

5F-2

Agenda Item #:

TIME CERTAIN
11:00 A.M.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 18, 2015 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Developer Agreement (“Agreement”) with HW Spring Training Complex, LLC, (“LLC”) formed by the Washington Nationals Baseball Club, L.L.C., a Washington, D.C. Limited Liability Company (“Nationals”) and the Houston Astros, L.L.C., a Texas Limited Liability Company (“Astros”), to develop a two team Major League Baseball spring training complex (“Facility”).

Summary: This Agreement provides the terms and conditions by which the LLC shall serve as the County’s development consultant for construction of the Facility as contemplated by the material term sheet approved by the Board on February 3, 2015. The LLC shall select contractor(s) and consultant(s) consistent with the requirements of the Consultant’s Competitive Negotiation Act, and be responsible for the design, permitting, construction and delivery of the Facility with the minimum requirements outlined in Exhibit B of the Agreement. The County will issue revenue bonds sufficient to fund the development of the Facility in the net amount of 130 Million Dollars to be added to the Five (5) Million Dollars allocated in the Due Diligence and Planning Services Agreement (R-2015-0358) approved by the Board on March 10, 2015. The amount ultimately available for program expenditures (the “Budgeted Amount”) may be lower than 135 Million Dollars, depending on whether the extent to which any pre-construction cost savings are identified. However, the County’s obligation to issue County Bonds to finance the development is subject to conditions precedent as follows; 1) execution of this Agreement, 2) execution of the Sports Facility Use Agreement, 3) closing on the exchange of the properties as contemplated by the Interlocal Agreement with the City of West Palm Beach (“Interlocal”), 4) County’s receipt of the Funding Certification Letter from the State pursuant to F.S. §288.11631, 5) completion of the due diligence requirements for the Facility, and 6) approval of this Agreement by Major League Baseball, if required. Until such time that all conditions precedent are met; the Budgeted Amount remains at 5 (Five) Million Dollars. In addition, the Agreement assigns the County’s responsibilities pursuant to the Reclaimed Water Agreements and the Interlocal to the LLC, which includes the design, permitting, development and delivery of a park on approximately 12.2 acres adjacent to the Facility, at the LLC’s sole cost and expense. *The approval of this agreement is a companion to the Interlocal, Sports Facility Use Agreement and three separate Agreements pertaining to reclaimed water serving the Facility.* (FDO Admin) Countywide/District 7 (MJ)

Background and Policy Issues:

CONTINUED ON PAGE 3

Attachments:
Developer Agreement

Recommended By: *Amy Wolf* 8/10/15
Department Director **Date**

Approved By: *Don Allen* 8/14/15
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	<u>\$130,000,000</u>	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>_____</u>	<u>\$130,000,000</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Proposed Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

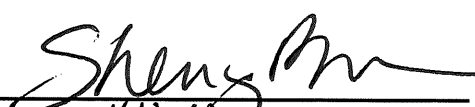
B. Recommended Sources of Funds/Summary of Fiscal Impact:

The Budgeted Amount for this contract is \$135,000,000. \$5,000,000 was previously encumbered from TDC 1st Cent Reserves and the remaining \$130,000,000 will be from a taxable non-ad valorem revenue bond anticipated to be issued in FY 2016. The actual amount of the bond issue will be greater than \$130,000,000 to cover the costs of bond issuance, etc. The debt service on the bond will be paid from a combination of funding received from the State, the use fees from the Teams, and funding the TDC 1st Cent.

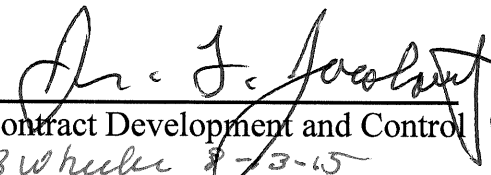
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

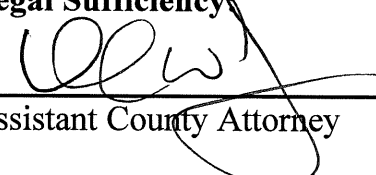


 OFMB *KN 4/1*
8/12 8/12



 Contract Development and Control *8/13/15*
B Wheeler 8-3-15

B. Legal Sufficiency



 Assistant County Attorney *8/14/15*

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

The material components of the Agreement, and a summary of each, are provided in the following paragraphs.

Resolved Issues

Development Services

The LLC shall be responsible for administering the contract obligations of the contractor(s) and consultant(s) who are providing customary services and warranties. The LLC disclaims all construction warranties and is solely responsible for seeking recovery from the contractors and consultants for any damages the LLC, Teams and/or the County may incur as a result of failure of a consultant or contractor to perform in accordance to the respective construction or consultant contract(s). The LLC will be responsible for approving and requesting County payment for services from the Budgeted Amount retroactive to the February 3, 2015 approval of the Due Diligence and Planning Services Agreement. Costs that are not eligible for reimbursement from the Budgeted Amount include; 1) direct or indirect costs or expenses of the LLC or the Teams' employees, 2) costs or expenses for attorneys or financial advisors retained by the LLC or the Teams, 3) Palm Beach County impact fees, 4) Palm Beach County building permit fees, and 5) Costs associated with promotional items and marketing.

The LLC has the right to approve Change Orders, subject to County approval of those Change Orders that would; 1) significantly changes the general scope, extent or character of the Program or its design including, but not limited to, changes in size or character of construction; 2) modifies specified equipment and/or substitutes materials in Public Use Improvements as established within the Agreement; and/or 3) changes the Art in Public Places ("Art") component of the Facility that will integrate Art at a value of no less than \$800,000 pursuant to County's Art Program.

The LLC is responsible for constructing the Facility in accordance to County's standard design and construction practices, unless specific deviations are approved by the Director of FD&O. Exhibit F of the Agreement will identify those deviations that are approved but with conditions either; 1) re-assigning financial responsibility for renewal/replacement of the asset solely to the LLC, and/or 2) exempting the asset which is the subject of the deviation from coverage under the County's property insurance after completion of the Facility..

One of the deviations contained with Exhibit F would allow the LLC to pursue a potential cost savings measure involving relocating solid waste (other than reclaimed sand and fines) which are unsuitable materials on which to support structural improvements, from their current location to other areas on the Site or that are to remain in place. Should the LLC decide to pursue this cost savings measure, the LLC shall:

- Commission a study(ies) which, at a minimum, will: evaluate the volume and type of solid wastes which are to remain on-Site, taking into account a list of prohibited materials identified in Exhibit F; the level of constituents which were identified in the Limited Site Assessment Report prepared by URS and may be contained in any solid waste to be retained or relocated; the proposed Site location(s) to receive or retain the solid waste; the proposed method of placement (ie: burying, piling, etc); distance(s) between solid waste and water table; proposed fill cap; compaction methodology; and a list of all required regulatory permits and approvals (Study). The conclusion of the Study shall be a specific purpose plan for the retention and/or relocation of solid waste on the Site in a format, and with content, suitable to clearly explain the proposal to the public at large. The County shall have the ability to review and approve the Study for the sole purpose of determining compliance with this Section.
- Coordinate with the City of West Palm Beach if the proposed location is in the Buffer Area and/or City Park. If the LLC is to move forward with the retention/relocation of solid waste, the LLC must obtain written documentation West Palm Beach has reviewed the Study and does not oppose the LLC implementing this cost savings measure. This coordination can happen only after the County has approved the Study, prior to making application to any regulatory agency for implementation of this cost savings measure (including the City of West Palm Beach in their regulatory capacity), and after distributing the results of the Study to West Palm Beach.
- Secure the necessary regulatory permits and approvals to fully implement the retention and/or relocation of solid waste on Site. Other than executing any applications for regulatory permits and approvals, the County shall have no obligation to explain, support or otherwise comment on the LLC's proposal. Notwithstanding the above, the County shall have the right to comment if it so chooses.
- Be responsible for complying with all terms and conditions associated with each and every regulatory approval required to implement this cost savings measure including, but not necessarily limited to, physical improvements to the Site that are otherwise not required, groundwater monitoring wells, groundwater sampling, audits, reports, and inspections as may be required by any permitting authority.
- Indemnify, defend, and save harmless the County from any and all cost, expense and liability arising from or out of LLC's implementation of this cost savings measure. LLC shall have full and complete responsibility for any removal, transport, remediation or disposal required in order to resolve and conclude any environmental action and restore compliance with environmental laws, as well as reasonable attorney's fees and costs.

Page 4 – Background and Policy Issues Continued

- Share the savings with the County as a Pre-Construction Cost Savings in accordance with Section 8.4.3 of this Agreement. The LLC also acknowledges that the Budgeted Amount will be reduced by the County's share of the savings and the treatment of the area for property insurance and renewal/replacement responsibility will be identified on Exhibit F.

Reclaimed Water Agreements

Three reclaimed water agreements, which are being considered as a companion but separate item, are essential to the development of the Facility, as it is the only economically viable source of water for irrigation of the Facility. These agreement are discussed in more detail in the companion item. The Developer Agreement requires the LLC to assume responsibility, at a minimum, for the following; 1) the costs associated with the design, permitting and installation of the reclaimed water pipeline from the PBC Water Utilities Department's reclaimed water supply located on the East Coast Regional Water Plant to the City and then onto the Site, which may be allocated from the Budgeted Amount; and then 2) all ongoing retail charges associated with the purchase/use of reclaimed water from the City.

LLC Services Related to the Interlocal Agreement

The LLC shall have sole responsibility for each of the following County obligations of the Interlocal Agreement:

- pertaining to environmental liability, securing a certification of the Limited Site Assessment (LSA) prepared by URS Southern Corp. to City or making the City a third party beneficiary of the LSA;
- design, permitting, development and construction of the City Park adjacent to the Facility;
- all provision of the Temporary Construction Easement for the development of the City Park;
- assuming obligations, responsibilities and rights associated with the Access Easement across the City Park for parking associated with the Facility; and
- assuming obligations, responsibilities and rights associated with the License Agreement for construction of improvements within the City's 50' Water Catchment Area.

The LLC will assume and independently fund the obligations of County related to the City Park. The LLC shall establish the processes and procedures necessary to ensure the separation of accounting for all of the Services related to the City Park including, but not limited to, program management, design, permits and approvals, construction, construction administration, equipping, and providing the appropriate insurance obligations, so that the LLC and the County are able to legally demonstrate that no County monies were expended on the City Park.

County's Responsibilities Pursuant to the Developer Agreement

The County shall have sole responsibility for each of the following:

- approving all conditions of permits or approvals which run with the land and/or require an expense not covered by the Program Cost Estimate;
- attending, at County's discretion, any meeting scheduled by the LLC relating to the Program, except those between the LLC and/or its representatives and legal counsel that may be considered attorney-client privileged;
- paying all Actual Costs for the Services from the Budgeted Amount, including Actual Costs for the Services authorized retroactive to February 3, 2015;
- using good faith efforts to; 1) secure the conveyance of the Site from the City to the County; and 2) secure a Temporary Construction Easement for access to develop the City Park;
- using good faith efforts to obtain a Funding Certification Letter and to execute an agreement with the State pursuant to Florida Statute §288.11631;
- funding Cost Overruns attributable to County; and
- performing the obligations assigned to County for design, permitting, management and construction of the improvements contained in Exhibit E of the Reclaimed Water Agreement.

Program Cost Estimate/Budget/Financing

The LLC shall create a Program Cost Estimate for development of the Facility. Prior to the issuance of the County Bonds, the LLC shall submit the form and structure of the Program Cost Estimate for approval by the County. The County's approval shall be for compliance with the requirements of this Agreement as well as the form and practicality of monitoring and implementation throughout the term of the development of the Facility. The Program Cost Estimate shall specifically identify the line items reflecting the anticipated Actual Costs, which include Program Contingency lines and Non-Eligible Costs, in accordance to County's specific requirements.

Expenditures in excess of the Budgeted Amount are considered Cost Overruns and are the sole responsibility of the LLC unless attributable to County as a result of County imposition of new program requirements or County breach of the Agreement.

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The conditions precedent to the County's issuance of bonds are as follows; 1) execution of this Agreement, 2) execution of the Sports Facility Use Agreement, 3) the City having received no challenge to the Interlocal Agreement pursuant to Section 2-31(27)9f) of the City Code of Ordinances, 4) closing on the exchange of the properties as contemplated by the Interlocal, 5) County's receipt of the Funding Certification Letter from the State pursuant to F.S. §288.11631, 6) completion of the due diligence requirements for the Facility, and 7) approval by Major League Baseball, if required.

Until such time that the conditions precedent to the issuance of bonds are met, the Budgeted Amount remains at \$5,000,000. When the conditions precedent are met, the County will issue revenue bonds sufficient to fund the development of the Facility in the net amount of 130 Million Dollars to be added to the Five (5) Million Dollars allocated in the Due Diligence and Planning Services Agreement (R-2015-0358). The amount available for program expenditures (the "Budgeted Amount") may be lower than 135 Million Dollars, depending on whether and the extent to which any pre-construction cost savings are identified.

At the time of bond issuance, if the true interest cost exceeds 4.78%, the LLC has the option to either; 1) authorize the County to issue the bonds and to increase the LLC's annual fee payments pursuant to the Sports Facility Use Agreement ("Use Agreement") in an amount equal to the aggregate additional true interest cost of the bonds, or 2) terminate this Agreement and reimburse the County 50% of the County's Actual Costs at the date of termination.

During the construction of the Facility, there are two (2) types of the savings which may occur; 1) Sales Tax Recovery Savings resulting from participation in the County's Sales Tax Recovery program, with all such savings allocated to the program contingency, and 2) monies remaining in the program contingency at final construction completion, if the program budget does not exceed the Budgeted Amount. These Construction Savings are to be allocated 2/3 to the LLC's Renewal and Replacement (R/R) Project Reserve and 1/3 to the County's R/R Project Reserve. If the program budget does exceed the Budgeted Amount as a result of Cost Overruns attributable to the LLC, any monies remaining in the program contingency would be returned to the LLC.

Term and Termination of the Agreement

The term of the Agreement commences upon the approval of the Board and continues until the earlier of; (a) full completion of all Services and payments contemplated; (b) the date of termination of the Interlocal Agreement between County and City if terminated prior to the closing; (c) the date of the termination of the Sports Facility Use Agreement; or (d) the date of the termination of this Agreement, pursuant to the termination provisions.

Both the County and the LLC have the right to terminate the Agreement if the Conditions Precedent are not satisfied or waived by March 1, 2016. In that case, the LLC shall reimburse the County 100% of actual costs paid by County to the LLC, unless the failure is County's inability to get the Funding Certification Letter or failure to close on the exchange of the properties with the City, in which case the LLC shall reimburse the County for 50% of the actual costs paid to the LLC. In addition, the LLC shall have the right to terminate the agreement for any reason prior to the sale of the County Bonds, subject to repayment of One Hundred Percent (100%) of the Actual Costs paid by County to the LLC.

Defaults

The County would be in default for failure to make the payments due for Actual Services after fifteen (15) days written notice from the LLC, or failure to perform a material obligation provided County has 30 days prior written notice and has not cured the default, or initiated a cure if a longer time is required. The LLC remedies for a County default are to grant additional time for performance, seek dispute resolution, file a specific performance action, and if the LLC is unable to obtain specific performance, seek other remedies at law or in equity.

The LLC would be in default upon the filing of bankruptcy, failing to pay Contractors or Consultants when due, failing to perform a material obligation of the Agreement provided the LLC has thirty (30) days notice and has not cured the default, or initiated a cure if a longer cure period is required. The County has the same remedies as the LLC, except that County also has the right to terminate the Agreement and the Sports Facility Use Agreement and to seek recovery pursuant to the Guaranty of each Team. The County will not sue the LLC for damages attributable to a Consultant or a Contractor provided the LLC pursues damages against the Consultant or Contractor on behalf of County.

The parties have mutually agreed to attend dispute resolution prior to filing a lawsuit.

The LLC agrees to comply with Florida Statute §288.11631, which requires the LLC to repay the State of Florida in the amount equal to the total amount of state distributions expected between the date the team breaks its agreement through the final maturity of the bonds.

Insurance & Indemnification

The Teams and the LLC are required to maintain workers comp, commercial general liability and automobile insurance for the Facility. Despite the County not being a party to the consultant and construction contracts with the LLC, the LLC is responsible for using the County's standard professional services and construction contracts; all of which contain the

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County's standard insurance and indemnification requirements. In addition, the County is named as an additional insured and third party beneficiary to all consultant and construction contracts. The County is required to review and approve the form of all such contracts prior to the LLC executing same to ensure compliance with these requirements.

The LLC indemnifies the County to all claims excluding claims caused by the County's negligent or willful acts.

Guaranty

A single guaranty is proposed by the LLC for both the Developer Agreement and Sports Facility Use Agreement. That guaranty unconditionally, absolutely and irrevocably guarantees to County all obligations imposed on the LLC through this Developer Agreement.

After extensive negotiation, each team has offered a guaranty in the amount of 100 Million and no/100 Dollars, which is secured with a letter opinion from an appraisal firm or certified public accountant that one or both Teams combined have a net worth or fair value of equity of 100 Million and no/100 Dollars. The letter will be provided once every five years and in the remaining years, the Teams will provide a statement from an appraisal firm or certified public accountant that there has been no material change in the financial position of the guarantor over the last year. This is a deviation from standard policy, which requires a letter of credit or bond be provided.

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2015 by and between Palm Beach County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County") and HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC").

WITNESSETH:

WHEREAS, the County desires to develop and own a Stadium, including two-team training facilities, practice fields, clubhouses, dedicated on-Site parking areas, and other appurtenances and improvements, to be used by the Washington Nationals and the Houston Astros as their joint spring training facility to be located on certain real property more particularly described on **Exhibit A** attached hereto and made a part hereof by this reference, within the City of West Palm Beach, Palm Beach County, Florida; and

WHEREAS, the improvements to the Site are to be designed and constructed to include the Minimum Requirements as set forth in **Exhibit B** attached hereto and made a part hereof; and

WHEREAS, the County desires to enter into an agreement with the LLC whereby the LLC will coordinate and administer all aspects of the design, permitting, construction, development and delivery of the Facility, including, without limitation, the obligations to coordinate, administer, and assume certain rights and obligations with respect to: (a) the Consultants under the Consultant Contracts (as hereinafter defined), and (b) the Contractor under the Construction Contract (as hereinafter defined) for the Facility; and

WHEREAS, the LLC desires to act as the County's development consultant and to render development consultant services under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein contained, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 **RECITALS**

The foregoing recitals are hereby incorporated herein, and made a part hereof, by this reference.

ARTICLE 2 **DEFINITIONS**

The following terms shall have the meanings specified in this Article 2 when capitalized and used in this Agreement. Some terms provided herein are used only in the Sports Facility Use Agreement and are included herein for clarity. Capitalized terms not defined in this Article 2

shall have the meanings ascribed to them in this Agreement or in any other Agreement referenced herein. The meanings specified are applicable to both the singular and plural.

“Actual Costs” shall mean compensation for Services authorized and performed and either paid or payable by County pursuant to this Agreement and/or pursuant to the Due Diligence Agreement in an amount equal to the LLC’s paid or payable expenditures, without administrative mark-up, but not including Excluded Costs.

“Affidavit of Disbursement of Previous Payments” shall mean a form submitted by the Contractor certifying that it has paid all Subcontractors and suppliers for payments made by the LLC to the Contractor from the previous payment application.

“Affiliate” shall mean, with respect to the LLC or the Teams, a Person that, directly or indirectly, controls, is controlled by, or is under common control with, the LLC.

“Agreement” shall mean this Agreement (including all Exhibits hereto), as it may be amended or supplemented from time to time.

“Art” shall mean those improvements installed at the Site and Facility pursuant to the County’s “Art in Public Places” program.

“Art in Public Places Administrator” shall mean an employee within the Facilities Development and Operations Department designated by the County and indicated to the LLC as the individual with responsibility to implement the County’s “Art in Public Places” program.

“Budgeted Amount” shall mean Five Million and no/100 Dollars (\$5,000,000) until issuance of the County Bonds, and thereafter the Budgeted Amount shall equal the net amount of the County Bond issue plus Five Million and no/100 Dollars (\$5,000,000) which combined, shall equal One Hundred Thirty Five Million and No/100 Dollars (\$135,000,000.00) less Pre-Construction Cost Savings.

“Buffer Area” shall mean the area within the South 400’ of the Site to be used as grassed pervious open space, multipurpose athletic fields, and overflow parking as depicted on the Conceptual Plan and described in Section 12.7 of the Interlocal Agreement.

“Business Day” shall mean any day, except Saturday, Sunday or any national holiday or any other day recognized by the County as a holiday, or any other day during which County governmental offices are closed.

“Change Order” shall mean a written instruction to the Contractor or Consultant authorizing an addition, deletion, or revision to the Work in consideration of an adjustment in the contract sum, contract time, or both. Change Orders may also be necessary to document no cost revisions to specified products or materials.

“City” shall mean the City of West Palm Beach, a Florida municipal corporation.

“City Park” shall mean the land and improvements as described in **Exhibit I and Section 12.6 of the Interlocal Agreement**.

“City Park Improvements” shall mean the facilities and features described in **Exhibit I and Section 12.6 of the Interlocal Agreement** and including the loop trail feature as described therein.

“City Park Property” shall mean the approximately 12.2 acres legally described in **Exhibit A of the Interlocal Agreement**.

“Clerk” shall mean the Clerk to the Board of County Commissioners, Palm Beach County.

“Conceptual Plan” shall mean the general layout of proposed improvements to the Site and the City Park Property including the City Park, Facility and Buffer Area and which is attached as **Exhibit B to the Interlocal Agreement**.

“Concession License Fee” shall mean the amounts paid by the LLC as consideration for the Food and Beverage Concession Areas, payable annually, based on escalating schedule of annual payments as described in Article 6 of the Sports Facility Use Agreement.

“Construction Change Directive” or **“CCD”** shall mean a written order prepared by the architect/engineer of record and issued by the LLC, directing a change in the Work and stating a proposed basis for adjustment, if any, in the contract sum or contract time, or both.

“Construction Change Proposal” or **“CCP”** is used by the Contractor in response to a FB itemizing proposed changes in the contract price or time. It also may be used by the Contractor to initiate proposed changes the Contractor deems necessary.

“Construction Contract(s)” shall mean the legally binding agreement(s) to be entered into by and between the LLC and the Contractor(s) for the construction of the Facility, or any portion thereof, as such agreement(s) may be amended by the LLC including through a Change Order authorized pursuant to Section 8.5 herein.

“Construction Savings” shall mean the amount, if any, remaining in the Program Contingency at the time of Final Completion if the Program Budget does not exceed the Budgeted Amount.

“Consultant” shall mean the Planning Consultant, Environmental Consultant, Program Manager, Architectural/Design Consultant, or other professional either individually or collectively as the context shall require, selected either in accordance with the procedures set forth in **Exhibit C** attached hereto, or otherwise as agreed to between the parties, engaged by the LLC, responsible for planning, permitting, administering and designing the Program, or any portion thereof, pursuant to a Consultant Contract, and such replacement consultant(s) as may be selected as agreed to between the Parties from time to time.

“Consultant Contract(s)” shall mean the agreement(s) to be entered into by and between the LLC and the Consultant(s) for the planning, design and construction administration of the Facility, or any portion thereof, as such Consultant Contract may be amended by the LLC through a Change Order authorized pursuant to Section 8.5 herein.

“Contractor” shall mean the Construction Manager, duly licensed pursuant to Chapter 489, Florida Statutes, selected in accordance with the procedures set forth in the attached **Exhibit C**, engaged by the LLC, responsible for constructing the Program, or any portion thereof, pursuant to the Construction Contract, and such replacement contractor(s) as may be selected in accordance with County requirements from time to time.

“Cost Overruns” shall mean Program Budget in excess of the Budgeted Amount.

“Cost Savings” shall mean; 1) Pre-Construction Cost Savings, 2) savings resulting from participation in the Sales Tax Recovery Program, and 3) Construction Savings.

“County” shall have the meaning set forth in the introductory paragraph of this Agreement.

“County Bonds” shall mean the County’s revenue bonds to be issued in connection with the Facility in one or more series yielding One Hundred Thirty Million Dollars (\$130,000,000) in net proceeds for development of the Facility and any refunding thereof.

“County Representative” shall mean the Director of the County’s Facilities Development & Operations Department, or such other persons as may be designated in writing by the County as its representative or liaison during the Term of this Agreement.

“Day” shall mean each 24-hour period beginning and ending at 12:00 midnight Eastern Standard Time and shall include Saturdays, Sundays and all holidays, except that in the event that an obligation to be performed under this Agreement falls on a day other than a Business Day, such obligation shall be deemed due on the next Day that County offices are open for business thereafter.

“Design Contract” shall mean the agreement to be entered into by and between the LLC and the Design Professional selected by the LLC for the design of the Facility, or any portion thereof, as such design contract may be amended or replaced from time to time.

“Design Professional” shall mean HKS, Inc., or such other design professional as may be selected in accordance with this Agreement.

“Drawings” shall have the meaning set forth in the Construction Contract.

“Due Diligence Agreement” shall mean the Due Diligence and Planning Services Agreement R-2015-0358, executed on March 10, 2015, between the LLC and the County for due diligence and planning services, as the same may be amended or supplemented from time to time.

“Effective Date” shall mean the date this Agreement is executed by the Palm Beach County Board of County Commissioners.

“Effective Termination Date” shall be seven (7) days after the defaulting party has received written notice of termination.

“ERP” shall mean the environmental resource permit issued for the Facility and City Park Improvements as set forth in Section 12.2 of the Interlocal Agreement.

“Excluded Costs” shall mean those direct or indirect costs, fees and/or expenses that are not eligible for payment from the Budgeted Amount and that are identified in the attached **Exhibit D**.

“Exclusive Parking Areas” shall mean those areas designated in the Exclusive Use Areas designed for and/or used for the parking of Team related vehicles.

“Exclusive Use Areas” shall mean the areas that are identified in **Exhibit D of the Sports Facility Use Agreement** and are reserved for the exclusive use of the Teams, unless otherwise set forth therein.

“Facility” shall mean a professional sports franchise facility for joint spring training of two Major League Baseball teams as well as minor league affiliates, including a stadium, two-team training facilities, practice fields, clubhouses, dedicated on-Site parking areas, and other appurtenances and improvements, intended for use by the Washington Nationals and the Houston Astros and for other tourism and community uses contemplated by the Operative Agreements, and shall also include, without limiting the foregoing, all improved and unimproved areas of the Site and any off-Site improvements required for regulatory approval.

“Facility Use Fee” shall have the meaning ascribed to such term in the Sports Facility Use Agreement.

“Final Completion” shall have the meaning ascribed to it in the Construction Contract.

“FF&E” shall mean furniture, fixtures and equipment.

“Field Bulletin” or “FB” shall mean an instruction issued by the Consultant proposing a change in either the drawings or specifications and requesting a proposal from the Contractor. It is not a direction to proceed with the work.

“Funding Certification Letter” shall mean a letter from the Florida Department of Economic Opportunity certifying the County pursuant to Section 288.11631, Florida Statutes, as eligible to receive funding for the construction and development of the Facility in the amount of Two Million Dollars (\$2,000,000) per year for a total of Twenty-Five (25) years.

“GMP” or “Guaranteed Maximum Price” shall mean the cost of the Work required to be performed pursuant to the Construction Contract and including, but not limited to, the Contractor’s lump sum fee as set forth in the Construction Contract.

“Interest Election” shall mean the LLC’s option, available at the time of County Bond issuance only if the true interest cost exceeds 4.78%, to either; 1) authorize the County to issue the County Bonds and to increase the LLC’s annual Facility Use Fee, Parking Area Fee and Concession License Fee payments pro rata in an amount equal to the aggregate additional true interest cost of the County Bonds allocable to the LLC due to the higher true interest cost, or 2) terminate the Agreement and reimburse the County 50% of the Actual Costs at the date of termination.

“Interlocal Agreement” shall mean Agreement R-2015-_____ between the City and the County as the same may be amended or supplemented from time to time.

“Land Reclamation” shall mean the actual Work tasks, subject to Section 5.4 herein, associated with the removal and disposal of unsuitable and/or contaminated materials as well as replacement with suitable building materials pursuant to the Construction Contract. Land Reclamation shall not include making any improvements to the Site other than to replace the unsuitable and/or contaminated materials with suitable building materials pursuant to the Construction Contract.

“LLC” shall mean HW Spring Training Complex, LLC, a Florida Limited Liability Company, formed under the laws of the State of Florida and validly authorized to do business as a limited liability company under Florida law.

“LLC Parties” shall mean the LLC and the Teams and each of their respective members, officers, directors, employees, agents, servants and representatives, of any and all of the foregoing.

“LLC Restoration Areas” shall mean any and all improvements and land areas identified in **Exhibit E of the Sports Facility Use Agreement**, all land areas and property identified as an LLC Restoration Area in **Exhibit F** hereto, and any personal property, equipment and/or any portion of the Facility damaged as a result of the deviations from County standard design and construction policies identified in **Exhibit F** hereto, shall be considered LLC Restoration Areas for the purposes of determining financial responsibility for claims including, but not limited to, damage to personal property, damage to the Facility, all property insurance claims and deductible costs and financial responsibility for repairs or restorations to property resulting from said deviations.

“Major League Baseball” or “MLB” shall have the meaning as set forth in the Sports Facility Use Agreement.

“Minimum Requirements” shall mean the minimum programmatic requirements for a Facility, as set forth in **Exhibit B** hereto.

“Non-Eligible Costs” shall mean all projected expenditures and costs, other than Excluded Costs, relating to the development of the Site and Facility that are; 1) Cost Overruns, or 2) exceed what the LLC and County have agreed to be standard for Major League Baseball Spring Training Facilities in terms of quantity or quality as of the date the County approves the County Bonds. Except for Cost Overruns attributable to the County pursuant to Section 8.3 hereof, Non-Eligible Costs shall be paid solely by the LLC and shall not be paid from the Budgeted Amount.

“Operative Agreements” shall collectively refer to this Developer Agreement, the Sports Facility Use Agreement and the Interlocal Agreement.

“Parking Area Fee” shall mean the amounts paid by the LLC as consideration for the parking of vehicles, payable annually, based on an escalating schedule of annual payments as described in Article 6 of the Sports Facility Use Agreement.

“Parking Areas” shall mean any areas at the Facility that are not Exclusive Parking Areas and which are intended to be used for the parking of vehicles as identified in **Exhibit C of the Sports Facility Use Agreement** and which may be included in a County Event license agreement, if requested by the County pursuant to Section 5.3 of the Sports Facility Use Agreement.

“Person” shall mean an individual, corporation, association, general partnership, limited partnership, limited liability company, trust, unincorporated organization, political subdivision or municipal corporation.

“Pre-Construction Cost Savings” shall mean the dollar amount of the difference between One Hundred and Thirty Five Million Dollars (\$135,000,000) and the Program Cost Estimate calculated at the time of County approval of the County Bonds, if the Program Cost Estimate is less than One Hundred and Thirty Five Million Dollars (\$135,000,000).

“Pre-Land Reclamation” shall mean activities relating to the Consultant and Contractor gaining access to the Site for the purpose of performing Site investigation and due diligence as needed to prepare assessments, condition reports, and development plans. Activities may include, but are not limited to, subsurface and/or obtrusive exploration and sampling of the soil, surface water, and/or groundwater, installation and abandonment of soil borings and temporary monitoring wells using standard drilling practices and/or direct push technologies and limited emergency response source removal activities.

“Program” shall mean the Services required for the design, development and construction of the Facility.

“Program Budget” shall mean the total of the Actual Costs and Non-Eligible Costs, but not including Excluded Costs.

“Program Contingency” shall mean a specified amount of money within the Program Cost Estimate that can be re-allocated by the LLC to an Actual Cost line item within the Program

Cost Estimate without further approval of the County. All funds remaining in the individual line items of the Program Budget for Actual Costs after Final Completion shall be transferred to Program Contingency during the final accounting at the completion of the Program and shall become Construction Savings.

“Program Cost Estimate” shall mean the line item breakdown of all projected expenditures for the Services and Work authorized in Article 3 of this Agreement, including the Program Contingency, but not including Excluded Costs.

“Program Representative” shall mean the person designated by the LLC and acceptable to the County, who will represent and act on behalf of the LLC.

“Program Schedule” shall mean the schedule of events, dates and milestones for the timely completion of the Work prepared by the Contractor and accepted by the LLC in accordance with all requirements of the Construction Contract.

“Public Laws” shall mean all applicable federal, state and local laws, codes, ordinances, rules, regulations, standards or orders of any public authority having jurisdiction over the Program, including building, health, labor, safety, licensing, environmental or zoning laws, codes, ordinances, rules, regulations, standards or orders of any such public authority.

“Public Use Improvements” shall mean land areas along with all improvements, equipment, fixtures and furnishings that are the County’s renewal/replacement funding responsibility and that shall be identified during the design development phase of the Program and listed on **Exhibit B of the Sports Facility Use Agreement**, except for any improvements listed on **Exhibit F** of this Agreement as not being the County’s Renewal/Replacement funding responsibility, even if they are located within Public Use Improvement areas.

“Purchase Order” shall mean the County document that is issued by the County to a vendor to contract for the purchase of a product.

“Reclaimed Water Agreement” shall mean Agreement R-2015-_____ which sets forth terms and conditions for the extension of a reclaimed water pipeline to the Site and the City’s provision of reclaimed water to the Site.

“R/R Project” or “Renewal/Replacement Project” shall have the meaning provided in the Sports Facility Use Agreement.

“R/R Project Reserve” or “Renewal/Replacement Project Reserve” shall mean two lines in the Program Cost Estimate established pursuant to Section 8.4.7 herein which contain Construction Savings, if any, which upon Final Completion will be allocated to the LLC R/R Project Reserve and the County R/R Project Reserve in order to fund the initial R/R Project obligations of County and the LLC.

“Sales Tax Recovery PO” shall mean a Purchase Order issued by the County pursuant to the provisions of the County’s Sales Tax Recovery Program outlined in the attached **Exhibit E**.

“Sales Tax Recovery Program” shall mean the County’s program for recovery of sales tax outlined in the attached **Exhibit E**.

“SBE Goal” shall mean a minimum of fifteen (15) percent participation of County certified small business enterprises in the Program.

“Scope of Work” shall mean the aggregate of all Work required to complete the Program.

“Services” shall mean all of the responsibilities of the LLC as set forth in this Agreement, whether performed by LLC employees, Contractor(s), or by Consultant(s). The County acknowledges the LLC’s responsibilities are limited as described in Section 3.6 herein and exclude those tasks or responsibilities specifically assigned to County under this Agreement.

“Site” shall mean the real property legally described in **Exhibit A** attached hereto.

“Sports Facility Use Agreement” shall mean the Agreement R-2015-_____ between the County and the LLC governing the use, occupancy and operation of the Facility as the same may be amended or supplemented from time to time.

“Stadium” shall mean the improvement designed and constructed for Major League Baseball within the Facility in which the LLC will conduct its MLB Spring Training Home Games, as that term is defined in the Operative Agreements.

“Subcontractor” shall mean any contractor in privity with any Consultant, Contractor, or any other contractor at any tier.

“Substantial Completion” shall have the meaning as set forth in the Construction Contract.

“TCE” shall mean the Temporary Construction Easement granted by the City of West Palm Beach to County and the LLC for the construction of City Park and the City Park Improvements contained in **Exhibit I of the Interlocal Agreement**.

“Team(s)” shall collectively mean the Houston Astros, LLC, a Texas Limited Liability Company and the Washington Nationals Baseball Club, LLC, a Washington, D.C. Limited Liability Company, and their successors and assigns as authorized in this Agreement, and in the singular may refer to either entity individually.

“Term” shall have the meaning set forth in Article 10 herein.

“Work” shall mean all obligations, duties and responsibilities assigned to, or undertaken by, any Contractor(s) required to complete the Program pursuant to all Construction Contract(s).

ARTICLE 3
SERVICES TO BE PROVIDED BY LLC

3.1 All applications for permits and approvals shall require approval of the County Representative or other duly authorized County employee prior to submittal.

3.2 The LLC covenants to diligently perform the Services outlined below in a commercially reasonable manner consistent with the terms of the Operative Agreements.

3.3 The LLC shall, either itself, or through the Program Representative:

- A. act as the County's development consultant for the Facility and shall be responsible for the delivery of the Facility and completion of the Program in accordance to the requirements of this Agreement;
- B. select Consultant(s) and Contractor(s) to design and construct the Facility in a manner consistent with the requirements of the Consultant's Competitive Negotiation Act (CCNA), F.S. § 287.055 and County PPM CW-O-048, if applicable, or via a competitive request for proposals as required by County Code and as further detailed in the attached **Exhibit C**. The County shall have a voting member on each and every Selection Committee;
- C. select all other vendors receiving any payment under the Program Cost Estimate, not otherwise subject to the CCNA, in accordance with a competitive solicitation process;
- D. subject to Article 7 herein, engage (prepare, negotiate and enter into contracts with) and manage qualified Consultants and Contractor(s) to perform due diligence, testing, planning, design, and construction services as may be required in the LLC's discretion. The LLC shall also engage the Consultant(s) and Contractor(s) necessary to provide advice to the County concerning the conveyance of the Site, or portion thereof, to the County;
- E. subject to Article 7 herein, engage (prepare, negotiate and enter into contracts with) and manage the Contractor(s), Consultant(s) and vendors;
- F. take all actions necessary and/or required to effectively manage and coordinate all tasks and activities associated with the execution of multiple design and construction teams required to complete the Services;
- G. comply with all applicable requirements of any and all County Bond resolutions, documents and covenants consistent with the terms of the Operative Agreements;
- H. require each Contractor to construct all improvements in accordance with County's standard design and construction policies except as otherwise approved by County and specifically included in the attached **Exhibit F**;

- I. monitor, review and approve the development of drawings and the specifications prepared by the Consultant(s), conduct progress reviews of the drawings and specifications and coordinate such reviews with the Teams;
- J. observe the Work in progress to ensure that the Work is compliant with the terms of the respective Construction Contract and/or Purchase Orders;
- K. determine the acceptability of each Consultant's performance under the respective Consulting Contract(s) and each Contractor's performance under the respective Construction Contract(s), and as required take all necessary enforcement action to compel compliance with the terms of each Consultant Contract and each Construction Contract;
- L. conduct progress meetings and prepare reports (including an executive summary every other month), identifying the percentage of Work completed, the amount paid to each Consultant and Contractor and the remaining balance of each Consultant Contract and each Construction Contract;
- M. identify and coordinate activities required for Site access and due diligence that must be performed in order for the Program Schedule, Program Cost Estimate, development approval and permit assumptions to be satisfied;
- N. identify requirements and confirm assumptions for the Program related to Land Reclamation, infrastructure and permitting requirements;
- O. prepare a Program Schedule based on analysis of existing schedules, programs, goals and objectives;
- P. develop and maintain a list of dates which are critical for the success of the overall schedule of the Services identified in this Agreement;
- Q. prepare the line items within the Program Cost Estimate and Program Budget and at appropriate intervals and where necessary, review and assist in preparing revised line items within the Program Cost Estimate and Program Budget;
- R. update the Program Cost Estimate to specifically coincide with the timing of the GMP and the issuance of County Bonds;
- S. review preliminary designs for the Facility in order to confirm Program Cost Estimate assumptions;
- T. review detailed schedules and cash requirement projections;
- U. provide specific guidance about the proposed Program and uses for the Facility, and ensure that the Program meets or exceeds the Minimum Requirements;

- V. conduct all activities necessary to prepare applications for governmental permits and approvals and secure such permits and approvals subject to County review and/or approval requirements of this Agreement;
- W. prepare a list of required governmental reviews and permits/approvals, and engage Consultant(s) to prepare, submit and secure any permits or approvals that are required for the construction of the Facility;
- X. review and approve the design for the Facility and City Park pursuant to the requirements of this Agreement;
- Y. conduct design progress meetings with the Consultant(s) and Contractor(s), and County when required or requested/appropriate, as a forum for exchange of information and resolution of design decisions;
- Z. incorporate County's design and construction standards and approved plans into each Construction Contract as required by the terms of this Agreement and enforce compliance with these design and construction requirements in each Construction Contract;
- AA. incorporate and enforce requirements in each Construction Contract that, when specified as part of the approved design, each Contractor utilizes new materials and/or equipment (or newly manufactured materials and/or equipment using recycled components), including when such materials and/or equipment are incorporated into the Work, unless otherwise approved by the County; and where materials and/or equipment are not specified as part of the approved design, require each Contractor utilize a high grade of quality for its intended use;
- BB. review, negotiate and approve the design and pricing of all improvements which will become Public Use Improvements and submit to County for compliance with building standards where comparable standards exist;
- CC. identify the Parking Areas, Exclusive Parking Areas, Public Use Improvements and the LLC Restoration Areas no later than the conclusion of design development;
- DD. contractually require and enforce the requirement that the Consultant(s) and Contractor(s) design and construct the Facility to be compliant with the applicable building codes and American Red Cross ARC Standard 4496 for use of the Facility as a shelter site for the homeless during any periods of declared federal, state, or local emergency;
- EE. select an artist or artist team to design, fabricate and install integrated Art pursuant to a competitive process approved by County and incorporate the integrated Art into the design and construction, the total value of the integrated Art (including, but not limited to, honoraria, materials, fees, and any other costs

associated with the design, fabrication, and installation) being no less than \$800,000;

- FF.** conduct good faith comprehensive constructability reviews and value analysis to reduce the cost of the Program;
- GG.** coordinate with utility service providers for off and on-site water, sewer, gas, electric and telecommunications service, and other service, as appropriate;
- HH.** prepare all documentation and then submit to County for review, processing and approval of all required easements for the Program, including required utility easements for water, reclaimed water, sewer, electric, cable, telephone and other services and obtaining required insurance and indemnification from each Contractor and each Consultant performing Work on easements as set forth in Article 7 hereto;
- II.** conduct meetings with City, regulatory agencies and the community, as may be required to accomplish all Services contemplated in this Agreement;
- JJ.** handle public relations activities related to the Program, including but not limited to, responding to public inquiries, attending public meetings and presenting at community meetings;
- KK.** conduct coordination meetings with City, regulatory agencies and the community, as may be required for the purposes of planning and submitting development and permit applications;
- LL.** prepare a list of required governmental reviews and approvals, and engage Consultant(s) to secure any permits or approvals for off or on-site activities that are required for the construction of the Facility;
- MM.** contractually require and enforce the requirement that each Consultant designs, and each Contractor constructs, all physical improvements to the Site and the City Park Property in accordance with the ERP and as set forth in Section 12.2 of the Interlocal Agreement;
- NN.** implement the Sales Tax Recovery Program including reviewing and certifying each request for payment submitted by contractors and vendors under any Sales Tax Recovery POs for payment, in accordance with the applicable Sales Tax Recovery POs;
- OO.** evaluate phasing options and implications and determine an efficient and economical design and construction option consistent with the Minimum Requirements;

- PP. monitor each Contractor's request for Change Orders and notify the County and the Teams of any changes that may affect the operations or maintenance of the Facility;
- QQ. provide funding for Non-Eligible Costs, unless same are attributable to the County pursuant to Section 8.3 hereof, and the payment of such Non-Eligible Costs shall be guaranteed by the Guaranties attached to this Agreement as Exhibits I-1 and I-2;
- RR. ensure that all Public Use Improvements and non-Public Use Improvements are reported, inventoried, tagged and recorded in accordance with the requirements of the Construction Contract;
- SS. cause the filing by others of all required reports, certifications and similar documents;
- TT. establish operating procedures;
- UU. develop a transition plan from development to operations;
- VV. upon request of the Contractor(s) and Consultant(s), the LLC shall review the request, and if approved, execute a certificate of Substantial Completion accepting the Program as sufficiently complete for the LLC to use the Facility for its intended purposes, and thereafter, when the LLC is satisfied that all Work under the Construction Contract is complete and in accordance to the requirements of the Construction Contract, the LLC will make final payment and accept the Program as complete as set forth in the Construction Contract;
- WW. perform all of County's obligations pertaining to the terms of the Reclaimed Water Agreement between County and City except for the responsibilities for the specific design, permitting, management and construction identified in Exhibit E of the Reclaimed Water Agreement; and
- XX. fund, from the Budgeted Amount, all of the obligations of the County pertaining to the terms of the Reclaimed Water Agreement, including those performed by the County pursuant to Section 3.3 WW.

3.4 During the Term of this Agreement, the County may, from time to time, request in writing that the LLC perform certain services for the Program in addition to those set forth in Article 3 of this Agreement (the "Additional Services"). The scope of, and compensation to the LLC for, any such Additional Services shall be mutually acceptable to the County and the LLC, shall be set forth in a written amendment to this Agreement executed by both parties and shall be governed by the terms and conditions of this Agreement, unless otherwise provided in such amendment.

3.5 The LLC shall have no obligation or responsibility to fund or provide the work outlined in this Section 3.5, but may participate with County, in regard to the following:

- A. securing the conveyance of the Site to the County;
- B. providing legal services to the County; or
- C. arranging for, or providing for, County Bond financing for the Budgeted Amount.

3.6 County acknowledges that LLC is providing the Services described in this Article 3 as a development consultant and not as a licensed general contractor, architect or other licensed professional. However, the LLC will engage and contractually require licensed professionals to complete the Work in accordance with the requirements of this Agreement, and will enforce such contracts and administer any claims process associated with such contracts as set forth herein. LLC shall require each Contractor and each design Consultant to provide customary warranties, will enforce said warranties and will name the County as a third party beneficiary of all such warranties. The foregoing notwithstanding, the LLC shall be obligated to enforce the provisions of each Consultant Contract and each Construction Contract as set forth herein.

3.7 THE LLC SHALL PERFORM THE DUTIES AND OBLIGATIONS AS CONTAINED IN SECTIONS 3.3 AND 3.6 HEREIN. THE LLC DISCLAIMS ANY AND ALL WARRANTIES RELATED TO THE WORK, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, WORKMANSHIP, CONSTRUCTION OR PHYSICAL CONDITION OF THE FACILITY AND ALL FIXTURES OR ITEMS OF PERSONAL PROPERTY CONTAINED THEREIN, REGARDLESS OF WHETHER THE WARRANTIES ARISE FROM CUSTOM, USAGE, COURSE OF TRADE, CASE LAW, STATUTORY LAW OR OTHERWISE.

ARTICLE 4

LLC SERVICES RELATED TO THE INTERLOCAL AGREEMENT

4.1 Except as otherwise set forth in Article 5 hereof, the LLC shall assume and have sole responsibility for each of the following:

- A. All of County's obligations set forth in Section 4.2 of the Interlocal Agreement;
- B. All of County's obligations set forth in Section 12 of the Interlocal Agreement including Section 12.6 of the Interlocal Agreement pertaining to the design, development and construction of City Park and the City Park Improvements and in accordance to the ERP;
- C. All of County's obligations set forth in **Exhibit I of the Interlocal Agreement** (Temporary Construction Easement);
- D. All of County's obligations, responsibilities and rights associated with the Access Easement described in Section 10.3.1.3 and **Exhibit H of the Interlocal Agreement**;

- E. All of the County's obligations, responsibilities and rights associated with the License Agreement described in Section 10.3.1.4 and **Exhibit M of the Interlocal Agreement**; and
- F. All of the County's obligations, responsibilities and rights associated with Section 10.3.2.4 of the Interlocal Agreement.

4.2 The LLC's performance of the obligations identified in this Article 4 is subject to the following conditions;

- A. The LLC shall not accept any conditions, approvals or permits that; 1) run with the land, 2) present on-going financial cost, obligation or responsibility, or 3) that are inconsistent with, or require changes to the Operative Agreements, without the express written approval of County; and
- B. The LLC must first obtain County approval of any document that is to be submitted to the City pursuant to the Interlocal Agreement and the LLC shall provide a copy of the approved submittal to the County at the time of delivery to the City.

4.3 It is expressly intended that the LLC will assume and independently fund the obligations of County as identified in Section 4.1 herein. The LLC shall establish the processes and procedures necessary to ensure the separation of accounting for Services related to the City Park, including, but not limited to, program management, design, permits and approvals, construction, construction administration, equipping, and providing the appropriate insurance obligations, so that the LLC and the County are able to legally demonstrate that no County monies were expended on the City Park. At a minimum, the LLC shall direct the accountant with responsibility for preparing the payment requisitions, to; 1) maintain separate records and books for the Facility and City Park, and 2) maintain separate agreements for the Services related to City Park.

4.4 The LLC shall have the right to negotiate, to approve and to execute in its name, all contracts and agreements for the services and work performed for the development of City Park, including, without limitation, the Consultant(s) Contracts and the Construction Contract(s), provided that the LLC complies with the provision of Sections 3.3 (B), (C) and (D) and Article 7 herein.

4.5 The LLC shall provide County with copies of all FBs, CCPs and Change Orders which County shall review for consistency with the obligations of the Interlocal Agreement and this Agreement.

4.6 The LLC will contractually obligate the Consultant(s) and the Contractor to name the County and the City of West Palm Beach as co-obligee on the Contractor's \$255.05, Florida Statutes, public construction bonds for all work related to the development of the City Park. In addition, any Consultant or Contractor performing work related to the development of the City

Park shall name the County and the City as additional insured under any required insurance policies, and also indemnify and hold the City and County harmless under any required indemnity provisions of the Consultant Contract(s) and the Construction Contract(s). The provisions of this paragraph shall also apply to any Subcontractor performing work related to the development of the City Park.

ARTICLE 5

COUNTY RESPONSIBILITIES

5.1 Permit and Development Approval Applications

All applications for permits and approvals shall require approval of the County Representative or other duly authorized County employee prior to submittal.

5.2 Conditions of Approval/Expenses not in Program Cost Estimate

All conditions of permits or approvals which run with the land and/or require an expense not covered by the Program Cost Estimate require the approval and/or execution by the same individual as in Section 5.1 herein.

5.3 Peer Review

Notwithstanding any of its responsibilities identified in this Agreement and without assuming any responsibility for the design and/or performance of the Consultants, the County reserves the right, but not the obligation, to contract for its own consultant or contractor to review the in-progress design documents for general compliance with the terms of this Agreement, design efficiency, cost effectiveness, and compliance with County building standards. Unless the LLC requests in writing that the County contract with a consultant or contractor to perform a portion of its responsibilities pursuant to this Agreement, the cost of any peer review conducted by the County as provided in this Section 5.3, will be an Excluded Cost and paid by County. If requested by the LLC, the cost of the peer review conducted by County will be paid from the Budgeted Amount. The decision to contract with a consultant or contractor to perform a portion of the County's responsibilities pursuant to this Agreement is in the County's sole discretion.

5.4 Consider Request to Commence Land Reclamation

Land Reclamation activities shall not commence until the LLC has obtained the approval of the County pursuant to this Section 5.4. After the Pre-Land Reclamation is concluded, the County shall consider any requests from the LLC to proceed with Land Reclamation. Any request to proceed with Land Reclamation activities shall be accompanied by all pertinent studies and evaluation, permits and identification of all off-site disposal locations for unsuitable (pursuant to the Construction Contract) and/or contaminated materials found on the Site. If the LLC desires to re-use or re-cycle any landfill materials found on the Site as part of the Facility and/or Site, it must specifically identify the materials, how they will be processed (if at all) prior to re-use and the location of the proposed re-use. If the LLC is authorized to proceed with Land Reclamation, the approval shall be reduced to writing and may contain conditions relating to the authorized activities, including any approved deviations from the requirements of the County's standard Construction Contract.

5.5 Meetings

The County, at its option, may attend any meeting scheduled by the LLC relating to the Program, except those between the LLC and/or its representatives and legal counsel that may be considered attorney-client privileged.

5.6 Make Payments

The County shall timely pay all Actual Costs for the Services authorized in Article 3 hereof from the Budgeted Amount, including Actual Costs for the Services authorized retroactive to February 3, 2015, in accordance with the payment and requisition procedures set forth in Section 9.3 and Exhibit G of this Agreement, including any and all compensation requested by the LLC for the Consultants and Contractor to be paid by County pursuant to the terms of this Agreement. Payments shall not exceed the Budgeted Amount, shall be disbursed by the Clerk, and shall be payable in accordance with the requirements of the Clerk's Office and the requisition procedures.

5.7 County Coordination with City

In relation to those issues in which it is necessary to coordinate with the City, the County shall use good faith efforts to:

- A. Secure the conveyance of the Site from the City of West Palm Beach to the County; and
- B. Secure a Temporary Construction Easement for access to develop the City Park Property.

5.8 Other Responsibilities

5.8.1 The County shall have the following additional responsibilities:

- A. Use good faith efforts to obtain a Funding Certification Letter and to execute an agreement with the State pursuant to Florida Statute § 288.11631. The County shall use the funds received from the State pursuant to Florida Statute §288.11631 solely to pay or pledge for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto, bonds issued for the construction or renovation of the Facility, or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.
- B. Provide funding for Cost Overruns attributable to County as set forth in Section 8.3 hereof.
- C. Cooperate with the LLC in coordinating the procurement and placement of off-Site directional signage, along Palm Beach County roadways and along I-95, with the Florida Department of Transportation and other authorities.

- D. The County shall reasonably expedite any actions or approvals requested or required of the County in connection with the Program, and except as otherwise provided in this Agreement, all such actions or approvals shall not be unreasonably withheld, conditioned or delayed. The County shall not act, or fail to act, in a manner that would cause, or would reasonably be expected to cause, the completion of the Program to be delayed. The County shall provide assistance to and use reasonable efforts to cooperate with the LLC in the performance of this Agreement. Nothing in this Section shall be construed to require either party to violate any valid and enforceable Public Laws.
- E. The County shall perform the obligations assigned to County for design, permitting, management and construction of the improvements contained in **Exhibit E of the Reclaimed Water Agreement**.

5.8.2 Throughout the Term, the LLC shall be granted, for the LLC and their invitees, uninterrupted access to and egress from the Site (including access to and egress from all areas owned, licensed or otherwise controlled by the County) and the right to enter the Site to the extent reasonably necessary for the LLC to exercise its rights and perform its obligations under this Agreement.

ARTICLE 6

PROGRAM MANAGEMENT

6.1 An organizational chart for the LLC's Program team is set forth on **Exhibit H** hereto. The LLC shall inform County in writing, of the name, email address and telephone number(s) of its Program Representative, together with a clear definition of the scope of his authority to represent and act for the LLC and shall specify any and all limitations of such authority. The LLC shall keep the County informed of any subsequent changes in the foregoing.

6.2 The Program Representative is responsible for administering all required work at the Site and a representative of the Program Representative shall be at the Site when the construction of improvements is in progress. All notices, determinations, instructions and other communications made or given by the Program Representative shall be binding upon the LLC; provided however, notwithstanding the foregoing, only the managers of the LLC shall have the authority to bind the LLC with respect to; (a) modifications or amendments pertaining to this Agreement, (b) modifications or amendments pertaining to the Consultant Contract(s), and (c) modifications, amendments, or Change Orders pertaining to the Construction Contract(s).

6.3 If, at any time during the term of this Agreement, the then current Program Representative becomes unacceptable to the County, upon written notice from the County the LLC shall replace the unacceptable Program Representative with a Program Representative acceptable to the County.

6.4 The Program Representative shall invite the County Representative to each and every meeting scheduled with the City or governmental regulatory agency, including, but not limited

to, all meetings relating to permitting or approvals. The LLC shall provide the County with advance notice of any regularly scheduled Program meetings. The Program Representative shall invite the County Representative to each and every meeting scheduled with every Consultant and the Contractor or any Subcontractor, except those meetings relating directly to the construction of City Park or the City Park Improvements.

6.5 The LLC shall not self-perform any physical construction at the Site pursuant to this Agreement. Furthermore, the LLC shall not perform, and nothing contained in this Agreement shall be construed to require the LLC to perform, any activity or service which would require a license, a certificate of authorization, certification or registration under Chapters 471, 481 or 489, Florida Statutes.

6.6 Except as otherwise specifically provided in this Agreement, the County agrees that the LLC shall make all decisions relating to the design, construction, development and delivery of the Facility and Program.

6.7 The LLC shall reasonably expedite any actions or approvals requested or required of the LLC in connection with the Program, and except as otherwise provided in this Agreement, all such actions or approvals shall not be unreasonably withheld, conditioned or delayed. The LLC shall not act, or fail to act, in a manner that would cause, or would reasonably be expected to cause, the completion of the Program to be delayed. The LLC shall provide assistance to and use reasonable efforts to cooperate with the County in the performance of this Agreement. Nothing in this Section shall be construed to require either party to violate any valid and enforceable Public Laws.

ARTICLE 7 **CONTRACTS**

7.1 The LLC agrees to abide by County's Small Business Enterprise and Local Preference policies as set forth in Palm Beach County Code Sections 2-80.21 through 2-80.34 and Sections 2-80.41-44, 2-80.46, 2-80.47, as amended, with an SBE Goal of 15% for the Program. In order to meet the established goals and comply with the requirements of the policies, the LLC will use the selection processes and forms described in this Article 7.

7.2 The LLC shall have the right to negotiate, to approve and to execute in its name, all contracts and agreements for the Facility, including, without limitation, the Consultants Contracts and the Construction Contracts provided that the LLC:

- A. Selects the Consultant(s), Contractor and vendors as set forth in **Exhibit C** and Section 3.3(B), (C) and (D), as applicable;
- B. Uses a form Consultant and Contractor Agreement that is substantially similar to County's standard contract for the applicable service and specifically including the requirements of the County's Small Business Enterprise and Local Preference policies as set forth in Palm Beach County Code Sections 2-80.21 through 2-

80.34 and Sections 2-80.41-44, 2-80.46, 2-80.47, as amended as well as the specific language required by any State or Local law;

- C. Uses a form artist agreement that is substantially similar to County's standard artist agreement for the design, fabrication and installation of Art procured in accordance with Section 3.3(EE) hereof;
- D. Requires all types of insurance in amounts equal or greater than the County standard for all Consultants, Contractors, and any other entities performing any portion of their respective Work at the Site;
- E. Requires a payment and performance bond, where required by Florida Statutes §255.05 on the County's form and from a surety meeting the County's requirements;
- F. Names the County as additional insured and/or third party beneficiaries to all insurance policies and co-obligees on all bonds;
- G. Indemnifies and holds harmless the County using standard indemnity provisions found within the contracts identified in Section 7.2(B) and 7.2(C) above; and
- H. For the sole purposes of determining compliance with the requirements of the Agreement and to allow the County to set up the necessary payment accounts, secure the approval of the Director, Facilities Development & Operations, or designee, on each and every Consultant Contract and Construction Contract. Such approval shall be proof that the requirements of this Section 7.2 are met.

7.3 The LLC shall ensure that each Consultant Contract and Construction Contract has the requirement that the Consultant and Contractor deliver to the County Representative, such documents and materials received by, and in the possession of, the LLC, prepared by the Consultant and the Contractor pursuant the Consultant Contract or the Construction Contract, as the case may be, or pursuant to any other agreement related to the Program, as the County may reasonably request. All drawings, maps, sketches, programs, data bases, reports and other data developed, or purchased, under this Agreement or any agreement related to the Program, by or from the Consultant or the Contractor, and received by the LLC, shall be and remain the County's property.

7.4 The LLC represents that all sub-consultant agreements entered into shall incorporate the requirements set forth in Section 7.2 above, and further warrants that the County is an intended express third party beneficiary of any such subcontract.

ARTICLE 8
PROGRAM COST ESTIMATE and PROGRAM BUDGET

8.1 Creation of a Program Cost Estimate.

8.1.1 The LLC shall create a Program Cost Estimate. Prior to the issuance of the County Bonds, the LLC shall submit the form and structure of the Program Cost Estimate for approval by the County. The County's approval shall be for compliance with the requirements of this Agreement as well as the form and practicality of monitoring and implementation throughout the term of the development of the Facility.

8.1.2 The Program Cost Estimate shall specifically identify the line items reflecting the anticipated Actual Costs, which include Program Contingency lines and Non-Eligible Costs, in accordance to County's specific requirements.

8.1.3 The LLC shall designate which Consultant will be responsible for the management of the Program Cost Estimate and the Program Budget.

8.2 The Consultant identified to create and manage the Program Cost Estimate and the Program Budget shall maintain a separate budget with detailed expenditures relating to the development of City Park and the City Park Improvements.

8.3 Cost Overruns.

The LLC will be responsible for Cost Overruns, except to the extent: (a) the County imposes a program requirement in excess of the Minimum Requirements that results in a Cost Overrun; or (b) the County breaches any of the Operative Agreements or any agreements relating to bond financing for the Program, which breach results in a Cost Overrun. In the event that either of the foregoing causes occurs, the County shall pay a proportionate share of any such Cost Overrun, which proportion shall be equal to the extent to which the Cost Overrun was caused by the County.

8.4 Cost Savings

8.4.1 The County and the LLC shall use good faith efforts to achieve Cost Savings through the various stages of the Program and shall allocate the Cost Savings as set forth herein.

8.4.2 The County and the LLC will work together throughout the design of the Facility to ensure; 1) the design and specifications reflect the materials typically installed in professional sports stadium facilities, 2) that quantities of features are generally comparable to other professional stadium facilities, 3) that Public Use Improvements are designed to County standards where comparable standards exist, 4) that any recycled and/or re-used materials are considered, when appropriate, and that 5) specified building equipment and materials are of types and installation details typical to South Florida. The County shall conduct design reviews to ensure consistency with the above listed requirements and to identify opportunities for Pre-Construction Cost Savings as follows:

- A. The LLC shall invite County to participate in any meetings it believes appropriate to facilitate the identification of Cost Savings. The County shall be allowed to participate in any meetings and/or discussions that the County believes appropriate to facilitate Cost Savings.
- B. The LLC will provide County with electronic access to design submittals (schematic design, design development, construction documents and corresponding cost estimates) and provide County with copies of the design submittals as requested by County. The LLC shall work with County, including meeting with County and inviting County to design review meetings, in order to facilitate County review of design submittals, including plans, specifications and schedules. The LLC shall provide County with written reports detailing all comments resulting from such interim submittal reviews. The County shall review and provide comments to the LLC upon receipt of the estimates of probable construction cost as prepared by the Contractor. The County may make recommendations to advise the LLC where the estimate of probable construction cost could be reduced in order to achieve Pre-Construction Cost Savings.
- C. The LLC shall review all comments of County as it relates to the design submittals and probable construction costs to ensure the LLC addresses each comment and incorporate changes approved by the LLC, if any, into the Program Cost Estimate.
- D. Pre-Construction Cost Savings will be identified and allocated no later than the time of County Bond approval by the County.

8.4.3 Pre-Construction Cost Savings will be shared between the County and the LLC, on a pro rata basis of the total cost of the Program over the term of this Agreement. The County's share will be calculated based upon the combined State and County's contribution to reduce the Budgeted Amount. The LLC's share shall reduce the LLC's total payment obligation to County as set forth in Section 6.5.2 of the Sports Facility Use Agreement, which shall be applied proportionately to reduce all Facility Use Fee, Concession License Fee and Parking Area Fee payments pro rata, during the term of the Sports Facility Use Agreement.

8.4.4 The LLC shall implement the Sales Tax Recovery Program pursuant to the policies and procedures set forth in **Exhibit E** attached hereto. It shall be the responsibility of the Program Representative to seek the advance approval of the County Representative on whether a commodity is eligible for purchase pursuant to the Sales Tax Recovery Program. The Program Representative will be responsible for processing all Sales Tax Recovery Change Orders and Sales Tax Recovery PO's. The County will respond within ten (10) business days of receipt of properly completed Sales Tax Recovery PO's. To the extent that the County receives any proceeds in accordance with Section 2.1.13 of **Exhibit E** hereto, the County agrees that said proceeds shall be utilized to replace any commodity purchased under the Sales Tax Recovery Program, unless otherwise agreed to by the County and the LLC.

8.4.5 All savings resulting from participation in the Sales Tax Recovery Program will be credited to the Program Contingency in the Program Cost Estimate.

8.4.6 The Parties acknowledge that the costs of any particular line item for Services will vary from the number identified in the Program Cost Estimate. If the contracted cost of the particular Service is less than that identified in the Program Cost Estimate, then the LLC shall credit the difference to the Program Contingency ("Buy-Out Savings"). If the contracted cost of the particular Service is more than identified in the Program Cost Estimate, then the LLC shall first debit the Program Contingency, and once the Program Contingency is exhausted, the difference will be considered a Cost Overrun.

8.4.7 Construction Savings shall be deposited into the R/R Project Reserve and allocated one-third (1/3) to the County R/R Project Reserve and two-thirds (2/3) to the LLC's R/R Project Reserve, to provide initial funding for Renewal/Replacement Projects pursuant to the Sports Facility Use Agreement.

8.5 Change Orders

8.5.1 The LLC shall provide County with a monthly report listing of all FBs, CCPs, Contingency Use, CCDs, and Change Orders with sufficient details to enable County's review of each of the above, for consistency with the terms of this Agreement.

8.5.2 Changes to the Consultant(s) and Contractor Scope of Work shall be authorized by the Program Representative pursuant to its standard practice and copies of such Change Orders shall be provided to County with each pay application.

8.5.3 The LLC is required to obtain County approval on any Change Order that: 1) significantly changes the general scope, extent or character of the Program or its design including, but not limited to, changes in size or character of construction; 2) modifies specified equipment and/or substitutes materials in Public Use Improvements; and/or 3) changes the Art component, which Change Orders may be granted or denied in County's discretion. County may review other Program changes as deemed appropriate in County's discretion.

ARTICLE 9 COMPENSATION FOR SERVICES

9.1 The County shall timely pay any and all Actual Costs required to be paid by it to the LLC pursuant to the terms of this Agreement, which payments shall be made in accordance with the provisions of this Agreement.

9.2 The County shall only be required to pay for Actual Costs not exceeding the Budgeted Amount, retroactive from February 3, 2015. Except as otherwise provided in Section 8.3 for Cost Overruns attributable to County, under no circumstance shall the County pay for any other costs of the Program.

9.3 Requisition Process

9.3.1 On or before the fifth (5th) Day of each month, the LLC shall be entitled to submit to the County a payment certification and requisition for Actual Costs incurred, which shall include a copy of the Consultants or Contractor application for payment, certified by the LLC and the applicable Consultant or Contractor in accordance with the requirements of **Exhibit G** attached hereto. The LLC agrees to deliver to the County such back-up materials as the County may reasonably require, and which the LLC has reasonable access to obtain. Unless the County disputes all or a portion of any charge set forth in said payment certification and requisition, the County shall make payments to the LLC in the amounts due to: (a) the Consultant, pursuant to each Consultant Contract; and (b) the Contractor, pursuant to each Construction Contract; within 30 days from the date of receipt of a complete payment certification and requisition from the LLC. The Contractor's application for payment must also be accompanied by the Affidavit set forth in Section 9.3.2 below. To the extent that the County disputes all or part of the payment requested by the payment certification and requisition, the County shall make partial payment of the non-disputed amount and provide notice of the disputed amount and reason for the dispute to the LLC within ten (10) days of receipt of the payment certification and requisition. Said notice shall be considered the initial notice of the dispute resolution procedure set forth in Section 14.1 hereof, and the parties agree to follow the dispute resolution procedure to resolve any such payment disputes.

9.3.2 With each payment certification and requisition submitted to the County, the LLC shall deliver to the County from each Contractor(s) or Consultant(s) for which payment is requested, as the case may be, fully executed Affidavit of Disbursement of Previous Payments in the amount of the immediately prior payment for the applicable Contractor or Consultant, as the case may be, excepting any claims that remain in dispute. The County shall not release payment for any portion of the Services performed by the Consultant(s) or the Contractor(s), as the case may be, unless the payment certification and requisition submitted to the County is accompanied by the Affidavit of Disbursement of Previous Payments for the Consultant(s) or the Contractor. However, the County may, but shall not be required to, make payments on account of the respective Construction Contract or Consultant's Contract without such affidavit, if the Contractor or Consultant presents to the LLC, and the LLC presents to the County, a consent of surety to such payment, from the Contractor's or Consultant's surety, in form acceptable to the County.

9.4 The receipt of such payment by the LLC is hereby deemed to be a condition precedent to the LLC's obligation to transmit payments to the Consultant(s) or the Contractor(s). In the event that the County fails to make payment to the LLC in the entire amount of any payment certification and requisition submitted by the LLC, the LLC shall only be obligated to transmit payment to the Consultant(s) or the Contractor(s) in the amount actually received from the County. Notwithstanding the above, the receipt of payment from County is not a condition precedent to the extent the payment request represents payment to a Consultant(s) or Contractor(s) attributable to a Cost Overrun payable by the LLC pursuant to Section 8.3 herein.

9.5 Upon receipt of payment from the County with respect to any payment certification and requisition, the LLC shall transmit payment to the Consultant or the Contractor, in the exact

amount received from the County within five (5) Business Days from the date of the LLC's receipt of such payment from the County.

ARTICLE 10
TERM AND TERMINATION

10.1 The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of; (a) full completion of all Services and payments contemplated under this Agreement; (b) the date of termination of the Interlocal Agreement if terminated prior to the closing as described in Section 10 therein; (c) the date of the termination of the Sports Facility Use Agreement; or (d) the date of the termination of this Agreement, pursuant to the terms hereof (the "Term").

10.2 The LLC shall have the right to terminate this Agreement:

- A.** For any reason prior to the sale of the County Bonds, subject to repayment of One Hundred Percent (100%) of the Actual Costs paid to the LLC pursuant to the Due Diligence Agreement and this Agreement.
- B.** Pursuant to the Interest Election, subject to the LLC reimbursing the County fifty percent (50%) of the Actual Costs paid to the LLC pursuant to the Due Diligence Agreement and this Agreement.
- C.** In the event any of the conditions precedent set forth in Section 17.1 are not satisfied or waived by March 1, 2016, the provisions of Sections 17.2, 17.3 and 17.4 shall control the LLC's right to terminate this Agreement.
- D.** In the event of termination pursuant to Section 10.2 hereof, payment by the LLC to the County shall be made to County within thirty (30) days of receipt of substantiated bills from County.

10.3 The County shall have the right to terminate this Agreement:

- A.** For any reason prior to the issuance of the County Bonds, subject to the County making payment to the LLC for Actual Costs accrued to the date of termination of this Agreement. The County shall only be obligated to pay the LLC, and the LLC shall only be entitled to receive from the County, all Actual Costs accrued to the date of the termination of this Agreement.
- B.** In the event any of the conditions precedent set forth in Section 17.1 are not satisfied or waived by March 1, 2016, the provisions of Sections 17.2, 17.3 and 17.4 shall control the County's right to terminate this Agreement.

10.4 The following provisions shall survive termination of this Agreement: Articles 11, 13 and 15, and Sections 4.1A, 4.1D, 12.3, 19.3, 19.4, 19.7, 19.8, and 19.16, **Exhibit F** and **Exhibit J** hereto.

10.5 The Sports Facility Use Agreement shall terminate simultaneously with the termination of this Agreement, subject to the survival of any provisions which either specifically survive termination or which, by their nature are intended to survive. Termination shall be effective on the Effective Termination Date.

ARTICLE 11 GUARANTY

The Teams shall individually guaranty all of the LLC's obligations under this Agreement pursuant to the attached Exhibits I-1 and I-2.

ARTICLE 12 INSURANCE AND INDEMNIFICATION

12.1 Teams Insurance

12.1.1 The LLC shall cause the Teams to secure and maintain during the Term, at no cost to the County, the following coverages covering its operations hereunder, provided however, that if the obligations are met by an Umbrella Policy, such policy shall be as broad as the primary:

- A. Worker's Compensation. Insurance covering all Team employees including coaching staff and players) meeting statutory limits in compliance with the applicable state and federal laws.
- B. Commercial General Liability. Coverage shall have minimum limits of \$5,000,000 per occurrence and \$10,000,000 in the aggregate for Bodily Injury Liability and Property Damage Liability, which limit can be evidenced by any combination of primary and excess coverage. This shall include Premises and Operations; Personal and Advertising Injury; Independent Contractors; Products and Completed Operations; Broad Form Contractual Liability; Liquor Liability; and Athletic Participation coverage.
- C. Automobile Liability. Coverage will include all licensed, over-the-road vehicles owned or used by the Team with minimum limits of no less than \$1,000,000.00 per accident.

12.2 LLC Insurance

12.2.1 In addition to the requirements of Section 7.2(D) hereof, the LLC shall secure and maintain, or shall cause to be secured and maintained, during the Term, at no cost to the County, the following coverages covering its operations hereunder, provided however, that if the obligations are met by an Umbrella Policy, such policy shall be as broad as the primary:

- A. Workers' Compensation. Insurance covering all LLC employees meeting statutory limits in compliance with the applicable state and federal laws.

- B. Commercial General Liability. Coverage shall have minimum limits of \$5,000,000 per occurrence and \$10,000,000 in the aggregate for Bodily Injury Liability and Property Damage Liability, which limit can be evidenced by any combination of primary and excess coverage. This shall include Premises and Operations; Personal and Advertising Injury; Independent Contractors; Products and Completed Operations; Broad Form Contractual Liability; Liquor Liability; and Athletic Participation coverage.
- C. Automobile Liability. Coverage will include all licensed, over-the-road vehicles owned or used by the LLC with minimum limits of no less than \$1,000,000.00 per accident.

12.2.2 All insurance policies must be issued by an insurance carrier with an A.M. Best rating of A- and Class VII or better.

12.2.3 The County shall be specifically listed as an additional insured (and not as a named insured) for all claims arising in connection with the LLC's operations on the Commercial General Liability Insurance policy and any umbrella policies which may be applicable to the Program (using ISO Form CG2010 10 01 or its equivalent) and the Automobile Policy. The Additional Insureds shall include "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents", c/o Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605. All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). Coverage for the County as an additional insured shall apply on a primary basis irrespective of any other insurance, whether collectible or not, in connection with the operations of the LLC. No policy shall contain a self-insured retention, but may have a deductible.

12.2.4 All of the foregoing insurance provided by the LLC shall: (i) be primary to any and all of the insurance carried by the County, and the County's insurance, if any, shall be in excess of, and not contribute with, the insurance provided by the LLC; and (ii) contain provisions entitling the County to waive its rights of recovery against any person or entity before loss.

12.2.5 The LLC shall require the Consultant(s) and the Contractor to maintain insurance and bonds as required in the Consultant Contract(s) and the Construction Contract, respectively.

12.2.6 It shall be the responsibility of the LLC to provide initial evidence of the minimum amounts of insurance coverage at the time of Agreement execution to:

Palm Beach County c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801
pbc@instracking.com or Fax: (562) 435-2999

and

Palm Beach County
c/o Capital Improvements Division, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411-5604.

12.2.7 Subsequently, the LLC shall, during the term of the Agreement, and prior to each renewal thereof, provide such evidence to ITS at pbcc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein.

12.2.8 Within five (5) Business Days of the County's written request to do so, the LLC shall deliver to the County via the Insurance Company/Agent a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect.

12.2.9 The County's Risk Management Department, shall have the right, but not the obligation, to review, reject or accept insurance policies, limits, coverages and endorsements for compliance with the terms of this Article 12 throughout the Term of this Agreement. The County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition (it being understood and agreed that an A.M. Best rating of A- and Class VII or better is acceptable) or by way of illegal operation, in the County's reasonable discretion. The County shall provide the LLC written notice of such action and the LLC shall agree to cure or comply with such action within thirty (30) days receipt thereof.

12.3 Indemnification

12.3.1 For purposes of this Section 12.3 only the "County Indemnified Parties" means the County, including each of its respective agents, employees and elected officials.

12.3.2 Indemnification by LLC.

12.3.2.1 The LLC agrees to protect, defend, reimburse, indemnify and hold County Indemnified Parties free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney's fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, for any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any Person, arising out of, or in incident to, or in connection with; (i) the Services performed pursuant to this Agreement, (ii) the use of the Site, including but not limited to, the driveways, sidewalks, walkways, entrances and exits from the Site, (iii) any act or omission of the LLC Parties, and/or (iv) the LLC's performance, non-performance or purported performance under this Agreement.

12.3.2.2 The LLC further agrees to hold harmless and indemnify County for fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from LLC Parties' activities pursuant to this Agreement, whether or not LLC was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving the LLC Parties' activities.

12.3.2.3 In case County shall be made a party to any litigation commenced against the LLC Parties or by the LLC Parties against any third party related to the LLC Parties activities or obligations pursuant to this Agreement, then LLC shall protect and hold harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof.

12.3.2.4 The foregoing indemnification shall not apply to the extent any claims, liability, expenses, loses, fines and damages arises from the negligent or willful acts of the County Indemnified Parties.

ARTICLE 13 **LIMITATION OF REMEDIES**

13.1 The County knowingly, voluntarily and intentionally waives any right or recourse to seek recovery from the LLC, its Affiliates, members, officers, directors, employees, agents, servants and representatives of any and all of the foregoing, for any damages attributable to any Consultant, Contractor, or Subcontractor, respectively, as set forth in Section 13.1.1 and Section 13.1.2, provided the LLC fulfills its obligations in good faith and seeks recovery on behalf of County as set forth herein, provided, however, the foregoing shall not limit the LLC's obligations to pay for Cost Overruns as provided in Section 8.3 hereof. Notwithstanding the prior sentence, and for the avoidance of confusion, nothing herein shall be interpreted as precluding the County from exercising any rights it may have under the Guaranties set forth in **Exhibits I-1 and I-2** hereto.

13.1.1 In the event that the LLC requires the Contractor to perform any obligation under the Construction Contract, and the Contractor fails to do so, or performs in a deficient or nonconforming manner, the LLC shall issue notice to the Contractor, requiring the Contractor to perform, correct or replace the Work, or the applicable portion thereof, in accordance with the Construction Contract. In the event that the LLC requires a Consultant to perform any obligation under a Consultant Contract and the Consultant fails to do so, or prepares instruments of service in a deficient manner, the LLC shall issue notice to such Consultant, requiring such Consultant to perform in accordance with the Consultant Contract, or to correct the deficiencies in its instruments of service, whichever is appropriate.

13.1.2 Notwithstanding any other provision of this Agreement to the contrary, the LLC hereby agrees to seek recovery: (i) directly from a Consultant, its surety or insurers, for any damages that the LLC, Teams and/or County may incur as a result of such Consultant's failure to perform in accordance with the Consultant Contract, or the Consultant's deficient or nonconforming performance under the Consultant Contract, as the case may be, or as a result of such Consultant's negligence; or (ii) directly from the Contractor, its surety and insurers, for any damages that the County, Teams and/or the LLC may incur as a result of the Contractor's failure

to perform in accordance with the Construction Contract, or the Contractor's deficient or nonconforming performance under the Construction Contract, as the case may be, or as a result of such Contractor's negligence.

13.1.3 In performing its obligations under Sections 13.1.1 and 13.1.2 hereof, the LLC shall have the right to consult with the County to seek a waiver of the obligation to bring an action, which may be granted or denied in the County's sole discretion, and to the extent the County provides a written waiver of such requirement, the LLC is not required to bring such action.

13.2 The LLC knowingly, voluntarily and intentionally waives any right or recourse to seek recovery from the County for any damages attributable to any Consultant, Contractor, or Subcontractor, respectively, as set forth in Section 13.1.1 and Section 13.1.2 herein.

13.3 The LLC knowingly, voluntarily and intentionally waives any right or recourse to seek recovery from the County for any damages caused by, or resulting from, delays in the Program unless such delays are directly attributable to the County's negligent or willful nonperformance of a material term of this Agreement; provided, however, the foregoing shall not limit the County's obligations to pay for Cost Overruns as provided in Section 8.3 hereof.

13.4 Notwithstanding anything contained herein, the County may, at its sole option, pursue recovery against a Consultant and/or Contractor as set forth in Section 13.1.1 or 13.1.2 for County damages, in collaboration with, or in place of, the LLC. Additionally, in the event that the LLC is in default of any of its obligations under this Agreement, the County may pursue any and all remedies that it may have against the LLC, available at law and in equity, subject to the requirements of Article 14 of this Agreement. Notwithstanding the above, it is acknowledged by the County, however, that except for those provisions intended to survive the termination of this Agreement as set forth in Section 10.4 hereof, such liability to the County shall cease at the same time as the Contractor's liability to the LLC ceases pursuant to the Construction Contract.

13.5 All parties hereto recognize that the LLC is a limited liability company whose sole managers as of the Effective Date are Arthur Fuccillo and Giles Kibbe. All parties hereto agree that no present or future manager or member of this LLC shall have any liability or obligation whatsoever directly or indirectly, personal or otherwise, under this Agreement (other than pursuant to the Guaranties attached hereto as Exhibits I-1 and I-2) under any legal or equitable theory. All parties further agree that no present or future manager or member shall directly or indirectly have any liability or obligation under any related agreement or agreement entered into in connection herewith, nor under any related understanding or undertaking, except if and to the extent such manager or member shall have executed an agreement expressly agreeing to such liability. No party to this Agreement shall name or serve any manager or member in any proceeding, suit or claim in violation of this paragraph. This paragraph shall not preclude any claim against the LLC as a limited liability company, nor shall this paragraph preclude any claim brought to enforce the provision of the Guaranties.

ARTICLE 14
DISPUTE RESOLUTION; DEFAULT

14.1 Dispute Resolution

The LLC and the County agree to make every reasonable effort to resolve any dispute under this Agreement prior to either party's proceeding to file suit due to a default by the other party. Accordingly, in the event of a dispute related to the performance of either the LLC or the County under this Agreement, the LLC and the County agree not to file a lawsuit until they have engaged in an expedited dispute resolution process including mediation, the parameters of which are to be agreed upon by the parties. The process is initiated by delivery of written notice to the other party, setting forth the subject of the dispute, claim or controversy and the relief requested. Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation sessions shall be within thirty (30) days from the initiating notice. The parties agree to share equally in the costs and expenses of the mediation and to each bear their own attorneys' fees and costs. This Section 14.1 shall not apply to the termination of this Agreement by a party for a reason other than a default by the other party.

14.2 LLC's Default

14.2.1 The LLC shall be in default upon:

- A. The filing by the LLC of a petition commencing a voluntary proceeding under the Federal Bankruptcy Code or any other federal, state or local law or statute pertaining to bankruptcy or insolvency; a general assignment by the LLC for the benefit of creditors; an admission in writing by the LLC of its inability to pay debts as they become due; the filing by the LLC of any petition or answer in any proceeding seeking for itself, or consenting to, or acquiescing in any insolvency, receivership or similar relief under any laws pertaining to bankruptcy or insolvency, or the filing by the LLC of an answer or other pleading admitting or failing to deny, or to contest, the material allegations of a petition filed against it in any such proceeding; the seeking or consenting to, or acquiescence by the LLC in the appointment of any custodian, trustee, receiver or liquidator of it, or any part of its property; and the commencement against the LLC of any involuntary proceeding under the Federal Bankruptcy Code, or a proceeding under any law or statute pertaining to insolvency, which case or proceeding is not dismissed or vacated within Ninety (90) Days; or
- B. The failure of the LLC to transmit amounts due to any Contractor or any Consultant under any Consultant Contract or any Construction Contract, after receipt of Actual Costs from County, unless the monies due represent a Cost Overrun attributable to the LLC as provided in Section 8.3, as and when due under this Agreement, provided that the County has provided to the LLC written notice of such failure, and such failure continues for fifteen (15) Days after the receipt by the LLC of such written notice; or

- C. The failure of the LLC in the performance of any material obligations under this Agreement, provided that the County has provided the LLC with written notice of such failure, specifying with detail, the nature of such failure, and such failure is not cured within thirty (30) Days following the receipt by the LLC of such written notice from the County, or, provided that such failure cannot be cured within such thirty (30)-Day period, if the LLC does not commence to cure such failure within such thirty (30)-Day period and thereafter diligently pursue the cure of such failure.

14.3 County's Default

14.3.1 The County shall be in default upon:

- A. The failure of the County to pay the LLC amounts due to the LLC under this Agreement, as and when due, provided that the LLC has provided to the County written notice of such failure, and such failure continues for fifteen (15) Days after the receipt by the County of such written notice; or
- B. The failure of the County in the performance of any material obligations under this Agreement, provided that the LLC has provided the County with written notice of such failure, specifying with detail, the nature of such failure, and such failure is not cured within thirty (30) Days, following the receipt by the County of such written notice from the LLC, or, provided that such failure cannot be cured within such thirty (30)-Day period, if the County does not commence to cure such failure within such thirty (30)-Day period and thereafter diligently pursue the cure of such failure.

14.4 LLC Remedies

Upon a default by the County, the LLC shall have the right to: (1) grant County a reasonable period of time within which to cure such default during which time County shall utilize County's best efforts, including bringing suit, to remedy such default; and/or (2) seek dispute resolution pursuant to Section 14.1 herein to resolve said dispute; and/or (3) subject to the requirements of Section 14.1, seek specific performance of the terms of this Agreement. In the event the LLC is unable to obtain specific performance of this Agreement for any reason, the LLC shall have such other remedies as available by law or in equity as a result of such default.

14.5 County Remedies

Upon a default by LLC, County shall have the right to: (1) grant the LLC a reasonable period of time within which to cure such default during which time the LLC shall utilize the LLC's best efforts, including bringing suit, to remedy such default; and/or (2) seek dispute resolution pursuant to Section 14.1 herein to resolve said dispute; and/or (3) subject to the requirements of Section 14.1, seek specific performance of the terms of this Agreement. In the event County is unable to obtain specific performance of this Agreement for any reason, County shall have the rights to terminate this Agreement and the Sports Facility Use Agreement and to seek recovery

pursuant to the Guaranty of each Team as provided in Article 11 and shall have such other remedies as available by law or in equity as a result of such default.

14.6 Florida Statute §288.11631

Notwithstanding anything herein to the contrary, the LLC shall comply with and remit any payments required under Section 288.11631, Florida Statutes.

ARTICLE 15
LIMITATIONS OF LIABILITY

15.1 Consequential Damages

- A. The County hereby knowingly, voluntarily and intentionally waives any claims against the LLC Parties for any incidental, special, punitive, indirect, or consequential loss or damage, under contract, or in tort (including negligence, fault and strict liability), warranty, or any other theory of law or equity of any nature arising, at any time, however the same may be caused, including the fault or negligence of the LLC Parties.
- B. The LLC knowingly, voluntarily and intentionally waives, and will cause the LLC Parties to waive, any claims against the County for any incidental, special, punitive, indirect, or consequential loss or damage, under contract, or in tort (including negligence, fault and strict liability), warranty, or any other theory of law or equity of any nature arising, at any time, however the same may be caused, including the fault or negligence of the County. In the event the LLC Parties do not waive any claims against the County as required in this paragraph, the LLC agrees to indemnify, defend, and save harmless the County from all such claims made by the LLC Parties against the County, including reasonable attorneys' fees and costs.

ARTICLE 16
COUNTY'S AND LLC'S REPRESENTATIONS

16.1 LLC Representations

The LLC represents and warrants to the County that, as of the date of this Agreement:

- A. Corporate Standing. The LLC is a duly organized limited liability company, validly existing and in good standing under the laws of the State of Florida, is qualified to do business in the State of Florida and that the execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action and will not violate any material provision of any Public Laws, or violate any material provisions of the LLC's Articles of Organization or any other agreement or instrument to which it is a party or by which it or its property may be bound or affected.

- B. No Violation of Law. The LLC is not in violation of any applicable Public Laws, which violations, individually or in the aggregate, could adversely affect its ability to perform its obligations under this Agreement.
- C. Consents. To its knowledge and except as provided in Article 17 of this Agreement, neither the execution and delivery by the LLC of this Agreement nor the consummation of any of the transactions by the LLC that may be contemplated hereby requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any regulatory authority or agency.
- D. Execution and Delivery. This Agreement has been duly executed and delivered by the LLC and constitutes the legal, valid and binding obligation of the LLC enforceable in accordance with the terms hereof.
- E. Litigation. The LLC is not a party to any legal, administrative, arbitration, investigative (to the best of its knowledge) or other proceeding or controversy pending or, to the best of its knowledge, threatened, which could have a material adverse effect on its business, operations, condition (financial or otherwise) or its ability to perform under this Agreement.

16.2 The LLC further agrees that it will notify the County immediately if at any time prior to completion of the Services under this Agreement any of the foregoing representations ceases to be accurate and complete in any material respect.

16.3 The County represents and warrants to the LLC that, as of the date of this Agreement, the County is a duly organized and validly existing political subdivision of the State of Florida; that this Agreement has been authorized by all necessary bodies and parties required for its execution, is validly executed by the County, and is binding upon and enforceable against the County in accordance with its terms.

ARTICLE 17

CONDITIONS PRECEDENT TO ISSUANCE OF COUNTY BONDS

17.1 The obligations of the County to issue County Bonds and provide funding for the Program Budget are expressly subject to each of the following conditions precedent:

- A. The full execution and effectiveness of the Operative Agreements, including, specifically, the effectiveness of the Interlocal Agreement without the requirement of a referendum pursuant to Section 2-31(27)(f) of the City Code of Ordinances;
- B. The County's receipt of the Funding Certification Letter;
- C. Satisfactory completion of all due diligence requirements for the proposed Facility, and having obtained approval or conditional permits and approvals, or

both parties having agreed that permits and approvals will be obtained as required for the development and construction; and

D. The approval of this Agreement by Major League Baseball, if required.

17.2 In the event the conditions precedent of Section 17.1 (A), (C) and/or (D) are not either satisfied or waived by March 1, 2016, and such failure of condition precedent is not the result of the County's failure to act consistently with the Operative Agreements, then either party may terminate this Agreement by written notice to the other party, and the LLC shall reimburse the County one hundred percent (100%) of the Actual Costs paid to the LLC pursuant to the Developer Agreement and the Due Diligence and Planning Services Agreement to the date of termination.

17.3 In the event the conditions precedent of Section 17.1 (B) is not satisfied or waived by March 1, 2016, and such failure of condition precedent is not the result of the LLC's or the County's failure to act consistently with the Operative Agreements, then either party may terminate this Agreement by written notice to the other party, and the LLC will pay to County fifty percent (50%) of the Actual Costs paid by County to the LLC pursuant to the Developer Agreement and the Due Diligence and Planning Services Agreement, to the date of termination.

17.4 The parties may agree to an additional amount of time for compliance with Conditions Precedent.

17.5 Neither party may terminate pursuant to Section 17.1(A) without first discussing with the other party the option of extending the time to allow for the full execution and effectiveness of the Operative Agreements, including the option of extending the March 1, 2016 date to a date after the referendum required pursuant to Section 2-31(27)(f) of the City Code of Ordinances.

ARTICLE 18 **ASSIGNMENT**

This Agreement is for the professional services of the LLC and may not be assigned by the LLC without the prior written consent of the County, which consent may not be unreasonably withheld, conditioned or delayed, unless the proposed assignee cannot reasonably demonstrate to the County that it can perform the obligations of the LLC under this Agreement, in which case the consent of the County may be withheld in the County's sole discretion; provided however, the LLC shall have the right to assign this Agreement to an Affiliate of the LLC upon prior written notice to the County, provided that such assignment shall be subject to all of the terms and conditions of this Agreement. The County shall not be entitled to assign this Agreement without the consent of the LLC. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

ARTICLE 19
MISCELLANEOUS PROVISIONS

19.1 Public Entity Crimes

As provided in Sections 287.132 and 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the LLC certifies that it, and to the best of its knowledge, information and belief, its Affiliates, suppliers, Subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Subsection 287.133(3)(a), Florida Statutes. The LLC will contractually obligate the Contractor to submit to the LLC, and to cause its Subcontractors and consultants to submit to the LLC, the certification set forth in this Section 19.1, with respect to such Subcontractors and Consultants.

19.2 Contingent Fees

The LLC warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the LLC to solicit or secure this Agreement and that it has not paid or agreed to pay any Person other than a bona fide employee working solely for the LLC, any fee commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

19.3 Access and Audits and Public Records

19.3.1 The LLC shall maintain adequate records to justify all charges, expenses and costs incurred in estimating and performing the Services for at least three (3) years after completion of this Agreement. The County shall have access to such books, records, and documents in Palm Beach County as required in this Section for the purpose of inspection or audit during normal business hours, at the LLC's place of business, provided that (a) the County notifies the LLC no less than thirty (30) Days prior to the date of such inspection or audit, and (b) the number of such inspections or audit shall be limited to One (1) per calendar year. The LLC agrees to make available to the County, at the County's request, and at the County's sole cost and expense, all documents and materials pertaining to the Program as required by this Section 19.3.1, if after three (3) years, then still in the possession of the LLC.

19.3.2 The LLC shall comply with the requirements of §119.0701, Florida Statutes, as amended. Specifically LLC shall:

- A. Keep and maintain public records that ordinarily and necessarily are required by the County in order to perform the services as provided under this Agreement.
- B. Maintain all public records in a readily accessible, organized format consistent with the requirement of identifying, retrieving and providing prompt and frequent access to records.
- C. Provide the public with access to public records on the same terms and conditions that the County is by law required to furnish, and at a cost that

does not exceed the cost provided in Florida Statutes, Chapter 119 or as otherwise provided by law.

- D. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements pursuant to Florida Statute are not disclosed, including but not limited to, records that are exempt pursuant to § 255.047, Florida Statutes and §125.0104(9), Florida Statutes, except as may be authorized by law.
- E. Redact part of a record if an exemption applies to part of a record, while producing the remainder of the record and providing the statutory exemption citation that exempts the portion of the record.
- F. If responding that an entire record is exempt, respond by stating the basis of the exemption and providing the statutory exemption citation.
- G. If requested, provide in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.
- H. Meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of the LLC upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County.

19.3.3 Failure to comply with the requirements of Section 19.3 herein constitutes a material breach of this Agreement.

19.4 Inspector General

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the LLC, its officers, agents, employees, and lobbyists in order to ensure compliance with Agreement requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421-2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

19.5 Indebtedness

The LLC shall not pledge the County's credit or make it a guarantor of payment or a surety for any contract, debt, obligation, judgment, lien or any form of indebtedness; provided however, this provision shall not be deemed or construed to abrogate or diminish the County's obligations under the Operative Agreements. The LLC further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

19.6 Notice

All notices and elections (collectively, "Notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any Notice shall be the date of delivery of the Notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which Notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Any notice required to be given hereunder shall be in writing and mailed, postage prepaid, by United States Certified or Registered Mail, Return Receipt Requested, or dispatched by overnight courier, address to the parties as follows, unless a different address is later designated by either party under this notice provision:

For notice to the LLC:

Giles Kibbe
HW Spring Training Complex, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002

And

Arthur Fuccillo
HW Spring Training Complex, LLC
Lerner Enterprises
2000 Tower Oaks Boulevard - Eighth Floor
Rockville, Maryland 20852

With copies to:

Houston Astros, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002
Attention: Reed Ryan

And

Washington Nationals Baseball Club, LLC
Mark D. Lerner
Vice Chairman & Principal Owner
Nationals Park
1500 South Capitol Street, SE
Washington, DC 20003

And

Brian M. Seymour, Esq.
Gunster
777 S. Flagler Drive, Suite 500 East
West Palm Beach, Florida 33401

For notice to the County:

County Administrator
301 North Olive Avenue, 11th Floor
West Palm Beach, FL 33401

With Copies to:
County Attorney
301 North Olive Avenue, 6th Floor
West Palm Beach, FL 33401

And

Director of Office of Financial Management
301 North Olive Avenue, 7th Floor
West Palm Beach, FL 33401

And

Director, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411

Either party hereto may change the address for service of Notices required or permitted hereunder upon ten (10) days' prior written notice. All Notices given hereunder shall be effective and deemed to have been duly given only upon receipt by the party to which notice is being given, said receipt being deemed to have occurred upon such date as the postal authorities shall show the Notice to have been delivered, refused, or undeliverable, as evidenced by the return receipt. Notices may be given, on behalf of a party, by the attorney for such party in accordance with the terms of this Section 19.6.

19.7 Governing Law and Venue

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. The parties acknowledge that personal jurisdiction upon proper service will be valid in the State of Florida, and that venue of all actions arising out of or related to this Agreement shall be proper only in a state court of competent jurisdiction in Palm Beach County, Florida.

19.8 WAIVER OF JURY TRIAL

THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY AND THE LLC TO ENTER INTO THIS AGREEMENT.

19.9 Construction

In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

19.10 Binding Effect

The covenants, terms, conditions, provisions and undertakings in this Agreement, or in any renewals thereof, shall extend to and be binding upon the legal representatives, successors and assigns of the respective parties hereto as if there were in every case named and expressed and ~~wherever reference is made to any of the parties hereto~~, it shall be held to include and apply also to the legal representatives, successors and assigns of such party as if in each and every case so expressed.

19.11 Further Instruments

The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition or assurance in this Agreement whenever the occasion shall arise and request for such instrument shall be made.

19.12 Integration and Merger

This Agreement shall constitute the full and complete understanding between the parties as to the matters addressed herein. There are no oral understandings, terms or conditions and no party has relied on any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions, whether with a party to this Agreement or any partner of a party, are deemed to merge in this Agreement, and this Agreement cannot be changed or supplemented except by an agreement in writing and signed by the parties to this Agreement.

19.13 Severability

If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

19.14 Compliance with Laws

None of the Parties hereto shall in any manner, directly or indirectly, violate the laws, ordinances, rules or regulations of any federal, state, county, city or other governmental authority or agency in connection with the development, construction, use, operation and occupancy of the Facility under the terms of this Agreement.

19.15 Exhibits

All exhibits referenced in this Agreement are incorporated into this Agreement by such reference and shall be deemed to an integral part of this Agreement.

19.16 Attorney's Fees

In the event of litigation or arbitration arising under, or in connection with, this Agreement, each party shall bear and be responsible for their own attorneys' fees and costs at the pre-trial, trial and appellate levels. This provision shall survive the termination of this Agreement for any reason.

19.17 Survival

The warranties and indemnities provided under this Developer Agreement shall survive for a period of One Year after Substantial Completion of the Facility; however, the rights and obligations under Article 13 and Section 10.4 shall survive during the entire term of the Sports Facility Use Agreement.

19.18 Amendments

No change, amendment or modification of this Agreement shall be valid or binding upon the parties hereto unless such change, amendment, or modification shall be in writing and duly executed by both parties hereto. No change, amendment or modification of this Agreement shall be deemed to be made by either party on the basis of any action or failure to act by either party or by the course of performance, course of dealing, or course of conduct of either party.

19.19 Captions

The captions contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

19.20 No Waiver

Any waiver by either party of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party any right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.

19.21 Force Majeure

Except as otherwise provided herein, neither party shall be in default under, or breach of, this Agreement to the extent it is unable to perform due to an event of Force Majeure. For the

purpose of this Agreement, "Force Majeure" shall mean and include any act of God, accident, fire, riot or civil commotion, act of public enemy, failure of transportation facilities, enactment, rule, order or act of government or governmental instrumentality (whether domestic or international and whether federal, state or local (except in the case of a rule, order or act by County), or the international equivalent thereof), failure of technical facilities, or any other cause of any nature whatsoever beyond the control of the parties which was not avoidable in the exercise of reasonable care and foresight. The party claiming the occurrence of a Force Majeure event shall promptly notify the other party of such occurrence, and the likely duration and termination thereof.

19.22 Counterparts

Provided that all parties hereto execute an original of this Agreement, this Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

19.23 No Agency

The LLC is, and shall be, in the performance of all Services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the Work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to the LLC's sole direction, supervision, and control, except for those persons engaged in a peer review pursuant to Section 5.3 hereof. The LLC shall exercise control over the means and manner in which it and its employees, sub-consultants and suppliers perform the Services, and in all respects the LLC's relationship and the relationship of its employees to the County shall be that of an Independent Contractor and not as employees or agents of the County.

The LLC does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

19.24 Non-Discrimination

The LLC warrants and represents that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information.

The LLC has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in R-2014-1421, as amended, or in the alternative, if the LLC does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that the LLC will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

19.25 Third Party Beneficiary

The Teams are intended third party beneficiaries of this Agreement. Except for the Teams, no provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the LLC. The County is an intended third party beneficiary of all Construction Contracts and Consultant Contracts, and

all subcontracts thereto. The LLC shall provide copies of this Agreement to the Consultants and the Contractor.

19.26 Nature of the Parties Obligations

19.26.1 It is understood and agreed that the LLC is acting as an independent contractor in the performance of its services and responsibilities hereunder, and nothing herein shall be deemed to create a joint venture, agency or partnership relationship between the County and the LLC.

19.26.2 The obligation of the County to pay any amounts required under this Agreement shall constitute a revenue obligation of the County payable solely from the Budgeted Amount and, where applicable, legally available non-ad valorem revenues of the County and shall not in any way be construed to be a debt of the County in contravention of applicable constitutional, statutory or charter limitations or requirements concerning the creation of indebtedness of the County. Neither the County, the State of Florida, nor any political subdivision or agency thereof shall be obligated to pay any sums due under this Agreement from compelled levy of ad valorem or other taxes, and neither the full faith and credit nor the taxing power of the County, the State of Florida or any political subdivision or agency thereof are pledged for payment of such sums due under this Agreement.

19.27 Annual Appropriations

The County's performance and obligation to pay under this Agreement is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

19.28 Construction

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any article, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in several counterparts, each of which shall constitute an original and all of which, taken together, shall constitute a single instrument, as the day first written above.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Audrey Wolf, Director
Facilities Development & Operations

WITNESSES:

**HW SPRING TRAINING COMPLEX, LLC, a
Florida Limited Liability Company**

By: _____
Witness Signature

By: _____
Arthur Fuccillo, Manager

Print Witness Name

By: _____
Witness Signature

Print Witness Name

WITNESSES:

**HW SPRING TRAINING COMPLEX, LLC,
a Florida Limited Liability Company**

By: _____
Witness Signature

By: _____
Giles Kibbe, Manager

Print Witness Name

By: _____
Witness Signature

Print Witness Name

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1, THENCE S.87°45'40" E., ALONG THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 513.11 FEET TO THE NORTHEAST CORNER OF THOSE CERTAIN LANDS RECORDED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, AND BEGINNING; THENCE CONTINUE S.87°45'40"E. ALONG SAID NORTH LINE, A DISTANCE OF 1,674.92 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN FLORIDA DEPARTMENT OF TRANSPORTATION RETENTION AREA, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.01°47'54"W. ALONG THE WEST LINE OF SAID RETENTION AREA, A DISTANCE OF 261.46 FEET; THENCE S.87°47'46"E. ALONG THE SOUTH LINE OF SAID RETENTION AREA, A DISTANCE OF 438.30 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.02°40'54"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 848.33 FEET; THENCE S.03°41'15"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 1517.89 FEET; THENCE N.88°08'01"W. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 2,080.84 FEET; THENCE N.02°27'51"E., A DISTANCE OF 390.13 FEET; THENCE N.86°00'41"W., A DISTANCE OF 217.70 FEET; THENCE N.04°33'50"E., A DISTANCE OF 922.84 FEET; THENCE N.86°00'00"W., A DISTANCE OF 323.67 FEET; THENCE N.04°55'38"E., A DISTANCE OF 175.20 FEET; THENCE N.49°23'30"E., A DISTANCE OF 35.68 FEET; THENCE N.04°55'39"E., A DISTANCE OF 60.01 FEET; THENCE N.40°35'00"W., A DISTANCE OF 51.86 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 603.73 FEET; THENCE N.51°47'07"E. ALONG THE SOUTHEASTERLY LINE OF THOSE CERTAIN LANDS DESCRIBED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, A DISTANCE OF 633.92 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.
CONTAINING 6,160,376 SQUARE FEET/141.423 ACRES MORE OR LESS.

EXHIBIT B
MINIMUM REQUIREMENTS

The following are the minimum requirements for the Program

- A baseball stadium containing a minimum of 6,400 ticketed seats and a minimum of 1,000 grass berm seats together with supporting components, such as concession stands, public and family toilets, novelty stores, ticket sales offices, administrative offices, windows and box offices;
- Two clubhouses consistent with the size, features and amenities typical of MLB clubhouses constructed within the last five (5) years, each which includes locker rooms, steam room, sauna, coaches conference room and lounge, video room, training staff locker room, and storage, physician exam room, hydrotherapy room, weight room, kitchen, laundry, indoor and outdoor dining, equipment room;
- Four Major League practice fields;
- Eight Minor League practice fields;
- Two agility fields;
- Covered and outdoor batting cages;
- Major and Minor League pitching mounds;
- Pedestrian access to the Minor League practice fields, clover leaf, and the Major League practice fields;
- 3,000 parking spaces, of which a minimum of 1500 will be grassed parking, which, in the Buffer Area, are convertible to a minimum of 5 regulation size adult soccer fields in the non-training season;
- other supporting training spaces, such as a maintenance compound;
- a public art feature coordinated and approved by the County's Art in Public Places Administrator; and
- any other improvements and/or infrastructure necessary to create a fully functional and code compliant Facility.

EXHIBIT C
CONSULTANT AND CONTRACTOR SELECTION PROCEDURES

Planning Consultant

The Work will include all of the land planning, land development and permitting coordination.

The Selection Committee interviewed the two planning firms which currently hold continuing contracts with Palm Beach County. On February 5, 2015, the Selection Committee chose Urban Design Kilday Studios.

Environmental Consultant

The Work will include, among other things, all of the environmental analysis and geotechnical investigation required of an experienced environmental engineering and geotechnical consultant in the State of Florida and will include consideration of the Site specific considerations of the property.

The Selection Committee interviewed the three environmental assessment consultants which currently hold continuing contracts the Palm Beach County. On February 17, 2015, the Selection Committee chose URS Corp.

Program Manager

The Consultant, and any sub-consultant working thru consultant, shall serve as the Teams' **Program Manager**, also referred to as program manager, for the development of the Facilities. The duties may include, but are not limited to:

- a. Develop, monitor and administer Program Cost Estimate and Program Budget.
- b. Develop, monitor and administer Program Schedule.
- c. Oversee the development of the architectural program and act as primary contact with the Teams and all other sponsors, agencies and users of the Facility.
- d. Assist in the development and negotiations of Consultant Contracts.
- e. Coordinate the activities of consultants.
- f. Review value engineering efforts of design professionals and make recommendations to the Teams.
- g. Assist in the permitting and approval process in conjunction with legal counsel and other Consultants.
- h. Provide technical support for land acquisition efforts.
- i. Make recommendations to the Teams on the most appropriate delivery method and assist with pre-qualifying and selecting Contractor.
- j. Administer the Construction Contract.
- k. Evaluate and negotiate change orders and claims on behalf of the Teams.
- l. Coordinate the procurement of all Furniture, Fixtures & Equipment, including baseball specific items.
- m. Plan and implement transition, occupancy and commissioning of all improvements.

- n. Act as an extension of the Teams' staff on any matter related to this Program that is assigned by the Teams.
- o. Assist with selection of Architectural and Design Professional Services.
- p. Coordinate the design and construction of all sponsorship and revenue related aspects of the Program including concessions and other third-party involvement.
- q. Coordinate vendor review and comment on Program-specific elements including but not limited to Food Service, Concessions, AV/IT, and Broadcast facilities.
- r. Coordinate the introduction and integration of Team operational, food service, and maintenance staffs during the start-up and pre-opening phases.
- s. Coordinate the close-out of all contracts and the establishment of organized reference and as-built files.
- t. Any other responsibilities generally consistent with those listed above in the managing of the Program.

Experience with stadium facilities, including but not limited to baseball facilities (major league and spring training facilities), as well as multi-team facilities, is preferred. Experience with the local permitting agencies (e.g. City of West Palm Beach, Palm Beach County, Florida Department of Transportation, South Florida Water Management District) is also encouraged.

The solicitation was publically advertised with responses received on February 13. The minimum requirements for the responses were identical to that required in County competitive Request for Proposals for similar services. The Selection Committee convened and made its final decision based on the following point structure.

Category	Points
<i>SBE Participation</i>	
Percentage of SBE (as set forth below)	10
<i>Quality of Experience, Depth and Specialized Skills (including as related to specific individuals)</i>	
Experience with sports stadiums	20
Experience with baseball stadiums	15
Experience with spring training facilities	20
Experience with multi-team spring training facilities	10
Experience with permitting with local agencies (e.g., City of West Palm Beach, Palm Beach County, Florida Department of Transportation and South Florida Water Management District)	3
Experience with development of former land fill sites, or in the alternative other potentially environmentally sensitive properties.	2
<i>Performance</i>	
Ability to meet strict deadlines	10
Demonstrated ideas for cost effectiveness	5
Financial capability and capacity to perform	5
Total	100

The Selection Committee interviewed responders on February 17, 2015 and chose Stranix Associates.

Architectural/Design Professionals

Design Professionals with experience with stadium facilities, including but not limited to baseball facilities (major league and spring training facilities), as well as multi-team facilities, is preferred. Experience with the local permitting agencies (e.g. City of West Palm Beach, Palm Beach County, Florida Department of Transportation, South Florida Water Management District) is also preferred. The lead architect must be certified by Palm Beach County as well as sub-consultants. The lead architect must be licensed to do business in the State of Florida, including the ability (either thru itself or sub-consultants) to sign and seal drawings.

The Consultant shall serve as the Teams professional architectural and design representative for the architecture, design and construction administration phases of the development of the Facilities. This shall include, but not be limited to:

- a. Architectural Design
- b. Civil Engineering, including drainage, utilities, water management, water use (including reclaimed water), Site development and roadway production.
- c. Traffic Engineering, including traffic performance analysis and signalization
- d. Mechanical, Electrical, Plumbing and Fire Protection
- e. Lighting
- f. Acoustical and Sound Engineering
- g. Life Safety
- h. Signage
- i. Survey and Site Controls
- j. Audio-Visual and Broadcast
- k. Furniture, Fixtures & Equipment, including baseball specific items.
- l. Telephone and Data
- m. Food services, including specialty food service
- n. Security
- o. Field Design, for both major league spring training and minor league fields
- p. Structural Engineering
- q. Geotechnical engineering, specially related to the Facilities and related offsite improvements (e.g. roadways)
- r. Theming and Sponsorships
- s. Interior Design
- t. Construction Administration
- u. Other sub-disciplines the lead architect or the Teams deem appropriate.

The solicitation was publically advertised with responses received on February 23. The minimum requirements for the responses were identical to that required in County CCNA solicitations. The Selection Committee convened and made its final decision based on the following point structure.

Category	Points
<i>SBE/Local Participation</i>	
Percentage of SBE (as set forth below)	10
Percentage of Local Business (Palm Beach County) in addition to SBE	10
Volume of previous work with Palm Beach County	10
<i>Quality of Experience, Depth and Specialized Skills (including as related to specific individuals).</i>	
Experience with sports stadiums	13
Experience with baseball stadiums, including major league stadiums, minor league stadiums and/or spring training stadiums.	8
Experience with spring training facilities specifically	13
Experience with multi-team spring training facilities specifically	8
Experience with permitting with local agencies (e.g., City of West Palm Beach, Palm Beach County, Florida Department of Transportation and South Florida Water Management District)	3
Experience with development of former land fill sites, or in the alternative other potentially environmentally sensitive properties.	2
LEED AP Certifications, including LEED Proven Provider Certification	2
Awards received for similar project design and development	4
<i>Performance</i>	
Ability to meet strict deadlines	7
Demonstrated ideas for cost effectiveness	5
Financial capability and capacity to perform	5
Total	100

The Selection Committee interviewed responders on February 25, 2015 and chose the team lead by HKS.

Construction Manager

Construction Managers with experience in stadium facilities, including but not limited to baseball facilities (major league and spring training facilities), as well as multi-team facilities, is preferred. Experience with the local contracting environment and local permitting agencies (e.g., City of West Palm Beach, Palm Beach County, Florida Department of Transportation, South Florida Water Management District) is also encouraged. The Construction Manager must be a licensed General Contractor in the State of Florida qualified firms to provide construction management services for the ultimate construction of the Facilities on a Guaranteed Maximum Price basis. The selected Construction Management firm will function as a general contractor responsible for publicly bidding trade contracts, all scheduling and coordination of the Program,

and the successful, timely, and economical completion of the Program. The selected Construction Manager (CM) will also provide preconstruction services.

In coordination with and/or at the direction of the Teams, the Construction Manager shall provide all services usually and customarily provided by CM at Risk general construction contractors in Florida for Programs of the size and scope of the Facilities. Those services shall begin immediately upon selection by the Teams and shall include, but not be limited to, the following:

- A. Develop a comprehensive approach to completion of the Program in compliance with the Teams' required construction schedule and overall budget requirements and limitations.
- B. Advise key stakeholders on procedures, design sequence and phasing, coordination and scheduling of the Work
- C. Provide design, estimating and constructability reviews and advise on availability of materials and labor
- D. Provide preconstruction budgeting support related to overall Program cost and associated costs of alternative designs or materials, life-cycle data, and possible cost reductions without loss of utility or performance.
- E. Provide Value Engineering analysis as required during the entirety of the Program.
- F. Provide an integrated design and construction schedule that addresses all design, procurement, and construction activities and sequences.
- G. Provide recommendations on phasing and the need and impact of any necessary accelerated, fast-tracked or phased construction
- H. Provide preliminary total Program Cost Estimates with comparisons to preliminary budget expectations. Generate alternative design and cost reduction alternatives to the degree they are needed to reduce the Program cost relative to the established budget.
- I. Develop an organization chart, for Teams' approval, reflecting the proper number and experience of staff necessary to carry out the complete construction of the Program.
- J. Generate a potential subcontractor bid list and maintain an active program of subcontractor solicitation to generate and determine market strength in all necessary disciplines.
- K. Develop a Bid List for the Teams' approval.
- L. Draft all invitations and solicitations for bid.
- M. Assemble all bid solicitation packages.
- N. Solicit, receive, review, and present all bid results to the Teams in the form of a Guaranteed Maximum Price (GMP) using the CM at risk format under Florida law.
- O. Provide a payment and performance bond as required by the Teams.
- P. Purchase all Subcontractors as required to meet the established Program schedule, ensuring that the full scope of the completed Program is included in the GMP
- Q. Ensure that all necessary trade permits are acquired for commencement of Work
- R. Properly staff the Program to ensure efficient leadership and proper oversight of all construction operations.
- S. Provide information and support to LEED certification activities, as required.
- T. Conduct weekly Owner, Architect, Contractor meetings to review Program progress and ensure integrated Program management.

- U. Coordinate the work with the Teams' requirements related to Furniture, Fixtures & Equipment, sponsorship, third-party vendors, Team consultants, and Team operations.
- V. Manage and administer Program cost and change order issues. Prepare all pay requisitions and coordinate any sales tax exemption procedures with local County officials to maximize savings to the Program.
- W. Develop and execute an operations start-up and commissioning schedule that allows phased, early, Team and vendor occupancy prior to Program completion, as required for specific specialty areas including but not limited to concessions, AV/IT, sponsorship, and team operations areas.
- X. Develop a program for phased punch list development, completion and turnover.
- Y. Develop a schedule of required County and other regulatory inspections necessary for phase occupancy and operations of the ballpark and training facilities.
- Z. Provide stand-by trade support during initial facility and ballpark operations, including initial team and public events to ensure immediate reaction to system failures or start-up difficulties.
- AA. Create a comprehensive library of Record Drawings, submittals and spare inventory for Team operational use.
- BB. Provide and enforce complete close-out checklists for all subcontractors prior to requests for final payment.
- CC. Work efficiently at all times with the Teams' selected consultants selected to interface with the Construction Manager.

Selection was based on the following criteria:

Category	Points
SBE Participation	
A. SBE Participation (as set forth below)	-
Quality of Experience, Depth and Specialized Skills (including as related to specific individuals)	10
B. Experience with sports stadiums	-
C. Experience with baseball stadiums	15
D. Experience with sports training facilities	20
E. Experience with construction of baseball playing fields	20
F. Knowledge of local conditions, including experience with local building codes and requirements	10
Performance	
G. Ability to meet strict deadlines	-
H. Financial capability and capacity to perform	10
TOTAL	5
	100

The solicitation was publically advertised with responses to be received on March 20, 2015. The minimum requirements for the responses were similar to that required in County competitive Request for Proposals for similar services. The Selection Committee interviewed contractors on March 30, 2015 and selected HSMC (Hunt Construction Group).

EXHIBIT D
EXCLUDED COSTS

The following are Excluded Costs.

1. Any direct or indirect costs or expenses of the LLC's or Teams' employees.
2. Any direct or indirect costs or expenses for attorneys and financial advisors retained by the LLC or Teams, even if such costs or expenses are for work performed on the Program's behalf.
3. Any County employee expenses or Staff charge-offs. Out of County travel expenses for County employees as requested by the LLC and approved by the County are Actual Costs.
4. Fees or costs associated with a peer review conducted pursuant to Section 5.3 unless the LLC requests the County contract for a peer review and County agrees to such request.
5. Palm Beach County impact fees.
6. Palm Beach County building permit fees.
7. County costs associated with the financing the Program.
8. LLC costs associated with financing any aspect of the Program not typically included in the Construction Contract.
9. Costs associated with promotional items, marketing the Facility, Program, Teams and/or Major League Baseball Spring Training.
10. Costs, fines, fees, penalties, including but not limited to termination costs, damages or other expenses of any kind associated with, or arising from, the LLC's or Teams' contracts or other obligations at Spring Training facilities outside of Palm Beach County.

EXHIBIT E
SALES TAX RECOVERY PROGRAM

1.0 Sales and Use Taxes. The County is exempt from paying sales and use taxes on materials and equipment purchased for, and incorporated into, the Facility. The County shall make direct purchases of all materials and equipment purchased for, or to be incorporated into the Facility, as requested by the LLC and confirmed by the County Representative to be eligible for the Program. All direct purchases of materials and equipment shall be made by the County with funding from the Budgeted Amount specifically allocated for the construction of the Facility, which is a capital improvement project, the construction of which is subject to the County's competitive procurement requirements. In order to avail itself to this exemption, the County requires the LLC to contractually obligate the Contractor(s) to implement the following procedures:

2.1 County Furnished Materials

2.1.1 The Construction Manager shall include Florida State Sales and other applicable taxes in its bid for material, supplies, and equipment.

The LLC reserves the right to require the Construction Manager to assign some or all of its subcontracts or other agreements with material suppliers directly to County. Any materials purchased by County pursuant to such an assignment of a material supply subcontract or agreement of a material supply subcontract or agreement shall be referred to as "County Furnished Materials" and the responsibilities of both County and Construction Manager relating to such County Furnished Materials shall be governed by the terms and conditions of these Special Conditions, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. In addition, the County's standard terms and conditions associated with purchase ordered materials will be applicable to all County Furnished Materials.

2.1.2 Material suppliers shall be selected by the Construction Manager awarded the contract by the competitive bid process. Supply contracts shall be awarded by the Construction Manager to the supplier whose bid/proposal is most advantageous to the LLC, price and other factors considered.

The Construction Manager shall include the price for all construction materials in its bid. County purchasing of construction materials, if selected, will be administered on a deductive Change Order basis.

2.1.3 To enable the LLC to realize savings of Sales Tax on selected tangible personal property needed for this Program, the Construction Manager will provide to the LLC a list of all intended suppliers, vendors, and materialmen for consideration as County Furnished Materials. The Construction Manager shall submit price quotes from the vendors, as well as a description of the materials to be supplied, quantities and prices. The Construction Manager will evaluate the list to recommend direct purchases where those direct purchases will result in Sales Tax Savings to the

LLC. The LLC will either accept or reject the Construction Manager's recommendations and purchases will be made according to County procedures.

2.1.4 Construction Manager shall identify materials with a minimum agreed upon goal which the County will furnish through the County Furnished Materials clause, and might furnish materials worth far more than that amount. Therefore, the provision by the Construction Manager for support, clerical, and administrative services detailed in that clause is part of this contract.

In a timely manner, Construction Manager shall prepare County Purchase Order Forms specifically identify the materials which County may, in its discretion, elect to purchase directly.

Construction Manager shall include copies of vendors' quotations.

2.1.5 The following procedure, which is a waiver of the Palm Beach County Procurement Code, shall be used for the implementation of this program.

Construction Manager shall prepare County Purchase Orders (hereinafter "Purchase Orders") for items of material which the County chooses to purchase directly. Once the Purchase Order has been prepared and executed, it shall be issued directly to the vendor by the County. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager, less any sales tax associated with such price. Promptly upon issuance of each Purchase Order by the County, Construction Manager shall verify the purchase of the items in accordance with the terms of the Purchase Order and in a manner to assure timely delivery of items. Palm Beach County's Director of Purchasing or his designated representative shall be the approving authority for the County on Purchase Orders in conjunction with County Furnished Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the County Furnished Materials on the delivery dates provided by the Construction Manager. The Vendor shall issue its invoice, for all materials supplied pursuant to a County Purchase Order, directly to Palm Beach County.

2.1.6 In conjunction with or prior to the execution of the Purchase Orders by the suppliers, the Construction Manager shall execute and deliver to the Program Representative LLC who will forward to the County one or more deductive Change Orders, in accordance with General Conditions referencing the full value of all County-Furnished Materials to be provided by each supplier from whom the County elected to purchase material directly, plus all sales taxes associated with such materials in Construction Manager's bid to County, plus savings to Construction Manager in the cost of Payment and Performance Bonds associated with such County Furnished Materials.

2.1.7 All shop drawings and submittals shall be made in accordance with the General Conditions.

2.1.8 Construction Manager shall be fully responsible for all matters relating to the receipt of materials furnished by County in accordance with these Special Conditions including, but not

limited to, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the County due to the negligence of the Construction Manager. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Construction Manager for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. The Construction Manager agrees to indemnify and hold harmless the County from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of the Construction Manager.

2.1.9 As County Furnished Materials are delivered to the jobsite, the Construction Manager shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of County Furnished Materials is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order together with such additional information as the County or LLC may require. The Construction Manager will then forward the documentation to the County through the LLC.

2.1.10 The Construction Manager shall insure that County Furnished Materials conform to the specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Construction Manager discovers defective or non-conformities in County Furnished Materials upon such visual inspection, the Construction Manager shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the County of the defective or nonconforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the Program. If the Construction Manager fails to perform such inspection and otherwise incorporates into the Work such defective or nonconforming County Furnished Materials, the condition of which it either knew or should have known by performance of an inspection, Construction Manager shall be responsible for all damages to County resulting from Construction Manager's incorporation of such materials into the Program, including liquidated or delay damages.

2.1.11 The Construction Manager shall maintain records of all County Furnished Materials incorporated into the Work from the stock of County Furnished Materials in its possession. The Construction Manager shall account monthly to the County through the LLC for any County Furnished Materials delivered into the Construction Manager's possession, indicating portions of all such materials which have been incorporated into the Work.

2.1.12 The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Construction Manager for resolution with the appropriate supplier, vendor, or Subcontractor.

2.1.13 Notwithstanding the transfer of County Furnished Materials by the County to the Construction Manager's possession, the County shall retain legal and equitable title to any and all County Furnished Materials although the Construction Manager shall maintain both Builders Risk and Inland Marine/Transit insurance on said Materials and the Loss Payee endorsement on said policies shall read "Palm Beach County Board of County Commissioners".

2.1.14 The transfer of possession of County Furnished Materials from the County to the Construction Manager shall constitute a bailment for the mutual benefit of the County and the Construction Manager. The County shall be considered the bailor and the Construction Manager the bailee of the County Furnished Materials. County Furnished Materials shall be considered returned to the County for purposes of their bailment at such time as they are incorporated into the Program or consumed in the process of completing the Program.

2.1.15 The County shall in no way be liable for any interruption or delay in the Program, for any defects or other problems with the Program, or for any extra costs or time resulting from any delay in the delivery of, or defects in, County Furnished Materials.

2.1.16 On a monthly basis, Construction Manager shall be required to review invoices submitted by all suppliers of County Furnished Materials delivered to the Program sites during that month and either concur or object to the County's issuance of payment to the suppliers, based upon Construction Manager's records of materials delivered to the Site and any defects in such materials.

2.1.17 In order to arrange for the prompt payment to the suppliers, the Construction Manager shall provide to the County a list indicating the acceptance of the goods or materials within 15 days of receipt of said goods or materials. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonable required by the County. Upon receipt of the appropriate documentation, the County shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered and remitted directly to the supplier. The Construction Manager agrees to assist the County to immediately obtain partial or final release of waivers as appropriate. The County shall not make any payment without the appropriate Contractor's concurrence and approval, which shall be delivered to the County by the Program Representative.

2.1.18 The County shall be entitled to the benefits of any discounts attributable to the early payment of vendor invoices for materials furnished by the County pursuant to these Specifications.

2.1.19 The material supplier may be required to provide a Supply Bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the County. If the supply bond is required the cost of the bond will be added to the amount of the purchase order. The premium cost for the surety bond should not be included in the bid price. Verifying that a designated material supplier can furnish a supply bond will be the responsibility of the Construction Manager.

EXHIBIT F
COUNTY STANDARD DESIGN AND CONSTRUCTION POLICY DEVIATIONS

1. Deviations from County standards remain subject to County review, comment and approval as required by the applicable provision of the Developer Agreement. The outcome of those discussions may require the Exhibit to be updated.
2. This exhibit may be modified by written agreement of the Director Facilities Development & Operations and the LLC at any time throughout the term of the Sports Facility Use Agreement.

Deviation Type	Property Insurance Responsibility Restoration Area	Renewal/Replacement Responsibility
Royal Palm Trees	LLC	LLC
Hardware Keying Standards	County	LLC
Full Cut off for parking lot, pedestrian circulation and general plaza lighting. Up lights for tree and landscape accent lighting	LLC	LLC
Clerestories - Deviation approved in Exclusive Use Areas Only	LLC	LLC
The entirety of the area that corresponds to Exhibit J hereto, if the solid waste relocation cost savings measure is implemented by the LLC	LLC	LLC
All property damaged or destroyed as a result of adding to, modifying, or using a structure in a manner outside of its intended use, or without first seeking any and all approvals and permits for the addition, modification or use as set forth in Section 17.2.3 of the Sports Facility Use Agreement.	LLC	LLC

EXHIBIT G
PAYMENT CERTIFICATION AND REQUISITION

Board of County Commissioners
Palm Beach County, Florida

Name of Contract (Payee): HW SPRING TRAINING COMPLEX, LLC

Amount to be Paid: \$

The LLC has submitted a payment certification and requisition (with accompanying bills) to Palm Beach County, Florida (the "County") for payment for the above-referenced Contract of the Amount set forth above from moneys held by the Clerk. In this regard, the undersigned hereby certify as follows:

- (i) that the obligation described above was incurred and is a proper charge against the Due Diligence and Planning Services Agreement.
- (ii) that the obligations described above, including any amounts retained by the County in the construction fund to be paid at such later date, have been incurred by, or through, the LLC and that each item thereof is a proper charge against the construction fund and has not been the basis of any previous withdrawal;
- (iii) that all prior distributions made pursuant to previous Payment Requisitions relating to the Facility were applied in the manner set forth in such Payment Requisition;
- (iv) that all required insurance and governmental approvals needed for the construction of the Facility, at this time, is in full force and effect;
- (v) that the Work performed to date has been satisfactorily performed in accordance with the Contractual requirements; and
- (vi) that there has not been filed with or served upon the County or the LLC notice of any valid lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any moneys payable to any of the persons named in such requisition which has not been released or will not be released simultaneously with the payment of such obligation.

HW Spring Training Complex, LLC, a Florida Limited Liability Company

By: _____
Signature/Title

Print Name: Art Fuccillo, Manager

By: _____
Signature/Title

Print Name: Giles Kibbe, Manager

Ballpark of the Palm Beaches

Houston Astros and Washington Nationals Spring Training Complex

Exhibits Page 16 of 35

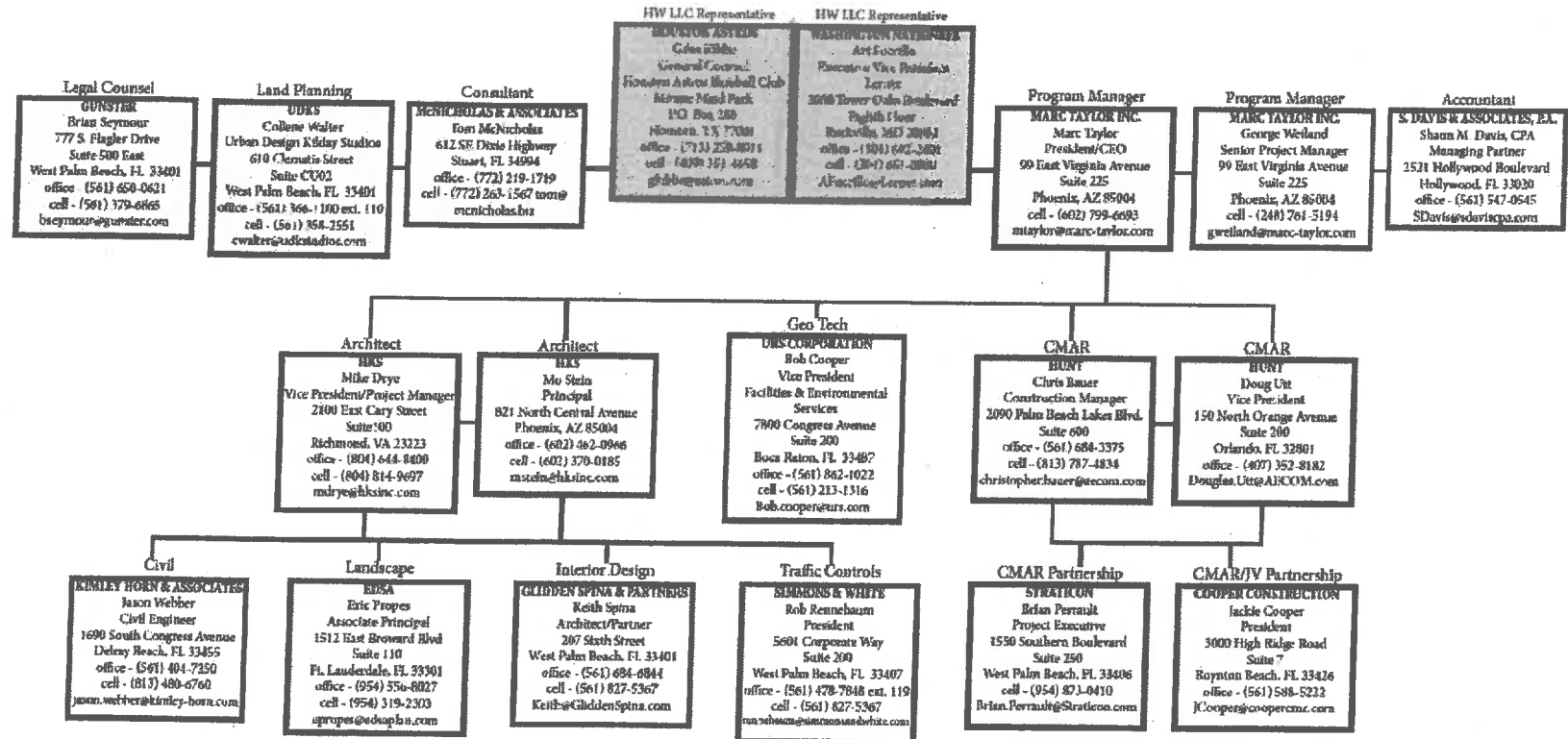


EXHIBIT H
LLC ORGANIZATIONAL CHART

EXHIBIT I-1
HOUSTON ASTROS
PAYMENT AND PERFORMANCE AND CONSTRUCTION GUARANTY

This PAYMENT, PERFORMANCE AND CONSTRUCTION GUARANTY (this "Guaranty") is made as of the ___ day of _____, 2015, by the Houston Astros, L.L.C., a Texas Limited Liability Company (the "Guarantor"), in favor of PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County").

RECITALS:

County is contemporaneously herewith entering into the Developer Agreement and the Sports Facility Use Agreement, to provide for the construction, development and operation of the baseball spring training facility (the "Facility") each dated as of the date hereof, and on March 10, 2015 County entered into a Due Diligence and Planning Services Agreement R-2015-0358 (collectively, the "County Documents"), each entered into by and between County and HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC").

In order to induce County to enter into the County Documents and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of County as follows:

1. **Incorporation of Recitals.** The recitals set forth above are true and correct and are incorporated herein as if set forth in full.
2. **Defined Terms.** Capitalized terms used herein shall have the meaning set forth herein. Unless the context otherwise requires and except as otherwise provided herein, capitalized terms used herein that are not defined herein shall have the meaning assigned to such terms in the County Documents.
3. **Due Diligence Guaranty.** This Guaranty replaces and terminates the guaranty provided by Guarantor on March 10, 2015 contemporaneously with the Due Diligence and Planning Services Agreement R-2015-0358.
4. **Payment, Performance, Construction and Operation Guaranty.** Guarantor hereby unconditionally, absolutely and irrevocably guarantees to County all obligations imposed by the County Documents, including, without limitation, the planning, design and permitting of the Project and the completion of construction of the Facility and operation of the Facility pursuant to the County Documents and the payment and performance of all liabilities, obligations and duties imposed on the LLC under each of the County Documents (collectively "the Obligations") as if Guarantor had executed each such County Document in place of the LLC. As this Guaranty replaces and terminates the Due Diligence Guaranty described in Section 3, this Guaranty shall have a commencement date of March 10, 2015 and shall apply to any Obligations from that date

forward. This Guaranty shall not terminate until the payment of all sums and performance of all Obligations, except that, to the extent this Guaranty guarantees performance of Obligations which survive the termination of the County Documents, then this Guaranty shall continue to remain in full force and effect.

5. Security. Simultaneously with the execution hereof, the Guarantor shall provide a statement from an independent Certified Public Accounting Firm or other independent third-Person (entity) experienced in appraising sports organizations and properties (an "Appraisal Firm"), which shall be in the form of a letter, on their respective letterhead, certifying or opining that the Guarantor has a current net worth or fair value of equity in excess of One Hundred Million and No/100 Dollars (\$100,000,000). At least once every five years thereafter until expiration of this Guaranty, Guarantor shall provide an updated letter to the County from one of the above possible sources, re-certifying or opining that the Guarantor has a then current net worth or fair value of equity in excess of One Hundred Million and No/100 Dollars (\$100,000,000). Additionally, in any year that a statement as described above, is not due to County, the Guarantor shall provide a statement from an Appraisal Firm or Certified Public Accounting Firm in the form of a letter on letterhead, stating that there have been no material adverse changes in the financial position of the Guarantor that would affect the previously certified minimum net worth or fair value of equity statement set forth above during the last year. Notwithstanding the foregoing, Guarantor shall not be in default or breach of this Section so long as (a) one of the Teams (as defined in the County Documents) has a net worth or fair value of equity of at least One Hundred Million and No/100 Dollars (\$100,000,000); or (b) the Teams together have a net worth or fair value of equity of at least One Hundred Million and No/100 Dollars (\$100,000,000). If the aggregate net worth or fair value of equity of both Teams together is equal to an amount less than One Hundred Million and No/100 Dollars (\$100,000,000), then the Teams will be required, for as long a period as such condition shall exist, to provide one or more irrevocable letters of credit in the amount equal to the difference between the combined aggregate stated net worth or fair value of equity of the Teams and One Hundred Million Dollars (\$100,000,000.00) in the form required by and consistent with Palm Beach County Policy and Procedure Memorandum No. CW-F-055 ("Letter of Credit").

6. Letter of Credit or Payment Bond. Guarantor may, at any time, present a Letter of Credit or Payment Bond in the amounts and according to the requirements set forth above in paragraph 5, instead of providing the CPA Firm or other Person (entity) certification described in paragraph 5, and thereafter Guarantor shall be obligated to maintain either a Letter of Credit or Payment Bond as security for the Guaranty in the amounts as set forth above and consistent with Palm Beach County Policies and Procedures.

7. Proprietary Business Information. To the extent permitted by law, this Guaranty does not provide County with access to any proprietary business or financial information of the Teams.

8. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Florida.

9. Severability. If any provision of this Guaranty should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Guaranty shall not be affected thereby.

10. Successors and Assigns. This Guaranty shall inure to the benefit of County and County's successors and assigns under any of the County Documents in accordance with the terms thereof, and shall be binding upon Guarantor and its successors and assigns.

11. Waiver of Jury Trial. GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY COUNTY AGAINST GUARANTOR ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTY.

12. Acceptance of Performance. County agrees to accept performance by Guarantor of all or any of the Obligations to be performed by the LLC under the County Documents with the same force and effect as though performed by the LLC thereunder.

13. Unconditional, Absolute, Irrevocable and Continuing Guaranty. The obligations of Guarantor under this Guaranty shall be unconditional, absolute, irrevocable and continuing, irrespective of the genuineness, validity, regularity or enforceability of the County Documents or any security which may have been given therefor or in connection therewith or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor. This Guaranty and the obligations of Guarantor hereunder shall not be affected, impaired, modified or released by reason of; (a) the making by the LLC of any assignment for the benefit of creditors or the bankruptcy or insolvency of the LLC, (b) any action taken by the LLC in any bankruptcy or insolvency proceeding, including, without limitation, disaffirmance or rejection of the County Documents, (c) any default by the LLC under the County Documents, (d) the liquidation or dissolution of the LLC, (e) any change in or termination of Guarantor's relationship to the LLC, (f) the enforcement by County of any of its rights under the County Documents, (g) the sale, conveyance, transfer or assignment by the LLC, of all or any portion of its interest under the County Documents, including, but not limited to, any assignment to an Affiliate of the LLC as authorized by the County Documents, or (h) the transfer by an owner of an interest in the LLC, including its successors and assigns, of all or any part of its ownership interest in the LLC, at any time, to an Affiliate; it being agreed that in the event of any of the foregoing, the liability of Guarantor hereunder shall continue hereunder as if such event had not occurred. County and the LLC, without notice to or consent by Guarantor, may at any time or from time to time enter into such extensions, expansions, amendments, assignments, subleases, or other covenants with respect to the County Documents as they may deem appropriate or desirable, including, without limitation, an expansion of the performance obligations and Guarantor shall not be released thereby, but shall continue to be fully liable for the payment and performance of all obligations as so extended, expanded, amended, assigned, sublet, or otherwise modified.

14. Primary Liability; Performance Guaranty. The liability of Guarantor under this Guaranty shall be primary, direct and immediate, and not conditional or contingent upon pursuit by County of any remedies it may have against the LLC or any other Person with respect to the

County Documents or any other agreement, whether pursuant to the terms thereof or by law or pursuant to any other security agreement or guaranty, except for pursuit by County of its remedies against the issuer of the Letter of Credit or Payment Bond securing this Guaranty. Guarantor and County each acknowledge and agree that this Guaranty is a guaranty of performance in respect to the Obligations. Any one or more successive or concurrent actions may be brought hereon against Guarantor with respect to the Obligations, either in the same action or proceeding, if any, brought against the LLC or any other person or entity, or in separate actions as often as County, in its sole discretion, may deem advisable. Guarantor may be joined in any action against the LLC in connection with the County Documents. Recovery may be had by County against Guarantor in any action against Guarantor without County first pursuing or exhausting any remedy or claim against the LLC or any other person or entity, as the case may be, or their respective successors or assigns (except for pursuit by County of its remedies against the issuer of the Letter of Credit or Payment Bond securing this Guaranty) and Guarantor hereby waives any right it may have to require that County seek recovery against any other Person before seeking recovery against Guarantor (except for pursuit by County of its remedies against the issuer of the Letter of Credit or Payment Bond securing this Guaranty). Until termination of this Guaranty in accordance with the provisions hereof, the liability of Guarantor under this Guaranty shall continue after (i) any assignment or transfer by the LLC, or any successor thereof, of any of its interests under the County Documents or (ii) any assignment or transfer by County, or any successor thereof, of any of its interests under the County Documents.

15. Waiver of Presentment, Protest and Notices. Guarantor hereby expressly waives: (a) presentment and demand for payment and protest of nonpayment; (b) notice of acceptance of this Guaranty and of presentment, demand and protest; (c) notice of all indulgences under the County Documents; (d) demand for observance or performance of, or enforcement of, any terms and provisions of this Guaranty or the County Documents; (e) notices of default by or to the LLC under the County Documents; and (f) all other notices and demands otherwise required by law which Guarantor may lawfully waive.

16. No Subrogation. Guarantor shall not enforce any right of subrogation it may now or hereafter have against the LLC by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor hereunder, and Guarantor shall not enforce any remedy which Guarantor now or hereafter shall have against the LLC by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor hereunder unless and until all of the Obligations of Guarantor have been fully discharged, performed and satisfied, whereupon Guarantor shall have such subrogation rights as may be allowed under applicable law.

17. No Setoff. No setoff, counterclaim or cross-claim, reduction or diminution of any obligation or any defense of any kind or nature (other than performance of the Obligations) shall be available to Guarantor in any action or proceeding brought by County to enforce the Obligations provided, however, that the foregoing shall not be deemed a waiver of the right of Guarantor to assert any compulsory counterclaim arising, from a claim brought by County hereunder, nor shall the foregoing be deemed a waiver of or prejudice in any manner whatsoever, Guarantor's right to assert any claim which constitutes a defense, setoff, counterclaim or cross-claim of any nature whatsoever against County in any separate action or proceeding. Guarantor

agrees that if at any time all or any part of any amounts at any time received by County from Guarantor or the LLC, or any other Person, as the case may be, for or with respect to the Obligations is or must be rescinded or returned by County by reason of any judgment or decree of any court having jurisdiction (including, without limitation, by reason of the insolvency, bankruptcy or reorganization of Guarantor or the LLC, or any other Person), then Guarantor's obligations hereunder shall, to the extent of the amount rescinded or restored, be deemed to have continued in existence notwithstanding such previous receipt by County and the obligation guaranteed hereunder which was to have been discharged by such rescinded or restored amount shall continue to be effective or reinstated, as the case may be, to the extent of such amount, whether or not this Guaranty has terminated, and the obligations of the Guarantor shall survive the termination hereof.

18. Joint and Several and Cumulative Rights and Remedies. The rights and remedies afforded to County in this Guaranty are cumulative and are not exclusive of any other right or remedy against Guarantor or any other Person provided by law, in equity or under any other agreement or instrument and all such rights and remedies may be exercised singly or concurrently. No delay or omission by County in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any right or remedy hereunder shall be deemed made by County unless in writing and shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of County, and no single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise thereof or of any other right or remedy. It is understood by the parties that other agreements similar to this Guaranty may, in County's sole discretion, be executed and delivered by other Persons with respect to the County Documents. This Guaranty shall be joint and several and cumulative of any such agreements, and the liabilities and obligations of Guarantor hereunder shall in no event be affected or diminished by reason of such other agreements.

19. Entire Agreement. This Guaranty shall constitute the entire agreement of Guarantor with County with respect to Guarantor's guaranty of the Obligations.

20. Amendment. This Guaranty may not be modified or amended, except by an agreement in writing executed by Guarantor and County.

21. Guarantor's Representations. In order to induce County to enter into this Guaranty, Guarantor represents and warrants to County that as of the date hereof:

- (i) Guarantor is a limited liability company duly organized, validly existing, and in good standing under the law of the State of Texas;
- (ii) Guarantor has the requisite power and authority to enter into and carry out the terms and provisions of this Guaranty, and the execution, delivery, and performance of this Guaranty have been duly authorized and approved by all requisite action;
- (iii) This Guaranty constitutes a valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms (subject to any bankruptcy, insolvency, reorganization, receivership, moratorium or

similar laws affecting the rights and remedies of creditors general, and subject to the effect of general principles of equity, whether applied by a court of law or equity);

- (iv) Guarantor's execution and performance of this Guaranty will not result in a breach of violation of, or default under, any laws applicable to Guarantor or any agreement, order, commitment, judgment, or decree by which Guarantor is bound;
- (v) The person executing this Guaranty on behalf of Guarantor has all requisite authority to do so, as a duly authorized officer of Guarantor; and
- (vi) Guarantor is solvent and will not be rendered insolvent by reason of this Guaranty.

22. Notices. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand request, consent, approval or other communication with respect hereto, each such notice, demand, request, consent, approval or other communication (herein referred to as a "Notice") shall be in writing and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt or (iii) a recognized national courier service, addressed as follows (or to such other addresses as a party may direct by a Notice to the other party hereto):

If to Guarantor: Houston Astros, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002
Attention: Giles Kibbe

with a copy to: Houston Astros, LLC
501 Crawford Street, Suite 500
Houston, Texas 77002
Attention: James R. Crane

If to County: Palm Beach County
301 North Olive Avenue, 11th Floor
West Palm Beach, Florida 33401
Attention: County Administrator

with a copy to: Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Attention: Real Estate

with a copy to: Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411

Any Notice may be given, in the manner provided in this Section 21, on behalf of any party by such party's attorneys as designed by such party by Notice hereunder. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, Guarantor, intending to be legally bound, has executed this Guaranty as of the day and year first above written.

WITNESSES:

HOUSTON ASTROS, L.L.C.
a Texas Limited Liability Company

Print Name: _____

By: _____

Print Name: _____

Name: _____

Title: _____

STATE OF _____

)

COUNTY OF _____

)ss:

)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, as _____ of the Houston Astros, L.L.C., who is personally known to me or has produced _____ as identification.

Print Name: _____

Notary Public

EXHIBIT I-2
WASHINGTON NATIONALS
PAYMENT AND PERFORMANCE AND CONSTRUCTION GUARANTY

This PAYMENT, PERFORMANCE AND CONSTRUCTION GUARANTY (this "Guaranty") is made as of the ___ day of _____, 2015, by the Washington Nationals Baseball Club, LLC, a Washington, DC Limited Liability Company (the "Guarantor"), in favor of Palm Beach County, a political subdivision of the State of Florida (the "County").

RECITALS:

County is contemporaneously herewith entering into the Developer Agreement and the Sports Facility Use Agreement, to provide for the construction, development and operation of the baseball spring training facility (the "Facility") each dated as of the date hereof, and on March 10, 2015, County entered into a Due Diligence and Planning Services Agreement R-2015-0358 (collectively, the "County Documents"), each entered into by and between County and HW Spring Training Complex, LLC, a Florida Limited Liability Company (the "LLC").

In order to induce County to enter into the County Documents and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of County as follows:

1. **Incorporation of Recitals.** The recitals set forth above are true and correct and are incorporated herein as if set forth in full.
2. **Defined Terms.** Capitalized terms used herein shall have the meaning set forth herein. Unless the context otherwise requires and except as otherwise provided herein, capitalized terms used herein that are not defined herein shall have the meaning assigned to such terms in the County Documents.
3. **Due Diligence Guaranty.** This Guaranty replaces and terminates the guaranty provided by Guarantor on March 10, 2015 contemporaneously with the Due Diligence and Planning Services Agreement R-2015-0358.
4. **Payment, Performance, Construction and Operation Guaranty.** Guarantor hereby unconditionally, absolutely and irrevocably guarantees to County all obligations imposed by the County Documents, including, without limitation, the planning, design and permitting of the Project and the completion of construction of the Facility and operation of the Facility pursuant to the County Documents and the payment and performance of all liabilities, obligations and duties imposed on the LLC under each of the County Documents (collectively "the Obligations") as if Guarantor had executed each such County Document in place of the LLC. As this Guaranty replaces and terminates the Due Diligence Guaranty described in Section 3, this Guaranty shall have a commencement date of March 10, 2015 and shall apply to any Obligations from that date

forward. This Guaranty shall not terminate until the payment of all sums and performance of all Obligations, except that, to the extent this Guaranty guarantees performance of Obligations which survive the termination of the County Documents, then this Guaranty shall continue to remain in full force and effect.

5. Security. Simultaneously with the execution hereof, the Guarantor shall provide a statement from an independent Certified Public Accounting Firm or other independent third-Person (entity) experienced in appraising sports organizations and properties (an "Appraisal Firm"), which shall be in the form of a letter, on their respective letterhead, certifying or opining that the Guarantor has a current net worth or fair value of equity in excess of One Hundred Million and No/100 Dollars (\$100,000,000). At least once every five years thereafter until expiration of this Guaranty, Guarantor shall provide an updated letter to the County from one of the above possible sources, re-certifying or opining that the Guarantor has a then current net worth or fair value of equity in excess of One Hundred Million and No/100 Dollars (\$100,000,000). Additionally, in any year that a statement as described above, is not due to County, the Guarantor shall provide a statement from an Appraisal Firm or Certified Public Accounting Firm in the form of a letter on letterhead, stating that there have been no material adverse changes in the financial position of the Guarantor that would affect the previously certified minimum net worth or fair value of equity statement set forth above during the last year. Notwithstanding the foregoing, Guarantor shall not be in default or breach of this Section so long as (a) one of the Teams (as defined in the County Documents) has a net worth or fair value of equity of at least One Hundred Million and No/100 Dollars (\$100,000,000); or (b) the Teams together have a net worth or fair value of equity of at least One Hundred Million and No/100 Dollars (\$100,000,000). If the aggregate net worth or fair value of equity of both Teams together is equal to an amount less than One Hundred Million and No/100 Dollars (\$100,000,000), then the Teams will be required, for as long a period as such condition shall exist, to provide one or more irrevocable letters of credit in the amount equal to the difference between the combined aggregate stated net worth or fair value of equity of the Teams and One Hundred Million Dollars (\$100,000,000.00) in the form required by and consistent with Palm Beach County Policy and Procedure Memorandum No. CW-F-055 ("Letter of Credit").

6. Letter of Credit or Payment Bond. Guarantor may, at any time, present a Letter of Credit or Payment Bond in the amounts and according to the requirements set forth above in paragraph 5, instead of providing the CPA Firm or other Person (entity) certification described in paragraph 5, and thereafter Guarantor shall be obligated to maintain either a Letter of Credit or Payment Bond as security for the Guaranty in the amounts as set forth above and consistent with Palm Beach County Policies and Procedures.

7. Proprietary Business Information. To the extent permitted by law, this Guaranty does not provide County with access to any proprietary business or financial information of the Teams.

8. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Florida.

9. Severability. If any provision of this Guaranty should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Guaranty shall not be affected thereby.

10. Successors and Assigns. This Guaranty shall inure to the benefit of County and County's successors and assigns under any of the County Documents in accordance with the terms thereof, and shall be binding upon Guarantor and its successors and assigns.

11. Waiver of Jury Trial. GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY COUNTY AGAINST GUARANTOR ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTY.

12. Acceptance of Performance. County agrees to accept performance by Guarantor of all or any of the Obligations to be performed by the LLC under the County Documents with the same force and effect as though performed by the LLC thereunder.

13. Unconditional, Absolute, Irrevocable and Continuing Guaranty. The obligations of Guarantor under this Guaranty shall be unconditional, absolute, irrevocable and continuing, irrespective of the genuineness, validity, regularity or enforceability of the County Documents or any security which may have been given therefor or in connection therewith or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor. This Guaranty and the obligations of Guarantor hereunder shall not be affected, impaired, modified or released by reason of; (a) the making by the LLC of any assignment for the benefit of creditors or the bankruptcy or insolvency of the LLC, (b) any action taken by the LLC in any bankruptcy or insolvency proceeding, including, without limitation, disaffirmance or rejection of the County Documents, (c) any default by the LLC under the County Documents, (d) the liquidation or dissolution of the LLC, (e) any change in or termination of Guarantor's relationship to the LLC, (f) the enforcement by County of any of its rights under the County Documents, (g) the sale, conveyance, transfer or assignment by the LLC of all or any portion of its interest under the County Documents, including, but not limited to, any assignment to an Affiliate of the LLC as authorized by the County Documents, or (h) the transfer by an owner of an interest in the LLC, including its successors and assigns, of all or any part of its ownership interest in the LLC, at any time, to an Affiliate; it being agreed that in the event of any of the foregoing, the liability of Guarantor hereunder shall continue hereunder as if such event had not occurred. County and the LLC, without notice to or consent by Guarantor, may at any time or from time to time enter into such extensions, expansions, amendments, assignments, subleases, or other covenants with respect to the County Documents as they may deem appropriate or desirable, including, without limitation, an expansion of the performance obligations and Guarantor shall not be released thereby, but shall continue to be fully liable for the payment and performance of all obligations as so extended, expanded, amended, assigned, sublet, or otherwise modified.

14. Primary Liability; Performance Guaranty. The liability of Guarantor under this Guaranty shall be primary, direct and immediate, and not conditional or contingent upon pursuit by County of any remedies it may have against the LLC or any other Person with respect to the County

Documents or any other agreement, whether pursuant to the terms thereof or by law or pursuant to any other security agreement or guaranty, except for pursuit by County of its remedies against the issuer of the Letter of Credit or Payment Bond securing this Guaranty. Guarantor and County each acknowledge and agree that this Guaranty is a guaranty of performance in respect to the Obligations. Any one or more successive or concurrent actions may be brought hereon against Guarantor with respect to the Obligations, either in the same action or proceeding, if any, brought against the LLC or any other person or entity, or in separate actions as often as County, in its sole discretion, may deem advisable. Guarantor may be joined in any action against the LLC in connection with the County Documents. Recovery may be had by County against Guarantor in any action against Guarantor without County first pursuing or exhausting any remedy or claim against the LLC or any other person or entity, as the case may be, or their respective successors or assigns (except for pursuit by County of its remedies against the issuer of the Letter of Credit or Payment Bond securing this Guaranty) and Guarantor hereby waives any right it may have to require that County seek recovery against any other Person before seeking recovery against Guarantor (except for pursuit by County of its remedies against the issuer of the Letter of Credit or Payment Bond securing this Guaranty). Until termination of this Guaranty in accordance with the provisions hereof, the liability of Guarantor under this Guaranty shall continue after (i) any assignment or transfer by the LLC, or any successor thereof, of any of its interests under the County Documents or (ii) any assignment or transfer by County, or any successor thereof, of any of its interests under the County Documents.

15. Waiver of Presentment, Protest and Notices. Guarantor hereby expressly waives: (a) presentment and demand for payment and protest of nonpayment; (b) notice of acceptance of this Guaranty and of presentment, demand and protest; (c) notice of all indulgences under the County Documents; (d) demand for observance or performance of, or enforcement of, any terms and provisions of this Guaranty or the County Documents; (e) notices of default by or to the LLC under the County Documents; and (f) all other notices and demands otherwise required by law which Guarantor may lawfully waive.

16. No Subrogation. Guarantor shall not enforce any right of subrogation it may now or hereafter have against the LLC by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor hereunder, and Guarantor shall not enforce any remedy which Guarantor now or hereafter shall have against the LLC by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor hereunder unless and until all of the Obligations of Guarantor have been fully discharged, performed and satisfied, whereupon Guarantor shall have such subrogation rights as may be allowed under applicable law.

17. No Setoff. No setoff, counterclaim or cross-claim, reduction or diminution of any obligation or any defense of any kind or nature (other than performance of the Obligations) shall be available to Guarantor in any action or proceeding brought by County to enforce the Obligations provided, however, that the foregoing shall not be deemed a waiver of the right of Guarantor to assert any compulsory counterclaim arising, from a claim brought by County hereunder, nor shall the foregoing be deemed a waiver of or prejudice in any manner whatsoever, Guarantor's right to assert any claim which constitutes a defense, setoff, counterclaim or cross-claim of any nature whatsoever against County in any separate action or proceeding. Guarantor

agrees that if at any time all or any part of any amounts at any time received by County from Guarantor or the LLC, or any other Person, as the case may be, for or with respect to the Obligations is or must be rescinded or returned by County by reason of any judgment or decree of any court having jurisdiction (including, without limitation, by reason of the insolvency, bankruptcy or reorganization of Guarantor or the LLC, or any other Person), then Guarantor's obligations hereunder shall, to the extent of the amount rescinded or restored, be deemed to have continued in existence notwithstanding such previous receipt by County and the obligation guaranteed hereunder which was to have been discharged by such rescinded or restored amount shall continue to be effective or reinstated, as the case may be, to the extent of such amount, whether or not this Guaranty has terminated, and the obligations of the Guarantor shall survive the termination hereof.

18. Joint and Several and Cumulative Rights and Remedies. The rights and remedies afforded to County in this Guaranty are cumulative and are not exclusive of any other right or remedy against Guarantor or any other Person provided by law, in equity or under any other agreement or instrument and all such rights and remedies may be exercised singly or concurrently. No delay or omission by County in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any right or remedy hereunder shall be deemed made by County unless in writing and shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of County, and no single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise thereof or of any other right or remedy. It is understood by the parties that other agreements similar to this Guaranty may, in County's sole discretion, be executed and delivered by other Persons with respect to the County Documents. This Guaranty shall be joint and several and cumulative of any such agreements, and the liabilities and obligations of Guarantor hereunder shall in no event be affected or diminished by reason of such other agreements.

19. Entire Agreement. This Guaranty shall constitute the entire agreement of Guarantor with County with respect to Guarantor's guaranty of the Obligations.

20. Amendment. This Guaranty may not be modified or amended, except by an agreement in writing executed by Guarantor and County.

21. Guarantor's Representations. In order to induce County to enter into this Guaranty, Guarantor represents and warrants to County that as of the date hereof:

- (i) Guarantor is a limited liability company duly organized, validly existing, and in good standing under the law of the State of Washington, DC;
- (ii) Guarantor has the requisite power and authority to enter into and carry out the terms and provisions of this Guaranty, and the execution, delivery, and performance of this Guaranty have been duly authorized and approved by all requisite action;
- (iii) This Guaranty constitutes a valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms (subject to any

bankruptcy, insolvency, reorganization, receivership, moratorium or similar laws affecting the rights and remedies of creditors general, and subject to the effect of general principles of equity, whether applied by a court of law or equity);

- (iv) Guarantor's execution and performance of this Guaranty will not result in a breach of violation of, or default under, any laws applicable to Guarantor or any agreement, order, commitment, judgment, or decree by which Guarantor is bound;
- (v) The person executing this Guaranty on behalf of Guarantor has all requisite authority to do so, as a duly authorized officer of Guarantor; and
- (vi) Guarantor is solvent and will not be rendered insolvent by reason of this Guaranty.

22. Notices. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand request, consent, approval or other communication with respect hereto, each such notice, demand, request, consent, approval or other communication (herein referred to as a "Notice") shall be in writing and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt or (iii) a recognized national courier service, addressed as follows (or to such other addresses as a party may direct by a Notice to the other party hereto):

If to Guarantor: Mark D. Lerner
Vice Chairman & Principal Owner
Washington Nationals Baseball Club
Nationals Park
1500 South Capitol Street, SE
Washington, DC 20003

with a copy to: Arthur Fuccillo
Executive Vice President
Lerner Enterprises
2000 Tower Oaks Boulevard
Eighth Floor
Rockville, Maryland 20852

If to County: Palm Beach County
301 North Olive Avenue, 11th Floor
West Palm Beach, Florida 33401
Attention: County Administrator

with a copy to: Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Attention: Real Estate

with a copy to: Facilities Development & Operations
 2633 Vista Parkway
 West Palm Beach, FL 33411

Any Notice may be given, in the manner provided in this Section 21, on behalf of any party by such party's attorneys as designed by such party by Notice hereunder. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, Guarantor, intending to be legally bound, has executed this Guaranty as of the day and year first above written.

WITNESSES:

WASHINGTON NATIONALS
BASEBALL CLUB, LLC, a
Washington, DC Limited Liability
Company

By: _____

Print Name: _____

Name: _____

Title: _____

Print Name: _____

STATE OF _____)

)ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ of the Washington Nationals Baseball Club, LLC, who is personally known to me or has produced _____ as identification.

Print Name: _____
Notary Public

EXHIBIT J
SOLID WASTE RELOCATION

1. **Preamble.** This Agreement authorizes the LLC to relocate solid waste (other than reclaimed sand and fines) which are unsuitable materials on which to support structural improvements. Should the LLC implement the relocation option, the requirements of this **Exhibit J**, including obtaining all required regulatory approvals, shall apply.

2. **Preparation of Studies.** The LLC shall commission a study(ies) which, at a minimum, will evaluate the volume and type of solid wastes which are to remain on-Site, taking into account the list of prohibited materials listed in item 3 below, the level of constituents which were identified in the Limited Site Assessment Report prepared by URS and may be contained in any solid waste to be retained or relocated, the proposed location(s) to receive the solid waste, the proposed method of placement (ie: burying, piling, etc); distance(s) between solid waste and water table, proposed fill cap, compaction methodology, and a list of all required regulatory permits and approvals (Study). The conclusion of the Study shall be a specific purpose plan for the retention and/or relocation of solid waste on the Site in a format, and with content, suitable to clearly explain the proposal to the public at large. The County shall have the ability to review and approve the study for the sole purpose of determining compliance with this Section.

3. **Prohibited Materials.** The following materials shall be prohibited from remaining on-Site as herein contemplated and as part of the LLC's implementation of this cost savings measure:
 - a. any material other than solid waste which currently exists on the Site as result of the Site's historic use as the City of West Palm Beach Former Yard Trash Facility;
 - b. any material(s) that is classified, defined or otherwise identified as hazardous by any government entity, agency, organization and/or authority;
 - c. any non-solid material including, but not limited to, manure, oils, paint, pesticides, refrigerants and septage;
 - d. any material that is customarily acceptable for recycling (i.e. plastic, glass, paper, etc.) and reuse (i.e. wood, ferrous metal, etc.), excluding any residual and incidental amount thereof;
 - e. ammunition, guns, firearms, explosives and flares;
 - f. appliances;
 - g. batteries;
 - h. bio-medical waste, drugs, medicine and pharmaceuticals;
 - i. boats, vehicles, RVs and trailers and any other motorized device or part;
 - j. cathode ray tubes (CRTs);
 - k. drums/barrels, gas cylinders, and containers formerly used or intended for the storage of paint, fuel, or flammable content;
 - l. electronics;
 - m. ferrous metal;
 - n. grease, cooking oils, lubricating oil and petroleum based oils;

- o. fluorescent lamps;
 - p. mercury containing devices;
 - q. photo wastes, x ray waste and film;
 - r. radio-active materials;
 - s. special wastes such as manufacturing process wastes or filter media;
 - t. tires;
 - u. vegetative wastes including street sweepings; or
 - v. asbestos containing materials ("ACM").
4. Coordination with Municipalities. After the County has approved the Study pursuant to Section 2, prior to making application to any regulatory agency for implementation of this cost savings measure (including the City of West Palm Beach in their regulatory capacity), and after distributing the results of the Study listed in Section 2 above, the LLC shall facilitate a discussion with the City of West Palm Beach (if the proposed location is in the Buffer Area and/or City Park). If the LLC is to move forward with the retention/relocation of solid waste, the LLC must obtain written documentation from the City confirming that the City has reviewed the Study and does not oppose the LLC implementing this measure.
5. Regulatory Permits and Approvals. The LLC shall have sole responsibility for securing the necessary regulatory permits and approvals to fully implement the retention and/or relocation of solid waste on Site. Other than executing any applications for regulatory permits and approvals, the County shall have no obligation to explain, support or otherwise comment on the LLC's proposal. Notwithstanding the above, the County shall have the right to comment if it so chooses.
6. Implementation. Prior to moving and covering any solid waste the LLC shall obtain and provide the County Representative with a letter signed and sealed by an engineer licensed in the State of Florida or other appropriately qualified professional that is licensed in the State of Florida; a) identifying the specific composition of the solid waste to be relocated, and b) attesting that all solid waste to remain on Site is in conformance with the list of prohibited materials in item 3 above.
7. Regulatory Compliance. The LLC, at its sole cost and expense, shall be responsible for complying with all terms and conditions associated with each and every regulatory approval required to relocate solid waste including, but not necessarily limited to, physical improvements to the Site that are otherwise not required, groundwater monitoring wells, groundwater sampling, audits, reports, and inspections as may be required by any permitting authority.
8. Liability. The LLC agrees to indemnify, defend, and save harmless the County from any and all cost, expense and liability arising from or out of or as a result of the LLC's implementation of this relocation of solid waste option. The LLC shall have full and complete responsibility for any removal, transport, remediation or disposal required in order to resolve and conclude any environmental action and restore compliance with environmental laws, as well as for reasonable attorney's fees and costs.

9. Allocation of Cost Savings. If this Cost Savings measure is implemented by the LLC, the LLC agrees that it will share the savings with the County as a Pre-Construction Cost Savings in accordance with Section 8.4.3 of this Agreement. The LLC also acknowledges that the Budgeted Amount will be reduced by the County's share of the savings and the treatment of the area for property insurance and renewal/replacement responsibility will be identified on **Exhibit F** of this Agreement.

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