

**CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION
AGENDA ACTION ITEM**

AGENDA DATE: January 8, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Carmen Arrieta-Candelaria, CFO, (915) 541-4011

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the Executive Director to do what? Be descriptive of what we want the Board to approve. Include \$ amount if applicable.

Approval of various organizational matters of the Corporation, including:

- a. the acceptance of the articles of incorporation of the Corporation;
- b. the adoption of the bylaws of the Corporation;
- c. the confirmation of officers of the Corporation; and
- d. the selection of a depository bank of the Corporation, which is proposed to be the same depository bank as the City's depository bank.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable the Board to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the LGC of this action?

On December 18, 2012, the City Council of the City of El Paso approved the creation of a Local Government Corporation (LGC) in accordance with state law provisions. This first action item (parts a-d) outline the first steps towards organizing the LGC.

Item a is the acceptance of the articles of incorporation that we approved by City Council on December 18, 2012.

Item b is the adoption of the bylaws as attached to this form, hereafter, referred to as the "Bylaws".

Item c is the confirmation of the officers as outlined in Article II, Section 1, of the Bylaws. The Board shall consist of nine (9) persons who shall have the qualifications contained in the Articles of Incorporation. The Directors of the Corporation ("Director" or "Directors") shall be those persons elected to serve on the City Council (including the Mayor of the City). The term of service for a Director shall run concurrently with each respective Director's term on the City Council. Each Director shall serve for the term for which he or she is elected to the City Council (including the Mayor of the City) and until his or her successor shall have been elected to the City Council or until his or her earlier death, resignation, retirement, disqualification, or removal. The Directors constituting the initial Board shall be those Directors named in the Articles of Incorporation.

Item d allows the City's depository bank, Wells Fargo, to be named as the depository for the LGC.

Attached supporting documents include the resolution, the articles of incorporation and bylaws of the corporation.

PRIOR BOARD ACTION:

Has the Board previously considered this item or a closely related one?

This is the first meeting of the board.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

*****REQUIRED AUTHORIZATION*****

Incorporator of LGC: Carmen Arrieta-Candelaria

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, AUTHORIZING AND APPROVING THE CREATION OF THE CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION PURSUANT TO SUBCHAPTER D OF CHAPTER 431 OF THE TEXAS TRANSPORTATION CODE, AS AMENDED, TO AID, ASSIST AND ACT FOR AND ON BEHALF OF THE CITY IN THE FINANCING AND DEVELOPMENT OF A MULTIPURPOSE COLISEUM, STADIUM OR OTHER TYPE OF ARENA OR FACILITY THAT IS PLANNED FOR USE FOR ONE OR MORE PROFESSIONAL OR AMATEUR SPORTS EVENTS, INCLUDING MINOR LEAGUE BASEBALL GAMES AND RELATED INFRASTRUCTURE; APPROVING THE ARTICLES OF INCORPORATION; APPOINTING THE INITIAL DIRECTORS AND CHAIRPERSON; AND CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO OTHER MATTERS INCIDENTAL AND RELATED THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Subchapter D of Chapter 431, Texas Transportation Code, as amended ("Chapter 431"), authorizes the creation and organization of a public, nonprofit local government corporation to act as a duly constituted authority of a city to aid and assist the city in the performance of one or more of the city's governmental functions; and

WHEREAS, Chapter 431 requires a local government corporation to be created pursuant to the provisions of Chapter 394, Texas Local Government Code, as amended ("Chapter 394"), and requires a local government corporation's articles of incorporation be in the form and be executed, approved, and filed in the manner prescribed by Chapter 394; and

WHEREAS, a local government corporation may have and exercise all of the powers prescribed by Chapter 431, Chapter 394, and the Texas Non-Profit Corporation Act (formerly Article 1396, Vernon's Texas Civil Statutes, as amended), now codified in the Texas Business Organizations Code as the Texas Nonprofit Corporation Law, as defined in Section 1.008 of the Texas Business Organizations Code, as amended (Chapter 431, Chapter 394 and the Texas Nonprofit Corporation Law are referred to collectively as the "Acts"); and

WHEREAS, Chapter 394 requires as condition to the creation of a local government corporation that at least three (3) residents of the City and the State of Texas (the "State") who are at least eighteen (18) years of age submit a written application for the incorporation of the local government corporation; and

WHEREAS, there has been presented to and filed with the City Clerk of the City of El Paso, Texas (the "City"), an application executed by three (3) residents of the City who meet the requirements of Chapter 394 requesting the incorporation of the City of El Paso Downtown Development Corporation (the "Corporation"); and

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WHEREAS, the Corporation will be organized for the purpose of aiding, assisting, and acting for and on behalf of the City in the performance of the City's governmental functions, including, but not limited to: (A) providing a means to develop, implement and finance, or otherwise pay or reimburse, the costs of a multipurpose coliseum, stadium or other type of arena or facility that is planned for use for one or more professional or amateur sports events, including minor league baseball games and related infrastructure as defined in Chapter 334, Local Government Code, as amended (collectively referred to as the "Project") and all of the costs of such Project (the "Project Costs"); (B) issuing bonds and/or notes for the financing of such Project Costs; and (C) leasing, selling, granting, transferring, or otherwise conveying all or a portion of the ownership interest in the Project as permitted by applicable law. In so acting on behalf of the City, the Corporation will assist the City in the performance of the City's governmental functions as contemplated by the Acts; and

WHEREAS, the City Council of the City (the "Council"), as the governing body of the City, has reviewed and approved the proposed form of the Articles of Incorporation attached hereto as **Exhibit A** and has determined to authorize and approve the creation of a local government corporation, a nonprofit entity, as its constituted authority and instrumentality to accomplish the purposes set forth in Article IV of such Articles of Incorporation pursuant to the provisions of Chapter 431; and

WHEREAS, the Council hereby finds and determines that the adoption of this Resolution is in the best interests of the citizens of the City;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

SECTION 1. The Council hereby finds, determines, and declares that the application for the incorporation of the City of El Paso Downtown Development Corporation was executed and filed in the manner required by Chapter 394, and the Council therefore has authority to consider and act on the application for incorporation of the Corporation.

SECTION 2. The Council hereby finds, determines, recites, and declares that it is wise, expedient, necessary and advisable that the Corporation be formed, be created and be organized under the provisions of Chapter 431 and, to the extent required by Chapter 431, the provisions of Chapter 394, as a duly constituted authority of the City, and the Corporation is hereby authorized to aid, assist and act on behalf of the City in the performance of its governmental functions; and to perform the other purposes described in the Articles of Incorporation.

SECTION 3. The Corporation may aid, assist, and act for and on behalf of the City to further the public purposes set forth in Article IV of the Articles of Incorporation, as the same may be amended from time to time. In furtherance of those public purposes, the Corporation may cause and arrange for the design, development, construction, implementation, financing and operation of the Project, pursuant to the provisions of State law, and may take all lawful actions necessary or useful in furthering such public purposes.

SECTION 4. The Corporation is hereby designated as the duly constituted authority and instrumentality of the City (within the meaning of those terms in the regulations of the Treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to section 103 of the Internal Revenue Code of 1986, as amended) and shall be authorized to act on behalf of the City for the public purposes set forth in Section 3 hereof; but the Corporation is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the Constitution and the general laws of the State, including without limitation Article III, Section 52 of the State Constitution, and the City does not delegate to the Corporation any of its attributes of sovereignty, including the power to tax, the power of eminent domain, or its police power.

SECTION 5. This Resolution is adopted for the purpose of satisfying the conditions and requirements of the Acts and of section 103 of the Internal Revenue Code of 1986, as amended, and the regulations prescribed thereunder from time to time and for the benefit of the Corporation, the City, the owners or holders from time to time of the bonds or notes of the Corporation, and all other interested persons.

SECTION 6. The Council hereby approves the Articles of Incorporation of the Corporation in substantially the form attached hereto as **Exhibit A**, and incorporated by reference as a part of this Resolution for all purposes, and authorizes the incorporators of the Corporation to file such Articles of Incorporation with the Secretary of State of the State in the manner provided by law.

SECTION 7. The Council hereby appoints the directors listed in the Articles of Incorporation attached hereto to the initial board of directors for the Corporation. Subsequent Directors shall be appointed as provided in the bylaws to be adopted by the Corporation.

SECTION 8. The Council appoints Mayor John Cook as the initial Chairperson of the board of directors. Subsequent chairpersons shall be designated as provided by the bylaws to be adopted by the Corporation.

SECTION 9. The Corporation may, under the conditions set forth in the Acts and in this Resolution, issue, or provide for the issuance of, bonds or notes, acquire, lease, sell or convey certain properties, and enter into purchase agreements, lease agreements, credit agreements, operating agreements and all other agreements necessary or useful in connection with the Project; provided that the Corporation shall not issue bonds or notes without the consent of the Council. Furthermore, bonds or notes issued by the Corporation shall be deemed not to constitute a debt of the State, the City, or of any other political corporation, subdivision, or agency of the State or a pledge of the faith and credit or taxing power of any of them, but such bonds or notes shall be payable solely from the revenues pledged to the payment of such bonds or notes. In no event shall the Corporation be authorized to levy ad valorem taxes.

SECTION 10. The Council hereby finds, determines, recites and declares that any notes, bonds, loans, debts or other obligations of the Corporation shall not be deemed an indebtedness, liability, general or moral obligation or pledge of the faith or credit of the State, the City or any other political subdivision or governmental unit, nor shall any such notes, bonds, loans, debts or

other obligations constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction or any agreement, obligation or indebtedness of the City or of the State within the meaning of any constitutional or statutory provision whatsoever.

SECTION 11. The Council hereby finds, determines, recites and declares that it is the purpose, intent and desire of the City, in approving the creation of the Corporation and its Articles of Incorporation, that such actions and the Corporation hereby authorized comply with the requirements of the Internal Revenue Code 1986, as amended, and the Treasury Regulations and Internal Revenue Service rulings promulgated thereunder and the rulings issued pursuant thereto, such that the Corporation shall be deemed to be a constituted authority acting on behalf of the City pursuant to the provisions of the Chapter 431.

SECTION 12. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are incorporated by reference and are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION 13. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters ordained herein.

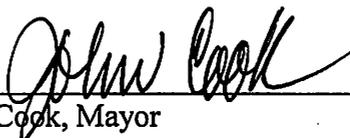
SECTION 14. This Resolution shall be construed and enforced in accordance with the laws of the State and the United States of America.

SECTION 15. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 16. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 17. This Resolution shall become effective from and after its date of passage in accordance with law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, THIS 12TH DAY OF DECEMBER, 2012.



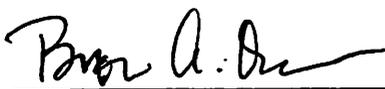
John F. Cook, Mayor

ATTEST:



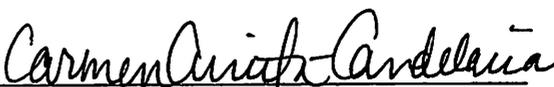
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Senior Assistant City Attorney
City of El Paso, Texas

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria
Chief Financial Officer
City of El Paso, Texas

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Exhibit A

**Articles of Incorporation
For
City of El Paso Downtown Development Corporation**

ARTICLES OF INCORPORATION
OF
CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION

We, the undersigned natural persons, each of whom is at least eighteen (18) years of age or more, and a resident of the City of El Paso, Texas (the "City") and a citizen of the State of Texas (the "State"), acting as incorporators of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended (the "Act"), and to the extent required by the Act, Chapter 394, Texas Local Government Code, as amended ("Chapter 394"), do hereby adopt the following articles of incorporation for such corporation (the "Articles of Incorporation"):

ARTICLE I

The name of the corporation is "CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION" (the "Corporation").

ARTICLE II

The Corporation is a public, nonprofit corporation.

ARTICLE III

Subject to the provisions of Article XV, the period of duration of the Corporation shall be perpetual.

ARTICLE IV

The Corporation is organized for the purpose of aiding, assisting, and acting for and on behalf of the City in the performance of the City's governmental functions, including, but not limited to: (A) providing a means to develop, implement and finance, or otherwise pay or reimburse, the costs of a multipurpose coliseum, stadium or other type of arena or facility that is planned for use for one or more professional or amateur sports events, including minor league baseball games and related infrastructure as defined in Chapter 334, Local Government Code, as amended (collectively referred to as the "Project") and all of the costs of such Project (the "Project Costs"); (B) issuing bonds and/or notes for the financing of such Project Costs; and (C) leasing, selling, granting, transferring, or otherwise conveying all or a portion of the ownership interest in the Project as permitted by applicable law. In so acting on behalf of the City, the Corporation will assist the City in the performance of the City's governmental functions as contemplated by the Acts.

The Corporation is formed pursuant to the provisions of the Act, which Act authorizes the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purpose for its creation.

To the extent necessary to carry out its authorized purposes, the Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State to corporations incorporated under the Act including, without limitation, all powers not in conflict with the Act granted to domestic nonprofit corporations by the Texas Nonprofit Corporation Law, as defined by Section 1.008 of the Texas Business Organizations Code, as amended, and shall have all other powers of a like or different nature not prohibited by law which are necessary or useful to enable the Corporation to perform the authorized purposes for which it is created.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Section 101.001, Texas Civil Practice and Remedies Code, as amended. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Chapter 101, as amended, Texas Civil Practice and Remedies Code. The Corporation shall not exercise the powers of sovereignty of the City, including the power to tax, eminent domain power, or police power.

ARTICLE V

The Corporation shall have no members and is a non-stock corporation.

ARTICLE VI

The City Council has by resolution adopted on the 18th day of December, 2012, authorized the creation of the Corporation as a local government corporation and approved these Articles of Incorporation pursuant to Subchapter D of the Act.

To the extent necessary to carry out its authorized purposes, the Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given under the Act, Chapter 394, and under the general laws of the State to nonprofit corporations incorporated under the Texas Nonprofit Corporation Law which are consistent with the provisions of the Act with respect to the development and operation of the Project together with all powers incidental thereto or necessary therefor. Notwithstanding the foregoing, before the consummation of the sale and delivery of any bonds or notes, the Corporation shall obtain approval from the City Council, as evidenced by the adoption of a written resolution of the City Council. Additionally, in the exercise of the powers of the Corporation, the Corporation may enter into any sale, loan, lease, trust, operating, or other agreement as authorized by the Act that are necessary and appropriate to the fulfillment of the authorized purposes of the Corporation as set forth in Article IV hereof.

The Corporation is a constituted authority and a public instrumentality within the meaning of the regulations of the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Corporation is authorized to act on behalf of the City as provided in these Articles of Incorporation. However, the Corporation is not a political subdivision or political corporation of the State within the meaning of the State constitution and laws, including, without limitation, Article III, Section 52 of the State Constitution, and no agreements, bonds, debts, or obligations of the Corporation are or shall ever

be deemed to be the agreements, bonds, debts, or obligations, or the lending of credit, or a grant of public money or thing of value, of or by the City, except as provided by State law, or any other political corporation, subdivision, or agency of the State, or a pledge of the faith and credit of any of them.

ARTICLE VII

These Articles of Incorporation may at any time and from time to time be amended as provided in the Act or Chapter 394 so as to make any changes herein and add any provisions hereto permitted by law. Any such amendment not prohibited above shall be effected in either of the following manners: (i) the members of the Board of Directors of the Corporation (the "Board") shall file with the City a written application requesting permission to amend the Articles of Incorporation, specifying in such application the amendments proposed to be made, and the City may consider such application and, if it shall by appropriate resolution duly find and determine that it is wise, expedient, necessary or advisable that the proposed amendments be made and shall approve the form of the proposed amendments, then the Board may amend the Articles of Incorporation by adopting such amendments at a meeting of the Board and delivering the articles of amendment to the Secretary of State for the State, or (ii) the City Council may, in its sole discretion, and at any time, amend these Articles of Incorporation, and change the structure, organization, programs, or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of the Act, Chapter 394, and any limitation provided by the State Constitution and laws of the State and the United States of America on the impairment of contracts entered into by the Corporation), by written resolution adopting the amendment to the Articles of Incorporation or articles of dissolution at a meeting of the City Council and delivering articles of amendment or dissolution to the Secretary of State for the State, as provided in the Act. Restated Articles of Incorporation may be filed with the Secretary of State for the State as provided in the Act.

ARTICLE VIII

The meetings of the Corporation shall be subject to the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and the Board is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, as amended, in the same manner as if the Corporation were a political subdivision.

ARTICLE IX

The initial bylaws of the Corporation shall be adopted by the Board and shall, together with these Articles of Incorporation, govern the initial affairs of the Corporation until and unless amended in accordance with the provisions of the Act and these Articles of Incorporation. The bylaws and each amendment and repeal of the bylaws must be approved by the City Council by resolution.

ARTICLE X

The street address of the initial registered office of the Corporation is 2 Civic Center Plaza, El Paso, Texas 79901, and the name of the initial registered agent at such address is Richarda Duffy Momsen, City Clerk.

ARTICLE XI

The affairs of the Corporation shall be managed by a nine (9) member board of directors (the "Board"), or such greater or lesser number (if then permitted by the Act), to be equivalent at all times with the total number of positions constituting the City Council of the City (including the Mayor of the City). The Board shall be composed in its entirety of persons who are members of the City Council of the City (including the Mayor of the City), and whose terms of office shall be fixed by and coterminous with, their respective terms of office as members of the City Council of the City (but in no event, shall any term exceed six years). A director shall hold office for the term to which the director is qualified and until a successor is qualified. A director serves without compensation but shall be entitled to reimbursement incurred in performing services as a director. Any vacancy in the Board shall be filled in the manner prescribed by the Bylaws.

ARTICLE XII

The number of directors of the Corporation (the "Directors") initially constituting the Board is nine (9). The names and addresses of the nine (9) initial Directors are:

<u>Names</u>	<u>Addresses</u>
John F. Cook	2 Civic Center Plaza El Paso, Texas 79901
Ann Morgan Lilly	2 Civic Center Plaza El Paso, Texas 79901
Susie Byrd	2 Civic Center Plaza El Paso, Texas 79901
Emma Acosta	2 Civic Center Plaza El Paso, Texas 79901
Carl L. Robinson	2 Civic Center Plaza El Paso, Texas 79901
Michiel Noe	2 Civic Center Plaza El Paso, Texas 79901
Eddie Holguin, Jr.	2 Civic Center Plaza El Paso, Texas 79901
Steve Ortega	2 Civic Center Plaza El Paso, Texas 79901
Cortney Niland	2 Civic Center Plaza El Paso, Texas 79901

All of the initial directors are residents of the City. Pursuant to Section 431.102(c) of the Act, a majority of the Board will reside within the City.

ARTICLE XIII

The names and street addresses of the incorporators, each of whom resides within the City, are:

<u>Names</u>	<u>Addresses</u>
William F. Studer, Jr.	2 Civic Center Plaza El Paso, Texas 79901
Carmen Arrieta-Candelaria	2 Civic Center Plaza El Paso, Texas 79901
Mark Sutter	2 Civic Center Plaza El Paso, Texas 79901

ARTICLE XIV

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by State law. Any repeal or amendment of this Article by the Board shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences and the bylaws, a Director shall not be liable to the fullest extent permitted by any amendment to the State law hereafter enacted that further limits the liability of a Director.

ARTICLE XV

If the Board determines by resolution that the purposes for which the Corporation was formed have been substantially met and all bonds or notes issued by and all other obligations incurred by the Corporation have been fully paid, the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of Section 394.026 of the Local Government Code, as amended, or with applicable law then in existence. In the event of dissolution of the Corporation, after the payment or satisfaction of all debts, liabilities and obligations, all assets will be turned over to the City, or its successor, unless the City Council shall otherwise direct.

ARTICLE XVI

A. The City Council, by written resolution, may authorize and direct the dissolution of the Corporation. However, the Corporation shall not be dissolved or liquidated, and its business shall not be terminated, by act of the City Council or otherwise, so long as the Corporation shall be obligated to pay any bonds, notes, or other obligations.

B. No action shall be taken pursuant to the first paragraph of this Article, in any manner or at any time that would impair any contract, lease, right, or other obligation theretofore executed, granted, or incurred by the Corporation.

ARTICLE XVII

As provided in the bylaws, the Corporation may indemnify any director, officer, agent or former director, officer or agent of the Corporation for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with any claim asserted against the person, by action in court or other forum, by reason of such person having been a director, officer or other agent.

ARTICLE XVIII

These Articles of Incorporation may not be changed or amended unless approved by the City Council by resolution or ordinance.

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IN WITNESS WHEREOF, we have hereunto set our hands this the 18th day of December, 2012.

William F. Studer, Jr.
William F. Studer, Jr., Incorporator

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria, Incorporator

Mark Sutter
Mark Sutter, Incorporator

THE STATE OF TEXAS

§
§
§

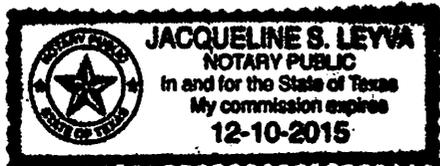
COUNTY OF EL PASO

I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on this the 18th day of December, 2012, William F. Studer, Jr., Carmen Arrieta-Candelaria, and Mark Sutter, who each being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

Jacqueline S. Leyva
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

(SEAL)



My Commission Expires:

12/10/2015

BYLAWS
OF
CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION

A Texas Local Government Corporation

Date of Adoption: January 8, 2013

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BYLAWS
OF
CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION

ARTICLE I

PURPOSES AND POWERS

Section 1. Purpose. The City of El Paso Downtown Development Corporation (the “Corporation”) is organized for the purposes set forth in Article IV of its Articles of Incorporation, as the same may be amended from time to time, with such purposes to be accomplished on behalf of the City of El Paso, Texas (the “City”) as the City’s duly constituted authority and instrumentality in accordance with the Subchapter D of Chapter 431, Texas Transportation Code, as amended (the “Act”), and other applicable laws.

Section 2. Formation. The Corporation is formed pursuant to the provisions of the Act and, to the extent provided by the Act, Chapter 394, Texas Local Government Code, as amended, which authorizes the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of its authorized purposes.

Section 3. Powers. The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State to nonprofit corporations incorporated under the Act including, without limitation, all powers not in conflict with the Act granted to domestic nonprofit corporations by the Texas Nonprofit Corporation Law, as defined by Section 1.008 of the Texas Business Organizations Code, to the extent necessary to carry out its authorized purposes, including, but not limited to, the power to acquire land and enter into a sale, loan, lease, grant, transfer, trust, operating, or other agreement as authorized by the Act.

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in the State and which are necessary or useful to enable the Corporation to perform its authorized purposes, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish its authorized purposes, provided that the Corporation shall not issue bonds or notes without the consent of the City Council of the City (the “City Council”).

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Section 101.001, as amended, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, as amended, Chapter 101, Texas Civil Practice and Remedies Code.

Section 4. Nonprofit Corporation. The Corporation shall be a public, nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and expenses shall inure to the benefit of any person other than the City.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Appointment, Classes, Powers, Number, and Term of Office. All powers of the Corporation shall be vested in the Board of Directors (the “Board”). The Board shall consist of nine (9) persons who shall have the qualifications contained in the Articles of Incorporation. The Directors of the Corporation (“Director” or “Directors”) shall be those persons elected to serve on the City Council (including the Mayor of the City). The term of service for a Director shall run concurrently with each respective Director’s term on the City Council. Each Director shall serve for the term for which he or she is elected to the City Council (including the Mayor of the City) and until his or her successor shall have been elected to the City Council or until his or her earlier death, resignation, retirement, disqualification, or removal. The Directors constituting the initial Board shall be those Directors named in the Articles of Incorporation. Successor Directors shall have the qualifications and shall be appointed subject to the terms set forth herein. In case of a vacancy in the Board through death, resignation, disqualification, or other cause or incapacity of a Director, a successor to hold office shall be the person appointed or elected to serve on the City Council in such vacant position. To the extent permitted by the Act, the number of the persons who make up the Board shall automatically increase or decrease such that the number of Directors shall never be less than the number of persons making up the City Council (including the Mayor of the City). In accordance with the Act, at all times a majority of the Directors on the Board shall reside within the City. In the event an elected member of City Council resigns as a Director but still holds his or her elected office, the remaining Board of Directors shall appoint a successor Director to fill such vacancy for a term which is co-terminous with the term of office of the elected City Council member who resigned as a Director.

The Chair/President of the Board (the “Chair”) shall at all times be the person serving as Mayor of the City.

Section 2. Meetings of Directors. The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within the City as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State.

The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required of a City under Chapter 551, as amended, Texas Government Code (the “Open Meetings Act”). The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, as amended, Texas Government Code (the “Texas Public Information Act”). The City Clerk has the primary responsibility for carrying out the duties required by the Texas Public Information Act, and is hereby designated the public information coordinator for purposes of the Texas Public Information Act.

Section 3. Annual Meetings. The annual meeting of the Board shall be held during the month of August of each year. The Board shall designate the time and the location of the annual meeting which shall be within the City.

Section 4. Regular Meetings. Regular meetings of the Board shall be held at such times and places as shall be designated, from time to time, by resolution of the Board.

Section 5. Special and Emergency Meetings. Consistent with the Open Meetings Act, special and emergency meetings of the Board shall be held whenever called by the Chair/President, the Secretary of the Corporation, or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called. The Secretary of the Corporation shall give notice of each special meeting in person, by telephone, telecopier, mail, electronic mail or telegraph at least two (2) hours before the meeting to each Director. Notice of each emergency meeting shall also be given in the manner required of the City under Section 551.045 of the Texas Open Meetings Act. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special or emergency meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Texas Open Meetings Act.

Section 6. Quorum and Action of the Board. A simple majority of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting from time to time. The act of a majority of the Directors present and voting at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these Bylaws.

A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action, unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of the action.

Section 7. Participation by Telephone Conference and Videoconference. In accordance with the Open Meetings Act, members of the Board or members of any committee designated by the Board may participate in and hold a meeting of the Board or such committee by means of telephone conference, video conference or similar communications equipment to the same extent as a governmental body within the meaning of the Open Meetings Act, and participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Notice of such meeting shall be given in accordance with the Open Meetings Act.

Section 8. Conduct of Business. At the meetings of the Board, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board may determine. At all meetings of the Board, the Chair/President shall preside, and in the absence of the Chair/President, the Vice Chair/Vice President shall preside. In the absence of the Chair/President and the Vice Chair/Vice President, a Chair shall be chosen by the Board from

among the Directors present. The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

Section 9. Compensation of Directors. Directors, as such, shall not receive any salary or compensation for their services as Directors. However, Directors shall be reimbursed for their actual expenses incurred in the performance of their official duties as Directors.

Section 10. Director's Reliance on Consultant Information. A Director shall not be liable if while acting in good faith and with ordinary care, he or she relies on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation;
- (b) legal counsel, public accountants, the operator or the developer of the Project (as defined in the Articles of Incorporation), or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or
- (c) a committee of the Board of which the Director is not a member.

ARTICLE III

OFFICERS

Section 1. Titles and Term of Office. The officers of the Corporation shall be a Chair/President, a Vice Chair/Vice President, an Executive Director, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that the Chair/President shall not hold the office of Secretary. The Chair/President and Vice Chair/Vice President of the Board and the Executive Director, Secretary and Treasurer of the Corporation shall be appointed in accordance with the provisions of these Bylaws. The Board, at its organizational meeting and annually thereafter, shall elect such additional officers as it sees fit. All officers (other than the Chair/President, Vice Chair/Vice President and those officers who hold office by virtue of their City positions) shall be subject to removal, with or without cause, at any time by a vote of a majority of the whole Board; provided, however, that a Director shall not subject to removal as a Director so long as such Director remains a member of the City Council. An officer who holds office by virtue of his or her position with the City shall only be removed if he or she is removed from such City position. A vacancy in the office of any officer (other than the Chair/President, Vice Chair/Vice President and those other officers who hold office by virtue of their City positions) shall be filled by the Board, subject to the provisions hereof.

Section 2. Powers and Duties of the Chair/President. The Chair/President shall at all times be the person serving as Mayor of the City and shall preside at all meetings of the Board. He or she shall have such duties as are assigned by the Board. The Chair/President may call special or emergency meetings of the Board.

Section 3. Powers and Duties of the Vice Chair/Vice President. The Vice Chair/Vice President shall at all times be the person serving as Mayor Pro Tem of the City. The Vice Chair/Vice President shall perform the duties and exercise the powers of the Chair/President upon the Chair/President's death, absence, disability, or resignation, or upon the Chair/President's inability to perform the duties of his or her office. Any action taken by the Vice Chair/Vice President in the performance of the duties of the Chair/President shall be conclusive evidence of the absence or inability of the Chair/President to act at the time such action was taken.

Section 4. Executive Director. The Executive Director shall be the chief administrative officer of the Corporation who is charged with carrying out Board policies and directives. To the extent authorized by the Board, he or she may sign in the name and on behalf of the Corporation all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation. The Executive Director of the Corporation need not be a member of the Board and shall at all times be the person serving as the City Manager of the City.

Section 5. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation which come into his or her hands. When necessary or proper, he or she may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; he or she may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; whenever required by the Board; he or she shall enter or cause to be entered regularly in the books of the Corporation to be kept by him or her for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; he or she shall perform all acts incident to the position of Treasurer subject to the control of the Board; and he or she shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require. The Treasurer of the Corporation need not be a member of the Board and shall at all times be the person serving in the capacity of the Chief Financial Officer of the City.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board in books provided for that purpose; he or she shall attend to the giving and serving of all notices; in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, he or she may sign with the Chair/President in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he or she shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, he or she shall in general perform all duties incident to the office of Secretary subject to the control of the Board. The Secretary of the Corporation need not be a member of the Board and shall at all times be the person serving as the City Clerk of the City.

Section 7. Officer's Reliance on Consultant Information. In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation, including members of the Board; or
- (b) legal counsel, public accountants, the operator or the developer of the Project, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be the same as the fiscal year of the City.

Section 2. Notice and Waiver of Notice. Whenever any notice whatsoever is required to be given under the provisions of these Bylaws (other than a notice required by the Open Meetings Act), such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. A waiver of notice, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 3. Resignations. Any Director or officer may resign at any time. Such resignation shall be made in writing to any officer of the Board. Said resignation shall become effective when such resigning Director's resignation from the City Council or officer's resignation from the City is effective.

Section 4. Gender. References herein to the masculine gender shall also refer to the feminine in all appropriate cases, and vice versa.

Section 5. Appropriations and Grants. The Corporation shall have the power to request and accept any appropriation, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision or municipality in the State, or any other source.

ARTICLE V

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification. Subject to the limitations and conditions as provided in this Article V and the Articles of Incorporation, each person who was or is made a

party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a “proceeding”), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys’ fees) actually incurred by such person in connection with such proceeding, and indemnification under Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

Section 2. Advance Payment. The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 1 of this Article V who was, is, or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person’s ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

Section 3. Indemnification of Employees and Agents. The Corporation, by adoption of a resolution of the Board or pursuant to an agreement approved by the Board, will indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a

capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

Section 4. Appearance as a Witness. Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

Section 5. Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 3 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles of Incorporation of the Corporation or these Bylaws, agreement, vote of shareholders or disinterested Directors or otherwise.

Section 6. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

Section 7. Notification. Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

Section 8. Savings Clause. If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VI

CODE OF CONDUCT

The members of the Board and the officers of the Corporation shall be subject to Chapter 2.92 of Title II of the City Code of Ordinances entitled "Ethics", as the same may now or hereafter be amended, which establishes the minimum standards that officers and employees of the City must meet to ethically fulfill the responsibilities of their positions.

ARTICLE VII

AMENDMENTS

A proposal to alter, amend, or repeal these Bylaws shall be made by the affirmative vote of a majority of the full Board at any annual or regular meeting, or at any special meeting where notice of the proposed amendment was contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by the City Council to be effective.

ARTICLE VIII

CONFLICTS

In the event of a conflict between these Bylaws and the Articles of Incorporation, the Articles of Incorporation shall control.