



**A REQUEST FOR PROPOSALS  
FOR  
FOOD AND BEVERAGE SERVICES  
AT  
BRONCOS STADIUM AT MILE HIGH  
PRE-PROPOSAL MEETING AND TOUR– AUGUST 17, 2018 AT  
10 AM  
PRE-SEASON GAME OBSERVATION-AUGUST 18, 2018  
PROPOSALS DUE – SEPTEMBER 28, 2018 3 PM**

THIS COPYRIGHTED REQUEST FOR PROPOSALS DOCUMENT HAS BEEN PREPARED BY THE BIGELOW COMPANIES, INC. FOR THE SOLE USE OF THE STADIUM MANAGEMENT COMPANY LLC (SMC) AND THE METROPOLITAN FOOTBALL STADIUM DISTRICT (DISTRICT) IN SECURING A FOODSERVICE CONTRACTOR FOR BRONCOS STADIUM AT MILE HIGH.

## TABLE OF CONTENTS

I. DEFINITIONS.....	1
II. PROJECT OVERVIEW .....	4
III. PROPOSAL PROCESS .....	7
IV. REQUIRED SUBMITTALS .....	8
V. PROPOSAL EVALUATION PROCESS .....	11
VI. FINANCIAL TERMS .....	13
VII. STADIUM DESCRIPTION .....	16
VIII. PERSONNEL.....	17
IX. COMMUNITY INVOLVEMENT .....	19
X. QUALITY OF SERVICES AND PRODUCTS.....	21
XI. ALCOHOLIC BEVERAGES .....	22
XII. OPERATING REQUIREMENTS .....	23
XIII. RECORD KEEPING AND ACCOUNTABILITY .....	27
XIV. SANITATION AND EQUIPMENT MAINTENANCE .....	29
XV. UTILITIES.....	30
XVI. BONDS/INSURANCE/INDEMNIFICATION .....	31
XVII. DEFAULT .....	34

### EXHIBITS

- A: Financial Proposal
- B: Projected Events, based on Operator Projected Attendance and Sales
- C: Capital Investment
- D: Management Staffing
- E: Operating Proforma
- F: Staffing Guidelines
- G: Historic Sales
- H: Current Menus
- I: Existing Equipment
- J: Stadium Maps and Sales by Location (pre-proposal handouts)

## **I. DEFINITIONS**

1. "Accounting Period" shall refer to the calendar month and payment is due fifteen days following each Accounting Period
2. "Accrual Accounts" shall refer to the one and one half percent (1.5%) of Gross Receipts for an Equipment Fund and seventy five thousand dollars (\$75,000) annually for marketing of non-football events to increase attendance. Accrual Accounts are Direct Operating Costs, for purposes of the Net Profit Split
3. "Agreement" shall refer to the contract executed between the Concessionaire and The Metropolitan Football Stadium District (DISTRICT) and the Stadium Management Company LLC. (SMC), in accordance with these specifications.
4. "Agreement Year" shall refer to the period commencing 30 days after the Denver Broncos last home game of the 2018 season and March 31, 2019, and every April 1<sup>st</sup> through March 31<sup>st</sup> thereafter until the Agreement terminates.
5. "Alcoholic Beverages" shall refer to all alcoholic drinks, beers, and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided.
6. "Branded Products" shall refer to those Foodservice items which are advertised, marketed and sold as part of a franchise or license agreement and with respect to which Concessionaire is required to pay royalty fees and/or shared advertising costs to the franchiser in consideration of the right to sell such items in the Stadium.
7. "Catering Sales" shall refer to any pre-arranged food and beverage function of multiple customers, such as banquets, where payment for the entire function rests with one individual or company.
8. "Club Sales" shall refer to all sales of food and beverages sold at the Club level. For Commission purposes only, all Food, Alcoholic and non-alcoholic beverages sold from the Club level will be calculated at the Concession rate.
9. "Commissions" shall refer to the percentage of Gross Receipts that the Concessionaire will pay to the Operator each Accounting Period.
10. "Concessionaire" shall refer to that party or parties selected by the Operator to provide the services set forth herein.
11. "Concession Sales" shall refer to all sales of food and beverages sold from permanent or portable concession stands or roving vendors to individual customers.
12. "Consultant" shall refer to Chris Bigelow, President, The Bigelow Companies, 6501 E. Commerce Avenue, Suite 120, Kansas City, MO 64120; Phone (816) 994-3261, Email [chrisbigelow@bigelowcompanies.com](mailto:chrisbigelow@bigelowcompanies.com).
13. "Direct Operating Costs" are the actual out-of-pocket costs of the Foodservice operation incurred at the Stadium and paid for by the Concessionaire. These costs include the actual expense of the product including corporate rebates, discounts, volume bonuses, on-site payroll, payroll taxes, fringe benefits and other operating expenses, such as repairs and maintenance, credit card expenses, cleaning, office supplies, marketing and promotional expenses. Direct Operating Costs do not

include any corporate overhead, corporate administrative expenses, corporate allocations, intercompany or interdivisional charges, allocations, fees, or Late Fees.

14. "Equipment" shall refer to all Foodservice furniture and machinery, except Smallwares and Leasehold Improvements, used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of product. Equipment shall not be affixed to the building except by electrical or gas connections.
15. "Foodservices" shall refer to all food and beverage sales and operations at the Stadium, whether Alcoholic Beverages, Branded Products, Catering, Concessions, or Media Dining
16. "Gross Receipts" shall refer to the total amount of money, gratuities, administrative, service and equipment rental charges received or charged by the Concessionaire, any agent, any employee or any subcontractor of the Concessionaire for all sales, cash or credit (whether collected or not), made as a result of the service rights granted under the Agreement, excluding only applicable sales taxes, payments retained by any Operator-approved Subcontractor and discounted sales or cost at Direct Operating Cost plus 10% Administrative Fee. Bad debts, unless credit extended by SMC, cash shortages, credit card fees, administrative and/or services for Foodservice sold at retail pricing may not be deducted from Gross Receipts for the calculation of Commissions. Credit card fees are a Direct Operating Cost.
17. "Late Fee" is the charge assessed to any payments due the Operator from the Concessionaire after the specified date in the Agreement. Late Fees shall be 5% of overdue payment. After 90 days, an additional 18% pro-rated daily based on an annual rate of eighteen percent (18%) is charged. Late Fees are payable by the Concessionaire and not allowed as a Direct Operating Cost.
18. "Leasehold Improvements" shall refer to all equipment, fixtures, furnishings, finishes, and construction affixed to the building, by more than an electrical or gas connection.
19. "MBE/WBE" shall refer to minority business enterprises and women business enterprises certified by the City of Denver or the State of Colorado.
20. "Net Profit" shall mean for any Accounting Period, the excess, if any, of Gross Receipts over the sum of applicable and/or pro-rated Direct Operating Costs, and Operator-approved depreciation.
21. Operator shall mean Stadium Management Company LLC (SMC), the Metropolitan Football Stadium District (MFSD), a political subdivision of the State of Colorado and the owner of the Stadium. All correspondence should be addressed to Mr. Jay Roberts, General Manager Denver Broncos Stadium at Mile High, 1701 Bryant Street, Denver, CO 80204 [Jay.roberts@broncos.nfl.net](mailto:Jay.roberts@broncos.nfl.net) and Matt Sugar, MFSD, suite 500 1701 Bryant Street, Denver CO 80204 . [MSugar@MFSD.com](mailto:MSugar@MFSD.com)
22. "Operator Parties" shall mean Stadium Management Company LLC ("SMC"), the Metropolitan Football Stadium District ("MFSD"), a political subdivision of the State of Colorado and the owner of the Stadium, and PDB Sports LTD ("PDB") and their officers, directors, managers, members, partners, employees, contractors, and agents.
23. "PCI" shall refer to the Payment Card Industry data security standards.

24. "POS" shall refer to a computerized cash register system that has credit/debit card capability plus full front and back of house accounting capability.
25. "Pre-opening Expense" shall refer to the Operator-approved Direct Operating Costs incurred by the Concessionaire between the execution of the Agreement and the first Accounting Period with Gross Receipts.
26. "Profit Split" shall refer to the percentage of Net Profits earned by either Operator or the Concessionaire as provided in Exhibit A.
27. "Proposer" shall refer to any person or entity submitting a proposal to provide the services as defined by and in accordance with this Request for Proposal.
28. "Renter" shall refer to any person or entity that may from time to time enter into any agreement for the use of any portion of the Stadium for a particular purpose.
29. "Smallwares" shall refer to the serviceware, utensils, crockery, glassware, dishware, and cutlery used in the Foodservice operation.
30. "Specifications" shall refer to this Request for Proposals.
31. "Stadium" shall refer to Broncos Stadium at Mile High, located at 1701 Bryant Street, Denver, CO 80204.
32. "Suite Sales" shall refer to all food and beverage sales sold in the Stadium's private suites, all of which are excluded from this Agreement.
33. "Vending Machine Sales" shall refer to all food and beverage sales derived from coin-operated automatic merchandisers, which the Operator reserves the right to provide in all employee, press and locker room areas of the Stadium. Video and other coin-operated games are excluded from this Agreement.

## II. PROJECT OVERVIEW

1. The Denver Broncos have a special relationship with their fans and strive to continually improve that bond, by making the game day experience better each game. The Broncos have sold out every game since 1970, with a wait list of 70,000 fans for season tickets. Even in non-playoff years, the Bronco's no-show rate is less than 8%. The Concessionaire must work cooperatively to positively impact the guest experience through;
  - Quality and Product Freshness
  - Creativity including
    - Local brand neighborhoods
    - Self-service Marketplaces
  - Faster Service, even with the severe employee shortages of the metro area
  - Innovation using Technology to help the Bronco's achieve Total Interconnectivity;
    - Reach every point of service including in-seat
    - Integrate with Broncos apps, loyalty programs, mobile payment
    - Provide seamless access to Broncos of all data and analytics collected by the concessionaire
    - Utilize the Capital Innovation Fund, throughout the term of the Agreement, to develop frictionless transactions, with innovations occurring throughout the term of the Agreement
  - Value Pricing to reward season ticketholders and other key stakeholders utilizing technology to ensure only target audience receives these reduced prices.
2. The Agreement is for the Foodservices at Broncos Stadium at Mile High in Denver, Colorado. The Stadium is the home of the Denver Broncos of the NFL and has an approximate seating capacity of 74,231(excluding suites). The Stadium is governed by the Metropolitan Football Stadium District, a body corporate and politic and a political subdivision of the State of Colorado (District), and Stadium Management Company, LLC (SMC). The Agreement will cover Concessions and Catering inside the ticketed venue and the Sports Legends Mall and the Mile High Monument on a non-exclusive basis. Other parking lots and surrounding areas of Stadium, as well as any future developments at the Stadium, are excluded from this Agreement.
3. The term of the Agreement will be for up to ten NFL seasons, with two five-year options for renewal upon mutual agreement. The Agreement will be in the form of a Hybrid Agreement with Commissions and a Net Profit Split paid to the Operator. Operator will entertain alternative financial proposals.
4. The Operator shall provide all of the Equipment, Leasehold Improvements, and Smallwares currently existing at the Stadium in "as-is" condition. The Concessionaire shall provide new uniforms and cash handling equipment, required for their operation, neither of which will remain from the previous concessionaire. Any additional office furniture above and beyond existing furniture will be provided by Concessionaire.

5. The Concessionaire should provide additional Equipment and Leasehold Improvements based on their Proposal to improve the overall Foodservice operations. The Concessionaire will invest in Foodservice Equipment, Leasehold Improvements, Smallwares and Uniforms. Proposer should include their recommendations for improvements, paying special attention to a complete POS system, replacement of Ping menu boards, and other Technology upgrades throughout the course of the Agreement which focuses on overall connectivity, reduction of labor, and improving the fan experience with a more frictionless environment.
6. The Stadium's Suites, of which there are 144 located on levels two and four, are managed by a local caterer, Epicurean, and are not part of the RFP or the Foodservice Contract. In addition, Epicurean currently manages all Non-Event Food and Non-Alcoholic Beverages on the Club Level. However, Concessionaire maintains the liquor license and manages alcohol sales for non-event catering functions.
7. Epicurean's agreement with SMC expires March 31, 2021. We request bidders add an alternate to the proposals if concessionaire gains rights to non-event catering on club level and alcohol sales on suite levels upon expiration of current contract (2021).
8. Unique Catering requirements of the Stadium's Renter's, such as Kosher, Indian and other Ethnic Foods, not regularly prepared by the Concessionaire, may be excluded from these rights if so directed by the Operator. Culinary events may also be excluded from these rights or done at a cost + 10% basis if so directed by the Operator.
9. In the event that the Operator shall seek to bring unique major events, of national or international importance, Concessionaire will make such modifications to the Agreement that are required for Operator to obtain any such event. Currently, the City of Denver is bidding for the Olympics and FIFA World Cup, in both cases, the Agreement would not be applicable, and Concessionaire would not be guaranteed the rights to serve Foodservices during those events.
10. All merchandise, souvenirs and any other non-consumables are excluded from this Agreement.
11. Catering or other Foodservices in the non-public areas including offices, locker rooms, back stage dressing rooms, parking lots or in any area of the Stadium during non-events, other than designated Foodservice spaces, are excluded from this Agreement, however the Operator reserves the right to require the Concessionaire to service those areas or events on a Direct Operating Cost of direct labor and product cost, plus 10% administrative fee.
12. The Agreement will be developed by the Operator's legal counsel and detail the standards of performance for the Concessionaire based on the Concessionaire's proposal, generally accepted Concessions Agreement standards and the Operator's rules and regulations. The Agreement will commence immediately upon the completion of the successful negotiations between the Operator and the Concessionaire. The Agreement term will be dependent on those negotiations and investment level of the Concessionaire.

13. A schedule of projected events and attendance for the first Agreement Year is attached as Exhibit B. Failure on the part of the Operator to meet event projections shall not relieve the Proposer from the obligation to comply with the Agreement.



### **III. PROPOSAL PROCESS**

1. A pre-proposal conference and tour will be held at 10:00 a.m. on Friday, August 17, 2018, at the SMC offices in the Stadium. All Proposers should attend this conference. There is a football game the following evening on Saturday, August 18, 2018, which proposers are invited to attend to observe the current Foodservice operations. Passes will be provided for the game at the pre-proposal meeting, but not tickets for seats.
2. Call Laurie Roark in Chris Bigelow's office at 816-994-3263 or e-mail to [laurieroark@bigelowcompanies.com](mailto:laurieroark@bigelowcompanies.com); if you intend to be at the pre-proposal meeting and indicate the number of company representatives that you will have, with names for the game credentials.
3. After the pre-proposal meeting, all questions concerning this RFP must be submitted in writing to the Consultant and will be answered in writing to all of the pre-proposal attendees to the extent deemed appropriate by Operator. Questions must be submitted no later than September 18, 2018.
4. Each Proposer shall carefully examine all proposal documents and any and all Addenda or other revisions, and thoroughly familiarize themselves with all requirements prior to submitting a proposal. Should a Proposer find discrepancies or ambiguities in or omissions from the proposal documents, or should the Proposer be in doubt as to their meaning, Proposer shall at once and in any event, not later than September 18, 2018, submit to the Consultant a written request for interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the RFP will be made only by written Addenda to all persons who have attended the pre-proposal conference. No allowance will be made after proposals are received for oversight, omission, error, or mistake by Proposer.
5. Before submitting a proposal, each Proposer shall make all investigations and examinations necessary to ascertain conditions and requirements affecting the operation of the proposed services. Failure to make such investigations and examinations shall not relieve the successful Proposer from the obligation to comply, in every detail, with all provisions and requirements, nor shall it be a basis for any claim whatsoever for alteration in any term of or payment required by an Agreement.
6. Seven of the eight proposals, including the original, six hard copies and one electronic copy are due by 5:00 p.m. on Friday, September 28, 2018, in the office of the Operator, to the attention of Mr. Jay Roberts and Matt Sugar. One additional hard copy is due at the same time, in the office of the Consultant. No proposals will be accepted after that time.
7. This RFP is designed to encourage the Proposer to exhibit the greatest amount of creativity in maximizing the Stadium's service levels to its customers and revenues to the Operator. Therefore, alternative financial proposals will be considered by the Operator.
8. The expense of developing and presenting the proposal is the sole expense of the Proposer, regardless of the results of the subsequent selection process of Concessionaire.

## **IV. REQUIRED SUBMITTALS**

Eight proposals shall be submitted with six copies plus the original to the Operator and one copy to the Consultant. Each Proposer shall submit, at a minimum, all of the following information in a format that corresponds with the order of the subheadings listed below:

1. Proposal Bond: The Proposer shall attach to the original proposal submitted, a proposal bond in the amount of \$50,000 made payable to the Operator as described in Section III (6).. A certified check in the same amount would also be acceptable. Each Proposer shall clearly identify and label any information it considers to be trade secrets or confidential / commercial, financial, geological or geophysical data. This confidential information should be submitted separately and marked as such.
2. Completed Exhibit A: Proposed Financial Offers.
3. Completed Exhibit B: Concessionaire's Projected Sales, based on Operator's project events and attendance.
4. Completed Exhibit C: Concessionaire's Capital Improvements. A detailed schedule of the capital investment required and recommended (Exhibit C Total), over and above what is currently provided, including a full POS system and upgraded Digital Menu Boards.
5. Completed Exhibit D: Management Staffing Plan; listing all salaried personnel and when they would be on-site at the Stadium.
6. Completed Exhibit E: Operating Pro Forma for the first three Agreement Years.
7. Completed Exhibit F: Staffing guidelines for Foodservice, with recommended pay scales for all hourly employees or percentage compensation for Not for Profit Groups.
8. Personnel: An on-site organization chart and resumes including client references of the experience, education, and performance record in the Foodservice business of three proposed full-time general managers and one proposed candidate for all other management positions for the Stadium for whom the Operator will have the right of approval. Proposer must have their choice of the general manager at any oral presentation required by the Operator for selection of the Concessionaire. Please describe how you propose to staff / manage special events to ensure proper focus on this segment of the business.
9. Training Programs: Describe all of Proposer's available training programs including Proposers' current Alcohol Management and Customer Service Training Programs that are regularly used at other accounts. Indicate the proposed general manager's experience in administering these training programs.
10. Marketing Plan: Provide the Concessionaire's detailed marketing plan for expanding the current Catering sales business at the Stadium including non-game days and provide specific examples of where the Concessionaire has grown Catering sales each year at other Stadium accounts. Currently the

Operator's Special Events Department books and manages 250 special events annually.

11. **Quality Control:** Because the highest level of culinary quality and service is imperative for this Stadium to be successful in its marketplace, Proposer must have food operation and sanitation management that complies with the Operator's inspections and requirements. The Proposer must propose an impartial quantitative mechanism to evaluate its level of services, menu and overall quality with specific Key Performance Indicators. At a minimum, Concessionaire must maintain a 90% favorable rating or better in the aggregate on all customer surveys, focus groups or other testing methods used by an independent third party, exclusive of pricing. Failure on the part of the Concessionaire to reach that Operator-approved level of customer satisfaction will allow the Operator to terminate the Agreement.
12. **Proposed menus for all Foodservices in the Stadium,** showing portion sizes and proposed selling prices in 2019 dollars. Include Alcoholic Beverages, Catering, Clubs, Concessions, Employee Cafeteria and Media Dining. All Catering prices must include the cost of linen, china, and flatware. Pricing must be competitive with similar facilities in the region.
13. **Branded and other Subcontracted Products:** Describe how Branded Products and local Subcontractors should be handled and how they will impact sales and profits. Detail other facilities where Concessionaire uses Branded Products and/or local Subcontractors and any unique financial arrangements with these Brands and Subcontractors. List the specific Branded concepts you recommend for the Stadium and indicate if you currently have a relationship with the brand and if so, what are the financial deal points affecting the Operator
14. **Technology:** Proposer shall indicate how they will utilize technology to improve service and quality of their operations in order to assist the Operator in their plan for Total Connectivity. Also detail your IT Technology staff and how they will operate on a daily and event basis.
15. **Transition Plan:** Describe in detail with a timeline of how the Concessionaire will create a seamless transition for the customer, from the existing Concessionaire to the New Concessionaire.
16. **List of Clients:** A list of other clients similar to the Stadium that Proposer serves or has served in the past five (5) years. Please provide detailed information, e.g., name, address, and telephone number of the Client, contact name, length of time, size of Client, number, and type of events, annual sales, and attendance. Indicate what services are provided, i.e., Catering, Concessions, Clubs, Employee Dining, and Media Dining, etc.
17. **Financial Statement:** A current audited financial statement, for the two most recent fiscal years of the Proposer, including balance sheet and profit and loss statements, prepared and certified by an independent Certified Public Accountant. Include supplemental information as required to demonstrate that the company possesses financial resources adequate to permit contract fulfillment.
18. **List of Corporate Officers:** Provide a list of the Concessionaire's corporate officers and their experience in the industry.

19. Event Information Recaps: Provide samples of event information recaps, daily and monthly statements, etc. that will be furnished to the Operator during the term of this Agreement. Include forms from computerized cash registers.
20. Business Form of Proposer:
  - a) If the Proposer is a corporation, the Proposal shall be signed by an officer of the corporation, with the designation of the signer's official capacity. The proposal shall show the state in which the corporation is chartered. The proposal shall show that the corporation is in good standing and qualified and authorized to do business in the State of Colorado.
  - b) If the Proposer is a partnership, the Proposal shall be signed in the name of the partnership by a general partner or another person duly authorized to bind the partnership. The capacity and title of the person signing shall be shown. A copy of the partnership agreement and a full explanation of the job-related duties of each member of the partnership must be included.
  - c) If the Proposer is an individual or sole proprietorship, the Proposal shall be signed by the individual in person, stating the name or style, if any, under which the Proposer is doing business.
  - d) If the Proposer is a joint venture, the Proposal shall be signed by an officer of the joint venture. A copy of the joint venture agreement and a full explanation of the job-related duties of each member of the joint venture must be included.
  - e) If the Proposer is a Limited Liability Company, the proposal shall be signed by the manager duly authorized to bind the LLC. The capacity and title of the person signing shall be shown.
21. In any business form case, the Proposal shall show the present business address of the Proposer at which communications from the Operator and notices served are to be received.
22. The Proposal must be signed by a person(s) authorized to legally bind the Proposer and must contain a statement that this proposal and the financial terms proposed therein shall remain firm for a period of 180 days from the receipt of the Proposals.

## **V. PROPOSAL EVALUATION PROCESS**

1. Following receipt of written Proposals, the Operator may thereafter select those Proposers which, in the judgment of the Review Committee, qualify as finalists and request those Proposers to make oral presentations to the Operator and Review Committee, prior to the final selection of the Concessionaire.
2. Operator reserves the right to reject any and all Proposals.
3. Proposers are advised that the Operator intends to select the Concessionaire that the Operator determines is the most responsive and responsible and will provide the Stadium with the highest quality products, efficient services, and highest revenues, based on the criteria set out below.
4. In order to determine this, the Operator will consider the following factors, none of which will, standing alone, be conclusive:
  - a) Creativity reflected in the Proposal for unique operational plans, point of sale areas, menu, personnel training, uniforms, and related marketing and promotional ideas. This includes a strong focus on the use of technology to improve the overall fan experience and total connectivity.
  - b) The experience, training, and past performance of those persons designated by the Proposer as proposed management personnel.
  - c) The Proposer's performance at similar facilities, as shown by contacts with representatives of those facilities by phone or mail which have been or may be made by the Operator.
  - d) Proposer's general reputation for performance and service.
  - e) Proposer's financial condition, including the ability to provide a required performance bond and proposed capital investments to improve the fan experience
  - f) Proposer's plan to utilize Community and MBE/WBE firms in their operation.
  - g) Proposer's financial return to the Operator.
  - h) The quality and scope of the Proposer's investment.
  - i) Proposer's plan for local participation
5. Operator reserves the right, at its discretion:
  - a) To reject Proposals that contain omissions or otherwise fail to comply with these specifications.
  - b) To reject Proposals that are not accompanied by proper proposal bond or deposit.
  - c) To reject all Proposals when the Operator reasonably determines that such a procedure would be in the best interest of the Operator.

- d) To waive technical or insubstantial irregularities in the Proposal of any Proposer, when not shown to have resulted in any unfair advantage to any Proposer.
  - e) To reject Proposals that contain any conditions and/or contingencies which, in the Operator's judgment, make the Proposal indefinite or incomplete.
  - f) To negotiate with companies that did or did not submit Proposals.
  - g) To operate all or part of the Foodservices themselves.
6. Proposal bonds or checks will be returned by mail within 48 hours after the Operator, and a Concessionaire have executed an Agreement and executed the performance bond, and the required certificates have been delivered to and approved by the Operator. If no award has been made within 180 days after the opening of Proposals, upon demand of a Proposer at any time thereafter, Proposal bonds or checks will be returned, provided that the Proposer has not been notified of acceptance of his Proposal. In consideration for the Operator's agreement to consider the Proposer's proposal, the Proposer agrees that, in the event it withdraws its proposal from consideration prematurely, or refuses to enter into an Agreement containing the basic financial terms contained in the Proposal that has been accepted by the Operator, the Proposer will be liable to the Operator for damages in the sum of \$50,000, which sum is set forth herein as liquidated damages. It being expressly understood between the Operator and Proposer that unwarranted withdrawal of Proposal or refusal to perform shall damage the Operator in an undetermined amount and said liquidated damages amount is reasonable compensation for default.

## VI. FINANCIAL TERMS

1. The Proposer will propose their financial terms as a Hybrid Agreement, with a base Commission and share of Net Profits in Exhibit A.
2. The Proposer will also indicate, in Exhibit A and C, the Capital Investment that they will make in the Foodservices over and above the current level of Equipment which will remain on-site for the Concessionaire's use, as well as a contribution to the Technology Capital Fund in years 1, 3, and 5 (approximate timeline based mutually agreed upon plan of action).
3. In addition to the investment explained above, the Concessionaire will be responsible for providing:
  - Uniforms
  - All Foodservice office equipment, any additional furniture concessionaire requires, money counting, and computers.
  - Updating or replacing the current Quest POS system and software
4. At the termination of this Agreement, for any reason, the Operator will purchase or cause to be purchased, the Concessionaire's approved investment at its then book value. The Concessionaire will amortize their investment to assure a zero book value as of the end of the ten NFL seasons as follows:
  - a) Pre-Opening Expenses - 36 months, straight-line method
  - b) Technology Capital Funding - Straight line method, from date of installation to original Agreement termination date.
  - c) Equipment - Approximately 120 months or less, straight-line method
  - d) Leasehold Improvements - Approximately 120 months or less, straight-line method.
  - e) Uniforms and Smallwares - 36 months, straight-line method
5. At the termination of the Agreement, Concessionaire will surrender their Alcoholic Beverage Licenses for the Stadium and assign them, to the extent transferrable, to the new Concessionaire
6. At the termination of the Agreement, Concessionaire will transfer any Catering deposits collected from customers whose events will be held after the termination date of this Agreement, to the new Concessionaire.
7. The Concessionaire will provide all working capital and inventory necessary to effectively manage the Foodservices.
8. Concessionaire will lease a Suite each year of the Agreement for \$150,000. Such lease is the sole cost of the Concessionaire and not a Direct Operating Cost. Food and non-alcoholic beverages may be provided by Concessionaire but alcohol must be purchased from Epicurean.
9. The Concessionaire will prepare a Commission and Profit and Loss Statement, in a format directed by the Operator, for each Accounting Period and submit same

with the Commissions and Net Profits no later than 15 days following the close of the preceding Accounting Period. Failure to pay by the due date will incur the Late Fee.

10. The Concessionaire shall establish and maintain two Accrual Accounts; one for Equipment in an amount equal to One and One-Half Percent (1½%) of Gross Receipts as a Direct Operating Cost and the second a \$75,000 annual fund to support non-football events. All expenditures from the Accrual Account shall only occur with the prior written approval of the Operator. Any money left in the account at the end of the Agreement will belong to the Operator. All replacements of Smallwares and uniforms will be a Direct Operating Cost and not eligible to be paid by the Accrual Account. Currently, there is approximately \$2 million dollars in the Equipment Accrual Account which can be used in future years at Operator's discretion.
11. Commissions are paid each Accounting Period regardless of the profit or loss of the operation. In any Accounting Period where there are no Net Profits, Concessionaire will accrue the loss into the next Accounting Period until there are sufficient Net Profits to pay the Operator. At the end of the Agreement, if there still are insufficient Net Profits, Concessionaire will absorb all operating losses.
12. Concessionaire, if requested, will operate an employee cafeteria year round (five days a week) at the stadium for 80 to 100 employees. The pricing, invoiced to SMC, may not exceed the Concessionaires Direct Operating Cost for food and direct service labor plus a ten percent (10%) administrative fee. Any other meals requested by SMC for SMC staff on event days, training days, or other days, will be under the same structure.
13. Concessionaire provides all Media Catering during events, invoiced to the Operator for a price at the Direct Operating Cost of direct service labor and food, plus a ten percent (10%) administrative fee.
14. The Operator may terminate this Agreement, without cause upon ninety (90) days' notice to the Concessionaire. If such early termination occurs, SMC will pay the Concessionaire the following Early Termination Fee based on the Agreement Year terminated, in addition to the book value of the Concessionaire's Capital Investment as detailed above.

Agreement Year 1	\$1,000,000
Agreement Year 2	\$900,000
Agreement Year 3	\$750,000
Agreement Year 4	\$600,000
Agreement Year 5	\$500,000
Agreement Year 6	\$400,000
Agreement Year 7	\$300,000



*Broncos Stadium at Mile High Foodservice RFP FINAL*

Agreement Year 8	\$200,000
Agreement Year 9	\$100,000
Agreement Year 10	\$0

## VII. STADIUM DESCRIPTION

- Total approximate seating capacity, excluding Suites, is 74,231
- All Levels have in-seat hawkers.
- East and West Clubs have in-seat wait service for beverages only.
- West United Club Row Tables, East United Club Row Tables have full food and beverage in-seat wait service.
- Champions Club has bars and buffet service.
- By level:
  - Lower Level – 30,540 seats
  - South Stands – 4,696
  - North Reserved – 5,156
  - West Club- 4,090
  - West United Club Row-24
  - East Club-4,4147
  - East United Club Row-24
  - 5<sup>th</sup> Level-25,338
  - Champions Club-216

Total Non-Suite Capacity=74,231
- Foodservice area maps will be provided during the pre-proposal meeting
  - Level 1 Permanent POS = 220
  - Level 1 Portable POS = 32
  - Level 2 Permanent POS = 4
  - Level 2 Portable POS = 21
  - Level 3 GA Permanent POS = 24
  - Level 3 GA Portable POS = 12
  - Level 3 Club Permanent POS = 108
  - Level 5 Permanent POS = 125
  - Level 5 Portable POS = 20

Total Permanent Concession POS = 481

Total Portable Concession POS = 41

Total Concession Foodservice POS = 568

## **VIII. PERSONNEL**

1. Concessionaire shall employ the necessary personnel to conduct the operations at the Stadium in accordance with the terms and conditions of this RFP and the Agreement.
2. All Foodservice employees are employees of the Concessionaire and not the Operator. The Concessionaire shall at all times be an independent contractor, and the Agreement shall not in any way create or form a partnership or joint venture with the Operator. No agent, servant, or employee of the Concessionaire shall under any circumstances be deemed an agent, servant, or employee of the Operator.
3. Accurate records must be kept of the names, addresses and other legal identification of those to whom badges are issued to assure proper identification and legal working status of employees at any time required by the Operator or any other proper agency. Upon request by the Operator, the Concessionaire shall immediately dismiss from the Stadium, any employee deemed unsuitable for any reason by the Operator. Any employee so dismissed shall never again be employed at the Stadium without the prior written consent of the Operator.
4. Concessionaire's minimum management staff shall include a General Manager, Assistant General Manager, Catering Sales Manager, Catering Manager, Special Events Manager, Executive Chef, Concessions Manager, Controller/Office Manager, Human Resources and Training Manager, and a Warehouse Manager (collectively referred to as the "Management").
5. SMC shall, upon consultation with MFSD, approve Concessionaire's proposed on-site Management throughout the term of the Agreement. Concessionaire's on-site Management shall have no job-related responsibilities at other venues and must have a full-time office at the Stadium. If SMC approves, Concessionaire may allow Management staff to be temporarily assigned to other accounts if that salary is then transferred out. If SMC requests a replacement for the on-site Management or any of the staff, Concessionaire shall have five (5) days to provide a temporary replacement approved by SMC, and fifteen (15) days to provide SMC with at least three (3) resumes of suitable candidates for such purpose.
6. Concessionaire must conduct regularly scheduled training sessions, as approved by SMC, throughout the year, for all personnel. At a minimum, the training will consist of Customer Service, Alcohol Awareness, Skills Training for each Position, including proper customer service, Concession food set up and sales, Catering and buffet merchandising, including wine service for all Catering Personnel. Service employees and not-for-profit group members must attend mandatory orientation and skills training specific to the Stadium and an additional sixteen (16) annual hours of training. Management must attend an additional forty (40) annual hours of training. No employee will be allowed to serve the public until at least a minimum of four (4) hours of training, including orientation, have been completed.

7. Concessionaire's training will incorporate Operator's customer service, quality control programs, systems, and management.
8. Concessionaire's employees shall be at all times neatly and cleanly uniformed in Operator-approved uniforms and must meet grooming guidelines and appearance standards prescribed for such employees.
9. Concessionaire receives 18 parking permits for event and non-event parking. Non-event parking is currently available at the Stadium for all of Concessionaire's employees. On Event Days, SMC provides Concessionaire with 55 parking passes in a variety of parking lots in addition to the 18 mentioned above. Additional employees use the shuttle bus organized by SMC, which Concessionaire pays 50% of the cost. Historically that cost has been \$7,000 to the Concessionaire per Bronco game.
10. The only foodservice employees currently covered by a collective bargaining agreement are the beer vendors who are represented by UNITE HERE Local 23.

## **IX. COMMUNITY INVOLVEMENT**

1. The Operator is committed to equal opportunity in employment and in the awarding of contracts for goods and services.
2. Concessionaire will reasonably cooperate with charitable and civic-minded programs endorsed by the District or SMC.
3. The District and SMC require M/WBE enterprises be afforded an opportunity to participate in the Stadium Foodservices. Concessionaire agrees to encourage the participation and promotion of M/WBE in performing Concessionaires obligations and the Stadium.
4. Concessionaire will develop and implement a community outreach program that encourages the involvement and participation of M/WBE vendors and suppliers for products and services at the Stadium. Concessionaire will submit an annual outreach plan and monitor its success or shortfalls on an annual basis, with plans to correct any shortfall in the succeeding three months.
5. Concessionaire will endeavor to help Operator satisfy the requirement of achieving 15% of the total square footage allocated for food and beverage sales to be directly or through subcontracts, by persons or businesses that maintain their principal place of business in Colorado.
6. The District and SMC shall have the right to designate charitable organizations which may be appropriate for receiving excess Foodservice product following events at the Stadium, subject to the organizations providing indemnification and insurance reasonably acceptable to the Concessionaire.
7. Concessionaire shall continually initiate methods to promote opportunities among local non-profit charitable organizations to provide persons to render services at the Stadium, in exchange for a donation for such service to the Charity. Such charities will be required to have adequate general liability and worker's compensation insurance. Charity volunteers must undergo all of the same training and work under the same work rules as all of the Concessionaire's other employees.
8. Any Concessionaire doing business with the Operator shall develop a written policy statement to inform all employees, job applicants, service recipients, and applicants for services of the Concessionaire's commitment to ensuring equal opportunity. The policy statement must be consistent with the Concessionaire's Corporate Equal Opportunity/Affirmative Action and Non-discrimination Policy Statements. The policy statement shall be signed by the Concessionaire's executive officer, prior to the commencement of this Agreement.
9. Concessionaire will, and will require its contractors and subcontractors to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations including, but not limited to, the Americans with Disabilities Act ("ADA") and all regulations promulgated thereunder. By submitting a Proposal, the Concessionaire agrees to indemnify, defend, and hold harmless the Operator Parties from and against all claims, suits, damages, costs, losses, and expenses (including attorney's fees) which in any manner arising out of, or are connected with, any alleged failure of the Concessionaire, its subcontractors, agents,

- successors, assigns, officers, or employees to comply with any applicable federal, state, and local laws, ordinances, rules, and regulations.
10. The Concessionaire shall not discriminate against any employee or applicant for employment or against any service recipient or applicant for services because of race, color, ethnic status, religion, sex, age, national origin, disabled veteran status, military status, family status or disability. The Concessionaire will agree to use good faith efforts to set minimum goals for minority hiring, as certified by an independent agency, selected by the Operator and the Concessionaire.
  11. Concessionaire agrees to be a good corporate citizen and to take an aggressive role in activities and projects in conjunction with the Operator to assist those in need, youth at risk and local charities, where possible.
  12. Any Proposer that is a joint venture consisting of a majority and MBE/WBE company must include their joint venture agreement and a written description of the Operatorship, voting control, and financial and operational responsibilities of each party.

## **X. QUALITY OF SERVICES AND PRODUCTS**

1. Concessionaire shall conduct all of their operations in a first-class, professional, businesslike, and efficient manner consistent with the top quartile of all NFL stadiums, as verified by the achievement of the 90% positive scores in the independent surveys discussed earlier. In addition to independent surveys, operator expects to be in the top 10 of Voice of the Fan survey results.
2. The Operator shall have the final approval on what suppliers, portions, and brands are used by the Concessionaire, and at no time will Concessionaire offer an exclusive to any supplier without the prior written approval of the Operator.
3. The Operator shall decide any and all questions which may arise as to the acceptability of services rendered, number of service areas required, levels of staffing by area, prices, portions, products, manner of performance, questions which arise as to the interpretation of the terms and conditions of this RFP, and all questions as to the acceptable fulfillment of the Agreement.
4. All foods, drinks, beverages, confectionery, refreshments, and the like sold or kept for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to the federal, state, and municipal food and other laws, ordinances, and regulations. No imitation, adulterated, or misbranded article shall be sold or kept for sale, and all product kept on hand shall be stored and handled with due regard for sanitation. Leftover perishable product shall not be sold at any time.
5. All products kept for sale shall be subject to inspection and approved by the Operator. Rejected product shall be immediately removed from the Stadium and shall not be returned for sale.
6. All employees of the Operator will be allowed to receive an employee discount of 50% on retail Concessions pricing including during games, concerts, etc.
7. It is the intent of the Operator to utilize Branded Products and serving items, whenever it is in the best interest of the Operator and may require the Concessionaire to implement among other things without limitation, special graphics, customized logoed containers, serving papers and wraps.
8. All Concessions and Club Sales will utilize disposable plates, cutlery, and cups.
9. Catering Sales, including Catering Alcoholic Beverages, will utilize disposables or permanent Smallwares, dishes, glassware, and placesettings.
10. Concessionaire is encouraged to work with local not-for-profit organizations, approved by the Operator, such as food banks to reduce product waste.
11. Concessionaire will provide a sustainability plan.
12. The Operator requires the Concessionaire to identify local products and vendors to utilize throughout the Stadium, whenever appropriate.
13. The Concessionaire is responsible for complying with all recycling rules, regulations of the Operator and laws of the State of Colorado and/or appropriate governmental bodies.

## **XI. ALCOHOLIC BEVERAGES**

1. Alcoholic Beverages are to be offered for sale by the Concessionaire to the extent permitted by applicable state and local laws, and subject to regulations established by the Operator. The final decision, as to whether or not Alcoholic Beverages may be sold at an event, or in any designated area of the Stadium, shall be the sole responsibility of the Operator. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of the Concessionaire.
2. Concessionaire's employees or not-for-profit groups may not handle, dispense or sell any Alcoholic Beverages until they have completed and been certified by an Alcohol Awareness Training program, such as Techniques in Effective Alcohol Management (TEAM) or Training for Intervention Procedures) TIPS approved by the State of Colorado Alcoholic Beverage Commission.
3. All licenses and permits required for the sale of Alcoholic Beverages at the Stadium shall be held in the name of the Concessionaire. The Concessionaire shall keep the permits in full force and effect, and neither party shall take any action which would impair the Concessionaire's ability to hold the permits. The Concessionaire shall prepare, file, and process all applications for renewals of the permits.
4. At the termination of the Agreement, Concessionaire shall surrender all Alcoholic Beverage Licenses for the Stadium and assign them, to the extent transferrable, to the new concessionaire.



## **XII. OPERATING REQUIREMENTS**

1. SMC, in consultation with the MFSD, shall issue reasonable rules and regulations for the operation of the Foodservices, and the Concessionaire shall operate the Foodservices in accordance with such rules and regulations.
2. The Operator shall decide any and all questions which may arise as to the acceptability of services rendered, levels of staffing, and manner of performance, No off-site or subcontracted sales are permitted from the Stadium and no Equipment or portable carts may be removed from the Stadium unless approved by the Operator in writing. Currently approved subcontractors are;
  - a) Angelo's Deli
  - b) City Pop Popcorn
  - c) Gigi's Cupcakes
  - d) Hog Heaven BBQ
  - e) Kona Ice of Boulder for outside events only
  - f) Observe Inc. – Lemonade, kettle corn, squishys, etc.
3. On an annual basis, the Concessionaire must provide the Operator with a written Foodservice sales program three months prior to each football season with specific financial and operational goals and specific methods for attaining each goal for the following agreement year.
4. Concessionaire shall develop clear, concise and professional quality written proposals for Catering functions.
5. At the termination of Concessionaire's Agreement, Concessionaire will assign all Catering contracts and Catering deposits, for events that are scheduled to occur after the effective date of termination, to the succeeding Concessionaire.
6. The Concessionaire shall not interfere with the free distribution of food or drinks or any other items of any nature whatsoever, where such distribution has been authorized by the Operator. Sample sizes will not exceed 2 oz. of food and 4 oz. of beverage
7. The Concessionaire will be required to provide, to abstain from service or to modify operations upon the request of any Renter, including the Olympics and World Cup, when it has been approved by the Operator, as in the best interest of the Operator or is necessary to comply with the terms of the contract between the Operator and said, Renter. Operator is currently in negotiations with Feld Entertainment to produce events at the Stadium. If Feld Entertainment (and or a similar provider engaged by the Operator) produces events at the Stadium, Concessionaire waives the right to certain concession and novelty products as is common practice within the industry (products include, but not limited to, cotton candy, snow cones, lemonade, confectioned apples, and popcorn).
8. The Concessionaire must provide a full hot lunch at no cost to SMC staff (up to 100 guests) every Wednesday August 1 thru end of during Football Season. In

- the event a daily employee cafeteria is provided, this Wednesday meal would be included in the cafeteria.
9. Operator shall have the final approval on what suppliers, prices, portions, and brands are used, and at no time will Concessionaire offer an exclusive to any supplier.
  10. Concessionaire will present proposed pricing for the upcoming season by June 1<sup>st</sup> of each year. Pricing must be competitive with the market place. Pricing at comparable venues must be provided.
  11. The Operator may sell advertising and sponsorship packages for the Stadium. Therefore, the Operator reserves the final right of approval of Concessionaire's sources of product supply. This includes but is not limited to items such as food and beverage products, printing companies, exterminators, florists, cleaners, laundries, insurance vendors, business machine and office supply vendors. The Concessionaire, however, will not be required to purchase from suppliers whose level of quality, service, and/or prices are not competitive with the marketplace. Concessionaire retains no advertising rights in this Agreement. The current corporate partners with serving rights are:
    - Anheuser Busch (non-exclusive)
    - Bimbo Bakeries (non-exclusive)
    - Broncos Prefer Visa awareness program and credit card processing
    - City Pop Popcorn
    - Coca-Cola
    - Flagship Food Group 505 – Minimum of 8 branded or co-branded nacho carts, United Club logoed Build-Your-Own nacho carts, nacho style chips and Digital Menu Board signage for Green Chile Pizza
    - Gatorade (sidelines only)
    - Hot Dogs and Sausages, to be determined, previously Continental Sausages
    - J&J Snack Foods, soft pretzels
    - Mars Candy (non-exclusive)
    - Mrs. Fields Cookies
    - Odell Brewing
    - Sysco
    - Westrock Coffee
  12. The Concessionaire must procure and keep in force during the entire period of the contract all permits and licenses required, including where applicable, Alcoholic Beverage Licenses, by all laws and regulations of the State of Colorado, City and County of Denver.
  13. Concessionaire shall collect and promptly disburse all taxes required by federal, state and local authorities, and shall pay any applicable taxes relating to

Foodservice sales, operations, Equipment, or inventory, as a Direct Operating Cost.

14. Concessionaire shall use computerized cash or point-of-sale registers, or other accounting electronic recording device to capture transactions at all sales locations in the Stadium. This includes portable and permanent Concessions, In-seat wait staff and hawkers, Clubs, and Catering. The cost of maintenance to this equipment is a Concessionaire cost and as mentioned previously, Concessionaire should submit plans and estimated costs to improve our current POS system.
15. Concessionaire shall at all times comply with all applicable laws, rules, regulations, and orders of the Federal Government, and the State of Colorado, City and County of Denver also shall abide by all rules, regulations and directives prescribed by the Operator.
16. Vending machines may only be used at times and locations prescribed by Operator.
17. Nothing herein contained shall be held to limit or qualify the right of the Operator to a free and unobstructed use, occupation and control of the Stadium and ingress and egress for itself, its Renters and the public.
18. Representatives of the Operator shall have the right to enter upon and have access to all spaces occupied by the Concessionaire during the time events are in operation and all times when Concessionaire employees are present.
19. Concessionaire must provide electronic and printed Catering menus, and other printed materials approved by the Operator, utilizing the Stadium's and/or Operator's' logos, used exclusively for the Stadium, in sufficient quantities for use by the Operator's and the Concessionaire's marketing staffs.
20. Operator will set rooms with sufficient tables and chairs for each Catered function. Concessionaire must provide and set linen, skirting and place settings on a timely basis, as well as removing same immediately following each Catered event.
21. The Concessionaire shall set up Equipment and Smallwares for all Foodservice events. Concessionaire shall be responsible for setting up and tearing down all portable Equipment, including any work tables, if any, supplied by the Operator.
22. The use of table coverings other than cloth must be approved in advance by the Operator.
23. The location of all Foodservice areas, whether temporary, portable or permanent shall be designated by the Operator. The Concessionaire shall acquire no right to any location once assigned and the Operator reserves the right to require the Concessionaire to move such operations and Equipment to facilitate the needs of events.
24. Operator is preparing for Safety Act Certification. Concessionaire must comply with the rules of the Act and assist in the Stadium receiving certification. This includes, but is not limited to, background checks for Full Time and kitchen staff as well as providing condiments in a manner that eliminates contamination from guests (no open air condiments).

25. Concessionaire pays for and manages content for the menu boards and other food service related signs but signage and messaging must interface with Operator's overall messaging at the Stadium.

### **XIII. RECORD KEEPING AND ACCOUNTABILITY**

1. Concessionaire shall maintain all accounting records for the Stadium in a format approved by the Operator at the on-site office. The original accounting records must be made available to the Operator simultaneously as the Concessionaire develops them and shall remain available for audit by the Operator at any time throughout the term of the Agreement at the on-site office, and for three years following the term of the Agreement at the Concessionaire's main office.
2. Concessionaire shall use Operator-approved hardware and Operator-approved accounting software, for all Foodservices records, proposals, contracts, invoices, and all accounting functions.
3. Concessionaire shall submit, for Operator approval, in a format approved by the Operator, an annual budget for their operation by May 1<sup>st</sup> of each Agreement Year, for every year during the term of the Agreement. A budget by month shall be submitted one week following the release of the NFL schedule for that year.
4. Concessionaire shall provide the Operator with a preliminary sales six hours after the completion of the event. Concessionaire shall provide to the Operator, in a format directed by the Operator, a written summary of each event within 72 hours of that event, indicating where appropriate, customer pricing, guarantees, sales by location, total inventory sales, total register sales, and cash overages and shortages. Concessionaire shall attach the corresponding deposit ticket and credit card transmission reports to all daily sales reports.
5. Concessionaire shall maintain a separate commercial bank account at a bank approved by the Operator for all sales deposits.
6. Bad debts, unless Operator required Concessionaire to extend credit, may not be deducted from Gross Receipts.
7. Concessionaire must use computerized electronic points of sale that accept all forms of payment (cash, credit, debit, electronic wallet, etc.) available in typical retail outlets in Denver. The Operator shall have access to all such sales and management reports.
8. Automatic Teller Machines (ATM) may be placed and managed in the Stadium at the discretion of the Operator.
9. An independent certified audit of the Concessionaire's Gross Receipts, Direct Operating Costs, and Net Profits, by an accounting firm approved by the Operator, must be submitted no later than ninety (90) days after the end of each Agreement Year as a Direct Operating Cost.
10. In the event the Operator is not satisfied with the statements submitted by the Concessionaire, as provided for herein, the Operator shall have the right to make a special audit by auditors selected by the Operator, of the books and records required to be made and preserved, including all sales and expenses, by the Concessionaire. If such audit shall show a deficiency in payments by the Concessionaire for any Accounting Period covered, the Concessionaire will immediately pay the owed Commissions and/or Net Profits plus the Late Fee on that amount. If such audit shall show a deficiency in payments by the

Concessionaire for any Accounting Period covered, in excess of one percent (1%) of the amount thereof, the amount owed and the Late Fees from the date the error took place and the cost of the audit, shall be paid promptly by Concessionaire to the Operator and not absorbed as a Direct Operating Cost.

11. Concessionaire and the Operator shall inventory all Equipment, Leasehold Improvements, uniforms and Smallwares on an annual basis to determine what replacements and repairs are required, and to adjust the depreciation schedule accordingly.
12. Concessionaire shall maintain all sales tax licenses and operating permits necessary for the Foodservices
13. Concessionaire shall collect and promptly disburse all taxes required by federal, state, and local authorities, and shall pay any and all applicable taxes relating to their operations, employees, Equipment, inventory or permits.
14. Concessionaire must provide complete PCI compliance in the handling of all credit/debit card transactions and handling of related information. Concessionaire will select only PCI compliant systems, perform PCI compliant best practices and train employees on the proper and consistent handling of customer credit/debit card and payment information.

#### **XIV. SANITATION AND EQUIPMENT MAINTENANCE**

1. Concessionaire must, in accordance with all applicable laws, ordinances, rules, and regulations, maintain, as a Direct Operating Cost, all assigned areas of the Stadium, including the space within a 10 foot radius of each area, including, but not limited to, kitchens, cafeterias, concession stands, bars, buffets, pantries, in-seat hawking areas, condiment stands, storage and prep areas in a clean, sanitary, and orderly fashion.
2. Concessionaire must provide adequate pest control licensed by the state and approved by the Operator for each assigned area.
3. Concessionaire is responsible for maintaining all grease traps, exhaust hoods, exhaust ductwork and roof fans and the regularly scheduled cleaning and testing of both, as a Direct Operating Cost. At SMC's discretion, SMC may elect to manage this maintenance testing and bill Concessionaire as a Direct Operating Cost. Current grease drain and trap cleaning is approximately \$2400 per year. Currently, hood cleaning and testing is approximately \$20,000 per year.
4. The Operator may require the use of their in-house maintenance staff for the repairs and maintenance, if it is in the Operator's best interest, including the cleaning of beer lines, and exhaust fans, pest control and invoice the Concessionaire at competitive rates.
5. Concessionaire shall maintain Operator-approved par levels of all Equipment, Leasehold Improvements, uniforms, and Smallwares.
6. Concessionaire shall maintain out of the Accrual Account, all Equipment, and Leasehold Improvements used in the performance of its duties, including rolling stock, in a good state of repair, including maintenance or repair necessitated by ordinary wear and tear.
7. Should replacement be necessary, as determined by the Operator and Concessionaire, mutually, then the replacement will be purchased from the Accrual Account. Unless the replacement is due to theft, vandalism, unusual wear, neglect or negligence by the Concessionaire, in which case, the Concessionaire will pay for such replacement and not as a Direct Operating Expense.
8. Concessionaire shall pay for all preventative maintenance plans for all Foodservice Equipment required and approved by the Operator, as a Direct Operating Cost.

## **XV. UTILITIES**

1. The Operator shall pay for the usage of HVAC, electricity, gas, and water service for the Concessionaire's operation. Concessionaire will utilize prudent energy management.
2. The cost of telephone service will be billed to the Concessionaire by the Operator and shall be a Direct Operating Cost of the operation. Historic monthly cost is \$1,500 per month.
3. Concessionaire is responsible for upkeep and maintenance of Internet Protocol Television (IPTV) concession system (Digital Menu Boards), and software license fees as a Direct Operating Expense. Cost of upgrade to system should be considered in technology investment. Current estimate of upgrade is \$750,000.
4. The Concessionaire will be responsible for bringing their trash and garbage from all Foodservice areas to the designated dumpster or recycling areas on non-event days. On event days, Concessionaire will place their trash and recycling in Operator approved containers and place them at designated pick up locations around the Stadium. The cost of supplying, emptying and removing the dumpsters is paid for by the Operator.
5. Concessionaire will be responsible for transporting, filtering, cleaning, storing and removing all fats, oils, and greases used at the Stadium, in an Operator approved container and location as a Direct Operating Cost.
6. Concessionaire must follow Best Management Practices (BMP) when discharging any gray water from their operations
7. The cost to repair or replace any utility service or lines due to Concessionaire's negligence shall be the Concessionaire's expense. Concessionaire's sewer lines shall be self-maintained by the Concessionaire and shall be maintained to the satisfaction of the Operator. Concessionaire shall take all precautionary measures necessary to assure that grease is not discharged into the sewers.
8. The Concessionaire is responsible for complying with all recycling rules, regulations and laws of the Operator and/or appropriate governmental bodies.
9. The Operator shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God or other work stoppage, federal, state, or local government action, the breakdown or failure of apparatus, equipment, or machinery employed in its supply of said services, any temporary stoppage for the repair, improvement, or enlargement thereof, or any act or condition beyond its reasonable controls. Further, the Operator shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.
10. The Operator shall not be responsible for any goods, merchandise or Equipment stored at the Stadium nor will it be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes



## **XVI. BONDS/INSURANCE/INDEMNIFICATION**

1. Proposal Bond or Check: A proposal bond or certified check, in the amount of \$50,000 made payable to the Operator, shall be submitted with the Proposer's original Proposal. A Proposer may demand the return of their bond or check any time after 180 days after the opening of proposals unless Proposer has been notified of acceptance of their Proposal. The bond or check of the successful Proposer shall be held until the delivery of the approved Agreement. The bond or check shall be retained by the Operator, as liquidated damages, if the successful Proposer fails to execute the Agreement after the award.
2. Concessionaire shall not commence any work under the Agreement until they have obtained all of the prescribed insurance and bonds, and such insurance and bonds have been approved by the Operator.
3. Performance Bond: The provisions of this paragraph shall survive the expiration or early termination of this Agreement. During the Agreement, Concessionaire shall maintain a performance bond or letter of credit in the amount of one million dollars (\$1,000,000) payable to the Operator, in the event of default by the Concessionaire.
4. Required Insurance: During the term of the Agreement, the following insurance coverage shall be kept in full force and effect continually and may be increased to meet the then current needs of the Stadium. These expenses and costs shall be a Direct Operating Cost.
  - a) Commercial General Liability Insurance (including contractual liability covering the requirements of the indemnification provisions, and automobile Liability coverage (owned, non-owned and hired coverages) with minimum limits of \$2,000,000 per occurrence, and \$10,000,000 in the aggregate. The insurance must protect the Concessionaire and Operator from claims for personal injury (including bodily injury and death) and property damage which may arise from or in connection with the performance of Concessionaire's services hereunder or from or out of any negligent act or omission of Concessionaire, its officers, directors, agents or employees. Limit requirements may be met by combining primary and excess/umbrella policies if necessary.
  - b) Liquor liability insurance in an amount not less than \$50,000,000. The required liquor liability insurance may be provided in combination with liquor liability coverage under Commercial General Liability, along with any Umbrella and Excess coverage.
  - c) Blanket Employee Dishonesty with minimum limits of \$100,000 per occurrence. This coverage shall be extended to provide coverage to funds and/or property held by the Concessionaire on behalf of the Operator.
  - d) Workers' Compensation Insurance as required by applicable law.
  - e) Employer's Liability Insurance with minimum limits of \$1,000,000 per occurrence.

- f) Personal Property Insurance providing All Risk Coverage on a replacement basis for the appropriate limit to cover all Concessionaire's personal property to include furniture, fixtures, equipment, inventory and any other personal property of the Concessionaire.
  - g) Umbrella or Excess Liability: I \$50,000,000. Coverage is to apply to excess of Comprehensive General, Employer's, Alcoholic Beverage and Automobile Liability policies
- 5. All such insurance required in above shall be with companies and on forms acceptable to Operator and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to the Operator. All insurance shall be primary and not contributory. All insurance shall be written by companies with a BEST Guide of rating of A- VII or better. No B ratings are acceptable. Certificates of insurance (or copies of policies, if required by the Operator) shall be furnished to the Operator, naming the MFSD, SMC and PDB , as additional insured and contain a waiver of subrogation. The additional insured requirement does not apply to Workers' Compensation or Blanket Employee Dishonesty.
  - 6. Not later than thirty (30) days prior to the date on which coverage is to be provided hereunder, the Concessionaire shall furnish to the Operator a certificate evidencing the required coverage.
  - 7. Mutual Waiver of Subrogation: Neither the Operator nor the Concessionaire shall be liable to the other party hereto or to any insurance company (by way of subrogation or otherwise) insuring the other party hereto for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees; provided, however, that this limitation of liability shall only be applicable to the extent of insurance proceeds paid where such loss or damage is covered by insurance benefiting the party suffering such loss or damage.
  - 8. Said mutual limitation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in any other related agreement with respect to any claim of the Operator or the Concessionaire. Inasmuch as the said limitation of liability will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), the Operator and the Concessionaire agree to give to each insurance company which has issued to it, policies of liability insurance, written notice of the terms of said mutual limitation of liability, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said limitation of liability.
  - 9. Indemnification: Concessionaire shall defend indemnify, defend and hold the Operator Parties harmless from and against any and all claims, demands, losses, or expenses, of any nature whatsoever, including attorneys' fees, arising directly or indirectly from or out of any negligent or willfully wrongful act, error, or omission of Concessionaire, or any of its officers, directors, partners, member, managers, agents, subcontractors, invitees or employees including volunteers;

and/or any occupational injury or illness sustained by an employee, volunteer, or agent of the Concessionaire in furtherance of Concessionaire's services hereunder, and/or any failure of Concessionaire to perform its services hereunder in accordance with the highest generally accepted professional standards, and/or any breach of Concessionaire's representations as set forth herein, and/or any other failure of Concessionaire to comply with the obligation on its part to be performed hereunder.

## **XVII. DEFAULT**

1. The Agreement shall contain appropriate provisions defining events of default by the Concessionaire including, but not limited to, the following. In the event that the Concessionaire shall fail to perform, keep and observe any of the terms, covenants, and conditions of the Agreement to be performed, kept or observed, such as failing to pay the correct amount of moneys due the Operator, the Operator shall give the Concessionaire written notice of such default. In the event, such default is not remedied or steps taken to remedy default to the satisfaction and approval of the Operator within fifteen (15) days of receipt of such notice by the Concessionaire, the Concessionaire may be declared in default, and all of their rights under the Agreement shall terminate. At the direction of the Operator, the Concessionaire shall vacate the Stadium and shall have no right to further operate under the Agreement.
2. In the event that the Concessionaire shall fail to correct any potentially hazardous condition, the Operator shall give written notice of such default. In the event such default is not remedied to the satisfaction and approval of the Operator within twenty-four (24) hours of receipt of such notice by the Concessionaire, the Concessionaire may be declared in default, and all of their rights under the Agreement shall terminate.
3. Should the Concessionaire be placed into bankruptcy either voluntarily or by the courts, or should the Concessionaire become financially insolvent and unable to perform its duties under the Agreement, the Operator may immediately place the Concessionaire in default, terminate the Agreement, and assume the Foodservice operation of the Stadium under the Agreement.
4. Should the Concessionaire fail to obtain or maintain the necessary licenses and permits, including the Alcoholic Beverage Licenses, the Operator may place the Concessionaire in default.
5. The Operator may terminate this Agreement if the Concessionaire allows a lien to be placed on the Stadium for any work approved by or administered by the Concessionaire.
6. The Operator shall retain the right to terminate the Agreement if the Operator is generally dissatisfied regarding Concessionaire's uncured performance, product, or service quality, based on customer surveys or other mutually agreed to rating services. Failure on the part of the Concessionaire to reach that Operator-approved level of customer satisfaction will allow the Operator to terminate the Agreement without constituting a default by the Concessionaire.
7. The Operator shall retain the right to terminate the Agreement if the Concessionaire repeatedly fails to work cooperatively with the Operator or its Renters and/or subcontractors.
8. Any termination of the Agreement is subject to the buyout provision of the Concessionaire's Operator-approved investment.