

## VENUE IMPROVEMENT AGREEMENT

This Venue Improvement Agreement (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and among the **CITY OF MADISON, ALABAMA**, an Alabama municipal corporation (the “City”), and **BALLCORPS, LLC**, an Arizona limited liability company authorized to do business in the State of Alabama (“BallCorps”) (BallCorps and the City are sometimes herein referred to collectively as the “Parties,” or singularly each as a “Party”).

### RECITALS

A. BallCorps and the City are parties to that certain Amended and Restated Venue License, Lease and Management Agreement dated \_\_\_\_\_, 2024, for the baseball stadium and venue commonly known as Toyota Field in Madison, Alabama (the “Amended Venue Agreement”).

B. Pursuant to the terms and conditions of the Amended Venue Agreement, the Parties have agreed that the City shall fund and cause to be constructed certain improvements to the Venue, as defined in the Amended Venue Agreement.

C. Any terms not defined herein shall have the meaning set forth in the Amended Venue Agreement.

**NOW, THEREFORE**, in consideration of the Parties entering into the Amended Venue Agreement, and the mutual promises contained herein and therein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BallCorps and the City agree as follows:

### ARTICLE I RECITALS AND DEFINITIONS

Section 1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

Section 1.02 Definitions. Certain terms used herein are defined in this Section 1.02; other terms are defined within the text of this Agreement or in the Amended Venue Agreement.

- (a) “Agreement” shall mean this Venue Improvement Agreement.
- (b) “City” shall mean the City of Madison, Alabama.
- (c) “Effective Date” shall mean the date listed in the introduction of this Agreement.
- (d) “Permitted Delay” shall have the meaning ascribed to it in Section 5.04.
- (e) “Venue Improvements Project” shall mean the project described and depicted on Exhibit A attached hereto.

- (f) “Venue Improvements Real Estate” shall mean the real property where the Venue Improvements Project shall be located, as legally described on Exhibit B hereto.

## **ARTICLE II MUTUAL ASSISTANCE**

Section 2.01 Mutual Assistance. The Parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions, and certifications (and, in the case of the City, the adoption of such ordinances and resolutions by the City), as may be necessary or appropriate, from time to time, to carry out the terms, provisions, and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions, and intent.

## **ARTICLE III VENUE IMPROVEMENTS DEVELOPMENT AND CONSTRUCTION AGREEMENTS**

Section 3.01 Venue Improvements. Subject to the satisfaction of all terms and conditions contained herein, the City shall develop, finance, construct, equip, and own the Venue Improvements as part of the Venue, as provided in this Agreement. The Venue Improvements, include the NLFB and the Parking Improvements, as shown on Exhibit A attached to this Agreement. Venue Equipment is defined in Exhibit XV(B) to the Amended Venue Agreement.

Section 3.02 Approvals. City shall, at City’s cost, obtain all zoning and development plan approvals and variances necessary to begin construction of the Venue Improvements Project, including, but not limited to, the granting of any necessary utility easements or public rights of way and the approval of any necessary encroachments upon public rights of way. City shall, at City’s cost, obtain all building permits necessary to construct the Venue Improvements Project in accordance with this Agreement. The City agrees to oversee the process of obtaining all approvals and agreements for the Venue Improvements Project before all necessary public bodies and in the preparation of such petitions and applications as are necessary for the approvals and permits to construct the Venue Improvements Project.

Section 3.03 Limitations. Nothing in this Agreement shall be construed in any way to obligate City or any other public agency to provide any public funding or other financial support beyond the commitments set forth in Article IV of this Agreement.

## **ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVES**

Section 4.01 Economic Development General Obligation Bonds. The City plans to finance the construction of the Venue Improvements and install the Venue Equipment with the proceeds of cash balances as well as General Obligation Stadium Improvement Warrants (Federally Taxable), Series 2025. The City has established a maximum project budget of [thirty million dollars (\$30,000,000)]<sup>1</sup> for the Venue Improvements, inclusive of financing costs.

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<sup>1</sup> NTD: Need to discuss cost estimate/cap.

Section 4.02 Conditions to Incentives. The incentives described in this Article IV are subject to the satisfaction of the following conditions:

- (a) City has delivered to BallCorps preliminary plans and designs for the development of the Venue Improvements Project (“Preliminary Plans”), and BallCorps has approved those Preliminary Plans. City agrees that any further approvals shall not be unreasonably withheld, conditioned, or delayed.
- (b) In accordance with the Project Timeline, defined below, the City shall provide final construction plans and specifications for the construction of the Venue Improvements Project (“Construction Plans”) to BallCorps for its review and approval, which approval BallCorps agrees shall not be unreasonably withheld, conditioned, or delayed;
- (c) City has received and/or will diligently pursue all necessary zoning approvals, development plan approvals, improvement location permits, and building permits to allow the City to construct the Venue Improvements Project in accordance with the Preliminary Plans;
- (d) City will use its best efforts to obtain all the required public approvals necessary to fund the Venue Improvements Project, including all public hearings and approvals necessary to issue the General Obligation Stadium Improvement Warrants (Federally Taxable), Series 2025, described herein;
- (e) City is prepared to close on all sources of equity, state, and federal project incentives and other debt financing sufficient to complete construction of the Venue Improvements Project; and
- (f) The City and BallCorps agree to work together in good faith to design, fund, and construct the Venue Improvements Project in accordance with the timeline set forth on Exhibit C attached hereto (the “Project Timeline”). BallCorps acknowledges that City bid and award timeframes are subject to adjustment and extension for reasons including bid law requirements, bidder or BallCorps requests for clarification on the plans and specifications for the project, any necessary addenda, and completion of financing documents. City agrees to inform BallCorps as soon as reasonably possible if any of the above circumstances arise and if it intends to grant an extension of time to contractors during the bid process.

## **ARTICLE V DEVELOPMENT TERMS**

Section 5.01 Delivery and Approval of Construction Plans. In accordance with the Project Timeline, City shall prepare the Construction Plans for the Venue Improvements Project which are consistent with the Preliminary Plans . BallCorps shall review the Construction Plans and provide its comments, questions, or concerns within five (5) days of City’s delivery. City shall respond to BallCorps’ comments on the Construction Plans prior to the date that it releases the bid package to qualified contractors. Neither Party’s approval of the Construction Plans shall be unreasonably withheld, conditioned or delayed, provided the Construction Plans are consistent

with (a) the description of the Venue Improvements Project attached hereto as Exhibit A; (b) the Preliminary Plans; and, (c) the terms and conditions of this Agreement.

Section 5.02 Venue Improvements Project Construction. City shall diligently pursue all applicable legal and/or regulatory permits, licenses, or approvals as are legally required to commence construction of the Venue Improvements Project from any federal, state, or local commission or authority having jurisdiction over the Venue Improvements Project from and after the Effective Date. City agrees to award a bid for construction of the Venue Improvements Project in accordance with the timeline established in the Project Timeline.

Section 5.03 Legal Compliance and Completion. City acknowledges and agrees that compliance with all applicable laws, regulations, codes, and ordinances with respect to the development, construction, and operation of the Venue Improvements Project shall be the sole responsibility of City. City agrees to complete, in all material respects, construction of the Venue Improvements Project as soon as reasonably possible after the date City awards a contract for construction of the Venue Improvements Project, subject to Permitted Delays provided for in Section 5.04 hereof.

Section 5.04 Permitted Delays. Whenever performance is required of any Party, such Party shall act in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, pandemic, or damage to work in progress by reason of fire or other casualty, or similar cause beyond the reasonable control of a Party (other than financial reasons), including actions or approvals required from public or other governmental bodies, then the time for performance as herein specified shall be appropriately and automatically extended by the time of the delay actually caused by such circumstances (“Permitted Delays”, and in the singular form, each a “Permitted Delay”). If (i) there should arise any Permitted Delay for which City is entitled to delay its performance under this Agreement, and (ii) City anticipates that the Permitted Delay will cause a delay in its performance under this Agreement, then City shall provide written notice to BallCorps of the nature and the anticipated length of such delay.

## **ARTICLE VI AUTHORITY**

Section 6.01 Actions. Each of the Parties hereto represents and warrants that it has taken or will use good faith efforts to take (subject to the City’s performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable each to execute this Agreement and to carry out fully and perform the terms, covenants, duties, and obligations on its part as provided by the terms and provisions hereof.

Section 6.02 Powers. Subject to the conditions described herein and subject to such procedures as may be required by law, each Party represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this Agreement, including, but not limited to, the right, power and authority, subject to such procedures as may be required by law, to carry out the terms and conditions of this Agreement.

**ARTICLE VII  
GENERAL PROVISIONS**

Section 7.01 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties and by the execution of said amendment by the Parties or their successors in interest.

Section 7.02 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions between the Parties hereto relative to the subject matter hereof and is a full integration of the agreement of the Parties. In the event either Party elects to terminate this Agreement as permitted herein, City and City acknowledge and agree that they shall in all events be responsible for their own costs, expenses and fees incurred in fulfilling their obligations pursuant to this Agreement and, upon such termination, they shall have no further rights or obligations pursuant to this Agreement.

Section 7.03 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 7.04 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Alabama.

Section 7.05 Notices. Any notice, consent or waiver required or permitted to be given or served by either Party to this Agreement shall be in writing and either (1) delivered personally to the other Party, (2) mailed by certified or registered mail, return receipt requested, or (3) sent via nationally recognized overnight courier addressed as follows, and shall be deemed given when personally delivered (or upon refusal to accept delivery), or the third (3<sup>rd</sup>) day after deposit in the mail, or the first (1<sup>st</sup>) day after sending by overnight courier.

To BallCorps :           BallCorps, LLC  
                                  Attn: Mark Holland  
                                  c/o Austerra Wealth Management LLC  
                                  5910 N. Central Expy., Suite 1875  
                                  Dallas, TX 75206  
                                  Telephone: (214) 810-0250  
                                  Email: mark@austerra.com

With a copy to:           Faegre Drinker Biddle & Reath LLP  
                                  Attn: Timothy J. Haffner  
                                  110 W. Berry Street, Suite 2400  
                                  Fort Wayne, IN 46802  
                                  Telephone: 260-460-1616  
                                  Email: timothy.haffner@faegredrinker.com

To the City: City of Madison  
Attn: Office of the Mayor  
100 Hughes Rd.  
Madison, AL 35758  
Telephone: 256-772-5603  
Email: mayors.office@madisonal.gov

With a copy to: City Attorney's Office  
Attn: Office of City Attorney  
100 Hughes Rd.  
Madison, AL 35758  
Telephone: 256-772-5603  
Email: megan.zingarelli@madisonal.gov

Either Party may, from time to time, change its notice address by notice to the other in accordance with the provisions of this Section.

Section 7.06 Counterparts. Facsimile or emailed signatures appearing hereon shall be deemed an original and this Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

Section 7.07 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all Parties hereto have executed this Agreement and the City has approved or ratified this Agreement at the appropriate public meeting(s).

*[Remainder intentionally blank. Signature pages follow.]*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**THE CITY OF MADISON, ALABAMA,**  
an Alabama municipal corporation

By: \_\_\_\_\_  
Paul Finley, Mayor

Attest: \_\_\_\_\_  
Lisa D. Thomas  
City Clerk-Treasurer

**“City”**

*[Signature Page for City]*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**BALLCORPS, LLC,**  
an Arizona limited liability company

By: \_\_\_\_\_  
Mark Holland  
CEO and President

**“BallCorps”**



## **LIST OF EXHIBITS**

<u>Exhibit</u>	<u>Description</u>
A	Description of Venue Improvements Project
B	Legal Description of Venue Improvements Real Estate
C	Project Timeline

## EXHIBIT A

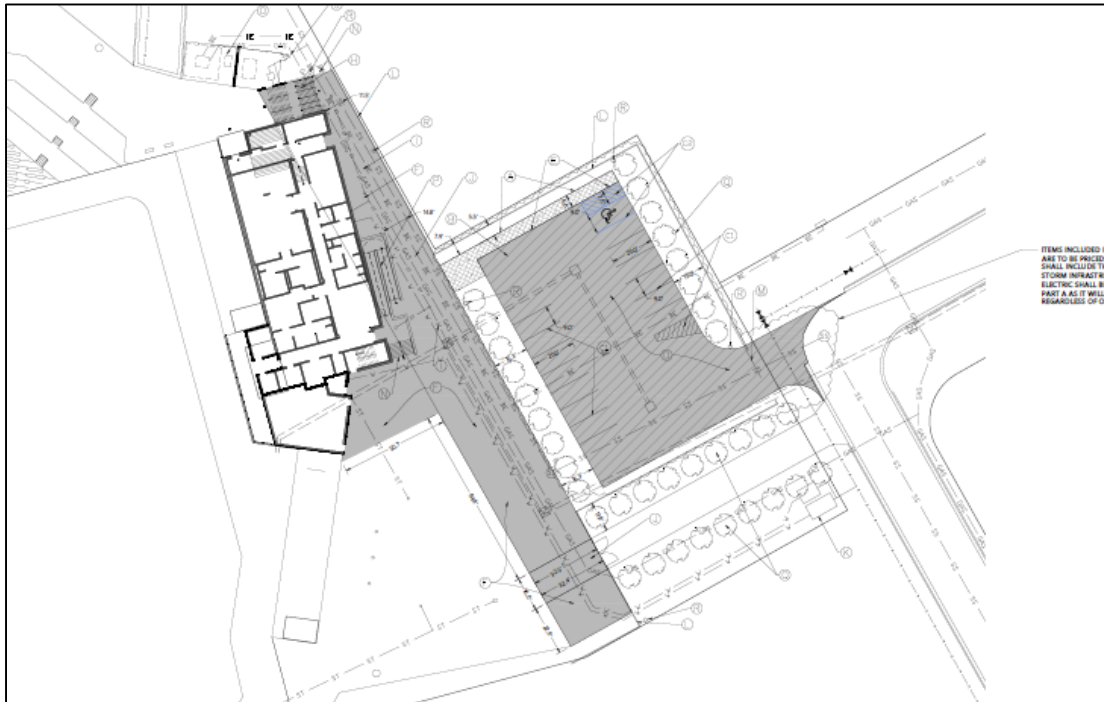
### DESCRIPTION OF VENUE IMPROVEMENTS PROJECT

#### General Description

The project shall be a four-story building located along the outfield line adjacent to third base foul pole and visitor's bullpen. The building will provide approximately 8,200 gross square feet(gsf) at the Field Level, Levels 3 and 4, with 9,000 gsf at Level 2(Concourse Level) for an approximate building size 33,600 gsf. The majority of Level 4 will be open air and not conditioned.

#### Program

The program will include spaces typically expected to support the needs of a visitor's locker room outlined in size and furnishings defined by the current PDL Operating Guidelines (Version 12- August 2024) provided to the Architect by the Team, as shown in the design development documents, and as noted to be revised during a design development phase review by MLB. Level 2 will include a large group space, Level 3-Fan Suites with balconies and Level 4, a large covered open air group space and tiered exterior seating. Support spaces including a kitchen, toilets, storage areas, catering support and mechanical spaces will be included across all levels.



**EXHIBIT B**

**LEGAL DESCRIPTION OF VENUE IMPROVEMENTS REAL ESTATE**

**LEGAL DESCRIPTION OF BUILDING FOOTPRINT**

ALL THAT PART OF TRACT F OF TOWN MADISON PHASE 3, A RESUBDIVISION OF TRACT C OF TOWN MADISON PHASE 2, A RESUBDIVISION OF TRACT C OF TOWN MADISON PHASE 1, AS SHOWN BY THE MAP OR PLAT OF SAID SUBDIVISION RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA IN DOCUMENT NUMBER 2018-00075279, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT F, SAID POINT BEING LOCATED ON THE WEST RIGHT-OF-WAY OF STADIUM WAY, THENCE FROM THE POINT OF BEGINNING SOUTH 60 DEGREES 39 MINUTES 21 SECONDS WEST, AND ALONG THE SOUTH BOUNDARY OF SAID TRACT F, 138.31 FEET TO A POINT; THENCE CONTINUE ALONG THE SAID SOUTH BOUNDARY, SOUTH 74 DEGREES 59 MINUTES 50 SECONDS WEST, 115.62 FEET TO A POINT; THENCE LEAVING THE SAID SOUTH BOUNDARY, NORTH 69 DEGREES 49 MINUTES 06 SECONDS WEST, 27.19 FEET TO A POINT; THENCE NORTH 14 DEGREES 47 MINUTES 46 SECONDS WEST, 30.84 FEET TO A POINT; THENCE SOUTH 81 DEGREES 38 MINUTES 16 SECONDS EAST, 20.61 FEET TO A POINT; THENCE NORTH 07 DEGREES 59 MINUTES 18 SECONDS EAST, 88.16 FEET TO A POINT; THENCE NORTH 82 DEGREES 33 MINUTES 28 SECONDS WEST, 41.68 FEET TO A POINT; THENCE NORTH 14 DEGREES 58 MINUTES 55 SECONDS WEST, 138.75 FEET TO A POINT; THENCE NORTH 73 DEGREES 56 MINUTES 29 SECONDS EAST, 20.03 FEET TO A POINT; THENCE NORTH 15 DEGREES 21 MINUTES 48 SECONDS WEST, 17.35 FEET TO A POINT; THENCE NORTH 74 DEGREES 44 MINUTES 31 SECONDS EAST, 60.58 FEET TO A POINT ON THE EAST BOUNDARY OF SAID TRACT F; THENCE SOUTH 29 DEGREES 20 MINUTES 29 SECONDS EAST AND ALONG THE SAID EAST BOUNDARY, 95.25 FEET TO A POINT; THENCE CONTINUE SOUTH 29 DEGREES 20 MINUTES 29 SECONDS EAST, 138.28 FEET TO A POINT; THENCE NORTH 60 DEGREES 39 MINUTES 31 SECONDS EAST, 107.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF STADIUM WAY; THENCE SOUTH 29 DEGREES 20 MINUTES 29 SECONDS EAST AND ALONG THE SAID WEST RIGHT-OF-WAY, 60.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.89 ACRES, MORE OR LESS.

**LEGAL DESCRIPTION OF PARKING AREA**

TRACT Q OF CERTIFIED PLAT OF TOWN MADISON PHASE 10, A RESUBDIVISION OF TRACTS P, Q AND COMMON AREA "B", TOWN MADISON, PHASE 5, A RESUBDIVISION OF TRACT I, TOWN MADISON PHASE 4, A RESUBDIVISION OF TRACT I, TOWN MADISON, PHASE 3, A RESUBDIVISION OF TRACT C, A RESUBDIVISION OF TRACT C, TOWN MADISON, PHASE 2, A RESUBDIVISION OF TRACT C, TOWN MADISON, PHASE 1 AND TRACTS S, TOWN MADISON, PHASE 6, A RESUBDIVISION OF TRACT I, TOWN MADISON, PHASE 5, A RESUBDIVISION OF

TRACT I, TOWN MADISON PHASE 4, A RESUBDIVISION OF TRACT I, TOWN MADISON, PHASE 3, A RESUBDIVISION OF TRACT C, TOWN MADISON, PHASE 2, A RESUBDIVISION OF TRACT C, TOWN MADISON, PHASE 1 RECORD AT PLAT BOOK 2022, PAGE 101 IN THE OFFICE OF THE JUDGE OF PROBATE IN MADISON COUNTY, ALABAMA.

**EXHIBIT C**

**PROJECT TIMELINE**

Date	Item	Notes
2024		
Dec 18	Notice of Early Release Bid Package (ERP) for Demolition and Excavation published and ERP package released for bidding.	
2025		
Week of Jan. 20	Open Bids for ERP.	
Jan. 29	Notice of Pre-Qualification and Bid Process for construction published.	
Feb. 10	City Council vote to award bid for ERP (Funding Source Fund 38 or Venue Improvements Fund).	
Feb. 19	Pre-Qualifications for construction of the project due from interested contractors.	
March 3	Receive Construction Drawings from consultant.	
March 12	Construction bid package released to qualified bidders	This could occur as late as March 17 <sup>th</sup> but prefer to give bidders more time.
April 9	Open bids for construction.	
April 28	City Council vote to award bid for construction & to authorize financing documents.	
2026		
March 20	Completion of Visitor Locker Room and Clubhouse	
December 31	Final Completion of Remainder of Building	