

# **Request for Proposal**

to provide Premium Food and Beverage, Catering, and Concession Services for Fayetteville Baseball and Entertainment Stadium operated by Fayetteville Baseball Club and Houston Astros Baseball Club.

RFP Date: January 12, 2018

Qualifications and Indication of Interest Date: January 19, 2018

Proposal Due Date: February 2, 2018

CONFIDENTIALITY NOTICE

THIS DOCUMENT IS CONFIDENTIAL AND NO DUPLICATION IS PERMITTED WITHOUT THE CONSENT OF FAYETTEVILLE BASEBALL CLUB AND THE HOUSTON ASTROS.

As a reminder, the information provided throughout this process is to be used strictly for evaluation purposes and is subject to the mutually accepted NDA.

REFERENCE TO DEFINITIONS

Defined terms and phrases used in this RFP are set forth in Appendix 1.

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## I. PROJECT OVERVIEW

- Fayetteville Baseball Club and the Houston Astros (henceforth referred to as “Team”) will lease a new sport and entertainment stadium (henceforth referred to as “Stadium”) built by the City of Fayetteville, North Carolina located in downtown Fayetteville with an approximate capacity of 5,000 seats for use during all MiLB home games played by the Team, and for other events such as amateur sports, concerts, civic, community and not-for-profit events, and other events to be determined. The Preliminary Site Plan for the Project is attached hereto as Exhibit A.
- The Agreement will be for the Premium Food and Beverage Sales, Catering Services, and Concession(s) for the Stadium. It might include clubhouse services for the team.
- Merchandise Services for the sale of Merchandise and other non-consumables are not anticipated for this RFP.
- The period between the date of the Agreement and the opening of the Stadium will be considered pre-opening and the Agreement term will not begin until the opening date of the Stadium which is scheduled for April 2019.
- The term of the Agreement will be for a period of not more than seven (7) years. Substantial completion of the Stadium is currently scheduled on or around January 1, 2019, but no guaranty is made that the Stadium will be completed by such date. The Agreement will also include options to extend the Agreement, either by mutual agreement or in the sole discretion of the Team.
- Although the Food Service Facilities are being designed for a single operator, the Team also reserves the right to enter into negotiations with one or more Persons that represent the best economic and qualitative returns.
- The Proposer will detail its Design Services and any costs associated therewith which have a financial effect on the Proposer's response to this RFP.
- The current conceptual design plans for the Stadium are available pursuant to the instructions attached to this RFP as Exhibit B. It is the responsibility of the Proposers to ensure that their submitted Proposals reflect the need to provide services for a first-class MiLB stadium, notwithstanding the fact that the programming, design and equipping of the food service areas are not fully developed at this time. The following list summarizes the approximate seating capacity of the Stadium. A more detailed breakdown illustrating the location of each area listed below is included in Exhibit A and B.

### Level Seating

Main Concourse Level	3,328
Club/Suite Level	394 (6 suites, club and party deck)
Concourse Suites	4 suites, 24 per suite = 96
Berm Seating	364
Group Seating Level	406 (six different group areas)
Standing Room Only	259
Total	4,847

- The Financial Proposal options requested in this RFP will set forth the capital investment requested of the Proposer. It is currently contemplated that the Proposer will provide uniforms and all office equipment for the Proposer's operations. Dependent on the proposed Financial Proposal Option outline in this RFP, the Proposer will potentially provide a capital investment related to the purchase of the Licensor Equipment, smallwares, POS system, tools of the trade and Leasehold Improvements.
- The Proposer should include recommendations for the complete POS system, regardless of the party making the investment.
- Services to the Team may be included in the definitive Agreement, at the discretion of the Team. The Proposer shall clearly state that Services to be provided to the Team, and certain specified Persons utilizing the Stadium such as media, employees of Licensor, and the Team, will be at no greater than cost and that no delivery cost or service fees will be charged for such Services.
- In the event the Team seeks to bring major events or other similar national or international events to the Stadium, the Proposer will make such modifications to the Agreement that are required for the Team to obtain such an event.

## **II. PROJECT SCOPE**

- The Team is seeking Proposals from qualified Persons to provide on an exclusive basis the Services as described in this RFP.
- The successful Proposer will be required to enter into a Definitive Agreement for the Services developed by the Team, which shall detail all obligations of the parties, along with the required standards of performance.
- The Proposer, at its own expense, shall be required to clean all Licensor Equipment, other Equipment and Leasehold Improvements, including without limitation, portable carts and kiosks, Smallwares, uniforms, and other tools of the trade required to operate the Food Service Facilities in an efficient manner.
- The Architect and other consultants are responsible for designing, among other things, the Concession Facilities, Food Service Facilities and Premium Food and Beverage Facilities. Once selected, the Proposer shall be required to provide insight during the construction phase with respect to the Concession Facilities. The Team shall make reasonable efforts to incorporate the suggestions made by the Proposer, provided that such changes do not increase costs of the Project. If the requested changes are deemed mandatory by the Proposer and result in increased costs, then the Proposer shall be required to reimburse the Team for any additional costs incurred.
- Before submitting Proposals, each Proposer shall conduct confirmatory due diligence, including but not limited to site visitations, market analysis, analysis of spending patterns for the region, and any other examination that is reasonably necessary to submit an informed Proposal. Any failure to conduct such due diligence shall not relieve the Proposer from any obligations contained in the Proposal.
- All costs associated with developing and presenting Proposals in response to this RFP are the sole obligation of the Proposer, regardless of the outcome of the selection process.

### **III. PROPOSAL PROCESS AND REQUIREMENTS**

#### **A. Proposal Timetable and Pre-Proposal Meeting**

The following timetable has been established by the Team for the issue, response and award of contract for the Services described in this RFP. The Team reserves the right to modify this timetable and will notify each Proposer of any change in the schedule.

RFP Issue Date	January 12, 2018
Qualifications and Indication of Interest Date	January 19, 2018
Follow-up questions	January 26, 2018
Proposal Due Date	February 2, 2018
Select Oral Presentations	February 12-28, 2018
Contract Negotiations	March 1-16, 2018
Contract Execution Date	March 30, 2018
Expected Service Commencement Date	April 2, 2018

**Qualifications and Indication of Interest** - Proposers are expected to deliver a letter of Qualifications and Indication of Interest to provide the Services requested under this Request for Proposals no later than 2:00 pm EST, January 19, 2018 to David Lane at the address set forth in Section C.1. herein. As a part of the letter of Qualifications and Indication of Interest, Proposer shall provide a list of professional sports venue projects (with particular focus on professional baseball/MiLB stadiums) where the Proposer provided or currently provides services similar to the Services set forth in this RFP over the past five (5) years. Please provide information regarding the name, address, contact name, length of service, size of the stadium, number and type of events. Provide a detailed description of the services provided (Catering, Concessions, Premium Food and Beverage Services). In addition, the Proposer shall provide, in completed form, Schedule 1 – "Proposer Background Information", Schedule 3 – "Acknowledgement and Attestation Form" and Schedule 4 – "Confidentiality Agreement."

**Addendums** - Addendums will be issued promptly following the issuance of this RFP for the following Sections of and Exhibits to this RFP: Section IV – "Summary of the Facilities within the Stadium" Section V.C. – "Insurance Requirements," Exhibit B – "Conceptual Design – Facilities Program for the Project," Exhibit C – "Stadium Seating Capacity," and Exhibit E – "Facility Description By Area."

**Follow-up Questions** - No pre-proposal meeting will be held. If interest warrants, a conference call among representatives will be organized by Fayetteville Baseball Club. In lieu of the pre-proposal meeting, all questions concerning this RFP must be submitted in writing in accordance with Section III.C.2 below.

**B. Review Criteria, Interviews/Presentations and Negotiation**

1. Review Criteria. The Team, at its' sole discretion, shall have the right to determine whether any Proposer has the qualifications to proceed in this process based on the Proposer's letter of Qualifications and Indication of Interest and/or detailed response to this RFP. Several factors shall be considered when making such determination including: (i) demonstrated understanding of and responsiveness to the requirements of this RFP and for the Project; (ii) prior and current experience in operating similarly sized facilities and/or professional sports facilities; (iii) financial qualifications; (iv) qualifications of the Proposer's personnel, general manager and other on-site management team personnel, as well as proposed regional management experience; (v) the Proposer's past experience in opening and operating a newly constructed professional baseball or MiLB facility; and (vi) the Proposer's financial response.

2. Interviews. In addition to submitting a response to this RFP, the Team may interview one or more Proposers regarding the Services. The purpose of the interview will be to meet the proposed Project team, become familiar with key personnel (including the Proposer's Design Services personnel), and understand the Project approach and ability to meet the stated objectives of the Team for the Project. The Proposer should be prepared to discuss with specificity (i) the Proposer's capacity to conduct the Services, and (ii) the Proposer's key personnel and their qualifications.

3. Negotiation. After the interview(s), the Team shall negotiate the Definitive Agreement with any or all Proposers deemed qualified to perform the Premium Food and Beverage Sales, Catering Sales, and Concession Sales. Contract negotiations shall be directed toward: (i) ensuring that the Proposer and the Team have a mutual understanding of the essential requirements involved in providing the required Services; (ii) determining that the Proposer will make available the necessary personnel, and resources to perform the required Services, within the proposed time; and (iii) agreeing upon compensation. A Proposer will be selected based on its ability, in the sole discretion of the Team, to meet the needs of the Project upon completion of the negotiations.

**C. Instructions for Submission of Proposal Response**

1. Submission. Two (2) copies and one (1) electronic copy of the Proposal shall be submitted no later than February 2, 2018, 2:00 p.m. Eastern Time. Responses must be sent to:

David Lane  
General Manager  
Fayetteville Baseball Club  
[dlane@astros.com](mailto:dlane@astros.com)  
910-339-1989  
101 Hay St.  
Suite 1  
Fayetteville, NC, 28301



2. Questions; Inquiries. Questions regarding interpretation of the content of this RFP must be in writing and concurrently directed to: David Lane at the respective addresses above or via email to [dlane@astros.com](mailto:dlane@astros.com). Questions may be submitted up to ten (10) days prior to the deadline for submitting the Proposal. If the questions are deemed necessary to provide clarification, an addendum to this RFP will be issued seven (7) days prior to the Proposal Due Date.

3. Communications. The Proposers considering responding to this RFP are strictly prohibited from communicating with any member of the governing body or staff of the Team in regard to this RFP, respectively, as all questions should be directed to the individuals identified in Section C.1. above.

4. Amendments. This RFP shall be modified only by a written amendment issued by the Team. It is the responsibility of the Proposers to verify that they have received, and incorporated into their responses, all changes to this RFP due to amendments.

5. Cancellation; Rejection. The Team reserves the right to cancel at any time for any reason this solicitation and to reject all qualifications statements. The Team shall not have any liability to any Proposer arising out of such cancellation or rejection. The Team reserves the right to waive variations in the selection process.

6. Proposer Costs. The Team does not and will not assume any responsibility for costs incurred in the preparation, submission, presentation or negotiation of the responses to or agreements arising from this RFP, including negotiation of the Definitive Agreement.

D. Award Criteria

The following is a representative (but not exhaustive) list of key attributes and responses that will be utilized by the Team in developing the short list of qualified Proposers who will proceed to the next level in the Proposal process:

- Financial Response
- Past Experience and Qualifications
- Creativity
- Customer Service Programs and Fan Value
- Business Partnership with Sponsorship, Marketing and Ticket Sales
- Sales and Marketing Programs
- Financial Strength of the Proposer (and/or its consolidated group)
- Proposed Pre-Opening and On-Site Management Team Members

E. Required Submittals

Each Proposal must include the following items without exception.

- Proposer Background Information

- Financial Proposal
- Alternate Proposal
- Operating Pro Forma
- Blackline of Definitive Agreement Setting Forth Contract Exceptions -  
Schedule 2
- Acknowledgement and Attestation Form – Schedule 3
- Confidentiality Agreement – Schedule 4
- Non-Collusion Statement – Schedule 5
- Proposal Bond
- Financial Statements – latest three (3) years of audited financial statements
- Management and Staffing Plan
- Sales and Marketing Plan
- Past Experience
- Quality and Service Enhancements
- Menu Recommendations
- Event Information and Reporting
- Branded Products
- LEED Certified Requirements
- Project Design Participation
- Unique Design Elements
- Pre-Opening Plan
- Training Programs
- Hazard Analysis Critical Control Plan

Each Proposer shall be required to submit at least two financial Proposals outlining a plan for i. percentage of gross revenues ii. Profit and Loss sharing and should include an outline with or without investment capital.

Each Proposer shall submit complete audited financial statements (profit and loss statements, balance sheets including footnotes, and any 10K's or 10Q's, if applicable) for the past three (3) years. Each Proposer must indicate the source of funds that may be used to fund any capital investment proposed, or if financing is required, that the Proposer has an adequate line of credit established for this purpose.

Any other information that the Proposer would like to include for consideration can be placed in a supplemental section after mandatory sections are completed as listed above.

**Other Proposal Requirements**

Each Proposal should include expanded sections detailing the Proposer's approach to:

1. **Management and Staffing Plan**
  - a. **Organization Chart**. Each Proposer shall provide a table of organization, which shall outline the duties and reporting relationships for all full-time

employees required to perform the required Services contained in the Agreement.

- b. Minimum Staffing and Matrix. Each Proposer shall provide a staffing chart for (i) all key Design Services personnel and (ii) all key on-site full-time staff which should include, at a minimum, a general manager, assistant general manager or Concession manager, Catering manager, controller, human resource manager, executive chef and sous chef. The Team shall have the right to approve the individuals designated to fill such staffing, subject to the Team's right to object to such staffing or to the retention of individual staff member.
- i. All Proposals must include resumes and references for all key on-site staff members as described above or for any equivalent position. The Team acknowledges the significant time period between execution and delivery of the Agreement and the dates that key personnel will be located in Fayetteville, North Carolina, and working actively at the Stadium. The Proposer shall provide alternate individuals that will serve in key capacities to account for, among other things, personnel turnover, promotions and gained experience, and similar factors.
  - ii. With respect to a general manager, the Proposer shall set forth its three (3) best candidates from which the Team may choose. This format is suggested due to the length of time to the 2019 anticipated opening of the Stadium. Without the written consent of the Team, each suggested Person for a key personnel position shall not be committed to any other project that is available to the Proposer, and each such Person shall be available to the Team unless such Person freely leaves the employ of the Proposer.
  - iii. Specific personnel requirements are described in detail in Section III.F of the Proposed Definitive Agreement.
  - iv. All Proposals must also include a conceptual staffing matrix for Services operations, which depicts the staffing guidelines (e.g. 1 concession server per 100 seats), and any support and supervision required to provide Services for an anticipated attendance of 5,000 patrons for MiLB games (with possible additional patrons established by SRO areas) and a concert with an anticipated attendance of 10,000. Proposals must also include a conceptual staffing matrix for a Catering Services event, which depicts the staffing requirements and any support and supervision required to provide Services for a private event with 250-1,000 guests. These numbers are merely estimations for reference, and the Team reserves the right to schedule events beyond these parameters.

2. Sales and Marketing Plan.

All Proposals must contain a sample sales and marketing plan to be enacted by the Proposer during the term of the Agreement. The Proposer is encouraged to become an active participant in the sales and marketing process. The sales and marketing plan should clearly outline objectives along with the resources required (personnel and other) and who shall be responsible for any anticipated cost. The sales and marketing plan should also contain a definitive timetable as well as a schedule of expected deliverables.

The Team is highly desirous of working with the Proposer to solicit and grow both event day and non-event day Catering Services as well as working with the Proposer to maximize per capita spending at events. The Proposer should provide examples of where the Proposer has grown Catering Services and driven per capita spending for other accounts.

3. Past Experience.

The Proposer shall provide a list of other clients similar in nature to the Stadium that the Proposer serves or has served in the past five (5) years. The Proposer should provide detailed information regarding the name, address, contact name, length of service, size of the stadium, number and type of events, annual sales, per capita spending and attendance. The Proposal should also provide the services the Proposer provides and other relevant information on the Proposer's financial performance.

4. Quality and Service Enhancements.

All Proposals should contain a description of any qualitative measurements of service and performance deployed at other MiLB and professional baseball venues operated by the Proposer as well as any unique service programs that are currently in place that can be verified by the Team.

5. Menu Recommendations.

Each Proposer is expected to perform the required due diligence and present menus for all areas of the operation that are reflective of the Fayetteville and Cumberland County area marketplace.

At a minimum, the Proposer must submit menus for Concession stands and hawking/in-seat service. For each menu submitted, the documentation must include a description of the product to be sold, including any branding, portion size, and recommended retail price points to be charged during the inaugural Baseball Season, as well as the first year of event operations.

In addition, each Proposer must submit typical menus for the types of service and amenities to be offered to club seat and suite holders for Premium Food and Beverage Operations as well as any other Catering Services programs along with

any branding, portion size, and suggested retail pricing. All Catering prices must include the costs of linen, china and flatware. The Proposer is encouraged to bundle offerings that would offer value pricing to suite holders and other Catering Services patrons.

Lastly, each Proposer must submit a plan for working with local vendors or suppliers to be featured in any menus, concessions, marketing, and promotion in order to create a local feeling and connection with guests of the Stadium.

6. Event Information and Reporting.

The Proposer shall provide samples of event information, recaps, daily and monthly statements and the like to be furnished to the Team during the term of the Agreement.

7. Branded Products.

Describe how Branded Products, particularly locally well-known brands and concepts, will be handled and how they will impact sales and profits. Detail other Stadia where the Proposer uses Branded Products and any unique financial arrangements associated with such Branded Products.

8. Project Design Participation.

Each Proposer shall provide a detailed qualification description of its Design Services capabilities, identify its prior stadium design experience and its qualified design, planning, construction and operations personnel that would be assigned to participate in the design and planning of all Facilities within the Stadium. These personnel will review and comment upon drawings and specifications, and participate in the evaluation of alternative systems, in coordination with the team, the Architect, the construction manager and other relevant consultants to the Project. These Design Services personnel must be described as available on a daily basis to assist, in person or telephonically, in the design and planning. The cost and expense of Design Services provided by Proposer shall be estimated and quantified. Design Services will either be subject to a separate contract entered into between the Proposer and the Team or the Design Services will be incorporated into the "Proposed Definitive Agreement" attached hereto on Appendix 2 upon finalization of terms, both subject to the approval of the Team.

9. Unique Design Elements.

Each Proposer is encouraged to submit creative interior design concepts that could be installed in the Stadium including concept renderings or other information that may reflect a unique approach.

10. Pre-opening Plan.

Each Proposal must contain a pre-opening plan, which shall detail all required tasks and responsibility from the contract award date through the date when the Stadium becomes fully operational. The plan shall include a timeline for design,

planning, construction and operations, the hiring and development of key personnel, as well as outline any plan for the installation of Licensor Equipment, Equipment, and supplies required to be procured by the Team and/or the Proposer under the terms of the Agreement.

**11. Training Programs.**

The Proposer will describe any training programs used to train both full-time and part-time employees at the Stadium. The Proposer shall be required to conduct regularly scheduled training classes for all employees in accordance with a schedule that is approved by the Team and, with respect to Team Stadium Events. Such training shall consist of customer training, alcohol awareness, and specialized position skills training in the Catering Services area including banquet service training, suite attendant service, bartending, and any other specialized service that may be required from time to time.

All training plans must meet the establish requirements as contained in Section 3.2 of the Agreement.

**12. Hazard Analysis Critical Control Plan.**

The Proposer shall describe all approaches to monitoring the quality and integrity of potentially hazardous food items through the implementation of a HACCP plan. This HACCP plan is to be in compliance with what is required by the City of Fayetteville and Cumberland County, North Carolina and will include systems and technologies to control the spread of food borne illnesses.

## IV. SUMMARY OF THE FACILITIES WITHIN THE STADIUM

THE INFORMATION TO BE SET FORTH IN THIS SECTION IV "SUMMARY OF THE FACILITIES WITHIN THE STADIUM AND ON THE PLAZA" WILL BE SUPPLEMENTED BY ADDENDUM.

Area Description	Level	POS Count (Sq. Feet)	Seating Capacity
Commissary/Kitchen (02.12.01/02.14.02)	2 (ground)	2,777 sf	
Club/Suite Kitchen (03.04.05)	3 (club lvl)	588 sf	
Commissary Pantry			
Commissary Pantry	-	-	-
Commissary Pantry	-	-	-
Media Pantry			
Food/Dry Good Storage (02.12.02)	2 (ground)	164 sf	
Concessionaire Office (02.11.03)	2 (ground)	145 sf	
Receiving Office (02.11.04)	2 (ground)	100 sf	
Concessionaire Office Conference Room			
Concessionaire Office Toilets			
Concession Day of Game Uniforms			
Food Service Money Counting Room (02.11.02)	2 (ground)	168 sf	
Food Service Vault	-	-	-
Vendor Commissary (02.11.01)	2 (ground)	140 sf	
Concession Locations 02.26.02	2 (ground)	650 sf (6 POS)	
02.17.01	2 (ground)	895 sf (6 POS)	
02.14.01	2 (ground)	288 sf (6 POS)	
02.08.03	2 (ground)	570 sf (4 POS)	
Club Lounge (03.19.01)	3 (club lvl)	2,875 sf	108
Party Deck (03.22.01)	3 (club lvl)	1,130 sf	150
Bars	2 (ground)	1,052 sf	116
Right Field Bar			
Home Plate Bar (02.14.03)	2 (ground)	1,185 sf	
Luxury Suites	3 (club lvl)	6 suites @ 380 sf each = 2,280 sf	72 (12 per suite)
Press Dining Room	-	-	-
Retail Storage (02.24.04)	2 (ground)	350 sf	
Total POS			
Total Square Footage			

## V. FINANCIAL TERMS AND CONDITIONS

### A. Financial Proposal

After your review of the information, please propose scenarios considering all or parts of the following potential deal points:

- Consider a term length of 5 to 7 years
- Consider a Gross Sales commissions deal structure or P&L deal structure
- Consider proposals with or without investment capital
- Consider a buyout of existing partner invested capital
- Alternative scenarios will be welcomed

Please ensure you submit your terms & conditions for review and address your commitment to technology infrastructure and innovation. We are interested in the data management, reports, KPI's and business intelligence used to drive revenue and decision making for this partnership. This will be critical moving forward.

### Alternate Financial Proposal

Each Proposer may submit one or more alternate financial Proposals. The proposed term may vary and may include, at the discretion of the Proposer, and a Proposer Investment.

### B. Performance Bonds

- a. The Proposer, on or before the execution date of the definitive Agreement shall furnish a performance bond issued by a company acceptable to the Team. Such bond shall be for the sum of One Hundred Thousand Dollars (\$100,000) payable to the Team upon any default of the Proposer. Such bond shall remain in effect for the duration of the definitive Agreement.

### C. Insurance Requirements

- a. During the term of the definitive Agreement and any extensions granted in connection herewith, and subject to any reasonable increases as required by the Team, the Proposer shall maintain public liability, property damage liability, contractual liability, liquor, including dram shop liability, and umbrella liability insurance, combined single limit coverage not less than [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)].
- b. [INSURANCE REQUIREMENTS WILL BE PROVIDED BY ADDENDUM.]
- c. Specific insurance requirements are contained in Section V of the Agreement.
- d. In addition, the following insurance coverage must be maintained:
  - i. Workers Compensation as required by the state of North Carolina
  - ii. Employer's Liability Coverage
  - iii. Comprehensive General Liability Coverage
  - iv. Comprehensive Automotive Liability Coverage
  - v. Personal Property Insurance



vi. Blanket Employee Dishonesty Coverage

- e. All such insurance coverage shall be primary and carried on an "occurrence," as opposed to a "claims made," basis. Certain of the insurance policies shall name the City of Fayetteville, the Team and the Stadium Operations Manager and their respective owners, shareholders, interest holders, officers, directors, managers, employees, agents and other representatives, as additional insureds, as their respective interests may appear. The Proposer must acknowledge and agree that while said policies of insurance may contain deductibles, self-insured retentions and/or retrospective rating endorsements, the coverage afforded to such additional insureds shall be without deductible or self-insured retention.
- f. Within thirty (30) days of the execution of the definitive Agreement, the Proposer shall provide to the Team a certificate of insurance evidencing that the coverage required under the Agreement is in effect. The insurance shall not be cancelled or changed in any material way except upon thirty (30) days prior written notice to the Team. Notwithstanding the foregoing, all insurance policies shall conform to the requirements of the Stadium Use Agreement, as now existing or as amended from time to time.

D. Other Qualifications of Coverage

- a. The insurance companies must be licensed to conduct business in the state of North Carolina.
- b. The insurance companies must have an AM Best Rating of A-IX, or higher.

## VI. OTHER PROPOSAL MATTERS

### A. General Operating Requirements

1. Occupancy and Applicable Law. The Proposer shall agree to occupy and operate all Food Service Facilities and Premium Food and Beverage Facilities, and shall agree to utilize all furniture, fixtures, Licensor Equipment and Equipment in strict compliance with all Applicable Laws and underwriter requirements, including, without limitation, in strict compliance with the liquor control and product offering laws and regulations of the state of North Carolina.
2. Permits and Licenses. The Proposer shall be required to obtain and keep in force all required permits and licenses, including any beverage licenses and health department permits, as applicable.
3. Collect and Remit Taxes. The Proposer shall be required to collect and disburse all taxes required by any federal, state, or municipal authority, including but not limited to and Gross Sales tax, sales and use taxes, personal property taxes, commercial rent tax, or any other tax related to the Facilities.
4. POS Devices. The Proposer shall utilize state of the art, as determined from time to time by the Team, POS devices or other computerized terminals at all locations within the Facilities.
5. Operations – Team Discretion. The Team shall have the right to determine the following:
  - (i) Types of products that are offered for sale by the Proposer
  - (ii) Specific location in which products may be sold
  - (iii) Retail pricing for products offered for sale by the Proposer
  - (iv) Type, size and location of portable stands
  - (v) Specific locations in which alcohol beverages may be sold
  - (vi) Brands, portion size and quality of products offered for sale by the Proposer
  - (vii) Number of employees required to perform game day and other event operations
  - (viii) Uniform design
  - (ix) Approval of subcontractors
  - (x) Placement of advertising within the Facilities
  - (xi) Suppliers and contractors that are used to provide good and Services required under the Agreement
6. License and Permit Transfer. At the conclusion of the term of the Agreement, the Proposer shall be required to transfer to the Team, any license or permit obtained in connection with operations at the Stadium to the extent that such transfer is permitted by law or regulation.

## B. Alcohol Beverages

Alcohol beverages shall be offered for sale by the Proposer to the extent that such sales are permitted by state and local laws and ordinances. All such sales and alcohol beverages offerings shall be in accordance with local laws. Such sales shall be, additionally, subject to rules and regulations that are established or observed by the Team, to the event served, which may include suspension of alcohol beverage service after the conclusion of a specified time period or event, for a duration of time, or for the health, safety and welfare of patrons. Notwithstanding the foregoing, the Parties hereto understand and agree that there will be events at the Stadium, at which alcohol beverages will not be offered as determined by Licensor in its reasonable discretion and Proposer shall not be entitled to any adjustment to the commission rates with respect to these events.

The Proposer shall cause all employees involved with the dispensing and sale of alcohol beverages to be trained in established methods of training. The Proposer shall also be required to perform self-monitoring for compliance with the above directive and shall meet with the Team on a quarterly basis to report and discuss any adverse conditions discovered in connection with such examinations.

All alcohol required licenses and permits shall be held in the name of the Team. If required to operate under the licenses and permits of the Team, the Proposer shall obtain such additional licenses and permits to perform the Services required. During the term of the Agreement, the Team and the Proposer (as applicable) shall keep all required alcohol permits and licenses in full force and effect. Neither party shall take any action that would impair the Team from obtaining and holding such alcohol permits and licenses. The suspension and revocation of any required license or permit to sell or dispense alcohol beverages shall be considered an event of default under the Agreement. At the termination of the Agreement, the Proposer shall surrender all licenses and permits held in connection with the Agreement, and where permitted by law, shall transfer to the Team or a successor proposer all licenses and permits at no cost to the Team, except those costs that may be a direct expense of the transfer.

## C. Accounting and Reporting Procedures

The Proposer shall keep complete and accurate records of all transactions and monies it receives in connection with the operation of the Facilities and shall make available to the Team or their respective agents, the Proposer's books and records for the purpose of auditing any calculations that are used in connection with Gross Sales that are applicable, respectively, to the Team. Such records shall be available to the Team, as applicable, at any time during the term of the Agreement, and for three (3) additional years following the expiration of such term.

The Team shall require the Proposer to provide daily, weekly, monthly, and annual reports in a format approved by the Team. The Team may require different formatting for Team Stadium Events. In addition to the above, a preliminary sales report shall be

due at 12:00 pm on the day following each event and such information will be required to be finalized within seventy-two (72) hours.

The Proposer shall use state-of-the-art POS terminals and other hardware to record daily sales activity within the Facilities, and the use of any particular hardware and software shall be subject to the advance approval of the Team.

The Proposer shall provide, as applicable to the events being reported, the Team with a detailed report of Gross Sales and commission payable by the Proposer for each Accounting Period within fifteen (15) days after the close of the Accounting Period along with any payment due.

The Proposer shall also be required to submit an annual budget of Gross Sales broken down by month and prepared in accordance with the planned schedule for the Team Stadium Events. The annual budget shall be submitted ninety (90) days prior to the start of the agreement year (as defined in the definitive agreement).

Ninety (90) days following the close of any fiscal year, the Proposer shall be required to submit an audited annual statement of Gross Sales and commissions payable to, as applicable, the Team. The audit shall be performed by an independent CPA firm approved by the Team. In the event that the Team, as applicable, is not satisfied with the statement submitted by the Proposer, the Team, as applicable, shall have the right to a special audit. If the results of the special audit show a deficiency in payments by the Proposer to the Team in excess of one half of one-percent ( $1/2$  of 1%) of Gross Sales for the reporting period, the amount owed plus interest (computed from the date of deficiency until fully paid) shall be paid to the Team (with a written allocation for the applicable amount(s) of the payment(s) with respect to the Team Stadium Events) within ten (10) days by the Proposer. In addition to the payment of the deficiency and late fees assessed, the Proposer shall also be responsible for any costs incurred by the Team in connection with the special audit.

The Proposer shall also be required to audit all Equipment and Smallwares including uniforms, on an annual basis and provide the Team with a copy of the audit along with the Proposer's plan to replenish any needed Equipment or Smallwares.

#### D. Equipment Repair, Maintenance and Smallwares

##### 1. Equipment Repair, Maintenance and Cleaning.

The Proposer shall be required to clean all Equipment and Licensor Equipment within the Facilities, and their adjacent areas including, but not limited to, bars, pantries, storage, Concession stands and other kitchens and storage areas. The Team will maintain and repair all Equipment but will rely on Proposer to report any issues with the equipment.

2. Smallwares.

The Proposer shall be required to maintain par levels of Smallwares, which are subject to the advance approval of the Team. Team will assist in creating a list of all tools of the trade.

3. Proposer Negligence.

Any cost of repair or replacement of Licensor Equipment, or any Equipment provided as part of the Proposer's Investment, or any other equipment located within the Facilities, which is a direct result of operator intentional or negligent acts or omissions, is the responsibility of the Proposer.

E. Utilities

The Team shall supply all electric, gas, water, and sewer to the Facilities. The Proposer shall have the sole responsibility to pay all costs and fees for Utility Services which are separately metered and/or which result from the incremental Utility Services utilized by Proposer for electrical Equipment used in the Stadium. The telephone system shall be owned and maintained by the Team. The Proposer shall be responsible for its share of usage and any other charges that are directly related to the Proposer's operation.

The Proposer shall operate the Facilities in an energy efficient mode and shall develop and implement an energy management and conservation plan. Such plan shall be presented to the Team ninety (90) days prior to the commencement of each calendar year. The Team reserves the right to make any required adjustments to the energy management and conservation plan and the Proposer agrees to promptly implement such changes.

F. Affirmative Action

The Proposer shall use best commercial efforts to secure qualified MBE/WBE/DBE firms for participation in the Services to be provided in the Stadium, and further agrees to comply with any other policy or agreement adopted or entered into by the Team and/or any governmental body that prescribes certain participation goals for such firms.

The Proposer, in conjunction with the Team shall undertake best commercial efforts to employ or otherwise engage local charities, youth organizations, and other charitable groups in need to perform certain of the Services required under the Agreement.

The Proposer shall be required, and shall cause any of its subcontractors to comply with all federal, state, and local laws, ordinances, rules and regulations including but not limited to: The Americans with Disabilities Act, and Equal Opportunity/Affirmative Action Policy Statements.

By executing the Agreement, the Proposer agrees to indemnify the Team, and their respective owners, shareholders, interest holders, officers, directors, managers, employees, agents and other representatives, from and against all claims arising out of, or connected with, any failure of the Proposer to comply with the terms of the Agreement and any Applicable Laws.

# **SCHEDULE 1**

## **PROPOSER BACKGROUND INFORMATION**

### Proposer Information

Company Name:  
Business Address:  
City, State, Zip:  
Main Telephone Number:  
Contact Person:  
Direct Phone:  
Email Address:

Please check one of the following and enter the information in the appropriate section.

### Type of Entity

- A.  Individual/Sole Proprietor
- B.  Corporation/LLC
- C.  Partnership
- D.  Other Describe: \_\_\_\_\_

#### A. Individual/Sole Proprietor

Owner's Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Federal Employer ID Number: \_\_\_\_\_  
D.B.A. Trade Name: \_\_\_\_\_  
Owner's Social Security Number: \_\_\_\_\_  
Owner's Date of Birth: \_\_\_\_\_

#### B. Corporation/LLC

\_\_\_\_\_, a corporation/LLC organized under the laws of the state of \_\_\_\_\_  
(Name and State)  
and domiciled at: \_\_\_\_\_ (State of Formation)  
\_\_\_\_\_  
(Address of Home Office)

and authorized to do business in the state of North Carolina.

The Agreement will be signed by: \_\_\_\_\_ (Name of the Authorized Officer(s))

Federal Employer Identification Number: \_\_\_\_\_

Additionally, please furnish a copy of the Operating Agreement or minutes of the Corporation's Board of Directors showing his or her team to act on behalf of the corporation.

**C. Partnership**

Name of Partnership: \_\_\_\_\_  
Federal Employer ID Number: \_\_\_\_\_  
Members/Partners: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(provide a list of all members/partners and share of ownership)

Managing Partner: \_\_\_\_\_

Home Address of Managing Partner:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, a Partnership organized under the laws  
of the state of \_\_\_\_\_ (Partnership Name),  
and domiciled at: \_\_\_\_\_ (State of Formation  
or existence)

\_\_\_\_\_  
\_\_\_\_\_ (Address of Home Office) and  
authorized to do business in the state of North Carolina.

The Agreement will be signed by: \_\_\_\_\_ (Name of  
Partner)

Additionally, please furnish a copy of the partnership agreement evidencing the formation of the partnership and the incumbency of the Person signing on behalf of the partnership.

**D. Other Business Entity**

Owner's Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Federal Employer ID Number: \_\_\_\_\_  
D.B.A. Trade Name: \_\_\_\_\_  
Owner's Social Security Number: \_\_\_\_\_  
Owner's Date of Birth: \_\_\_\_\_

## **SCHEDULE 2**

### **BLACKLINE OF DEFINITIVE AGREEMENT SETTING FORTH CONTRACT EXCEPTIONS**



## **SCHEDULE 3**

### **FAYETTEVILLE STADIUM ACKNOWLEDGEMENT AND ATTESTATION FORM**

(To Be Submitted With Proposal)

In submitting this Proposal for Premium Food and Beverage Operations, Catering Services and Concession Services the undersigned has certified that the Proposer has reviewed the RFP dated \_\_\_\_\_, 2018 and is familiar with the terms and conditions therein and accepts and waives any protest of the terms and conditions imposed under the RFP and all documents identified therein. The Proposer hereby agrees to handle any and all information provided with this RFP and/or from the Team on a confidential basis.

The Proposer understands the Team reserves the right to reject any or all Proposals in accordance with their best respective interests. The Proposer submitting a response does so at its own expense. I hereby certify that the foregoing is true and correct.

Proposer's Name

\_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Note: Use full entity name and attach corporate seal, if any, here. {SEAL}

## **SCHEDULE 4**

### **CONFIDENTIALITY AGREEMENT**

(To Be Submitted With Proposal)

This Confidentiality Agreement (the "Agreement") made and entered to as of the \_\_\_\_\_ day of [\_\_\_\_\_, 2018], by and between the Fayetteville Baseball Club and Houston Astros, (the "Team") and [\_\_\_\_\_] ("Proposer") in connection with the provision of Premium Food and Beverage, Catering and Concession Services for the new Fayetteville Baseball Stadium (the "Stadium Project"). The Team and each of their respective subsidiaries and affiliates are hereafter referred to individually or collectively as "Project Participants".

The Team is considering retention of or has retained the [Proposer] to assist in consulting or working on the Stadium Project. Because the [Proposer] may have access to confidential and proprietary information of the Team as a result of the Stadium Project, the [Proposer] agrees that its access to and/or receipt of the Confidential Information (as hereinafter defined) will be subject to the following terms and conditions:

1. For purposes of this Agreement, "Confidential Information" means any and all information accessed, received, obtained or otherwise learned about the Project Participants as a result of the Stadium Project, and/or any other information whether or not designated as Confidential Information by the Project Participants . Notwithstanding the above, Confidential Information will not include any information that (a) is or becomes public knowledge other than by the [Proposer]'s act or omission or (b) is or becomes available to without obligation of confidence from a source (other than the Project Participants) having the legal right to disclose that information.
2. Without the prior written consent of the Project Participants, which may be given or withheld in their sole and absolute discretion, the [Proposer] will (a) not disclose any Confidential Information to any third party nor give any third party access thereto, and (b) only disclose the Confidential Information to those of its employees or agents who need to know such information for purposes of completing the Project and who are bound by confidentiality obligations no less restrictive than this Agreement. For the avoidance of doubt, any disclosure by the Project Participants of work product received from the [Proposer] shall not be considered a breach of this Agreement.
3. The [Proposer] will use at least the same degree of care to avoid the publication, disclosure, reproduction, or other dissemination of the Confidential Information as employed with respect to its own valuable, proprietary information which it protects from unauthorized publication, disclosure, reproduction or other dissemination and in no event shall the [Proposer] use less than reasonable care.
4. If the [Proposer] receives notice that it may be required or ordered to disclose any Confidential Information in connection with legal proceedings or pursuant to a

subpoena, order or a requirement or an official request issued by a court of competent jurisdiction or by a judicial, administrative, legislative, regulatory or self-regulating authority or body, the [Proposer] shall (a) first give written notice of the intended disclosure to the Project Participants as far in advance of disclosure as is practicable and in any case within a reasonable time prior to the time when disclosure is to be made, (b) consult with the Project Participants on the advisability of taking steps to resist or narrow such request and (c) if disclosure is required or deemed advisable, cooperate with the Project Participants in any attempt made to obtain an order or other reliable assurance that confidential treatment will be accorded to designated portions of the Confidential Information or that the Confidential Information will otherwise be held in the strictest confidence to the fullest extent permitted under the laws, rules or regulations of any other applicable governing body.

5. The [Proposer] acknowledges that the unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury, the precise measure of which may be difficult to ascertain. Accordingly, the [Proposer] agrees that the Project Participants will be entitled to specific performance and injunctive or other equitable relief, without bond, as a remedy for any such breach or threatened breach, in addition to all other rights and remedies to which the Project Participants may have. The [Proposer] will, except to the extent inconsistent with (a) its use in connection with legal proceedings or (b) Applicable Law or official requests, at the election of the Team, as applicable, destroy or return to the Project Participants any tangible copies of the Confidential Information and permanently delete all electronic copies of the Confidential Information in its possession or control, if any, at the earlier of the request of the Project Participants or the completion of the Stadium Project and will certify in writing to the Project Participants that it has completed the foregoing.
6. In the event of any litigation between the Project Participants and the [Proposer] in connection with this Agreement, the unsuccessful party to such litigation will pay to the successful party therein all costs and expenses, including but not limited to actual attorneys' fees incurred therein by such successful party, which costs, expenses and attorneys' fees shall be included as a part of any judgment rendered in such action in addition to any other relief to which the successful party may be entitled.
7. All references to the [Proposer] herein also include any of its officers, directors, employees, attorneys, agents, professional advisors and independent contractors and any person, corporation, partnership or other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the undersigned. This Agreement supersedes all previous agreements, written or oral, relating to the above subject matter, and may be modified only by a written instrument duly executed by the parties hereto. All clauses and covenants contained in this Agreement are severable and in the event any of them is held to be invalid by any court, this Agreement will be interpreted as if such invalid clauses and covenants were not contained herein. The [Proposer] represents and warrants that it has the right and authority to enter into and perform this Agreement. This Agreement may

not be assigned without the Project Participants' prior written consent (in their sole discretion). This Agreement shall be construed in accordance with the internal laws of the state of North Carolian, USA, without regard to its principles of conflicts of laws. None of the provisions of this Agreement can be waived or modified except expressly in writing by the parties hereto.

Dated and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018

TEAM:

Fayetteville Baseball Club & Houston Astros

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

[PROPOSER]:

[LEGAL NAME OF PROPOSER]

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_

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

(if applicable)

**SCHEDULE 5**

**NON-COLLUSION STATEMENT**

(To Be Submitted With Proposal)

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that he or she is the [ Title of Person Signing ] of [ Name of Proposer ] states that all statements made and facts set out in the Proposal for the above Stadium Project are true and correct; and the Proposer (the person, firm, association, or corporation making said Proposal) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with said Proposal or any contract which may result from its acceptance.

Affiant further certifies that Proposer is not financially interested in, or financially affiliated with, any other Proposer for the above Project.

Proposer \_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

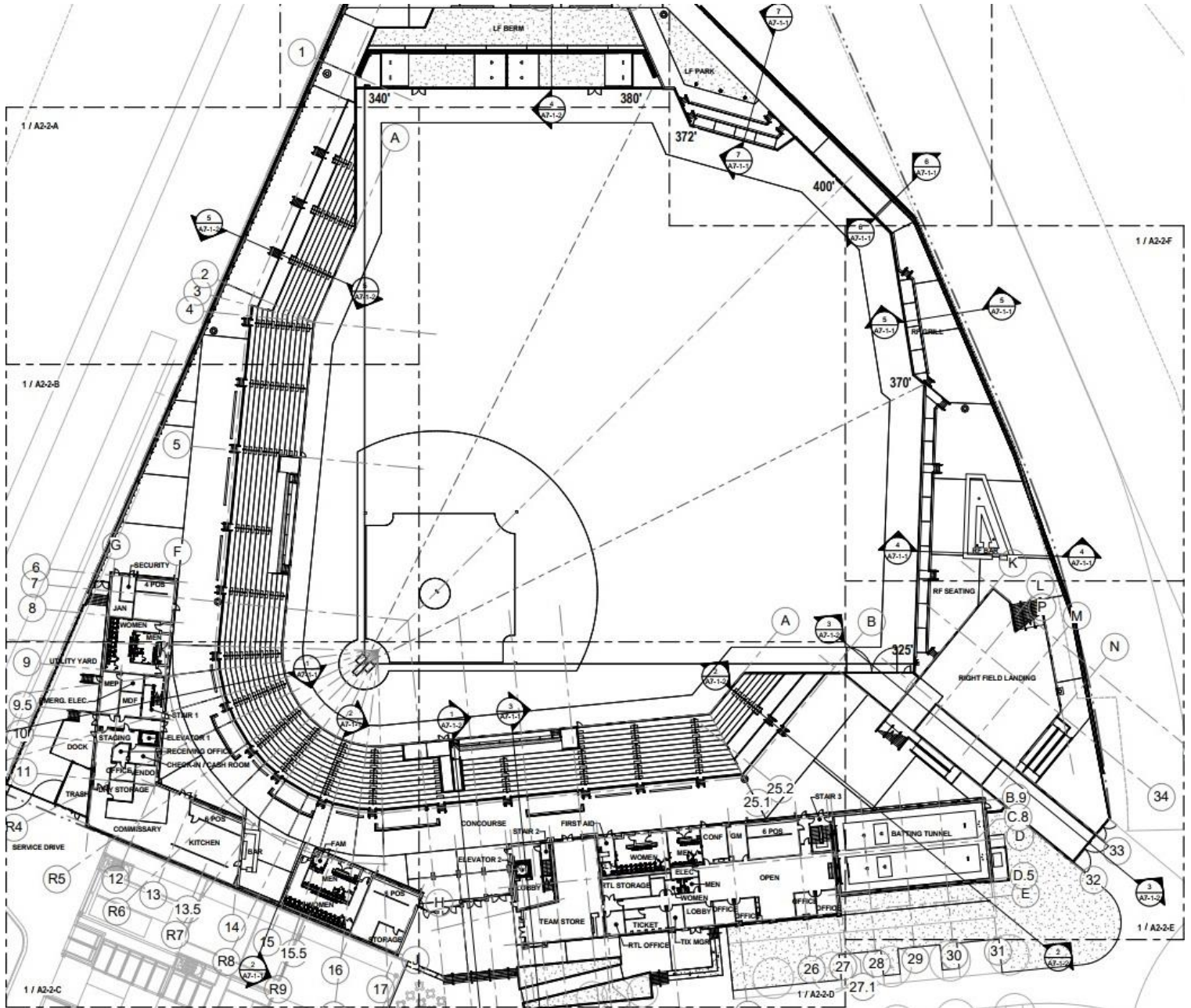
SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_ Notary  
Public

My Commission Expires:

# EXHIBIT A

## PRELIMINARY SITE PLAN



## **EXHIBIT B**

### **CONCEPTUAL DESIGN – FACILITIES PROGRAM FOR THE STADIUM PROJECT**

THE INFORMATION TO BE SET FORTH IN THIS EXHIBIT B "CONCEPTUAL DESIGN – FACILITIES PROGRAM FOR THE PROJECT" WILL BE SUPPLEMENTED BY ADDENDUM.

(INDIVIDUAL COPIES OF THESE DESIGNS ARE ATTACHED IN A SEPARATE FILE.)

#### **LEVEL BY LEVEL PROGRAM**

- Main Commissary behind home plate
- Home plate concessions
- 1<sup>st</sup> base grill
- 3<sup>rd</sup> base concessions
- Right Field Bar
- Beer cooler under RF Bar
- Club/Suite Level
- Portable cart plan

#### **FACILITY REQUIREMENTS**

Venue Seating Bowl  
Patron Amenities and Support  
MiLB and Multipurpose Facilities  
Food Service  
Venue Operations  
Media/Electronic Systems  
Mechanical and Electrical  
Circulation  
Miscellaneous  
Future Expansion

# **APPENDIX 1**

## **DEFINITIONS**

**"Accounting Period"** shall mean the Proposer's monthly fiscal accounting period, which shall be either four (4) or five (5) weeks. There shall be twelve (12) Accounting Periods in any given fiscal year.

**"Agreement"** shall mean the binding agreement between the Team and the Proposer to provide Services at the Stadium in accordance with the terms thereof.

**"Applicable Law"** shall mean any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, treaties, rules, codes, standards, permits, requirements and Orders that (i) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body or arbitrator having jurisdiction over a specified Person (or the properties or assets of such Person), and (ii) are applicable to this Agreement or the performance of the obligations of the Parties under this Agreement.

**"Architect"** shall mean Populous.

**"Baseball Season"** shall mean the period beginning on the date of the first to occur of Team's first regular season or pre-season exhibition baseball home game at the Stadium at which Team acts as the host team for its opponent in any calendar year and ending on the day of Team's last baseball home game at the Stadium (including post-season play, if any) in such calendar year.

**"Branded Product Charges"** shall mean royalties, franchise, and license fees, and other similar charges, the cost of any equipment required to sell a particular product or all rental payments for vendor-supplied or vendor-required equipment that is paid by Proposer with respect to Branded Products.

**"Branded Products"** shall mean any food and beverage offered for sale and sold from anywhere in the Stadium (i) directly by a non-affiliated third party subcontractor of the Proposer under a trade name or trademark that is franchised or licensed by such subcontractor to others, or used directly by the subcontractor, on a regional or national basis, or (ii) directly by the Proposer or a subcontractor under a non-affiliated third party trade name or trademark pursuant to a franchise or license agreement with such non-affiliated third party and for which, in the case of (i) or (ii) above, the Proposer or its subcontractor pays the Licensor or franchisor Branded Products Charges. Subject to the prior approval of the Team, as applicable, all Branded Products to be sold from any Facility, including Concession stands, kiosks and movable locations shall be identified in the appropriate exhibits to the Agreement, which may be amended from time to time.

**"Capital Reserve Fund"** shall mean any amounts paid by the Proposer to the Team with respect to each calendar year equal to a percentage of Gross Sales. Notwithstanding the foregoing, the Proposer shall remit to the Team for the Capital Reserve Fund, an amount no less than the annual amount included in this RFP. The Capital Reserve Fund shall be used for improvements and service enhancements, and other items agreed upon by the Team and the Proposer, to the Facilities.

**"Catering"** shall mean the availability and provision of Refreshments for pre-arranged functions or events whereby a Person receives such goods and services in exchange for payment for the function, where payment for the entire function rest with one individual or company, excluding Concessions and the Premium Food and Beverage Operations. Such functions or events shall include wedding receptions, corporate conferences, events held in tented or party areas, private parties and other such similar functions held on the Stadium Site.

**"Catering Sales"** shall mean Gross Sales from Catering at or in association with Team Events and Team Stadium Events.

**"Catering Services"** shall mean the goods and services arising from, in connection with, or incident to Catering, including planning, coordination, delivery and execution of pre-arranged Catering functions or events.

**"City"** shall mean the city of Fayetteville, North Carolina, a municipality under the laws of the state of North Carolina.

**"Concession(s)"** shall mean food and beverages that are offered for sale from either permanent or portable concession stands or through roving vendors to the invitees at the Stadium, excluding the Premium Food and Beverage Operations and Catering Services.

**"Concession Facilities"** shall mean all areas of the Stadium and the Plaza where concession services take place.

**"Concession Sales"** shall mean all Gross Sales of Concessions at or in association with Team Events, as applicable, which arise from, in connection with, or incident to the Agreement.



**"Equipment"** shall mean all food service and other equipment used in connection with the Services with respect to storage, preparation, cooking, serving, holding, transport and sales. Equipment may in limited cases include Smallwares, but does not include Licensor Equipment. Equipment is a component of the Proposer Investment.

**"Event"** shall mean an event or function at the Stadium that is sponsored or otherwise authorized by the Team.

**"Facilities"** shall mean the present and future Premium Food and Beverage Facilities, Concession Facilities, and any Stadium location (in or immediately outside of the Stadium) at which Catering Services are prepared and/or delivered, including mobile stands and any tented area or party area. The foregoing may include, depending on the context of use, food and beverage Service facilities.

**"Food Service Facilities"** shall mean all areas of the Stadium where food service takes place plus any adjacent area within a five (5) foot radius.

**"Gross Sales"** shall mean the total amount of money and other sales consideration received or charged by the Proposer, its agents, subcontractors and employees for all items sold and Services provided which arise from, in connection with, or incident to, without limitation, Concessions, Premium Food and Beverage Operations and Catering under or pursuant to the Agreement, less only (i) retail sales taxes and other direct taxes imposed upon receipts collected from the consumer, (ii) service charges up to a maximum of fifteen percent (15%) and only to the extent that such service charges are in fact remitted to employees of the Proposer, and (iii) food and beverages consumed by Licensor or the Team at a reduced price or without charge.

**"HACCP"** shall mean the Hazard Analysis Critical Control Plan to monitor potentially hazardous food items.

**"Leasehold Improvements"** shall mean all leasehold improvements now or hereafter constructed for the Facilities including but not limited to, as applicable: all demising walls, doors, lock sets and doorways; flooring, floor finishes and coverings; walls and wall finishes and coverings; dropped ceiling grids and tiles, soffits, roll down security grills and security enclosure gates; lighting; all exterior and interior finishes; front, back and condiment counters; cash wraps and associated cases; display lighting; all bar and bar dyes and mill work; signage and graphics; all utility systems for the Facilities; and Proposer's improvements. All Leasehold Improvements are and shall be the property of Licensor.

**"Licensor"** shall mean the Team (or its designee) or an assignee or other successor of the Team, who is the Person that is the holder of exclusive rights to grant to others the right to conduct the Services at the Stadium Site.

**"Licensor Equipment"** shall mean, as between Licensor and the Proposer, any expenditure made by or on behalf of Licensor (or its affiliates), other than an expenditure made on behalf of Licensor by the Proposer, in connection with the design, purchase, and installation, (including the distribution and connection of any required utilities services) of certain fixed equipment.

**"MBE/WBE/DBE"** shall mean minority business enterprises, women owned business enterprises, and disadvantaged business enterprises under Applicable Law.

**"Merchandise"** shall mean novelties, souvenirs, memorabilia, scorecards, publications, programs, apparel, and other similar items that are associated with and/or offered for sale at the games and events at or about the Stadium.

**"Merchandise Services"** shall mean the goods and services arising from, in connection with, or incident to Merchandise.

**"MiLB"** or **"Minor League Baseball"** shall mean, collectively, the Office of the Minor League Baseball President, the Minor League Baseball President, the Minor League Baseball Clubs, the MiLB owners, and/or any other Person appointed by any of the foregoing, or any successor substitute association or entity of which the Team is a member or joint owner and which engages in professional baseball in a manner comparable to Minor League Baseball.

**"Person"** shall mean any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, governmental body or other Person with legal constitution under applicable laws.

**"POS"** shall mean all point of sale equipment and systems, registers, cash drawers and related computer hardware, peripherals and software.

**"Profit and Loss or P&L"** shall mean gain and loss arising from commercial or other transactions, applied especially to an account or statement of account in bookkeeping showing gains and losses in business.

**"Premium Food and Beverage Facilities"** shall mean the areas of the Stadium, wherever located, where Premium Food and Beverage Operations are rendered.

**"Premium Food and Beverage Operations"** shall mean the goods and services associated with the food and beverages that are sold in areas of the Stadium that are not accessible to all patrons of the Stadium such as the private suites, private member restaurant and lounge facilities, exclusive clubs, premium seating areas and other areas of the Stadium with restricted patron access.

**"Premium Food and Beverage Sales"** shall mean Gross Sales from Premium Food and Beverage Operations.

**"Project"** shall mean the design, development, and construction of the Stadium and the Stadium infrastructure.

**"Proposal"** shall mean any response to this RFP by a Proposer.

**"Proposal Bond"** shall have the meaning as set forth in Section I.E. of this RFP.

**"Proposer"** shall mean any Person submitting a Proposal in accordance with the terms and conditions of this RFP.

**"Proposer Investment"** shall mean any approved capital expenses paid by the Proposer and scheduled by exhibit in the Agreement, for any Equipment or Smallwares located in the Facilities. The Proposer shall amortize the Proposer Investment on a straight-line basis over the expected useful life of the asset. **"RFP"** shall mean this Request for Proposal to provide Premium Food and Beverage, Catering, and Concession Services for a new Fayetteville Baseball Stadium dated June, 2013.

**"Services"** shall mean the Premium Food and Beverage Operations, Catering Services, and Concession(s), described and set forth in this RFP and the Appendix 2 – Proposed Definitive Agreement; provided, prior to substantial completion of the Stadium, the Services shall also include the Design Services.

**"Smallwares"** shall mean and include, without limitation, linens, removable serving Equipment, including dishware, china, glassware, flatware, serving bowls, bar utensils, pots, pans, chafing dishes, kitchen tools of the trade, tabletop appliances, table skirting, and other movable storage items.

**"Stadium"** shall mean the premises in which the Facilities are located.

**"Stadium Infrastructure"** shall mean the Stadium, parking structures, rights-of-way, connectors, walkways, and all other property, facilities, and improvements, owned and/or operated by Licensor or determined by Licensor to facilitate the use and operation of the Stadium.

**"Stadium Operations Manager"** shall mean the third-party management company or individual mutually agreed upon by the Team to manage the Stadium Site and certain major vendors to the Stadium Site.

**"Stadium Site"** shall mean the real property, rights, easements, and access areas associated with the Stadium Site plan and includes the site of the Stadium and Stadium Infrastructure.

**"Stadium Use Agreement"** shall mean that certain Stadium Use Agreement to be entered into by and between the Team (or its designee).

**"TEAM"** shall mean an employee-focused, full-facility alcohol management program available to sport and entertainment facility managers.

**"Team"** shall mean Fayetteville Baseball club and/or Houston Astros, or any successor, assign, designee or affiliate thereof.

**"Team Events"** shall mean events of the Team, in addition to the Team Games, that are directly related to the baseball operations of the Team or the marketing or promotion of the Team by the Team.

**"Team Games"** shall mean, during each Baseball Season, the Team's home games and, if applicable, MiLB playoff games, and including exhibitions, performances and other entertainment activities arranged by the Team and/or MiLB in connection with such games.

**"T.I.P.S"** shall mean Training for Incentive Procedures, a global education and training certification program for responsible service, sale, and consumption of alcohol.