct the City Improvements (subject to adjustment for any City requested changes, City/FCSE requested changes or non-party initiated cost overruns). City will notify FCSE of the City Improvements Cost and the corresponding Final Revised City Contribution and City Share, as hereinafter defined, within thirty (30) days after completion of the City Improvements. City will reimburse FCSE up to the Final Revised City Contribution plus the City's share of any requested changes or cost overruns for the FCSE Improvements in the manner described in Paragraph 8, below. The City shall be solely responsible for the added design, Development Manager, CEI and construction costs of any City requested changes regardless of whether the additional costs exceed the \$8,000,000.00 Estimated Costs or not. There may be changes initiated by City and FCSE jointly or cost overruns during construction not caused by a party initiated change and in such event City agrees to share with FCSE responsibility for such cost overruns, if any, pro rata in accordance with City's relative commitment level to fund the Estimated Cost.

8. FCSE Contribution. FCSE agrees to contribute up to Three Million Dollars (\$3,000,000.00) towards the design, permitting, soil studies, surveying, other soft costs and construction of the Improvements, "FCSE Contribution," except as said amount may be increased as specified in this Agreement, (eg., FCSE initiated changes, City/FCSE initiated changes and non-party initiated cost overruns). A portion of the FCSE Contribution will consist of the cost of design services (including without limitation geotechnical engineering costs, Development Manager (defined below) costs, survey costs and other soft costs) rendered to develop and complete the Plans including the Field Plans. City and FCSE agree that the cost of such design services incurred is \$593,964.95, "Design Costs". FCSE shall also be credited with the CEI costs it incurred to construct the Field. City and FCSE agree that the CEI cost to construct the Field is \$222,482.88, "Field Costs". The sum of the Design Costs and the Field Costs is referred to as the "Existing FCSE Contribution", (\$816,447.83). City shall have the right but not the obligation, to audit FCSE's books and records to verify the costs incurred by FCSE that make up the Existing FCSE Contribution. Any dispute between the parties as to the amount of said costs incurred will be resolved using the dispute resolution process described in

Paragraph 10 below. Other than the Design Costs and the Field Costs, the remainder of the FCSE Contribution, up to \$2,183,552.17, will consist of monetary funding, "Revised FCSE Contribution." The Revised FCSE Contribution shall include the costs to be paid by FCSE to its Development Manager who shall be responsible for overseeing, coordinating and supervising the work of the Construction Manager constructing the FCSE Improvements. FCSE shall be solely responsible for the added design and construction costs of any FCSE requested changes regardless of whether the additional costs exceed the \$8,000,000.00 Estimated Costs or not. There may be costs associated with changes initiated by City and FCSE jointly or cost overruns during construction not caused by a party initiated change and in such event FCSE agrees to share with City the responsibility for such costs, if any, pro rata in accordance with FCSE's relative commitment level to fund the Estimated Cost.

9. Payment of Costs. City will make payments to FCSE based on FCSE's submittal of a payment request, "Request," to the City. The Request is limited to costs incurred by FCSE (inclusive of amounts owed by FCSE to the Development Manager and consultants) related to design and construction of the FCSE Improvements and each Request will be based on applications for payment from the Construction Manager, Development Manager and consultants, "Invoice." Payment will be made by the City pro rata in the amount of 62.5% of each Invoice, "City Share." Except in the instance of a City initiated change or an FCSE initiated change, FCSE will base each Request on the City Share of each Invoice. Except as otherwise stated elsewhere in this Agreement, FCSE is responsible to pay the balance of each Invoice (not covered by the City Share) and will ensure that all payments made by the City under any Request are used solely to pay the Invoice(s) referenced in the Request.

Prior to execution of this Agreement, and as described in Paragraph 8 above, FCSE incurred costs in the amount of the Existing FCSE Contribution, or \$816,447.83, related to the design and construction of the Improvements. The Existing FCSE Contribution is 27.2% of the FCSE Contribution. In order to equalize the rate of each party's expenditures under this Agreement, the City agrees to pay 100% of Requests until the City reaches 27.2% of the City Contribution, or \$1,360,000.00. Thereafter, except as otherwise provided in this Agreement, Requests will be paid pro rata by the City and FCSE following the 62.5%/37.5% formula.

The total amount of the City's payments under this Agreement shall not exceed the Final Revised City Contribution plus (i) costs associated with changes initiated by City; (ii) costs associated with changes initiated by City and FCSE jointly; and (iii) cost overruns during construction not caused by a party initiated change; ("City Funding Contribution Limit"). The total amount of FCSE's payments under this Section shall not exceed the Revised FCSE Contribution plus (i) costs associated with changes initiated by FCSE; (ii) costs associated with changes initiated by City and FCSE jointly; and (iii) cost overruns during construction not caused by a party initiated change; ("FCSE Funding Contribution Limit"). If either party reaches its funding contribution limit before the other party, said other party will be responsible for paying 100% of each Invoice until reaching its funding contribution limit. FCSE will only

request payment from the City for work completed and invoiced in accordance with this Agreement. FCSE will submit a Request to the City no more than once per month. Each Request will be accompanied by the Invoice(s) on which the Request is based and a signed and sealed engineer's certificate of completion for the portion of work referenced in the Request, as well as documentation supporting the expenditures contained in the Request. City will review each Request within ten (10) calendar days of receipt and make payment for the approved amounts within twenty (20) calendar days of receipt of such Request.

City shall at all times have access to the Improvements in conjunction with its review of Requests and FCSE will provide proper facilities for such access and observation of the work being performed hereunder and also for any inspection or testing thereof. Said inspections shall not be deemed to have represented that City made exhaustive or continuous on-site inspections to check the quality or quantity of work performed or materials supplied for the FCSE Improvements, nor shall it relieve FCSE of any obligations associated with its warranty requirements under this Agreement or to perform otherwise in compliance with the terms of this Agreement. Subject to City's obligation to be solely responsible to pay for costs caused by any City initiated change and City's obligation to fund pro rata any City/FCSE initiated change costs and non-party initiated cost over-runs, all as described in this Agreement, City's obligations under this Paragraph terminate when all funds constituting the Final Revised City Contribution have been expended.

10. Disputes. All claims, disputes and other matters in question between the Parties arising out of, or relating to, this Agreement or its performance or breach shall be resolved in accordance with the following steps:

- (a) Negotiation;
- (b) Non-binding mediation (the cost of which is shared equally by the parties); and
- (c) Judicial resolution.

11. Warranty. FCSE shall require the Construction Manager and its subcontractors to warrant the FCSE Improvements related work for a period of one year after substantial completion of the FCSE Improvements.

12. Payment & Performance Bonds. FCSE shall require the Contractor to obtain performance and payment bonds, prior to commencement of construction of the FCSE Improvements and in a form acceptable to the City, with the penal amount of each bond equal to the contract amount for the construction of the FCSE Improvements. The Surety must be authorized to issue bonds in Florida, must be listed in the most recently issued United States Department of the Treasury's "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the Federal Register and is subject to approval of the City. The City shall be listed as an additional obligee on each bond through a Dual Obligee Rider. FCSE shall act diligently to prevent

construction liens from being filed on the Park property. If a lien is filed, FCSE shall take the requisite action to have the lien removed.

13. Non-Conforming Work. In the event work on the FCSE Improvements is discovered, whether by the City or FCSE, which is defective or otherwise non-conforming to the requirements of the construction plans which have been permitted by the City, the City or FCSE shall promptly notify the other party of such defect or non-compliance. FCSE shall immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming work to the reasonable satisfaction of the City.

14. Certification and Maintenance. Upon completion of the FCSE Improvements, the City shall conduct an inspection. If the City determines that all work has been completed in substantial conformance with the Plans and any other applicable construction, permitting or engineering requirements, the City will notify FCSE in writing of the City's approval. If the City determines that any portion of the FCSE Improvements was not completed in substantial compliance with the Plans, City shall notify FCSE in writing of the deficiencies. FCSE will immediately and diligently pursue remediation of the stated deficiencies and notify the City upon completion of same. City will then inspect the remediation work and notify FCSE of its determination. This process will be repeated until City approves the FCSE Improvements, upon which approval (which City shall not unreasonably deny, condition or delay), FCSE shall cause its Construction Manager to submit a final completion certification to the City. This certification will be accompanied by the As-Built drawings of the applicable portion of the FCSE Improvements as well as any necessary warranties, waivers and releases from the Construction Manager, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the City, if any, as well as any other reasonable supporting documents required by the City. After the City's review and approval of the above items, City will assume ownership of, and maintenance and operational responsibilities for, the FCSE Improvements and FCSE shall have no further interest in same. Upon City's request, FCSE will execute a Bill of Sale for the FCSE Improvements or any portion thereof. It is the parties' intent that the FCSE Improvements will become part of Lake Lorna Doone Park upon final approval by the City under this Paragraph.

15. MBE/WBE Participation. FCSE shall require the Construction Manager to comply with Articles II and III of Chapter 57 of the Orlando City Code (the "M/WBE Ordinance") relating to the participation of minority business enterprises ("MBE") and women business enterprises ("WBE") in the construction of the FCSE Improvements. The term "minority business" is defined as a business firm which is at least 51% owned and controlled by minority group members and which has been officially certified or recognized by the City as an MBE. The minority ownership must exercise actual day-to-day management and independent control. For the purpose of this definition, minority group members are Blacks, Hispanics, Asians, Pacific Islanders, Alaskan Natives, and American Indians. The term "women-owned business" means a business firm which is at least 51% owned and controlled by women and which has been officially certified or recognized by the City as a WBE. The women ownership

must exercise actual day-to-day management and independent control. Only those companies which are certified or recognized by the City on or before the date set for submittal of proposals may be utilized to meet the goals established by Chapter 57. FCSE shall require its Construction Manager to submit quarterly reports, (which FCSE will forward to the City) in a format acceptable to the City and the MBE/WBE Department, documenting MBE/WBE firms used, their scopes of work, dollar value of contracts, work performed to date, and dollar amounts paid to date. FCSE will comply, and will ensure that the Construction Manager complies, with the terms of the Blueprint MBE/WBE Requirements attached at **Exhibit "C,"** and made a part hereof by reference.

16. Living Wage. FCSE shall pay to all of its employees, Construction Manager and subcontractors providing services related to the construction of the FCSE Improvements, a living wage for the time spent providing such services "Living wage" means compensation for employment of not less than (i) \$_____ per hour for straight time if health insurance is provided and (ii) \$_____ per hour for straight time if health insurance is not provided, exclusive of FICA, unemployment taxes, and workers compensation insurance and employee benefits.

17. Donor Recognition. City and FCSE will cooperate in establishing a donor recognition process, "Process," whereby donors contributing funds and/or in-kind services or materials to the construction of the FCSE Improvements or the City Improvements shall be recognized on signage, "Signage," in the Park. The design and location of the Signage shall be agreed upon between City and FCSE. The Process will reference two types of donors, "Large Donors" and "General Donors."

Large Donors are those who fund all or substantially all of the cost of design, construction and installation of one of the following significant features in the Park, hereinafter referred to as ("Named Elements"):

- Pathway around the lake, including exercise stations located along the path
- Basketball courts
- Splash pad
- Playground
- Community Garden
- Ecology walk
- Pavilion located on the east side of the lake
- Fountain in the center of the lake
- Church Street Overlook entrance into the park

Additional "Named Elements" may be agreed upon between the City and FCSE.

The City, FCSE and the Large Donor will sign a tri-party agreement, "Donor Agreement", a template for which is attached hereto as **Exhibit "D"**, and made a part hereof by reference. The Donor Agreement will include the following terms: (i) the amount of the donation; (ii) the timing of the donation; (iii) the length of time the Named Element will bear the Large Donor's name, generally understood to be fifteen years or the useful life of the Element, whichever is

greater; (iv) the manner in which, and the location at which, the Large Donor's name will be displayed; and (v) the extent of the City's responsibility to maintain the Named Element. The City's Director of Families, Parks and Recreation (the "Director") shall have authority to sign Donor Agreements on behalf of the City. In no event will Named Elements be named in such a manner that (i) could reasonably be expected to cause embarrassment to the City (such as names containing slang, barbarisms or profanity), or (ii) is related or refers to any sexually oriented subject matter, business or enterprise or any firearms, tobacco, alcohol or gaming subject matter, business or enterprise, or (iii) is false, misleading, deceptive, contrary to good taste, controversial, or offensive to the moral standards of the community.

General Donors are those who donate \$250.00 or greater, "General Donation," but do not fund all or substantially all of the cost of design, construction and installation of a Named Element. All General Donations will be recognized as part of a Donor Recognition Feature to be located at the Church Street Overlook. The design of the Donor Recognition Feature shall be agreed upon between City and FCSE. All Signage will be installed as part of the construction of the FCSE Improvements.

18. Parking and Pavilion. Subsequently to the City's (i) approval of the FCSE Improvements and (ii) assumption of ownership/maintenance responsibilities, under Paragraph 14 above, City agrees, at no additional cost to FCSE, to reserve for FCSE's use at every FCSE event at the Camping World Stadium Complex, the newly paved parking lot located on the west end of the Improvements adjacent to the playground as shown in **Exhibit "E,"** attached hereto. FCSE will defend, indemnify, and hold the City harmless from and against any and all liability arising from FCSE's use of the referenced parking lot, except for liability arising from the City's negligence and will maintain insurance coverage for the City during FCSE's use of the referenced parking lot as provided in Paragraph 21, below. Additionally, the City may, in its sole discretion, require FCSE to enter into a standard parking lot use agreement. FCSE's use of the parking lot under this Section is limited to "VIP parking" that is part of a ticket package for the applicable FCSE event and does not include the sale of parking spaces to the general public.

19. Independent Contractors. City and FCSE, their agents, construction manager, contractor(s), subcontractors or consultants, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City or FCSE, or their employees or representatives.

20. Indemnification. FCSE shall defend, indemnify, release and hold harmless the City, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), arising out of or resulting from the activities of FCSE, its contractors, subcontractors, consultants, agents, and assigns under this Agreement. This provision will survive termination of the Agreement.

21. Insurance. FCSE will, (or FCSE will ensure that its contractors performing work for FCSE under this Agreement will,) at all times during the term of this Agreement, maintain general public liability insurance in the amount of Five Million Dollars (\$5,000,000.00) and

automobile liability insurance in the amount of Two Million Dollars (\$2,000,000.00) to afford protection against any and all liability, including claims for personal injury, death or property damage arising directly or indirectly from the activities of FCSE, its contractors, subcontractors, consultants, agents, assigns and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

Said insurance policies shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming the City of Orlando as an additional insured, with a combined-single limit of not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury or death and property damage. Each of the above liability policies shall contain a contractual liability endorsement in favor of the City. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by City of Orlando. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of this Agreement. Nothing in this Agreement operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law. FCSE will provide to the City proof of such insurance coverages, as described above, ten (10) days prior to commencement of construction activities related to any portion of the FCSE Improvements and within five (5) days of the City's request thereafter. This provision will survive termination of the Agreement, as required to provide coverage to the City against liability and damages arising from events occurring prior to termination.

The City will, at all times during the term of this Agreement, require its contractor for the City Improvements to maintain general public liability insurance in the amount of Five Million Dollars (\$5,000,000.00) and automobile liability insurance in the amount of Two Million Dollars (\$2,000,000.00) to afford protection against any and all liability, including claims for personal injury, death or property damage arising directly or indirectly from the activities of the contractor, its subcontractors, consultants, agents, assigns and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Said insurance policies shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming FCSE as an additional insured, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury or death and property damage. Each of the above liability policies shall contain a contractual liability endorsement in favor of FCSE. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by FCSE. This provision shall survive termination of this Agreement to the extent necessary to protect FCSE from liability arising during the term of this Agreement. The City will provide to FCSE proof of such insurance coverages, as described above, ten (10) days prior to commencement of construction activities related to any portion of the City Improvements and within five (5) days of the FCSE's request thereafter.

22. Notices and Deliveries. Any notices or other communications or deliveries which may be required or desired to be given under the terms of this Agreement shall be in writing and

shall be deemed to have been duly given if personally delivered, or if sent by email to the email addresses set forth below, or if sent by overnight courier (e.g., Federal Express), or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

If to the City:

City of Orlando
Attention: Director/Families, Parks and Recreation
595 N. Primrose Drive
Orlando, FL 32803
Email: _____

With copy to:

City of Orlando
Attention: Public Works Attorney
400 South Orange Ave.
Orlando, FL 32801
Email: _____

If to FCSE :

Florida Citrus Sports Events, Inc.
Attention: Mr. Steve Hogan, CEO
One Citrus Bowl Place
Orlando, FL 32805-2459
Email: shogan@fesports.com

With copy to:

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Attention: Richard J. Fildes, Esquire
215 N. Eola Drive
Orlando, FL 3280
Email: rich.fildes@lowndes-law.com

Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the second business day following the day such notice is deposited in the United States mail in the manner specified above. Any notice delivered by overnight courier shall be deemed to have been duly given, delivered or made on the first business day following the day such notice is delivered to the overnight courier as established by the receipted bill of lading. Any notice which is given, delivered or made by personal delivery or email shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying said change of address.

23. Records. FCSE will maintain books, records, and other evidence relating to the FCSE Improvements in accordance with generally accepted accounting principles, procedures and practices, which documents the FCSE Improvements in a manner that fulfills the requirements of this Agreement. The City will maintain books, records, and other evidence relating to the City Improvements in accordance with generally accepted accounting principles, procedures and practices, which documents the City Improvements in a manner that fulfills the requirements of this Agreement.

24. Audit. FCSE expressly acknowledges that the City shall have the right to audit FCSE's books and records to verify costs incurred by FCSE for the FCSE Improvements which shall extend for a period of three (3) years after the term of this Agreement. The City shall, upon reasonable notice, have full access during normal business hours for inspection, review and audit of such books and records.

25. Default. Failure by any party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

26. Termination. This Agreement may be terminated upon default as described in Paragraph 25, above or by written consent of the parties. In any event, this Agreement automatically terminates three (3) years from the Effective Date unless extended by written consent of the parties. Upon termination, any improvements installed or constructed within the Park under this Agreement will be deemed property of the City.

27. Litigation and Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

28. Binding Effect/No Assignment. The terms and conditions of this Agreement will run with the Park property and be binding upon and inure to the benefit of the parties hereto and

their respective successors and assigns. This Agreement may not be assigned by either party without the written consent of the other party.

29. No Waiver of Regulatory Authority. FCSE acknowledges that the City is the entity responsible for issuing permits for construction activities under this Agreement and further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable laws, rules or regulations.

30. Amendment. This Agreement may not be modified or amended except by an instrument in writing signed by each of the parties.

31. Controlling Laws.

- a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted.
- b. The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.
- c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.

32. Miscellaneous.

- a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
- b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

33. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all documents executed

in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

34. Further Assurances. In addition to the acts recited in this Agreement, the Parties agree to perform or cause to be performed any and all further acts as may be reasonably necessary to complete the transactions contemplated hereby, including the execution and/or recordation of further instruments, provided, however, such acts shall not expand the liabilities or obligations, nor diminish the rights of the Parties, as contemplated herein.

35. Force Majeure. The Parties shall not be liable to each other for damages, costs, attorneys' or paralegal fees (including attorneys' or paralegal fees on appeal) for breach of contract, or otherwise for failure or inability to perform occasioned by any cause beyond the control and without the fault of the Parties.

36. Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating a partnership or joint venture between the City and FCSE. FCSE shall not create any obligation or responsibility on behalf of the City or bind the City in any manner. The City shall not create any obligation or responsibility on behalf of FCSE or bind FCSE in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.

37. Public Records Law. City is a public agency subject to Chapter 119, Florida Statutes. FCSE agrees to comply with Florida's Public Records Law with respect to its actions under this Agreement. Specifically, FCSE will:

A. Keep and maintain public records relating to the FCSE Improvements as required by City under this Agreement.

B. Upon request from City's custodian of public records, provide City with a copy of the requested records relating to the FCSE Improvements or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract.

D. Upon completion of the contract, FCSE agrees to transfer at no cost to City all public records relating to the FCSE Improvements in possession of FCSE or to keep and maintain public records as required by City.

38. Effective Date. This Agreement shall become effective on the date of full and complete execution by all parties hereto.

ATTEST:

City of Orlando, Florida, a municipal corporation organized and existing under the laws of the State of Florida

By: _____
Denise Aldridge, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ____ day of _____, 2018 by _____, Mayor Pro Tem and _____, City Clerk, who is personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

Signed in the presence of Two Witnesses:

Florida Citrus Sports Events, Inc., a Florida non-profit corporation (Corporate Seal)

Signature _____

Print Name: _____

By: _____

Signature _____

Printed Name: _____

Print Name: _____

Title: _____

NOTARY NEXT PAGE

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____, as _____, of Florida Citrus Sports Events, Inc.,
a FL non-profit corporation. He/she ☐ is personally known to me or ☐ who has produced
_____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2018.

Notary Public

Print Name: _____

My _____ commission expires:

Exhibit “A”

Exhibit “B”

Exhibit "C"

DONOR AGREEMENT

THIS DONOR AGREEMENT, "Agreement," entered into this ____ day of _____, 2018, between **CITY OF ORLANDO**, a municipal corporation duly enacted under the laws of the State of Florida, whose address is 400 S. Orange Avenue, Orlando, FL, 32802, "**City**", **FLORIDA CITRUS SPORTS EVENTS, INC.**, a Florida not for profit corporation, whose address is One Citrus Bowl Place, Orlando, FL, 32805, "**FCSE**", and _____, a _____, whose address is _____, hereinafter referred to as "**Donor**".

WHEREAS, the City owns and operates Lake Lorna Doone Park, as a City park, located at 1519 W. Church Street, and generally shown in **Exhibit "A"**, attached hereto and made a part hereof by reference, "**Park**"; and

WHEREAS, FCSE is an organization that programs sports events at Camping World Stadium and is dedicated to increasing community spirit and pride, promoting tourism, stimulating economic development and benefiting charities, educational institutions and quality of life in Central Florida; and

WHEREAS, City and FCSE entered into an Agreement for Installation of Park Improvements at Lake Lorna Doone, "**Park Agreement**," on _____; and

WHEREAS, Pursuant to the Park Agreement, City and FCSE have agreed to construct improvements to the Park consisting primarily of the following elements: a pathway around the lake, basketball courts, a splash pad, a new playground, a community garden, a pavilion, a fountain, and a Church Street overlook and other mutually agreed upon improvements; and

WHEREAS, Donor has agreed to donate \$_____, "**Donation**," towards the cost of designing, purchasing, constructing, and installing the following element: _____, ("**Sponsored Element**"); and

WHEREAS, pursuant to the terms of the Park Agreement, donors, those who fund all or substantially all of the cost of the design, construction, purchase and installation of a specified park improvement are entitled to a donor recognition feature designating the improvement in the name of the donor ("**Donor Recognition**"); and

WHEREAS, the parties desire to memorialize their Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein described, the sufficiency of which is acknowledged by the parties hereto, the parties agree as follows:



1. Recitals. The above recitals are true and correct and incorporated into the substantive body of this Agreement.

2. Donation. The Donor agrees to make the Donation to FCSE within 90 days of the Effective Date of this Agreement if paid in lump sum or within no more than five (5) years if structured over monthly or annual installments. City and FCSE agree that the Donation will be utilized to fund all or most of the cost of design, purchase, construction and installation of the Sponsored Element. Donor acknowledges that a default in payment of the Donation or any part of it shall result in loss of the Donor Recognition described herein.

3. Donor Recognition. In consideration for the Donation, FCSE and the City agree to design, purchase, construct and install the Donor Recognition in the manner, appearance and location shown in **Exhibit "B"**, attached hereto and made a part hereof by reference. As agreed to between the parties and described in **Exhibit "B"**, the Donor Recognition may consist of one or more of the following: naming the Sponsored Element after the Donor, applying the Donor's name to wayfinding signs located in the Park, and installing Donor signage adjacent to the Sponsored Element. The City and FCSE agree that the Donor Recognition will remain in place for fifteen (15) years or the useful life of the Sponsored Element, whichever is greater, "Term." The City owns the Donor Recognition and is responsible for maintenance of same during the Term, which includes restoration if damaged or vandalized and for removal of the Donor Recognition upon expiration of the Term. The Donor Recognition will be constructed and installed prior to or contemporaneously with completion of the improvements to the Park.

4. Termination. This Agreement automatically terminates upon expiration of the Term.

5. Effective Date. This Agreement shall become effective on the date of full and complete execution by all parties hereto.

City of Orlando, Florida, a municipal corporation organized and existing under the laws of the State of Florida

By: _____
Director, Families, Parks and Recreation
Department

Date: _____

Continues Next Page

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ____ day of _____, 2018
by _____, the Director, Families, Parks and Recreation Department who is
personally known to me.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

Florida Citrus Sports Events, Inc., a Florida
non-profit corporation (Corporate Seal)

By: _____

Printed Name: _____

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____, as _____, of Florida Citrus Sports Events, Inc.,
a FL non-profit corporation. He/she ☐ is personally known to me or ☐ who has produced
_____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2018.

Notary Public
Print Name: _____
My commission expires _____

Signatures Continue Next Page

DONOR:

By: _____
Signature

Print Name: _____

Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____, as Donor. He/she ☐ is personally known to me or ☐ who has produced
_____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2018.

Notary Public
Print Name: _____
My commission expires: _____

EXHIBIT “A”

EXHIBIT “B”