

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** City Manager  
**AGENDA DATE:** September 18, 2012  
**CONTACT PERSONS/PHONE:** William F. Studer, Deputy City Manager, 541-4252  
**DISTRICT(S) AFFECTED:** ALL DISTRICTS

**SUBJECT:**

Discussion and action regarding a Resolution that the City Manager be authorized to sign a Ballpark Development Agreement, in substantially the form attached hereto, by and between the City of El Paso and Mountain Star Sports Group, LLC – El Paso Baseball Club Series for the purpose of establishing the process and schedule for the design, development, construction and delivery of a minor league ballpark and related facilities within the El Paso downtown area and specifying the use of a construction manager at risk for the project.

**BACKGROUND / DISCUSSION:**

At the City Council meeting of June 26, 2012, the Council approved resolutions that: (1) authorized the City Manager to sign the Term Sheet with Mountain Star Sports Group which signaled the intent of the City Council to construct the ballpark; move forward to formulate long and short term plans for relocation of City operations from the City Hall site to allow for the construction of the ballpark; proceed with the proposed financing plan; and authorized the negotiation of a contract containing the terms and conditions for the construction and future operations and maintenance of the ballpark; and (2) provided for the planning, acquisition, establishment, development and construction of a sports and community venue project and designating the method of financing the project pursuant to Chapter 334 of the Local Government Code.

**PRIOR COUNCIL ACTION:**

2 Resolutions approved June 26, 2012

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_  \_\_\_\_\_  
**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Ballpark Development Agreement, in substantially the form attached hereto, by and between the CITY OF EL PASO ("City") and MOUNTAIN STAR SPORTS GROUP, LLC – EL PASO BASEBALL CLUB SERIES ("Club") for the purpose of establishing the process and schedule for the design, development, construction and delivery of a minor league ballpark and related facilities within the El Paso downtown area and specifying the use of a construction manager at risk for the project.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012**

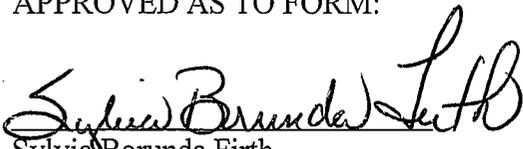
THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

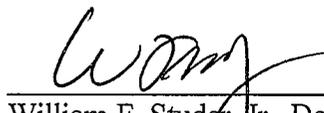
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sylvia Borunda Firth  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
William F. Studer, Jr., Deputy City Manager  
Development and Tourism

**BALLPARK DEVELOPMENT AGREEMENT**

**by and between**

**THE CITY OF EL PASO, TEXAS,**

**and**

**MOUNTAIN STAR SPORTS**

**GROUP, LLC—EL PASO BASEBALL CLUB SERIES**

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Appendix A	Glossary of Defined Terms
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Exhibit A	Real Property
Exhibit B	Lease

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of \_\_\_\_\_, 2012 (the "**Execution Date**") by and between the **CITY OF EL PASO, TEXAS**, a Texas home rule city ("**City**") and **MOUNTAIN STAR SPORTS GROUP, LLC—El Paso Baseball Club Series**, a Texas limited liability company ("**Club**"). City and Club are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

### RECITALS

WHEREAS, Club is the owner of a Triple A Minor League Baseball franchise granted by The National Association of Professional Baseball Leagues, Inc. (the "**NAPBL**") and the corresponding interests in the Pacific Coast League of Professional Baseball Clubs, Inc. or any successor MiLB league (the "**League**");

WHEREAS, City Council of City recognizes the presence of Club and the playing of the home games of Team (as defined herein) in El Paso, especially in its downtown area, provides a unique value to City, including generating new jobs, additional revenue sources and economic development and increased tourism for City;

WHEREAS, the NAPBL and the League have required that a new ballpark be constructed as a condition to Club's ownership of Team and re-location of Team to El Paso, Texas and City has agreed to finance, own, design, develop and construct a new, first class, state-of-the-art, natural turf, open-air Minor League Baseball ballpark and related facilities within El Paso's downtown that will serve as the home of the Team and will also host concerts, other sporting events and community-oriented events (the "**Ballpark**");

WHEREAS, City holds the title or other legal right to the real property described on Exhibit A attached hereto and incorporated herein by reference (the "**Real Property**");

WHEREAS, the City Council of City has determined that the construction of the Ballpark and re-location of the Team to El Paso, Texas will serve a public purpose and therefore has adopted a resolution on September 18, 2012, authorizing the City Manager of City to sign this Agreement;

WHEREAS, concurrently with the execution of this Agreement, City and Club plan to enter into (a) that certain Ballpark Lease Agreement (the "**Lease**") whereby City has agreed to lease to Club and Club has agreed to lease from City, the Ballpark, and (b) that certain Non-Relocation Agreement (the "**Non-Relocation Agreement**") whereby the Parties agreed to certain restrictions on any relocation of the Team;

WHEREAS, the Parties desire to enter into an agreement that establishes the process and schedule for the design, development and construction of the Ballpark.

### AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt

and sufficiency of which are hereby acknowledged, City and Club, each intending to be legally bound, do hereby agree as follows:

## ARTICLE I

### GENERAL TERMS

**1.1 Definitions and Usage.** Unless the context shall otherwise expressly require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A and incorporated herein by reference, which also contains rules as to usage that shall be applicable herein. Terms used but not defined herein shall have the meaning ascribed to such terms in the Lease.

## ARTICLE II

### REPRESENTATIVES

**2.1 City Representative.** City hereby designates the City Manager of City or her designee to be the representative of City (the "**City Representative**"), and the City Manager shall have the right, from time to time, to change the Person who is the City Representative by giving at least five (5) Business Days prior written notice to Club thereof. The only functions under this Agreement of City Representative shall be as expressly specified in this Agreement. Any one of the Persons from time to time serving as City Representative shall have the power to bind City in those instances in which this Agreement specifically provides for the Approval, decision, confirmation or determination of City Representative and in no other instances; *provided, however*, that notwithstanding anything in this Agreement to the contrary, City Representative shall not have any right to modify, amend or terminate this Agreement.

**2.2 Club Representative.** Club hereby designates Joshua Hunt to be the representative of Club (the "**Club Representative**"), who shall be authorized to act on behalf of Club under this Agreement. Club shall have the right, from time to time, to change the Person who is the Club Representative by giving at least five (5) Business Days prior written notice to City thereof. Any written Approval, decision, confirmation or determination hereunder by the Club Representative shall be binding on Club; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the Club Representative shall not have any right to modify, amend or terminate this Agreement.

**2.3 Collaborative and Cooperative Process.** The Parties intend that the design, development, construction and furnishing of the Ballpark Improvements shall be a cooperative process. The Parties agree that each Representative will have full access to any information available to City from the Owner's Representative, the CM At Risk, the Project Architect and all other contractors, consultants and other Persons retained in connection with the design, development, construction and furnishing of the Ballpark Improvements. For purposes of participating in the process of managing construction costs and continuing to be involved and informed during the design and construction of the Ballpark Improvements, each Representative will be given a reasonable opportunity to be present at all meetings and briefings with the Owner's Representative, the CM At Risk, the Project Architect and all contractors, consultants and other Persons engaged with regard to the design, development, construction and furnishing of the Ballpark Improvements; provided however, that that all contractually required

communications (subject to Club receiving notices pursuant to Section 6.4.6), obligations and ultimate authority with respect to the Ballpark, the Owner's Representative, the Project Architect, the CM At Risk or anyone acting through or on their behalf rests with City as long as the Ballpark is built in accordance with the Minimum Requirements.

### ARTICLE III

#### CONDITIONS TO CITY OBLIGATIONS AND COMMENCEMENT OF CONSTRUCTION

**3.1 Conditions to City Obligations.** This Agreement shall not be effective with respect to any City obligation hereunder and City shall not be obligated to move forward with any of the terms of this Agreement until the conditions in Section 3.1.1. through Section 3.1.4 (the "**Conditions to City Obligations**") are satisfied. City shall provide written notice to Club when the Conditions to City Obligations are satisfied.

**3.1.1 Team.** On or before October 31, 2012, the League shall have provided unconditional written confirmation to City that Club is the sole owner of the Team (including all associated franchise rights) which is a member of the League.

**3.1.2 League Approvals.** On or before October 31, 2012, Club shall have obtained any required League, NAPBL and/or any other baseball required approval or review of the Lease and have provided the unconditional written confirmation of Club Representative affirming that such approvals or reviews have been obtained and no other MiLB approval is required with respect to the Lease.

**3.1.3 Lease Execution.** On or before October 31, 2012, Club and City shall have signed the Lease.

**3.1.4 Non-Relocation Agreement Execution.** On or before October 31, 2012, Club and City shall have signed the Non-Relocation Agreement and such agreement will have been acknowledged in writing by the League.

**3.1.5 Opinion of Club Counsel.** On or before October 31, 2012, City shall have received the Opinion of Club Counsel addressed to City.

**3.2 Conditions to Commencement of Construction.** City shall not be obligated to commence the Ballpark Improvements Work until the conditions in Section 3.2.1. through Section 3.2.9 (the "**Conditions to Commencement**") are satisfied or waived, such conditions to be satisfied on or before the respective dates set forth below. City shall provide written notice to Club when the Conditions to Commencement are satisfied and specify such date as the "Construction Commencement Date." City and Club acknowledge and agree that the timeframes within which each of the Conditions to Commencement are to be satisfied shall be implemented in a manner that assures, to the extent commercially reasonable and in accordance with Applicable Law, that City achieves Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline (as the same may be extended by an Excusable City Delay Period).

**3.2.1 Owner's Representative.** As soon as commercially reasonable after the Conditions to City Obligations are satisfied and in accordance with all Applicable Laws, City and Club shall mutually agree on an owner's representative (the "**Owner's Representative**") which will act as both the City's and Club's lead point of contact to coordinate all scheduling, budget, design and construction matters related to the Ballpark; provided, however, that both Parties retain the right to retain separate owner's representatives to represent their independent interests. Any such additional owner's representatives shall be retained in accordance with Applicable Laws applicable to City regardless of whose interest such owner's representative represents. The costs and expenses of the Owner's Representative and any additional owner's representatives retained by either of the Parties shall be included as part of the Ballpark Budget and paid as part of the Ballpark Costs.

**3.2.2 Project Architect.** As soon as commercially reasonable after the Conditions to City Obligations are satisfied, City and Club shall mutually agree on the selection of the Project Architect in accordance with any requirements of Applicable Law, including procurement laws applicable to City.

**3.2.3 Construction Manager At Risk.** As soon as commercially reasonable after the Conditions to City Obligations are satisfied, City, with input and the involvement of Club, shall have selected the CM At Risk in accordance with any requirements of Applicable Law.

**3.2.4 Ballpark Construction Contract.** As soon as commercially reasonable after the selection of the CM At Risk and in accordance with all Applicable Laws, City and the CM At Risk shall have entered into the Ballpark Construction Contract (including the City Personal Property listed as part of the FF&E Requirements). Prior to the submission of the Ballpark Construction Contract to the CM At Risk, City and Club shall have mutually agreed on the form thereof. Any subsequent changes to such documents shall be governed by Section 8.1.3.

**3.2.5 Ballpark Budget.** As soon as commercially reasonable after the execution of the Ballpark Construction Contract and in accordance with all Applicable Laws, City shall prepare or cause to be prepared, with input and the involvement of the Club Representative, the Ballpark Budget. Any subsequent changes to such document shall be governed by Section 5.1.2.

**3.2.6 Project Plans.** As soon as commercially reasonable after the execution of the Ballpark Construction Contract and in accordance with all Applicable Laws, the Project Plans shall have been Approved by each of the Parties. Any subsequent changes to such documents shall be governed by Section 8.1.

**3.2.7 Construction Schedule.** As soon as commercially reasonable after the execution of the Ballpark Construction Contract and in accordance with all Applicable Laws, City shall prepare or cause to be prepared, with input and the involvement of the Club Representative, the Ballpark Construction Schedule. Any subsequent changes to such document shall be governed by Section 5.1.3.

**3.2.8 Financing.** By March 1, 2013 or as soon thereafter as commercially reasonable and in accordance with all Applicable Laws, the Financing shall have closed and the

proceeds thereof shall be available to City to pay the costs of issuance thereof (which are not a part of Ballpark Costs) and the Ballpark Costs.

**3.2.9 Governmental Authorizations.** As soon as commercially reasonable after the completion and delivery to City of the Project Plans and in accordance with all Applicable Laws, City shall have obtained all Governmental Authorizations necessary to permit commencement of construction of the Ballpark Improvements, including building permits and engineering and land use approvals necessary for the commencement of development and construction of the Ballpark Improvements.

**3.3 Agreement to Consult and Assist.** Prior to the Construction Commencement Date, the Representatives shall meet and consult with each other and reasonably assist each other with respect to satisfaction of the Conditions to Commencement.

**3.4 Termination for Failure of Conditions to be Satisfied.**

**3.4.1 Conditions to City Obligations Not Satisfied.** If for any reason all of the Conditions to City Obligations have not been fully satisfied (or waived in writing as specifically authorized by the Controlling Body of City) by November 30, 2012, as the same may be extended by an Excusable Club Delay Period, then in such event, City may, by written notice to Club, elect to terminate this Agreement.

**3.4.2 Conditions to Commencement Not Satisfied.** If for any reason all of the Conditions to Commencement have not been fully satisfied (or waived in writing by City Representative or Club Representative as applicable) by January 1, 2014, as the same may be extended by an Excusable City Delay Period or an Excusable Club Delay Period, as applicable and in accordance with this Agreement, then such failure shall not be construed to be an Event of Default under this Agreement, but in such event, either Club or City may, by written notice to the other Parties, elect to terminate this Agreement.

**3.4.3 Effect of Termination.** Upon any termination of this Agreement pursuant to this ARTICLE III, the Lease and the Non-Relocation Agreement shall also terminate and the Parties shall have no further rights, obligations or liabilities under such agreements (except pursuant to the provisions of such agreements which expressly survive termination) and the Parties automatically shall be released from any future obligations under this Agreement, the Lease or the Non-Relocation Agreement that arise after the date of termination but shall not be released from any obligations which arise or relate to occurrences prior to the date of termination.

## ARTICLE IV

### TERM

**4.1 Term.** The term under this Agreement (the "**Term**") shall commence at 12:00 a.m. on the day immediately following the Execution Date and shall end on 11:59 p.m. on the date Final Completion occurs as required in Section 5.1.6 hereof.

**4.2 Commencement of Construction.** The date on which all Conditions to Commencement are satisfied is the "**Construction Commencement Date**".

## ARTICLE V

### CERTAIN DEADLINES AND DELIVERABLES

**5.1 Deadlines Subsequent to Commencement of Term.** Subject to extension as a result of an Excusable Club Delay Period or an Excusable City Delay Period, as appropriate, in accordance with the terms of this Agreement and after the Construction Commencement Date, the Parties shall meet the following deadlines in connection with the following matters:

**5.1.1 Scheduled Ballpark Improvements Start Date Milestone.** City shall cause the construction (which includes demolition and other site preparation) of the Ballpark Improvements to commence on or before the day that is thirty (30) days after the Construction Commencement Date.

**5.1.2 Ballpark Budget.** Except to take into account any change orders entered into pursuant to Section 6.8 hereof, City shall not modify the Ballpark Budget in any material respect without the prior Approval of the Club Representative, such approval not to be unreasonably withheld, conditioned or denied. City will promptly provide Club Representative with notice of any proposed material change to the Ballpark Budget for Club's Approval, such Approval not to be unreasonably withheld, conditioned or denied.

**5.1.3 Ballpark Construction Schedule.** City will provide Club Representative with notice of any material change to the Ballpark Construction Schedule for Club's Approval, such Approval not to be unreasonably withheld, conditioned or denied.

**5.1.4 Substantial Completion.** City shall cause Substantial Completion of the Ballpark Improvements Work to occur on or before the Substantial Completion Deadline. On or before September 30, 2013, City Representative shall provide written notice to Club as to whether City Representative believes (to the best of the knowledge of the City Representative after reasonable inquiry) that the Substantial Completion Deadline will be met.

**5.1.5 Punch-list Items.** Upon Substantial Completion, City shall provide notice thereof to Club. Club Representative and City Representative shall schedule a time to meet within ten (10) Business Days thereafter to inspect the Ballpark and for Club to prepare a "punch-list" of items that are reasonably required to be completed or repaired prior to Final Completion of the Ballpark. The CM At Risk shall complete, or cause to be completed, all reasonable punch-list items within thirty (30) days after the inspection or as soon as is reasonably practicable in light of the work to be performed.

**5.1.6 Final Completion.** On or before the date which is ninety (90) days after the Substantial Completion Date, City shall cause Final Completion of the Ballpark Improvements Work to occur (using its commercially reasonable efforts to not unreasonably interfere with Club's business operations at the Ballpark).

**5.2 Extension of Substantial Completion Deadline.** In the event City fails to achieve Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline (as the same may have been extended by any Excusable City Delay Period), City shall have the continuing right and option to extend the Substantial Completion Deadline, as such Substantial Completion Deadline may be extended pursuant to the terms of

this Section 5.2 so that City may cause Substantial Completion of the Ballpark Improvements Work to occur, provided each of the following requirements is satisfied:

(a) City must continue to diligently and continuously prosecute the Ballpark Improvements Work (subject to Excusable City Delay) after the original Substantial Completion Deadline (as the same may have been extended by Excusable City Delay or the terms of this Section 5.2).

(b) So long as this Agreement is in full force and effect and a Club Default does not remain uncured, City shall pay to Club the Late Opening Charges, as liquidated damages and not as a penalty and as Club's sole remedy, for each day after the original Substantial Completion Deadline (as the same may have been extended by Excusable City Delay Period) which elapses before Substantial Completion of the Ballpark Improvements Work. City and Club agree that because of the difficulty or impossibility of determining Club's damages as a result of such a delay in Substantial Completion of the Ballpark Improvements Work, the difficulties of proof of loss and the inconvenience or nonfeasibility of Club otherwise having a remedy for such failure to achieve Substantial Completion of the Ballpark Improvements Work by the original Substantial Completion Deadline (as the same may have been extended by any Excusable City Delay Period or the terms of this Section 5.2), the Late Opening Charges are a reasonable amount to be paid for such failure.

In the event the CM At Risk fails to cause Substantial Completion of the Ballpark Improvements Work to occur on or before the date required by the Ballpark Construction Contract, City hereby agrees to use good faith, commercially reasonable effort to collect from the CM At Risk the liquidated damages set forth in the Ballpark Construction Contract for such failure. City will not (i) amend or modify the provisions providing for liquidated damages in the Ballpark Construction Contract, (ii) waive, release, reduce or terminate the liquidated damages payable by the CM At Risk thereunder or (iii) waive, release, extend or terminate the CM At Risk's obligation to achieve Substantial Completion in accordance with the Ballpark Construction Schedule, without the prior Approval of Club, such Approval not to be unreasonably withheld, conditioned or denied.

**5.3 Financing Proceeds.** Club acknowledges that City intends to use Financing Proceeds to pay for the Ballpark Costs.

**5.3.1 Financing Proceeds Attributable to Tax Exempt Bonds.** In the event the Ballpark Costs are less than the Financing Proceeds, then to the extent such remaining Financing Proceeds are attributable to tax exempt bonds, such remaining Financing Proceeds shall be used in the following order of priority: (a) first, to purchase any items and/or to perform any work that was included in the Project Plans but later removed as a result of value engineering, as mutually determined by the Parties, (b) second, for capital expenditures to enhance the value of the Ballpark Improvements, as mutually agreed to by the Parties, (c) third, for construction of additional Ballpark parking as mutually agreed to by the Parties, (d) fourth, for deposit into the debt service fund for the tax exempt bonds associated with the Financing and used to pay principal on such bonds; provided however; that in all cases the use of such proceeds for such expenditures will not adversely affect the tax exempt status of such bonds in the reasonable opinion of Bond Counsel to City. If the Parties cannot so mutually agree or if such opinion of Bond Counsel cannot be obtained, then any such remaining tax exempt Financing

Proceeds shall be deposited into the debt service fund for the tax exempt bonds associated with the Financing and used to pay principal on such bonds.

**5.3.2 Financing Proceeds Attributable to Taxable Bonds.** In the event the Ballpark Costs are less than the Financing Proceeds, then to the extent such remaining Financing Proceeds are attributable to taxable bonds, such remaining Financing Proceeds shall be used in the following order of priority: (a) first, the first \$500,000 of any such remaining Financing Proceeds shall be deposited into the Capital Repairs Reserve Fund (as such term is defined in the Lease), (b) second, to purchase any items and/or to perform any work that was included in the Project Plans but later removed as a result of value engineering, as mutually determined by the Parties, (c) third, for capital expenditures to enhance the value of the Ballpark Improvements, as mutually agreed to by the Parties and (d) fourth, for construction of additional Ballpark parking, as mutually agreed to by the Parties.

## ARTICLE VI

### CONSTRUCTION OF BALLPARK IMPROVEMENTS; GENERAL WORK REQUIREMENTS

#### 6.1 General Provisions.

**6.1.1 Ballpark Improvements.** City shall design, develop and construct the Ballpark Improvements in accordance with the terms and conditions of this Agreement and all Applicable Laws, and shall diligently and continuously adhere to the Ballpark Construction Schedule (subject to any Excusable City Delay permitted in accordance with the terms of this Agreement).

**6.1.2 Quality Standard and Minimum Requirements.** City and Club covenant and agree that the scope of design and development specifications for construction, and the construction, of the Ballpark Improvements will adhere to the Quality Standard and include the Minimum Requirements.

**6.2 Club's Access to the Ballpark Improvements.** Prior to the Operating Term Commencement Date, Club, its agents, contractors, licensees, and concessionaires shall have the right of access, for themselves and their authorized representatives, to the Ballpark and all portions thereof for the following purposes: (a) conducting inspections for purposes of determining compliance with this Agreement; and (b) installation of any additional fixtures or equipment Approved by City and not included in the Ballpark Budget. Such access shall be without charge or the commencement of Rent (as defined in the Lease) under the Lease, and at normal construction hours during the construction period, provided Club and all such agents, contractors, licensees, and concessionaires (i) notify City in advance of such proposed entry by any of Club's licensees or concessionaires, (ii) do not hinder or interfere with the construction of the Ballpark Improvements or the activities of City's contractors (including the CM At Risk) and coordinate such work with such activities of City's contractors (including the CM At Risk) to minimize the risk of creating Cost Overruns, (iii) pay all costs of such work, (iv) take such reasonable protective precautions or measures as City or its contractors (including the CM At Risk) may reasonably request, given the stage of the construction of the Ballpark Improvements at the time of such entry and (v) comply with and be subject to the provisions of the Ballpark Construction Contract relating to City's rights to access including providing the insurance

required by the terms of the Ballpark Construction Contract (or, if the CM At Risk does not specify the same, then by providing such insurance as City may reasonably request).

**6.3 Pre-Existing Site Conditions.** Prior to the Operating Term Commencement Date, City shall be responsible for performing or causing to be performed, and for paying the cost of performing as a part of the Ballpark Budget, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law (including the Antiquities Code) to be performed with respect to any (i) state historical landmarks present at, in, on or under the Ballpark prior to the Construction Commencement Date and (ii) any Pre-Existing Environmental Conditions in accordance with Section 9.2.

**6.4 Work Performed.**

**6.4.1 General Requirements.** City shall, at its sole cost and expense (except as otherwise provided in this Agreement), perform or cause the performance of the Ballpark Improvements Work in accordance with and subject to the terms of this Agreement, and City shall promptly and faithfully cause the CM At Risk to perform that portion of the Ballpark Improvements Work to be performed under the Ballpark Construction Contract in accordance with the terms and provisions thereof and keep and perform all of the covenants and conditions contained in the Ballpark Construction Contract to be kept and performed by City; provided, however (i) City shall not be in breach of its obligations in this sentence if its failure to so keep and perform is caused by the failure of Club or its Related Parties to perform their respective obligations under this Agreement and (ii) so long as City is using good faith, diligent efforts to achieve Substantial Completion of the Ballpark Improvements Work, City's liability related to any failure with respect to achieving the Ballpark Construction Schedule, including achieving Substantial Completion of the Ballpark Improvements Work by the Substantial Completion Deadline or any subsequent date, will be solely as set out in Section 6.4.4. City will at all times continually enforce all material obligations of all Persons under the Ballpark Construction Contract and will promptly, after City learns of the same, notify Club of any default by any Person under the Ballpark Construction Contract, and of the remedy or course of action sought by City in response to such default.

**6.4.2 Ballpark Construction Contract.** The construction management at risk agreement to be executed by City with respect to the construction of the Ballpark Improvements (the "**Ballpark Construction Contract**") shall (a) contain a completion guaranty and guaranteed maximum or fixed price for the Final Completion of the Ballpark Improvements Work, (b) cause the CM At Risk to obtain, keep and maintain performance and payment bonds from a Qualified Surety in a total amount equal to one hundred percent (100%) of the costs of the Ballpark Improvements Work, such performance and payment bonds to be held by and firmly bound unto City, and (c) comply with the terms of Section 6.4.5 below.

**6.4.3 Record Drawings and Other Documents.** Upon Substantial Completion of the Ballpark Improvements Work, City shall furnish to Club (i) three (3) copies of the as-built drawings that the CM At Risk delivers to City under the Ballpark Construction Contract, and (ii) three (3) copies of the operating and maintenance data binders supplied by the CM At Risk under the Ballpark Construction Contract.

**6.4.4 Remedy for Failure to Achieve Substantial Completion by the Substantial Completion Deadline.** City's liability to Club for City's failure to achieve

Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline shall be limited to Club's right to receive the Late Opening Charges. Notwithstanding anything to the contrary contained in this Agreement, Club shall have no rights or remedies against City, other than the recovery of the Late Opening Charges as set forth in Section 5.2(b) (Club hereby waiving all such rights and remedies, including any and all right to terminate this Agreement and the right to seek any additional type or kind of damages against City for such default), as a result of City's failure to achieve Substantial Completion of the Ballpark Improvements Work as required by this Agreement so long as City is exercising good faith, diligent efforts to achieve such Substantial Completion of the Ballpark Improvements Work. Nothing in this Section 6.4.4 is intended to limit any damages City may recover from the CM At Risk with regard to a delay in the completion of the Ballpark Improvements Work.

**6.4.5 Warranty Claims.** City shall take commercially reasonable efforts to enforce all warranty and similar claims with respect to the Ballpark Improvements at City's cost and expense. Club shall make City aware of any defects or warranty issues which come to its attention with respect to the Ballpark Improvements. City and Club shall cooperate with each other in prosecuting any and all warranty and similar claims, at City's cost and expense, under any and all contracts or other agreements with third parties for the design or construction of the Ballpark.

**6.4.6 Construction Cooperation.** City will conduct the Ballpark Improvements Work, and require the CM At Risk to conduct the Ballpark Improvements Work, in accordance with the cooperative process described in Section 2.3 , including the following:

(a) instructing the CM At Risk or the Project Architect to provide Club with a duplicate copy of all preliminary drawings or specifications, written notices and other documentation delivered or received by any of them contemporaneously with their delivery to City, including advance notice of any weekly progress meetings and design review meetings; and

(b) allowing Club Representative to attend all meetings with any Persons or Governmental Authority relating to the Ballpark Improvements Work, including weekly progress meetings and design review meetings.

**6.5 Cost Overruns.** City shall be responsible for any Cost Overruns. The term "**Cost Overruns**" as used in this Agreement shall mean the amount by which Ballpark Costs exceed the Ballpark Budget; *provided*, that, Cost Overruns shall not include such excess costs and expenses (a) to the extent such excess arises out of or is attributable to any cost or expense caused by the request, act or omission of Club, including any requested change order or (b) for which any Party is expressly liable by a provision of this Agreement, in each case, such excess costs and expenses to be paid by the Party responsible therefor.

**6.6 Pre-Development Expenses.** All Pre-Development Expenses shall be included in the Ballpark Budget and will be paid as part of the Ballpark Costs.

**6.7 Design Fees.** All Design Fees shall be included in the Ballpark Budget and will be paid as part of the Ballpark Costs.

**6.8 Reports; Audit Rights.** City shall provide Club Representative with a monthly report showing amounts funded against the Ballpark Budget. At Final Completion, City shall provide Club with a final, reconciled report certified by the City Representative showing all amounts funded against the Ballpark Budget. Club, at its expense (except as provided below), shall have the right, at any time during the Term of this Agreement to audit the monthly reports and the final, reconciled report produced by City pursuant to this Section 6.8 to confirm City's compliance with the terms of this Agreement. Any such audit will be commenced and conducted with reasonable promptness, after reasonable notice to City and by an auditor whose fee for such audit is not calculated on a contingent basis.

**6.9 Change Orders.** The Parties acknowledge and agree that the Project Plans may need to be supplemented, re-ordered and/or revised from time to time during construction through the use of change orders. Either City or Club may request a construction change order by notifying the other Party of such requested modification and the details and estimated costs thereof, which costs shall (i) include, but not be limited to, associated architectural, engineering, CM at Risk and contractor's fees for the change order and (ii) be the responsibility of the requesting Party to the extent that the requested change order results in an increase in the previously budgeted cost for such item. Accordingly, the Parties agree to cooperate with respect to all proposed modifications. Each change order requested by Club shall be subject to the Approval of City, which shall not be unreasonably withheld, conditioned or delayed; Each change order requested by City shall be subject to the Approval of Club, which shall not be unreasonably withheld, conditioned or delayed.

**6.10 Location of the Ballpark.** The Parties agree that the Ballpark will be located on the Real Property (a portion of which is the current site of the City Hall of City). Notwithstanding the foregoing, City may explore alternative downtown locations for the Ballpark provided that (i) City shall take into consideration operational and financial implications on the Team and the Substantial Completion Date with respect to any such alternate location, (ii) all additional costs associated with any proposed alternate downtown location, including costs of land acquisition, site preparation and necessary infrastructure, shall be paid by City as part of the Ballpark Costs and the Ballpark Budget shall be increased, as necessary, to include such costs; and (iii) City shall obtain the prior Approval of Club for any alternative Ballpark location.

## ARTICLE VII

### DELAYS AND EFFECT OF DELAYS

**7.1 Excusable Club Delay.** Regardless of the existence or absence of references to Excusable Club Delay elsewhere in this Agreement, any deadline or time period within which Club must fulfill the obligations of Club elsewhere in this Agreement shall each be adjusted as appropriate to include Excusable Club Delay Periods unless otherwise expressly provided in this Agreement to the contrary; *provided* that (i) the obligation to pay amounts as when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable Club Delay and (ii) Club complies with the requirements of this ARTICLE VII.

With respect to each occurrence of Excusable Club Delay, Club shall, within fifteen (15) Business Days after Club's knowledge of the occurrence of such event of Excusable Club Delay, give notice to City Representative of the event constituting Excusable Club Delay, Club's good

faith estimate of the Excusable Club Delay Period resulting therefrom and the basis therefor, Club's good faith estimate of any adjustment resulting therefrom that is to be made to the time for performance, together with reasonable documentation supporting the adjustments proposed. If City Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, City Representative shall give notice to Club of the claimed deficiency and Club shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from Club shall be required with respect to a continuing Excusable Club Delay, except that Club shall promptly (and in no event less often than every ten (10) Business Days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing delay. City Representative shall have the right to challenge Club's assertion of the occurrence of an Excusable Club Delay, or Club's good faith estimate of the Excusable Club Delay Period or changes in the additional time for performance claimed by reason of the Excusable Club Delay if City Representative gives notice to Club within fifteen (15) Business Days after receipt by City Representative of such claim of Excusable Club Delay or notice from Club of further changes to such dates as a result of such Excusable Club Delay, as the case may be (which challenge shall be deemed to have been made if City Representative gives notice to Club of any claimed deficiency in documentation as provided for above in this Section 7.1).

**7.2 Excusable City Delay.** Regardless of the existence or absence of references to Excusable City Delay elsewhere in this Agreement, any deadline or time period within which City must fulfill the obligations of City in this Agreement shall each be adjusted as appropriate to include Excusable City Delay Periods; *provided* that (i) the obligation to pay amounts when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable City Delay, and (ii) City complies with the requirements of this ARTICLE VII.

With respect to each occurrence of Excusable City Delay, City Representative shall, within fifteen (15) Business Days after City's knowledge of the occurrence of such event of Excusable City Delay, give notice to Club of the event constituting Excusable City Delay, City Representative's good faith estimate of the Excusable City Delay Period resulting therefrom and the basis therefor, City Representative's good faith estimate of any adjustment resulting therefrom that is to be made in the time for performance, together with reasonable documentation supporting the adjustments proposed. If Club believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Club shall give notice to City Representative of the claimed deficiency and City Representative shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from City Representative shall be required with respect to a continuing Excusable City Delay, except that City Representative shall promptly (and in no event less often than every ten (10) Business Days) give notice to Club of any further changes in the additional time for performance claimed by reason of the continuing delay. Club shall have the right to challenge City Representative's assertion of the occurrence of an Excusable City Delay, or City Representative's good faith estimate of the Excusable City Delay Period, or changes in the additional time for performance claimed by reason of Excusable City Delay if Club gives notice to City Representative within fifteen (15) Business Days after receipt by Club of such claim of Excusable City Delay or notice from City Representative of further changes to such dates as a result of such Excusable City Delay, as the case may be (which challenge shall be deemed to have been made if Club gives notice to City Representative of any claimed deficiency in documentation as provided for above in this Section 7.2).

**7.3 Continued Performance; Exceptions.** Upon the occurrence of any Club Delay or City Delay, the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practicable. Toward that end, Club and City each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Club Delay or City Delay occasioned by an Excusable Club Delay or Excusable City Delay, and shall diligently and continuously use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Agreement after the occurrence of any Excusable Club Delay or Excusable City Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any City Delay or Club Delay.

## ARTICLE VIII

### APPROVALS, CONFIRMATIONS AND NOTICES; DISPUTE RESOLUTION

#### **8.1 Approvals, Confirmations and Notices.**

**8.1.1 Ballpark Improvements Work.** City shall obtain the prior Approval of Club of any Material Change to the Plans for the Ballpark Improvements Work prior to the commencement of any Ballpark Improvements Work that deviates in a material respect from the Plans for the Ballpark Improvements Work, such Approval not to be unreasonably withheld, conditioned or denied.

**8.1.2 FF&E.** City shall obtain the prior Approval of Club of any Material Change to the FF&E Requirements prior to the commencement of any Ballpark Improvements Work that deviates in any material respect from that required in the FF&E Requirements, such Approval not to be unreasonably withheld, conditioned or denied. City shall obtain the prior Approval of Club of the selection of any "allowance" items provided for in the Ballpark Construction Contract prior to the commencement of any Ballpark Improvements Work that includes such allowance items, such Approval not to be unreasonably withheld, conditioned or denied.

**8.1.3 Construction Manager At Risk.** City and Club hereby agree that the CM At Risk to be selected by City shall be reasonably acceptable to both Parties. Both Parties will Approve the Ballpark Construction Contract prior to its execution, and City shall not subsequently modify or amend in any material respect the Ballpark Construction Contract without prior Approval of Club, such Approval not to be unreasonably withheld, conditioned or denied.

#### **8.2 Approvals; Standards.**

**8.2.1 Review and Approvals or Consent Rights.** The provisions of this Section 8.2.1 shall be applicable with respect to all instances in which it is provided under this Agreement that City, City Representative, Club or the Club Representative exercises Review and Approval or Consent Rights (as defined below); *provided, however*, that if the provisions of this Section 8.2.1 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict with other express provisions of this Agreement providing for time periods for exercise of designated Review and Approval or Consent Rights, then the provisions of such other provisions of this Agreement shall control. As used herein, the term "**Review and Approval or**

**Consent Rights**” shall include, without limiting the generality of that term, all instances in which one Party (the **Submitting Party**) is permitted or required to submit to the other Party or to the representative of that other Party any document, notice or determination of the Submitting Party and with respect to which the other Party or its representative (the **Reviewing Party**) has a right or duty hereunder to review, comment, confirm, Approve, disapprove, dispute or challenge the submission or determination of the Submitting Party.

**8.2.2 Standard for Review.** Unless this Agreement specifically provides that a Party’s Review and Approval or Consent Rights may be exercised in the sole discretion of the Reviewing Party, then in connection with exercising its Review and Approval or Consent Rights under any provision of this Agreement, and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a fair and commercially reasonable manner in its capacity as Reviewing Party with regard to each and all of its Review and Approval or Consent Rights and to not unreasonably withhold, condition or delay its Approval of, consent to or confirmation of any submission or determination. The Reviewing Party shall review the matter submitted in writing and shall give notice within five (5) Business Days to the Submitting Party of the Reviewing Party’s comments including Approval, confirmation, disapproval or failure to confirm, as applicable. Any failure to respond within such five (5) Business Day period shall be deemed to be an approval or confirmation of the matter submitted.

**8.2.3 Resubmissions.** If the Reviewing Party disapproves or fails to confirm a matter to which this Section 8.2 applies, the Submitting Party shall have the right, within fifteen (15) Business Days after the date the Submitting Party receives notice of such disapproval or failure to confirm, to re-submit the disapproved or not confirmed matter to the Reviewing Party, altered to satisfy the Reviewing Party’s basis for disapproval or failure to confirm. Any resubmission made pursuant to this Section 8.2 shall be subject to Review and Approval or Consent by the Reviewing Party in accordance with the procedures described in this Section 8.2, until such matter is Approved by the Reviewing Party.

**8.3 Governmental Rule.** The Approval by City or City Representative of any matter submitted to City or City Representative pursuant to this Agreement, which matter is specifically provided herein to be Approved by City or City Representative shall not constitute a replacement or substitute for, or otherwise excuse Club from, such permitting, licensing or approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Club from, any requirement hereunder for the Approval of City or City Representative.

**8.4 Dispute Resolution.**

**8.4.1 Generally.** In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a **Dispute or Controversy**”), including, but not limited to a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with this Section. In the event a Dispute or Controversy arises, either Representative shall have the right to notify the other Representative that it has elected to implement the following procedures. Within ten (10) Business Days after delivery of any such notice by one Representative to the

other Representative regarding a Dispute or Controversy, the Representatives shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. If a mutual resolution and settlement are not obtained at the meeting of the Representatives, either Representative may contact the City Manager directly to attempt to resolve the Dispute or Controversy. If the Dispute or Controversy is not resolved after the involvement of the City Manager, then City and Club shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within thirty (30) days after the notice of the Dispute or Controversy was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Representatives or the City Manager and the Representatives takes place within the sixty (60) day period following delivery of the initial notice, then either Party may seek injunctive relief or other relief at any time thereafter from any court of competent jurisdiction in El Paso County, Texas.

**8.4.2 Emergency Relief.** Notwithstanding any provision of this Agreement to the contrary, either Party may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in El Paso County, Texas in the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the dispute resolution procedures outlined in Section 8.4.1 above. Notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or another form of ancillary relief, the Parties expressly agree that such dispute resolution procedures still will govern the ultimate resolution of any portion of the Dispute or Controversy.

## ARTICLE IX

### ENVIRONMENTAL PROVISIONS

**9.1 No Hazardous Materials.** Club shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Ballpark or the Ballpark Surface Parking; *provided, however* that Club and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials at the Ballpark as may be reasonably necessary for Club to operate from the Ballpark pursuant to the terms of this Agreement so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws.

**9.2 City's Remedial Work.** City shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Pre-Existing Environmental Conditions at, in, on or under the Ballpark or the Ballpark Surface Parking. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility.

**9.3 Club Release.** **WITHOUT LIMITING CLUB'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, CLUB HEREBY RELEASES CITY AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES,**

OBLIGATIONS, COSTS AND/OR EXPENSES THAT CLUB MAY HAVE WITH RESPECT TO THE BALLPARK OR THE BALLPARK SURFACE PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT ARISING FROM CLUB'S OPERATION OF THE BALLPARK OR BALLPARK SURFACE PARKING, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, AS AMENDED.

**9.4 City Release.** WITHOUT LIMITING CITY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, CITY HEREBY RELEASES CLUB AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT CITY MAY HAVE WITH RESPECT TO THE BALLPARK OR THE BALLPARK SURFACE PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WHICH IS NOT ATTRIBUTABLE TO CLUB'S OPERATION OF THE BALLPARK OR BALLPARK SURFACE PARKING, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, AS AMENDED.

## ARTICLE X

### INSURANCE; INDEMNITY

#### **10.1 Policies Required.**

**10.1.1 Policies Required During Construction of the Ballpark Improvements Work.** At all times during the Ballpark Improvements Work, City will use good faith, commercially reasonable efforts to cause the CM At Risk to keep and maintain the policies of insurance required by the terms and conditions of the Ballpark Construction Contract.

**10.1.2 Builders Risk Insurance.** Additionally, City shall cause its Construction Manager At Risk to maintain additional property insurance written on the so-called "Builder's Risk Completed Value Non-Reporting Form" during any period in which any Ballpark Improvements Work is being performed, the anticipated costs of which exceed \$100,000 in the aggregate, with no coinsurance requirement, and containing a provision granting the insured permission to complete and adding the City as the loss payee for such insurance.

**10.2 City Property Insurance.** City agrees, at its sole expense, to obtain and maintain property insurance at all times during the Term of this Agreement, insuring all buildings and structures comprising the Ballpark against all risk of direct physical loss or damage to the same

extent and with the same coverage as other City owned buildings such as the Civic Center, Plaza Theatre and Convention Center. City may elect to self-insure for any deductibles in said insurance policies. Such insurance coverage may be maintained by any combination of single policies and umbrella policies and shall name Club as an additional insured. Such insurance shall include full replacement value cost coverage if it can be obtained at commercially reasonable terms acceptable to City.

**10.3 Indemnity of Club.** To the extent allowed by Applicable Law, Club shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Club or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of: (i) Club's occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) Club's performance under this Agreement.

**10.4 Indemnity of City** To the extent allowed by Applicable Law, City shall indemnify, hold harmless and defend Club and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Club, City or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of: (i) City's occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) City's performance under this Agreement.

## ARTICLE XI

### CONDEMNATION OR CASUALTY

**11.1 Condemnation.** If all of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings, this Agreement shall automatically terminate on the earlier to occur of (i) the date on which title to the Ballpark vests in the condemning authority; or (ii) the date on which City is dispossessed of the Ballpark.

**11.1.1 Partial or Temporary Condemnation.** If a portion of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and such taking materially affects Club's ability to use or otherwise operate and derive revenue from the Ballpark, Club shall have the right to terminate this Agreement effective as of the earlier to occur of (i) the date on which title to the condemned portion of the Ballpark vests in the condemning authority; or (ii) the date on which City is dispossessed of the portion of the Ballpark, by giving written notice to City within sixty (60) days after Club's receipt of notice of the partial condemnation. If all or a portion of the Ballpark or the use thereof is temporarily condemned, this Agreement shall remain in full force and effect. If a portion of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and Club does not terminate this Agreement pursuant to the terms and conditions of this Section 11.1.1, this Agreement shall be deemed terminated with respect to only the condemned portion of the Ballpark or use thereof.

**11.1.2 Award.** Each Party shall have the right to seek, at its sole cost and expense, any award to which it might be entitled as a result of any condemnation of all or any portion of the Ballpark or the use thereof. Neither Party shall have any rights to any award made to the other.

**11.2 Casualty.** If the Ballpark or any portion thereof is damaged or destroyed by Casualty, then neither Party shall have the right to terminate this Agreement and City shall promptly use commercially reasonable efforts to restore, repair and continue construction of the Ballpark Improvements and the Substantial Completion Date shall be extended by the period of restoration and repair. To that end, City shall use all insurance proceeds available for such purposes. The restoration and repair details shall be undertaken in the same manner involved in the original construction of the Ballpark.

## ARTICLE XII

### ASSIGNMENT, TRANSFER AND SUBLEASING

**12.1 Assignment, Subletting or Transfers by Club.** Except as otherwise provided in Section 12.2 below, Club shall not assign, transfer, sublease, license, mortgage, pledge, encumber or otherwise hypothecate (each a "**Transfer**") any right, title, interest or obligation of Club under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation) without the prior written Approval of City except for an assignment to an Affiliate of Club as long as no continuing Club Default exists. If Club wishes to assign this Agreement to a Person who is not an Affiliate of Club, then Club shall request City's Approval of such assignment which shall not be unreasonably withheld as long as (i) the duties and responsibilities of the assignee of Club under this Agreement do not change, (ii) any such assignment is approved by the League and/or MiLB, (iii) the Ballpark, when completed, will be managed and operated by Club or a "Qualified Operator" as defined in the Lease, (iv) any such assignee must expressly assume any and all obligations of Club under this Agreement, the Lease and agree to be bound by the terms of the Non-Relocation Agreement, and (v) there is no continuing Club Default and such assignment would not cause a Club Default. Without limiting the foregoing, no assignment hereunder shall affect the enforceability of this Agreement and any assignee shall continue to be bound by the terms hereof and of the Non-Relocation Agreement. Notwithstanding anything to the contrary contained in this Agreement, Club shall not enter into any such Transfer (other than a Use Agreement as described in Section 12.2) without also entering into the same Transfer under the Lease to the same entity unless otherwise agreed in writing by City.

**12.2 Use Agreement.** Notwithstanding Section 12.1 hereof, Club may enter in to a Use Agreement without City's prior written Approval *provided that* such Use Agreement (i) is subject and subordinate to this Agreement, and to the rights of City hereunder, and shall expressly so state and (ii) any Improvements made pursuant to such Use Agreement are made in accordance with the Quality Standard.

**12.3 Transfer of Majority Interest.** As long as there is no existing Club Default, the prior Approval of City will not be required with respect to any Transfer of a Majority Interest of Club or Company as long as such Transfer of Majority Interest complies with the following conditions: (i) the respective duties and responsibilities of Club or Company under this Agreement do not change, (ii) any such Transfer of Majority Interest is approved by the League

and/or MiLB, (iii) the Ballpark, when completed, be managed and operated by Club or a "Qualified Operator" as defined in the Lease, (iv) Club and Company will continue to be liable for any and all of their respective obligations under this Agreement and the Lease that arise after the effective date of such Transfer of Majority Interest, (v) no Club Default is caused by any such Transfer of Majority Interest, (vi) Club, Company and any new Control Person(s) of Club and Company, respectively, will continue to be bound by the terms of the Non-Relocation Agreement, and (vii) to the extent permitted by any applicable confidentiality agreements related to such Transfer of Majority Interest, prior notice of such Transfer of Majority Interest is given to City. All other Transfers of Majority Interest of Club or Company will require the prior Approval of City, which shall not be unreasonably withheld. To the extent that Club or Company, as applicable, have not otherwise provided notice to City of any Transfer of Majority Interest because of contractual confidentiality provisions or otherwise, Club or Company, as applicable, shall provide City with notice of any Transfer of Majority Interest in Club prior to the first to occur of: any public statement by Club or Company with respect to such transfer or the closing of such transfer.

**12.4 Other Transfers of Ownership Interest.** As long as there is no existing Club Default, Transfers of ownership interests in Club or Company which do not constitute a Transfer of Majority Interest will not require either City Approval or notice; provided that the aggregate of all such Transfers over the Term does not cause a Transfer of Majority Interest with respect to such entities

**12.5 Transfers by City.** Except in connection with the Financing, City may not effect a Transfer of any right, title, interest or obligation of City in and to the Ballpark or under this Agreement to any Person other than a Governmental Authority or a local government corporation formed by City, without Club's prior Approval, which Approval shall not be unreasonably withheld, conditioned or denied as long as City remains liable for City's financial obligations contained herein.

### ARTICLE XIII

#### REPRESENTATIONS, WARRANTIES AND COVENANTS

**13.1 Club's Representations and Warranties.** As an inducement to City to enter into this Agreement, Club represents and warrants to City that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization.* Club is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas. The business which Club carries on and which it proposes to carry on may be conducted by Club. Club is duly authorized to conduct business as a limited liability company in the State of Texas and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) *Authority.* The execution, delivery and performance of this Agreement by Club are within Club's powers, respectively, and have been duly authorized by all necessary action of Club.

(c) *No Conflicts.* Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Club nor any Applicable Laws to which Club is subject or any judgment, decree, license, order or permit applicable to Club, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Club pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Club is a party or by which Club is bound, or to which Club is subject.

(d) *No Consent.* No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Club of this Agreement.

(e) *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of Club, enforceable against Club in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Club, threatened against or affecting Club, which the management of Club in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Club under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Club or on the ability of Club to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Ballpark).

(g) *Conflict of Interest.* None of Club or any Affiliate of Club nor any of their officers, employees or agents are officials or employees of City.

(h) *Team.* Club is the owner of the Team and holds substantially all of the assets and Governmental Authorizations necessary for the operation of the Team and will continue to own such Team and assets throughout the Term. Club shall take all necessary and appropriate actions to maintain membership of the Team in the League.

**13.2 City's Representations and Warranties.** As an inducement to Club to enter into this Agreement, City represents and warrants to Club that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization.* City is a home rule city duly formed and validly existing under the laws of the State of Texas, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

(b) *Authority.* The execution, delivery and performance of this Agreement by City is within City's powers, respectively, and have been duly authorized by all necessary action of City.

(c) *No Conflicts.* Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene any Applicable Laws to which City is subject or any judgment, decree, license, order or permit applicable to City.

(d) *No Consent.* Upon the execution of this Agreement by City, City will have caused all governmental proceedings required to be taken by or on behalf of City to authorize City to make and deliver this Agreement and to perform the covenants, obligations and agreements of City hereunder.

(e) *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as limited by applicable relief, sovereign immunity, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* Except as previously disclosed to Club in writing, there is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of City, threatened against or affecting City, which City in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of City under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of City or on the ability of City to conduct its business as presently conducted or as proposed or contemplated to be conducted.

(g) *Financing.* City has the legal authority and the financial capacity to proceed with the proposed financing plan, which ultimately may be modified to include the possible use of (a) a venue hotel tax if approved by the voters at a duly-called election, (b) lease revenue bonds issued by a local government corporation formed by City and/or (c) other debt obligations issued by or on behalf of City for the construction and development of the Ballpark.

## ARTICLE XIV

### DEFAULTS AND REMEDIES

#### 14.1 Events of Default.

14.1.1 Club Default. The occurrence of any of the following shall be an "Event of Default" by Club or a "Club Default":

(a) the failure of Club to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement on Club's part to be kept, performed or observed if: (1) such failure is not remedied by Club within thirty (30) days after notice from City of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Club fails to commence to cure such default within thirty (30) days after such default, or Club fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days but is otherwise reasonably susceptible of cure, the time within which Club is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however*, that if such default is not cured within one hundred eighty (180) days after notice from City of such default, (notwithstanding Club's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement;

(b) the occurrence of an Insolvency Event with respect to Club; or

(c) a "Club Default" as defined in the Lease shall have occurred and remain uncured.

**14.1.2 City Default.** The occurrence of the following shall be an "**Event of Default**" by City or a "**City Default**":

(a) the failure of City to perform or observe any of the obligations, covenants or agreements to be performed or observed by City under this Agreement within thirty (30) days (or such longer period as may be permitted in this Agreement) after notice from Club of such failure, but if such performance or observance cannot reasonably be accomplished within such thirty (30) day period (or such longer period as may be permitted in this Agreement), then no Event of Default shall occur unless City fails to commence such performance or observance within such thirty (30) day period (or such longer period as may be permitted in this Agreement) and fails to diligently prosecute such performance or observance to conclusion thereafter; *provided, however*, that if such performance or observance has not been accomplished within one hundred eighty (180) days after notice from Club to City of such failure (notwithstanding City's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default hereunder; or

(b) the occurrence of an Insolvency Event with respect to City.

(c) a "City Default" as defined in the Lease shall have occurred and remain uncured.

**14.2 Remedies.** Subject to the provisions of this ARTICLE XIV:

**14.2.1 City's Remedies.** Subject to this ARTICLE XIV, upon the occurrence of any Club Default, City may, in its sole discretion, pursue any one or more of the following

remedies, without any notice or demand whatsoever, other than any notice (including Final Notice) expressly provided in this Agreement:

(a) City may (but under no circumstance shall be obligated to) terminate this Agreement pursuant to Section 14.2.3.

(b) City may exercise any and all other remedies available to City at law or in equity or otherwise provided in this Agreement;

*provided* that notwithstanding the foregoing or anything else herein to the contrary, City's rights under this Section 14.2 shall be subject to the terms and provisions of Section 14.3.

**14.2.2 Club's Remedies.** Subject to this ARTICLE XIV, upon the occurrence of any City Default, Club may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice (including Final Notice) expressly provided in this Agreement:

(a) Club may (but under no circumstance shall be obligated to) terminate this Agreement pursuant to Section 14.2.3.

(b) Club may exercise any and all other remedies available to Club at law or in equity or otherwise provided in this Agreement.

*provided* that notwithstanding the foregoing or anything else herein to the contrary, Club's rights under this Section 14.2 shall be subject to the terms and provisions of Section 14.3, and the terms and provisions of Section 6.4.4 that limit Club's damages in the event of a delay to achieve Substantial Completion by the Substantial Completion Deadline to the Late Opening Charges.

**14.2.3 Right to Terminate.** Upon the occurrence of a Club Default or a City Default, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give the defaulting Party notice (a "**Final Notice**") of the non-defaulting Party's intention to terminate this Agreement after the expiration of a period of thirty (30) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) day period, if the Event of Default is not cured, this Agreement shall terminate without liability to the non-defaulting Party. If, however, within such thirty (30) day period the defaulting Party cures such Event of Default, then this Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such Action or Proceeding.

**14.2.4 Cumulative Remedies.** Subject to the provisions of this ARTICLE XIV, each right or remedy of City and Club provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy of City or Club provided for in this Agreement, and the exercise or the beginning of the exercise by City or Club of any one or more of the rights or remedies provided for in this Agreement shall not preclude the simultaneous or later exercise by City or Club of any or all other rights or remedies provided for in this Agreement or hereafter existing at law or in equity, by statute or otherwise.

**14.3 No Indirect Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS AFFILIATES OR RELATED PARTIES; PROVIDED THAT WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

**14.4 Right to Injunction.** In addition to the remedies set forth in this ARTICLE XIV, the Parties shall be entitled to seek injunctive relief prohibiting or mandating action by the other Party in connection with an Event of Default and to seek declaratory relief with respect to any matter under this Agreement for which such remedy is available hereunder, at law or in equity. In connection with any such action by a Party, each Party (a) recognizes that City has contributed significant capital costs to the construction of the Ballpark Improvements and related infrastructure, in material part in reliance on the agreements of the other Party contained in this Agreement, and (b) acknowledges and agrees that monetary damages could not be calculated to compensate the other Party for any violation by such Party, its Affiliates or any Related Party of such Party of the covenants, duties and obligations contained in this Agreement. Accordingly, each Party agrees that (i) the other Party may restrain or enjoin any violation as provided above in this Agreement or threatened violation of any covenant, duty or obligation contained in this Agreement without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in this Agreement the balance of hardships would weigh in favor of entry of injunctive relief, (iii) the other Party may enforce any such covenant, duty or obligation contained in this Agreement through specific performance, and (iv) the other Party may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Agreement on an interim basis pending the outcome of the applicable Dispute or Controversy in connection with this Agreement. Each Party further agrees and irrevocably stipulates that the rights of the other Party to injunctive relief pursuant to this Section 14.4 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving such Party.

**14.5 No Waivers.**

**14.5.1 General.** No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements

of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

**14.5.2 No Accord and Satisfaction.** Without limiting the generality of Section 14.5.1 above, the receipt by City of any amounts due under this Agreement with knowledge of a breach by Club of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach (other than as to the amount received). The payment by Club of any amount due under this Agreement with knowledge of a breach by City of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance by City or Club of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City and Club may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Agreement.

**14.5.3 No Waiver of Termination notice.** Without limiting the effect of Section 14.5.1 above, the receipt by City of any amount due under this Agreement paid by Club after the termination in any manner of the Term, or after the giving by City of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Agreement, reinstate, continue or extend the Term, or destroy, or in any manner impair the efficacy of, any such notice of termination as may have been given hereunder by City to Club prior to the receipt of any such amount due under this Agreement or other consideration, unless so agreed to in writing and executed by City. Neither acceptance of the keys nor any other act or thing done by City or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Ballpark, excepting only an agreement in writing executed by City accepting or agreeing to accept such a surrender.

**14.6 Effect of Termination.** If City or Club elects to terminate this Agreement, as provided herein (whether such termination occurs pursuant to this ARTICLE XIV or any other provision hereof), this Agreement shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Agreement shall not alter the then existing claims, if any, of either Party for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

## ARTICLE XV

### GENERAL PROVISIONS

**15.1 No Broker's Fees or Commissions.** Each Party hereto hereby represents to the other Party hereto that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Agreement.

**15.2 Council Approval.** Notwithstanding anything to the contrary set forth in this Agreement, Club recognizes and agrees that any contracts or agreements, or amendments thereto, contemplated to be entered into by City under the terms of this Agreement which are

entered into after the date of this Agreement will be subject to the prior Approval of the Controlling Body of City, but not Approvals and confirmations expressly permitted in this Agreement to be given by City Representative.

**15.3 Non-Appropriation.** Notwithstanding any other provision of this Agreement, City's obligation to pay any money to Club under this Agreement is contingent upon an Appropriation of the money by the Controlling Body of City. City's failure to make an Appropriation is not a Default under this Agreement, but Club, as its sole and exclusive remedy, may terminate this Agreement as a result thereof. City retains all of its sovereign prerogatives and rights as a city under State law with respect to the planning, design, construction, development and operation of the Ballpark.

**15.4 Interest on Overdue Obligations.** In the event either Party fails to pay the other Party any amount owed by such Party pursuant to the terms of this Agreement on or before the date which is thirty (30) days after the other Party delivers notice to such Party of such failure, then such amount shall bear interest at the Default Rate from the date due until paid. No breach of a Party's obligation to pay the other Party any amount owed by such Party pursuant to the terms of this Agreement shall have been cured unless and until the interest accrued thereon under this Section 15.4 shall have been paid. All payments shall first be applied to the payment of accrued but unpaid interest.

**15.5 Employment of Consultants.** City shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as City may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to City by Club under this Agreement and to perform any inspection rights on behalf of City. Club covenants and agrees to reasonably cooperate with such consultants in the same manner as Club is required to cooperate with City pursuant to the terms of this Agreement. Club shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as Club may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to Club by City under this Agreement and to perform and inspections on behalf of Club. City covenants and agrees to reasonably cooperate with such consultants in the same manner as City is required to cooperate with Club pursuant to the terms of this Agreement.

**15.6 Confidential Information and Open Records.** Disclosure of the terms of this Agreement will be governed by the Texas Public Information Act, Chapter 552, Texas Government Code (as amended, the "Open Records Act"). City shall maintain the confidentiality of any proprietary information, trade secrets or other confidential materials delivered to it pursuant to this Agreement and designated as confidential by the delivering Party (the "Confidential Information") in accordance with the Open Records Act; provided, however, that Club will need to assert the basis for any such exclusion from disclosure under the Open Records Act before the Texas Attorney General if City receives an open records request. City shall promptly give Club written notice of any request or demand made upon it for inspection, release or disclosure of any Confidential Information of Club. Within three (3) Business Days after Club's receipt of such notice from City, Club shall notify City in writing whether Club desires City to request a determination from the Texas Attorney General (an "Opinion Request") as to whether the requested information must be disclosed pursuant to the

Open Records Act; *provided* that City shall only be required to comply with the foregoing to the extent that City, in good faith, believes there is a reasonable basis for claiming that the requested information is subject to an exception under the Open Records Act and the Open Records Act permits City to make an Opinion Request in the circumstance in question. Upon receipt of a request from Club for City to make an Opinion Request and provided City is required to act on same pursuant to the terms hereof, City, at Club's sole cost and expense, shall provide all commercially reasonable assistance to Club necessary to draft the Opinion Request so that it may be completed and filed within the time period prescribed by the Open Records Act. After the Opinion Request is so filed, each Party shall cooperate with each other Party in preparing appropriate responses or filings to the Texas Attorney General and to any other Person with respect to the information request and the Opinion Request, including any commercially reasonable appeals involved with respect thereto, to prevent the disclosure of such information. Each Party shall also cooperate with each other Party and use reasonable efforts to promptly identify any possible third Person whose privacy or property interests may be compromised by any such information request in order to enable City to timely furnish to any such third Person any statutory notice required by the Open Records Act and to seek any applicable exceptions from disclosure under the Open Records Act.

**15.7 Anti-Discrimination and Diversity.** In accordance with Applicable Laws, the Parties, in performing their respective obligations hereunder will not discriminate based on race, sex, religion, national or ethnic origin, age or disability. It is the intent of the Parties to encourage local participation, community involvement and diversity in the design, construction, and/or development of the Ballpark.

**15.8 Accounting Terms and Determinations.** Unless otherwise specified, all accounting terms used in this Agreement shall be interpreted, all determinations with respect to accounting matters thereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP.

**15.9 Survival.** The following terms and provisions of this Agreement shall survive any expiration or termination of this Agreement: Sections 3.4.3 and 5.2, Articles IX, Article XIV and Sections 10.3, 10.4, 15.4, 15.9, 15.13, 15.15, 15.16, and 15.24.

**15.10 Severability.** If any term or provision of this Agreement, the Lease and the Non-Relocation Agreement or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

**15.11 Entire Agreement; Amendment.** This Agreement (including all exhibits attached hereto), together with the Lease and the Non-Relocation Agreement, constitute the entire and exclusive agreement between City and Club with respect to the subject matter

contained herein and therein. There are no restrictions, promises, obligations or undertakings between the Parties, other than those set forth or referred to in this Agreement with respect to the subject matter hereof. Neither this Agreement nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

**15.12 Table of Contents; Headings; Exhibits.** The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement. All Appendices and Exhibits attached to this Agreement are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Agreement and any Appendices or Exhibits, the text of this Agreement shall control.

**15.13 Parties in Interest; Limitation on Rights of Others.** The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of this Agreement.

**15.14 Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

**15.15 Governing Law.** THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS NOTWITHSTANDING ANY CHOICE-OF-LAW OR CONFLICT-OF-LAW PRINCIPLE THAT MIGHT DICTATE A DIFFERENT GOVERNING LAW.

**15.16 Court Proceedings.** Any suit, action or proceeding against any Party arising out of or relating to this Agreement, any transaction contemplated hereby or any judgment entered by any court in respect of any thereof may be brought in any Federal court whose jurisdiction includes El Paso County or any state court located in the City of El Paso, Texas, and the Parties hereby submit to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. To the extent that service of process by mail is permitted by Applicable Law, the Parties irrevocably consent to the service of process in any such suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notice provided for in this Agreement. The Parties irrevocably agree not to assert any objection that they may ever have to the laying of venue of any such suit, action or proceeding in any Federal or state court located in the City of El Paso, Texas, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Agreement or any transaction contemplated hereby

except in a Federal court whose jurisdiction includes El Paso County or a state court located in the City of El Paso, Texas.

**15.17 Limitation to Capacity as City.** The Parties acknowledge that all references to “City” herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to City as the owner of the fee interest in the Ballpark) shall refer only to City in its capacity as City under this Agreement. The term “City” and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of City when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of City’s Governmental Functions may prevent City from performing its obligations under this Agreement and shall not cause or constitute a default by City under this Agreement or give rise to any rights or Claims against City in its capacity as the “City” hereunder, it being acknowledged that Club’s remedies for any injury, damage or other Claim resulting from any such action, omission or circumstances arising out of City’s Governmental Functions shall be governed by the laws and regulations concerning Claims against City as a Governmental Authority. In addition, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Club to City under this Agreement as a result of any action or omission of City when performing its Governmental Function.

**15.18 Capacity of Persons Acting on Behalf of City.** Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to Persons acting in City’s capacity as the “City” hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of City’s Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of City shall be deemed to be acting in connection with the performance of City’s Governmental Functions.

**15.19 No Limitation on City’s Governmental Functions.** The Parties acknowledge that City is a Governmental Authority in addition to being the owner of the Ballpark, and that no representation, warranty, Approval or agreement in this Agreement by City shall be binding upon, constitute a waiver by or estop City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to City when performing its Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by City is only with respect to matters arising in its capacity as a Party to this Agreement and expressly does not constitute a waiver of City’s legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of City’s Governmental Functions.

**15.20 Non-liability of City’s Officials and Club’s Employees.** No member of any legislative, executive, or administrative body of, or affiliated with, City or its Affiliates, and no official, agent, employee or representative of City or such body or any of its Affiliates (whether acting in the performance of City’s Governmental Functions or otherwise) shall be personally liable to Club or any Person holding by, through or under Club, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by City, or for any amount which may become due to Club or any Person holding by, through or under Club, or for any other obligation, under or by reason of this Agreement. No officer, director, shareholder, member, agent, employee or representative of

Club or its Affiliates shall be personally liable to City or any Person holding by, through or under City, for any actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Club, or for any amount which may become due to City or any Person holding by, through or under City, or for any other obligation, under or by reason of this Agreement.

**15.21 Payment on Business Days.** If any payment under this Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

**15.22 Time.** Times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement. All provisions in this Agreement which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance, or occurrence shall automatically be extended to the next calendar day that is Business Day. All references in this Agreement to times or hours of the day shall refer to Mountain Standard Time.

**15.23 Interpretation and Reliance.** No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision hereof.

**15.24 Attorneys' Fees.** If any Party to this Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Agreement and the other Party hereto places the enforcement of this Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

**15.25 Joint and Several Liability.** If Club at any time comprises more than one Person, all such Persons shall be jointly and severally liable for payment of amounts due under this Agreement and for performance of every obligation of Club under this Agreement.

**15.26 Relationship of the Parties; No Partnership.** The relationship of Club and City under this Agreement is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Agreement to the contrary, neither the obligation to pay City any amounts hereunder or under the Lease nor any other aspect of this Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Club and City. As such, City shall have no direct supervision of or obligation to the employees of Club and any communication of employee matters shall be through the Club Representative.

**15.27 Non-Merger of Estates.** The interests of City and Club in the Ballpark shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Agreement, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Ballpark or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Ballpark shall join in the execution of a written instrument effecting such merger of estates.

**15.28 Payments by Either Party.** All payments required to be made by either Party to the other Party pursuant to the terms of this Agreement shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party's address as set forth in Appendix B, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of Section 15.29 below. Notwithstanding the provisions of Section 15.29 below and for the purposes of this Agreement, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account.

**15.29 Notice.** All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, facsimile or e-mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one (1) Business Day after delivery to an overnight courier if delivered by an overnight courier; (c) three (3) Business Days after deposit with the United States Postal Service if delivered by certified mail; or (d) when sent if delivered by facsimile or e-mail (as evidenced by facsimile or e-mail confirmation). All such notices shall be addressed to the appropriate Party at the addresses set forth in Appendix B.

[Signature Page Follows]

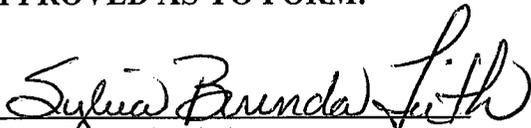
This Agreement is executed to be effective for all purposes as of the Execution Date.

**CITY:**

**CITY OF EL PASO, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Sylvia Berunda Firth  
City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
William F. Studer, Jr.  
Deputy City Manager for  
Development and Tourism

**CLUB:**

**MOUNTAIN STAR SPORTS GROUP, LLC—  
El Paso Baseball Series,  
a Texas limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMPANY GUARANTY**

Notwithstanding anything herein to the contrary, Mountain Star Sports Group, LLC, a Texas limited liability company ("**Company**") hereby unconditionally and irrevocably guarantees to City the due, punctual and full payment and performance of all covenants, agreements, obligations and liabilities of Club under this Agreement, the Lease and the Non-Relocation Agreement, whether now existing or hereafter arising, contracted or incurred, as and when such payment or performance shall become due (whether by acceleration or otherwise) in accordance with the terms of this Agreement, the Lease and the Non-Relocation Agreement. The obligations of Company hereunder are continuing, absolute and unconditional, irrespective of any circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a guarantor (other than the defense that the obligations have been paid or satisfied).

The obligations of Company under this Agreement may not be assigned without prior Approval of City. With respect to a proposed assignment by Company to an Affiliate of Company, such prior Approval of City may be withheld in City's sole discretion. With respect to a proposed assignment by Company to a Person who is not an Affiliate of Company, such prior Approval of City shall not be unreasonably withheld as long as the conditions set forth in Section 12.1 hereof are satisfied and Company is not in default under the terms of this Agreement, the Lease or the Non-Relocation Agreement. Company agrees to be bound by the provisions of Sections 12.3 and 12.4 with respect to a Transfer of an ownership interest in Company.

**MOUNTAIN STAR SPORTS GROUP, LLC**  
a Texas limited liability company

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

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

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

APPENDIX A  
TO  
DEVELOPMENT AGREEMENT

*Glossary of Defined Terms*

“**Action**” or “**Proceedings**” means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

“**Affiliate**” means, with respect to any specified Person, any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by such specified Person.

“**Agreement**” has the meaning given to that term in the introductory paragraph of this Agreement.

“**Antiquities Code**” means the Antiquities Code of Texas as codified in Title 9, Chapter 191 of the Texas Natural Resource Code, as may be amended from time to time.

“**Applicable Laws**” means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include the Antiquities Code, all City Codes, Environmental Laws and any applicable Federal wage requirements. Club acknowledges that there may be certain “Applicable Laws” that apply to the Ballpark as a result of same being owned by City or a local government corporation organized under the laws of the State of Texas.

“**Appropriation**” means with respect to any payment obligation or other monetary obligation of City that may from time to time exist or arise under this Agreement during a fiscal year, the approval and setting aside by City of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of City.

“**Approval**,” “**Approve**” or “**Approved**” means (a) with respect to any item or matter for which the approval of City or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by City pursuant to a written instrument executed by City or City Representative, as applicable, delivered to Club, and shall not include any implied or imputed approval, and no approval by City or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any Governmental Functions of City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Club is required under the terms of the Agreement, the specific approval of such item or matter by Club or the Club Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Club or the Club Representative, as permitted pursuant to the terms of this Agreement, and delivered to City, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other Person is required under the terms of this Agreement, the specific approval of such item or matter by such Person

pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to City or Club, as applicable, and shall not include any implied or imputed approval.

**“Ballpark”** has the meaning given to that term in the Recitals.

**“Ballpark Budget”** means the total budget for all Ballpark Costs (which is currently estimated not to exceed \$50 million), broken down in reasonable detail by “hard” and “soft” cost categories, including separate line items for the amount payable under each of the Ballpark Construction Documents and allowances and contingencies, together with any amendments thereto up to the Substantial Completion Date. The Ballpark Budget shall include a mutually agreed upon contingency in order to protect the interests of the Parties.

**“Ballpark Construction Contract”** has the meaning set forth in Section 6.4.2.

**“Ballpark Construction Documents”** means any and all contracts, documents or other instruments entered into by or on behalf of City or any Affiliates thereof for the development, design, construction or furnishing of the Ballpark Improvements, including the Ballpark Construction Contract.

**“Ballpark Construction Schedule”** means a schedule of critical dates relating to the Ballpark Improvements Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall include the estimated dates for (i) completion of the Project Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (ii) issuance of all Governmental Authorizations and satisfaction of all Applicable Laws prerequisite to commencement of the Ballpark Improvements Work and (iii) Substantial Completion of the Ballpark Improvements Work. The Ballpark Construction Schedule shall be adjusted as appropriate to reflect the delay in the Ballpark Improvements Work resulting from each occurrence of Excusable City Delay in accordance with the provisions of this Agreement.

**“Ballpark Costs”** means all documented, direct costs incurred or to be incurred by City in order for City to fulfill its obligations under this Agreement with respect to the Ballpark Improvements Work and to cause Final Completion of the Ballpark Improvements Work, including all infrastructure, demolition, site preparation, any necessary land acquisitions, Pre-Development Expenses, Design Fees and any amounts payable to a third party under any of the Ballpark Construction Documents, but excluding costs of issuance of any Financing and any additional costs incurred to comply with City’s public art requirement.

**“Ballpark Improvements”** means the Ballpark and the Ballpark Surface Parking, including the Improvements and the City Personal Property located on the Real Property and described in the Ballpark Plans for Ballpark Improvements and the FF&E Requirements.

**“Ballpark Improvements Work”** means the design, development and construction of the Ballpark Improvements (including any associated infrastructure, demolition or site preparation) in accordance with the terms of this Agreement.

**“Ballpark Surface Parking”** has the meaning given to that term in Section 5.2 of the Lease.

**“Business Day”** shall mean a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in El Paso, Texas.

**“Business Hours”** means 9:00 a.m. through 5:00 p.m. on Business Days.

**“City”** has the meaning set forth in the preamble to this Agreement.

**“City Codes”** means all ordinances, codes and policies from time to time adopted by the City of El Paso, Texas, including, the El Paso Code of Ordinances and any building codes, fire or life safety codes, development codes, subdivision code, and zoning ordinances, as same may be amended from time to time.

**“City Default”** has the meaning set forth in Section 14.1.2.

**“City Delay”** means any delay by City in achieving any of its deadlines for performance of obligations under this Agreement.

**“City Personal Property”** means any and all movable equipment, furniture, fixtures and other tangible personal property that are owned by City as of the Operating Term Commencement Date or otherwise purchased as part of Ballpark Costs and located on or within the Ballpark (and that do not constitute fixtures) and can be removed from the Ballpark without damage thereto. The term “City Personal Property” includes any replacements of the City Personal Property by City, Club or otherwise.

**“City Representative”** has the meaning set forth in Section 2.1.

**“Claims”** shall mean and include any and all actions, causes of action, suits, disputes, controversies, claims, debts, sums of money, offset rights, defenses to payment, agreements, promises, notes, losses, damages and demands of whatsoever nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages or dues, recovery of property, or specific performance, or any other redress or recompense which have accrued or may ever accrue, may have been had, may be now possessed, or may or shall be possessed in the future by or in behalf of any Person against any other Person for, upon, by reason of, on account of, or arising from or out of, or by virtue of, any transaction, event or occurrence, duty or obligation, indemnification, agreement, promise, warranty, covenant or representation, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of any Applicable Law, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, usury, conspiracy, wrongful acceleration of any indebtedness, wrongful foreclosure or attempt to foreclose on any collateral relating to any indebtedness, action or inaction, relationship or activity, service rendered, matter, cause or thing, whatsoever, express or implied.

**“Club”** has the meaning set forth in the preamble to this Agreement.

**“Club Default”** has the meaning set forth in Section 14.1.1.

**“Club Delay”** means any delay by Club in achieving performance of its obligations under this Agreement.

**“Club Representative”** has the meaning set forth in Section 2.2.

**“Club’s Personal Property”** means any and all movable equipment, furniture, fixtures and other tangible personal property that are owned by Club or its Subtenants and located on or within the Ballpark (including trade fixtures, but not other fixtures) and can be removed from the Ballpark without material damage thereto. The term “Club’s Personal Property” does not include any of the City Personal Property or any replacements of the City Personal Property.

**“Club’s Project Representative”** has the meaning set forth in Section 6.7.1.

**“Company”** means Mountain Star Sports Group, LLC, a Texas limited liability company.

**“CM At Risk”** means the Construction Manager At Risk selected by City in accordance with the terms of this Agreement to construct the Ballpark Improvements.

**“Comparable Properties”** means one or more first-class, Triple-A caliber, multi-purpose baseball ballparks (as mutually agreed upon by the Representatives) that (i) have been constructed within five (5) years of the Execution Date, (ii) are generally comparable in size, design and quality of construction to the Minimum Requirements and (iii) are located in the United States. For the purposes of this Agreement, the term “Comparable Properties” shall also include the Dell Diamond in Round Rock, Texas and ONEOK Field in Tulsa, Oklahoma.

**“Conditions to City Obligations”** has the meaning set forth in Section 3.1.

**“Conditions to Commencement”** has the meaning set forth in Section 3.2.

**“Construction Commencement Date”** has the meaning set forth in Section 4.2.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

**“Controlling Body of City”** means the City Council of the City of El Paso, Texas.

**“Cost Overruns”** has the meaning set forth in Section 6.5.

**“Default Rate”** means the Prime Rate plus one percent (1%) per annum, not to exceed the Maximum Lawful Rate.

**“Design Fees”** means the fees paid by City to the Preliminary Architect, the Project Architect or other design professional for the preparation of plans and specifications for the Ballpark Improvements.

**“Dispute or Controversy”** has the meaning set forth in Section 8.4.1.

**“Dispute Resolution Procedures”** means the dispute resolution procedures set forth in Section 8.4.1.

**“Emergency”** means any circumstance in which (i) Club, City or the Person in question, as applicable, in good faith believes that immediate action is required in order to safeguard lives, property or the environment against the likelihood of injury, damage or destruction due to an identified threat or (ii) Applicable Laws require that immediate action be taken in order to safeguard lives, property or the environment.

**“Encumbrances”** means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Ballpark, whether evidenced by written instrument or otherwise evidenced.

**“Environmental Event”** means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Ballpark caused by a third party; (iii) any event on, at or from the Ballpark or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; or (v) the existence or discovery of any spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials on, at or from the Ballpark which may cause a threat or actual injury to human health, the environment, plant or animal life.

**“Environmental Law(s)”** means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex. Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.

§§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

“**Event of Default**” has the meaning set forth in Section 14.1.1 and Section 14.1.2.

“**Excusable City Delay**” means any City Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No City Delay arising from the failure to make funds available for any purpose shall ever be an Excusable City Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable City Delay.

“**Excusable City Delay Period**” means with respect to any particular occurrence of Excusable City Delay, that number of days of delay in the performance by City of its obligations under the Agreement actually resulting from such occurrence of Excusable City Delay.

“**Excusable Club Delay**” means any Club Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Club Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Club Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Club Delay.

“**Excusable Club Delay Period**” means with respect to any particular occurrence of an Excusable Club Delay, that number of days of delay in the performance by Club of its obligations hereunder actually resulting from such occurrence of Excusable Club Delay.

“**Execution Date**” has the meaning set forth in the preamble to the Agreement.

“**FF&E Requirements**” means the specifications and requirements for the City Personal Property to be part of the Ballpark Improvements at Substantial Completion thereof.

“**Final Completion**” means, with respect to the Ballpark Improvements Work or any component of the Ballpark Improvements Work, (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements substantially in accordance with the Project Plans or other plans therefor (all of which have been Approved pursuant to the terms of this Agreement, as and if required), all Applicable Laws and all other requirements of this Agreement, including the completion of the punch-list type items referred in Section 5.1.5 and (B) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Ballpark Improvements, in accordance with the terms of this Agreement.

“**Final Notice**” has the meaning set forth in Section 14.2.3.

“**Financing**” means the issuance, by City, or a local government corporation formed by City, of one or more series of bonds or other debt obligations in an aggregate principal amount such that the net proceeds of such issuance are not less than an amount equal to the Ballpark Budget, including any Ballpark Costs paid by City in advance of such Financing. Such bonds to be secured by one or more of the following: (i) City’s two percent (2%) hotel occupancy tax if approved by the voters of City under Chapter 334 of the Texas Local Government Code and/or

(ii) other lawfully available revenues of City, including Rent and other payments received by City pursuant to the terms of the Lease.

**“Financing Proceeds”** means the cash proceeds of the Financing, net of all costs of issuance associated with the Financing.

**“Force Majeure”** means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, and (c) is not due to the affected Party’s fault or negligence. Subject to the satisfaction of the conditions set forth in (a) through (c) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes including a strike or lockout by MiLB players or umpires; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law; and (vii) failure of either Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; *provided, however*, that under no circumstances shall Force Majeure include economic hardship.

**“GAAP”** means generally accepted accounting principles as in effect from time to time in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

**“Governmental Authority”** means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation.

**“Governmental Authorizations”** means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

**“Governmental Function”** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Agreement and the performance by City of its obligations under this Agreement shall not be considered a “Governmental Function.”

**“Hazardous Materials”** means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or

substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

**“Improvements”** means all improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

**“Insolvency Event”** means, with respect to any Person, (a) such Person’s or any of its Subsidiaries’ (i) failure to generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person or any of its Subsidiaries (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person or any such Subsidiary, any such proceeding shall remain undismissed for a period of ninety (90) days or any of the actions sought in such proceeding shall occur; or (c) such Person’s or any of its Subsidiaries’ taking any corporate action to authorize any of the actions set forth above in this definition.

**“Late Opening Charges”** means fifty percent (50%) of (i) the liquidated damages (as set forth in the Ballpark Construction Contract) actually paid to City by the CM At Risk pursuant to the terms of the Ballpark Construction Contract for the CM At Risk’s failure to cause Substantial Completion of the Ballpark Improvements Work to occur on or before the Substantial Completion Deadline; and (ii) any additional amount awarded to City in connection with the CM At Risk’s failure to cause Substantial Completion of the Ballpark Improvements Work to be completed by the Substantial Completion Deadline; in both cases, net of any third party expenses of City associated with collecting any such amounts.

**“League”** means the Pacific Coast League of Professional Baseball Clubs, Inc. or any successor league.

**“Lease”** has the meaning set forth in the Recitals.

**“Legal Holiday”** means any day, other than a Saturday or Sunday, on which City’s administrative offices are closed for business.

**“Lien”** means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any Property or assets or any kind, whether real or personal tangible or intangible, now owned or hereafter acquired.

**“Material Change”** means (a) as to the Ballpark Improvements, any modification to the Ballpark Improvements so that the Ballpark Improvements will not conform in a material respect to the Plans for Ballpark Improvements previously Approved by Club, and (b) as to City Personal Property to be a part of the Ballpark Improvements at Substantial Completion thereof, any modification to such City Personal Property so that such City Personal Property does not conform to the FF&E Requirements previously Approved by Club.

**“Maximum Lawful Rate”** means the maximum non usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Agreement, under Applicable Laws with respect to the Person entitled to collect such interest and such indebtedness or, to the extent permitted by Applicable Law, under such Applicable Laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

**“MiLB”** means Minor League Baseball.

**“Minimum Requirements”** means the following criteria that shall be incorporated into the design and construction of the Ballpark: (a) a total capacity of no less than nine thousand (9,000) seats (including fixed and berm seating), with no less than seven (7,000) fixed seats, (b) twenty (20) to thirty (30) luxury suites, (c) two hundred fifty (250) to five hundred (500) club seats, (d) office space for the Team, (e) all customary furniture, fixtures and equipment (including without limitation, (i) field fixtures (e.g., irrigation infrastructure, turf and other field-related improvements, dugouts, Ballpark patron protection, outfield wall improvements), (ii) field and stadium maintenance equipment (e.g., lawnmowers and forklifts), (iii) weight training, therapy and other fitness equipment (e.g., therapy pools), (iv) field protection devices (e.g., tarps and other field covers), all office, suite, loge box and club furniture, fixtures and equipment) and (v) all concessions equipment (excluding concessions small wares) and (g) a retail store (together with all related furniture, fixtures and equipment). Such Minimum Requirements shall meet the Quality Standard.

**“Open Records Act”** has the meaning set forth in Section 15.6.

**“Operating Term”** means the “Term” as defined in the Lease.

**“Operating Term Commencement Date”** means the first day of the Operating Term.

**“Opinion of Club Counsel”** means the opinion of Kemp Smith LLP, El Paso, Texas, as counsel to Club and Company, in a form reasonably acceptable to City, that (i) Company and Club are each duly organized, validly existing and in good standing under Texas law, (ii) Company and Club have duly authorized the execution of this Agreement, the Lease and the

Non-Relocation Agreement and the persons signing such agreements on behalf of Club and Company have the authority to do so; (iii) Club owns all right, title and interest (including the franchise rights) to Team, and (iv) none of Club or Company's corporate governance documents or material agreements or contracts binding Club, Company or Team contain contingencies or conditions precedent to Club's ownership or continued ownership of Team and/or the ability of Team to play its home games in El Paso, Texas.

**"Owner's Representative"** has the meaning set forth in Section 3.2.1.

**"Parties"** or **"Party"** has the meaning set forth in the preamble to this Agreement.

**"Person"** means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

**"Plans for Ballpark Improvements"** means the plans and specifications for the construction of the Ballpark Improvements prepared by the Project Architect and which shall include the Minimum Requirements.

**"Pre-Development Expenses"** means third party design, survey, site preparation and/or other pre-construction expenses of City incurred prior to Execution Date, including those of the Preliminary Architect (but excluding legal fees of the Parties).

**"Pre-Existing Environmental Conditions"** means the Hazardous Materials and other environmental conditions that existed on or under the Ballpark prior to the Operating Term Commencement Date to the extent such have not been caused by or contributed to by Club, its Affiliates or Related Parties.

**"Preliminary Architect"** means the architect engaged by City prior to the Execution Date to prepare certain preliminary documentation with respect to the Ballpark, including any programming documents and concept plan.

**"Prime Rate"** means the "prime rate" as published in the "Money Rates" section of The Wall Street Journal; however, if such rate is, at any time during the Term, no longer so published, the "Prime Rate" shall mean the average of the prime interest rates that are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States that publish a "prime rate".

**"Project Architect"** means a Qualified Design Professional or team of Qualified Design Professionals who will be employed by City in connection with the Ballpark Improvements.

**"Project Plans"** means collectively, the Plans for Ballpark Improvements and the FF&E Requirements.

**"Qualified Design Professional"** means an architect that satisfies all of the following criteria: (i) licensed and otherwise in compliance with all applicable Governmental Rules to do business and act as an architect in the State of Texas for the type of work proposed to be performed by such architect and (ii) well experienced as an architect in comparable work.

**“Qualified Surety”** means any surety which has been approved by City and which has an Alfred M. Best Company, Inc. rating of “A” or better and a financial size category of not less than “VIII” (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Agreement, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

**“Quality Standard”** means a first-class, state-of-the-art, Triple-A caliber, multi-purpose minor league baseball ballpark, comparable, when taken as a whole, to the Comparable Properties.

**“Real Property”** means the tract of land depicted in Exhibit A. In addition to the description of real property attached hereto as Exhibit A, the term “Real Property” shall also include any additional real property interests acquired by City and on, over or under which, or pursuant to, the Ballpark is constructed.

**“Related Party”** or **“Related Parties”** means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and Affiliates, and for each of the foregoing their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicensees, tenants, and subtenants.

**“Responsible Officer”** means with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Agreement, an authorized officer of such Person (or in the case of a partnership, an individual who is a general partner of such Person or such an authorized officer of a general partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

**“Review and Approval or Consent Rights”** has the meaning set forth in Section 8.2.1.

**“Reviewing Party”** has the meaning set forth in Section 8.2.1.

**“Submitting Party”** has the meaning set forth in Section 8.2.1.

**“Subsidiary”** means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by

such Person, one or more Subsidiaries of such person, or by such Person and one or more Subsidiaries of such Person.

**“Substantial Completion”** means, when used with respect to the Ballpark Improvements Work or any component of the Ballpark Improvements Work, the receipt of (i) a certificate of the Project Architect certifying that such Improvements have been completed in accordance with the Project Plans, and (ii) a certificate of occupancy from the City acting in accordance with its Governmental Function that such Improvements are ready for use and occupancy for their intended purposes in accordance with Applicable Law.

**“Substantial Completion Date”** means the date upon which Substantial Completion of the Ballpark Improvements Work occurs.

**“Substantial Completion Deadline”** means March 1, 2014, as such date may be extended by (i) an Excusable City Delay Period or (ii) Section 5.2, each in accordance with the terms of this Agreement.

**“Subtenant”** means any Person in possession of any portion of the Ballpark pursuant to a Use Agreement.

**“Team”** means all rights, title and interest, including franchise rights, in the Triple A Minor League Professional Baseball franchise granted by the NAPBL and the corresponding interests in the League and known as of the Execution Date as the “Tucson Padres” baseball club.

**“Term”** has the meaning set forth in Section 4.1.

**“Transfer”** has the meaning set forth in Section 12.1.

**“Transfer of Majority Interest”** means, with respect to Club or Company, any direct or indirect transfer, sale or other transaction (or related transactions) that results in any Person (other than a current Control Person of Club or Company, as applicable) becoming the beneficial owner, directly or indirectly, of fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of managers, directors or other comparable Controlling body of Club or Company, as applicable.

**“Use Agreement”** means a use, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Ballpark for any Permitted Use (as defined in the Lease), but shall not include any of the foregoing for all or substantially all of the Ballpark or for a period greater than the “Initial Term” as defined in the Lease.

#### *Rules as to Usage*

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(1) “Include”, “includes” and “including” shall be deemed to be followed by “, but not limited to,” whether or not they are in fact followed by such words or words of like import.

(2) "Writing", "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Laws defined or referred to above means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined above by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(6) "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by this Appendix are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in this Agreement and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) The word "or" will have the inclusive meaning represented by the phrase "and/or".

(10) "Shall" and "will" have equal force and effect.

(11) Unless otherwise specified, all references to a specific time of day shall be based upon Mountain Standard Time or Mountain Daylight Savings Time, as applicable, on the date in question in El Paso, Texas.

(12) References to "\$" or to "dollars" shall mean the lawful currency of the United States of America.

(13) "Not to be unreasonably withheld" when used herein with respect to any Approval shall be deemed to be followed by "conditioned or delayed" whether or not it is in fact followed by such words or words of like import.

**APPENDIX B**  
**TO**  
**DEVELOPMENT AGREEMENT**

*Address for Notices*

A. **CITY: CITY OF EL PASO, TEXAS**

All notices to City shall be sent to:

City of El Paso  
2 Civic Center Plaza, 10<sup>th</sup> Floor  
El Paso, Texas 79901  
Attention: City Manager

with copies of all notices to City relating to defaults, remedies or indemnification being sent to:

City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901  
Attention: City Attorney

B. **CLUB: MOUNTAIN STAR SPORTS GROUP, LLC**

All notices to Company or Club shall be sent to:

Mountain Star Sports Group  
4401 North Mesa  
El Paso, Texas 79902  
Attention: Joshua Hunt

**EXHIBIT A  
TO  
DEVELOPMENT AGREEMENT**

*Real Property*

**EXHIBIT B  
TO  
DEVELOPMENT AGREEMENT**

*Lease*



# City of El Paso

BALLPARK

*September 18, 2012*

**William F. Studer, Jr.**  
**Deputy City Manager**  
**City of El Paso**





## **Professional Baseball**

**1869 – First Professional Baseball Team Cincinnati Reds**

**1958 – Dodger & Giants move to California**

## **Texas Baseball**

**Prior to 1962 Texas League (AA Baseball)**

**1962 – Houston Colt 45's**

**1972 – Texas Rangers in Arlington**

**AAA – Round Rock Express – Nolan Ryan**



**No MLB or AAA in San Antonio, Dallas, Austin & Fort Worth**



# Sports & Entertainment Amenity Costs

## Olympic Size Pool

- **Construction cost is \$12 Million**
- **Annual Operation cost of \$689,895**
- **Annual Maintenance, including utility costs, would be \$500,000**





# Sports & Entertainment Amenity Costs

## Major Soccer Complex (12+ Fields)

- Construction cost is from \$10,000,000 to \$15,000,000 with the higher number being synthetic fields
- Annual Operation cost of \$110,000 (not to include GSD services such as utilities or maintenance)
- \$30,000 maintenance per natural turf field annually
- \$18,000 per artificial turf field annually
- Annual utility costs are \$30,591





## Double Tree Hotel

- Event Room Block Rate
- Hotel Parking Lot Facilities
- Hotel Occupancy Tax
- Property Tax Abatement
- Sale & Use Tax and Mixed Beverage Tax
- Total of \$1,121,688 since 2009





# Outlet Shoppes of El Paso

## Sales and Use Tax Revenue

- 50% of the City's 1% Sales and Use Tax revenue
- Total of \$1.25 M

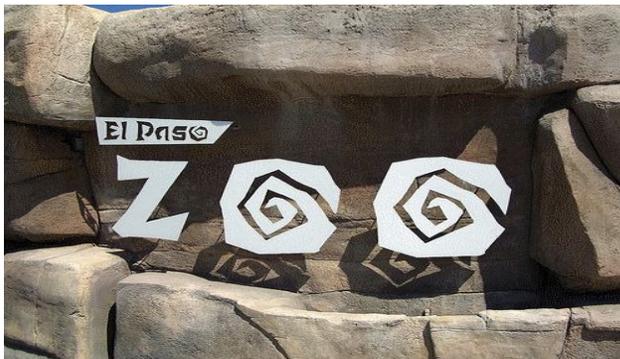




# Cost of Construction and Operation

## Art Museum

- **Cost of Construction**  
**\$8 million**
- **5 year operation**  
**\$6,165,313**



## Zoo

- **The cost for the Asian expansion in 1994 was \$5.5M**
- **2000 Bond: Zoo received \$34M**
- **5 year operation \$6,165,313**



## El Paso CVB Operations

### Civic Center

- Opened in 1972
- 2002 - \$20 Million Renovation/Expansion



### Plaza Theater

- 2004 – \$38 Million Renovation
- Reopened in March 2006



**Total Combined 5 year operation of \$30,572,620**



## Why Triple-A Baseball?

- **Local ownership group buying team to locate in El Paso as amenity for the citizens and visitors of El Paso**
- **Team available for purchase now**
- **City had to partner to build new stadium downtown**
- **Be ready for 2014 season**
- **25 year lease commitment**





## Why Triple-A Baseball?

- Triple-A baseball is also an economic development opportunity
- Only 30 cities in the nation host Triple-A baseball teams
- Triple-A baseball would provide 72+ home games per season plus additional special events to the Downtown area
- Visiting teams, officials, media and visitors will stay in El Paso as part of this investment
- Triple-A brings an average of 436,000 patrons per season





## What is the economic impact of having Triple-A Baseball in El Paso?

- Ballpark visitors will spend an average of \$41.17 per game, which translates to over \$17.9 million in direct spending per year
- Constructing a \$50 million ballpark contributes an estimated total economic impact of \$76.8 million, labor income of \$22.6 million and 611.7 jobs





## ***Why not Cohen Stadium?***



- **Cohen stadium is over 20 years old and does not meet Triple-A standards**
  - **Numerous deferred maintenance issues**
- 
- **The location of Cohen is not downtown, which is a key focus area of the City and ownership group**
  - **Not acceptable to League or ownership group, even as interim facility**



## *Why not Cohen Stadium?*

- **Inadequate Revenue Generating Opportunities to Support Triple-A**
  - Concessions
  - Sponsorship
  - Group Sales
  - Premium Seating
- **Inadequate Team Infrastructure**
  - Locker Rooms
  - Physical Conditioning Space
  - Rehabilitation Space
  - Administrative Office Space
- **Inadequate Fan Experience Infrastructure**
  - Limited Seating Options
  - Concessions Points of Sale is Low
  - Inadequate Commissary
  - Limited Opportunities for Premium Menu Items
  - Number of Restrooms is Low
  - Premium Seating is Substandard (Suites/Club Spaces)
  - No Lounge/Meeting Space





## ***Why not Asarco?***

**The ASARCO property is not owned nor directed by the City of El Paso. It is under the exclusive jurisdiction of a trustee, Project Navigator, appointed by the federal bankruptcy court.**

**Additionally, ASARCO is currently not in an environmental condition for this type of development as environmental clean-up of the site will not be completed until 2015**





# *Why Downtown and Specifically the City Hall Site?*



- **Downtown Opportunities**



## Multiple Downtown Locations Considered





# Accessibility



- 4,322 existing parking spaces within a 5 minute walk of the Convention Center
- Accessible from I-10 and the Southern Relief Route, and is within close proximity to downtown's international bridges
- Rapid Transit System
- Future Trolley System



## *Why the City Hall Site?*

- **The size of the site can accommodate baseball in the required orientation and works with proposed Triple-A timeline**
- **Eliminates the need for private property acquisition and allows the project to proceed in a timely manner**
- **City Hall is in need of extensive repairs**





**DRAFT CONCEPTUAL IMAGE**  
**POPULOUS**

DRAWING PEOPLE TOGETHER



## **BallPark Lease Agreement**

- **Parties: City of El Paso and Mountain Star Sports Group, LLC**
- **Ballpark shall be owned by the City**
- **City responsible for securing financing**
- **Development of the Ballpark subject to the approvals of the City as required by law**
- **Team shall include “El Paso” as part of the Team’s name**
- **The Club has committed to keep ballgames an affordable family entertainment activity**



## BallPark Lease Agreement

- **City and the Club shall mutually agree on the selection of a qualified architectural firm**
- **The Ballpark shall be first-class and state-of-the art**
- **Total cost not exceed \$50 million**





# BallPark Lease Agreement

## The Club shall have the right to:

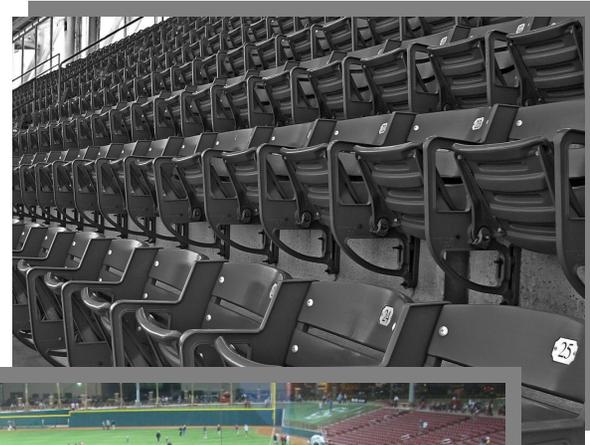
- Naming Rights
- Advertising Revenue
- Premium Seating Revenue
- Concessions
- Merchandise





## BallPark Lease Agreement

- 7,000 to 9,000 Seats
- 20 to 25 Luxury Seats
- Team Office Space
- Retail Store





## **BallPark Lease Agreement**

- **Ballpark to open for 2014 Triple A-season**
- **The Team shall play home games at the Ballpark for 25-years after the Commencement Date**
- **Renewal Periods: 3 consecutive additional of 5 years each**
- **Fixed rental of \$200,000 per year**
- **Ticket Fee: \$0.10 for each ticket**
- **Capital Repairs Reserve Fund: 3<sup>rd</sup> full payment, 75% into the Capital Repairs Reserve Fund**



# Triple-A Lease Comparisons

Team	Average Household Income	Annual Rent - Stadium	Ticket Surcharge	Parking
<b>El Paso Triple-A</b>	<b>\$48,864</b>	<b>\$200,000</b>	<b>\$0.50</b>	<b>50%</b>
New Orleans Zephyrs	\$62,197	\$0	0%	100%
Reno Aces	\$70,766	\$1.00	0%	100%
Round Rock Express	\$73,579	\$1.00	0%	100%
Salt Lake Bees	\$72,868	\$7,500	0%	100%
Iowa Cubs	\$69,854	\$16,000	0%	100%
Syracuse Chiefs	\$61,817	\$126,000	0%	100%
Oklahoma City Redhawks	\$58,806	\$150,000	0%	100%
Gwinnett Braves	\$75,055	\$250,000	\$1.00	50%
Durham Bulls	\$66,390	\$300,000	\$0.25	100%
Omaha Storm Chasers	\$66,712	\$450,000	\$0.50	100%
Tacoma Rainiers	\$79,557	\$500,000	\$0.50	100%
Albuquerque Isotopes	\$60,716	\$700,000	10.00%	100%



# Triple-A Lease Comparisons

Team	Average Household Income	Annual Rent - Stadium	Ticket Surcharge	Parking
<b>El Paso Triple-A</b>	<b>\$48,864</b>	<b>\$200,000</b>	<b>\$0.50</b>	<b>50%</b>
<b>Econdido Padres</b>	<b>\$80,006</b>	<b>\$200,000</b>	<b>0%</b>	<b>50%</b>
<b>Tucson Padres</b>	<b>\$59,389</b>	<b>\$0</b>	<b>\$0.50</b>	<b>Free</b>
<b>El Paso Diablos</b>	<b>\$48,864</b>	<b>\$0</b>	<b>0%</b>	<b>100%</b>



# BallPark Lease Agreement

## Opportunities for Non-Baseball Events

- Civic-Oriented
- Community
- Educational Events
- Concerts
- Other Sporting Events
- Meeting & Banquets
- Any Other For Profit Events



# BallPark Lease Agreement

## Tenant's Operation and Routine Maintenance

- Club responsible for all operating expenses and routine maintenance and repairs
- City shall be responsible for the prompt and timely installation, repair and replacement of all Capital Improvements such that the Ballpark remains a safe, clean, attractive, and first-class facility

## Utilities

- The City & Club shall each pay ½ of annual water and sewer cost
- The club shall reimburse the City for electric expenses



# BallPark Lease Agreement

## 200 Surface Parking Spaces

- City Hall Visitor Lot & end of Franklin St.

## 300 Season Parking

- 300 parking spaces in the Offsite Garage Parking (Convention Center and UPTT)
- Equal to \$1.00 times the number of Season Parking Events for 12 month period (approximately \$80 per year)

## Parking Revenues

- City and Club shall divide from garages for daily parking fees
- Beginning 1 hr before Ballpark until 1 hr after the start of the Ballpark event





# BallPark Development Agreement

- The design, development, construction and furnishing of the Ballpark Improvements shall be a cooperative process





## **BallPark Non-Relocation Agreement**

- **The Club and the Team shall maintain their principal place of business in the City**
- **If the Club attempts directly or indirectly, to, or does, relocate the Team in violation of any provision of the Non-Relocation Agreement, the City shall have the right to purchase, or identify a qualified potential purchaser to purchase the Team.**
- **Actual Damages: City shall have the right to institute claims permitted by law or equity to recover any damages proximately caused by the Club's breach**



**PACIFIC COAST LEAGUE**  
of Professional Baseball Clubs, Inc.



PACIFIC COAST LEAGUE  
of Professional Baseball Clubs, Inc.

One Chisholm Trail, Suite 4200  
Round Rock, TX 78681  
Phone: (512) 310-2900  
Fax: (512) 310-8300

July 30, 2012

Joyce Wilson  
City Manager  
2 Civic Center Plaza, 9th Floor  
El Paso, TX 79901

Dear Ms. Wilson,

The purpose of this letter is to confirm to you that Mountain Star "Ownership Group") has entered into a Term Sheet and subsequent purchase agreement covering the contractual rights to a Triple-A baseball team, which intends to relocate to El Paso.

Under the Constitution of the Pacific Coast League of Professional Baseball Clubs ("PCL"), the Ownership Group is required to obtain initial approval from our Preliminary Application Review ("PAR") process, and I am pleased to report that the Ownership Group received *unanimous* approval of its PAR application by the PCL Executive Committee on July 25, 2012.

The Ownership Group has begun the next phase of baseball's application process by submitting a Control Interest Transfer ("CIT") application to Minor League Baseball ("MLB") and the PCL. The review of that application is in process. Because the Ownership Group has already been approved under the PAR process, we expect the CIT review to be straightforward and we do not anticipate any issues.

Finally, it is my understanding that all funds required for the acquisition have already been deposited in a single purpose, segregated account.

Sincerely,

Branch B. Rickey  
President

BBR/maf

Web: [www.pclbaseball.com](http://www.pclbaseball.com)  
E-mail: [office@pclbaseball.com](mailto:office@pclbaseball.com)

Joyce Wilson  
City Manager  
2 Civic Center Plaza, 9th Floor  
El Paso, TX 79901

Dear Ms. Wilson,

The purpose of this letter is to confirm to you that Mountain Star Sports Group, LLC (the "Ownership Group") has entered into a Term Sheet and subsequent purchase agreement covering the contractual rights to a Triple-A baseball team, which the Ownership Group intends to relocate to El Paso.

Sincerely,

Branch B. Rickey  
President



# Questions or Comments?





# ***2013 City Hall and Ballpark Capital Improvement Plan and Related Relocation Plan***

September 18, 2012

Prepared by: Carmen Arrieta-Candelaria,  
Chief Financial Officer





# Components of City Hall Relocation Plan and Related Capital Improvement Plan

	<p><b>Component 1</b></p>	<p><b>Acquisition of new City Hall site and related parking lot</b></p>
	<p><b>Component 2</b></p>	<p><b>Plan, design, and construct Ballpark</b></p>
	<p><b>Component 3</b></p>	<p><b>IT relocation improvements, records/archiving and moving of staff and FF&amp;E</b></p>



## Component 1

**Acquisition of new City Hall site and  
related parking lot**



# Capital Acquisitions

## Purpose:

- To house City Administration and Information Technology

## Strategic Characteristics:

- Located near State offices; 911 District and near 801/11 Texas; parking lot across the street included
- Building in excellent condition with open floor plan and

## Base Purchase Price (without closing costs):

- \$11,000,000.00 building/\$3,000,000.00 parking lot

## Gross Square Footage:

- 85,394/\$128.81 per square foot

## Improvements Needed:

- Minimal due to condition of building



## 300 North Campbell (Building and Parking Lot)





# Capital Acquisitions

## Purpose:

- To house City Development and other customer service-oriented departments.

## Strategic Characteristics:

- Storefront area accessible from alley; ample customer parking in city-owned lot and streets; originally built in 1919 and good candidate for renovation; open floor plan.

## Base Purchase Price (without closing costs):

- \$2,300,000.00

## Gross Square Footage:

- 69,000/\$33.33 per square foot

## Improvements Needed:

- Significant improvements will need to be made to be ready for staff to move in.



## 801/811 Texas





# SUMMARY OF BUILDING COSTS

Building	Construction and related closing costs*
801/811 Texas	\$2,460,800
300 North Campbell	\$11,507,750
Parking Lot	\$3,140,800
Upgrades, renovations and furnishings for all facilities	\$11,005,000
<b>Total</b>	<b>\$29,238,924</b>
<b>Financed with Certificates of Obligation – Debt Tax Rate Impact: \$.0062</b>	

Annual Cost to Taxpayer: \$6.20  
based on a \$100,000 home



\*includes 2% for the AISC, 1% for Debt Insurance



## Component 2

**Plan, design, and construct Ballpark  
on City Hall site**



## Plan, Design and Construct the Ballpark

- Ballpark budget consists of
  - Planning and review of City Hall site
  - Consulting, architect and engineering costs
  - Designing the Ballpark
  - Demolishing and preparing the site for construction
  - Constructing the Ballpark



*Planned Budget  
is \$52 million*

*(includes 2% Public Art  
and 2% Bond Issuance  
Costs)*





# How is the Ballpark financed and who pays for it?

- **Goal was to minimize the impact to the taxpayers by seeking an alternative way to pay for the venue**
  - **2% HOT revenue – *new* revenue to the City if approved by voters**





# How is the Ballpark financed and who pays for it?

- **The most cost effective way to finance the Ballpark is with the utilization of a 2% Hotel Occupancy Tax imposed on individuals occupying a hotel room in El Paso**
  - **This requires voter approval of a venue project to fund the project**
  - **Currently scheduled for vote on November 6, 2012**





## How is the Ballpark financed and who pays for it? (continued)

- **The 2% Hotel Occupancy Tax pays for approximately 72% of the cost of the Ballpark but this % increases over time if HOT growth materializes and therefore reduces the amount of dollars required from other sources**



*What are the other sources?*





## How is the Ballpark financed and who pays for it? (continued)

- **Other Sources to support the debt of the Ballpark are:**
  - **Ticket Surcharge charged to each ticket purchased by fans**
  - **Rent paid by the Team to the City for the stadium**
  - **General fund revenues that are generated by the presence of the Ballpark such as additional sales tax and parking revenues and other general fund revenues**



*How does this work?*





# If HOT passes, Estimated *Revenues* Generated by 2% HOT and Ballpark-related Sources

	Fiscal Year	HOT revenues	Ticket Surcharge	Rent	General Fund Revenues					Total Revenues
					Sales Tax	Parking (1)	Parking (2)	Other	Offset of Water	
1	2013	1,746,667	-	-	-	-	-	-	-	1,746,667
2	2014	2,620,000	218,396	200,000	179,805	24,000	132,000	-	(16,750)	3,357,451
3	2015	2,698,600	218,396	50,000	181,603	24,000	133,320	-	(16,918)	3,289,002
4	2016	2,779,558	218,396	50,000	183,420	24,000	134,653	-	(17,087)	3,372,940
5	2017	2,862,945	218,396	50,000	185,254	24,000	136,000	-	(17,258)	3,459,337
6	2018	2,948,833	218,396	50,000	187,106	24,000	137,360	-	(17,430)	3,548,265
7	2019	3,037,298	240,236	70,000	188,977	26,400	138,733	-	(17,604)	3,684,040
8	2020	3,128,417	240,236	70,000	190,867	26,400	140,121	-	(17,780)	3,778,260
9	2021	3,222,270	240,236	70,000	192,776	26,400	141,522	-	(17,958)	3,875,244
10	2022	3,318,938	240,236	70,000	194,704	26,400	142,937	-	(18,138)	3,975,076
11	2023	3,418,506	240,236	70,000	196,651	26,400	144,366	-	(18,319)	4,077,839
12	2024	3,521,061	266,443	92,000	198,617	29,040	145,810	-	(18,502)	4,234,469
13	2025	3,626,693	266,443	92,000	200,603	29,040	147,268	-	(18,687)	4,343,360
14	2026	3,735,494	266,443	92,000	202,609	29,040	148,741	-	(18,874)	4,455,452
15	2027	3,847,558	266,443	92,000	204,635	29,040	150,228	-	(19,063)	4,570,842
16	2028	3,962,985	266,443	92,000	206,682	29,040	151,731	-	(19,254)	4,689,627
17	2029	4,081,875	292,651	116,200	208,749	31,920	153,248	-	(19,446)	4,865,195
18	2030	4,204,331	292,651	116,200	210,836	31,920	154,780	-	(19,641)	4,991,077
19	2031	4,330,461	292,651	116,200	212,944	31,920	156,328	-	(19,837)	5,120,667
20	2032	4,460,375	292,651	116,200	215,074	31,920	157,891	-	(20,035)	5,254,075
21	2033	4,594,186	292,651	116,200	217,225	31,920	159,470	-	(20,236)	5,391,416
22	2034	4,732,011	318,858	142,820	219,397	35,040	161,065	-	(20,438)	5,588,753
23	2035	4,873,972	318,858	142,820	221,591	35,040	162,676	-	(20,643)	5,734,314
24	2036	5,020,191	318,858	142,820	223,807	35,040	164,302	-	(20,849)	5,884,169
25	2037	5,170,797	318,858	142,820	226,045	35,040	165,946	-	(21,057)	6,038,448
26	2038	5,325,921	318,858	142,820	228,305	35,040	167,605	-	(21,268)	6,197,281
	2039	5,485,698	-	-	-	-	-	-	-	5,485,698
	2040	-	-	-	-	-	-	-	-	-
	TOTALS	101,008,971	6,682,918	2,505,100	5,078,281	732,000	3,728,102	-	(473,074)	121,008,964

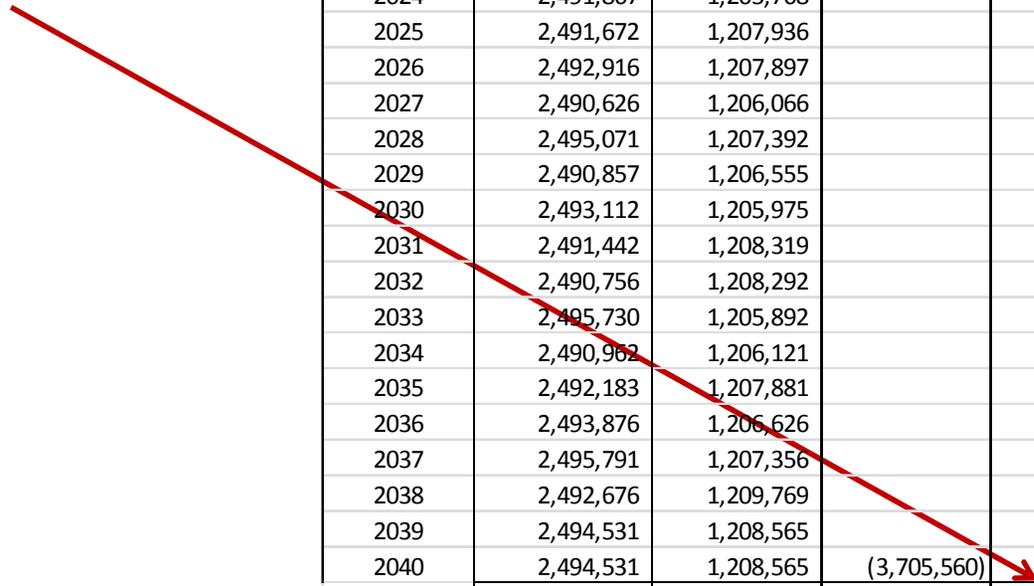
*No other Revenues not directly attributable to ballpark*





If HOT passes,  
Estimated **Cost**  
to Finance  
Ballpark

Fiscal Year	Tax-Exempt	Taxable	Reserve Fund	Total Debt*
2013	-	-		-
2014	2,495,004	1,205,524		3,700,528
2015	2,495,129	1,207,139		3,702,268
2016	2,492,151	1,207,927		3,700,078
2017	2,491,698	1,207,818		3,699,516
2018	2,494,035	1,206,423		3,700,458
2019	2,493,480	1,208,794		3,702,274
2020	2,494,718	1,204,620		3,699,338
2021	2,492,960	1,209,098		3,702,058
2022	2,492,666	1,206,755		3,699,421
2023	2,493,825	1,206,950		3,700,775
2024	2,491,867	1,205,768		3,697,635
2025	2,491,672	1,207,936		3,699,608
2026	2,492,916	1,207,897		3,700,813
2027	2,490,626	1,206,066		3,696,692
2028	2,495,071	1,207,392		3,702,463
2029	2,490,857	1,206,555		3,697,412
2030	2,493,112	1,205,975		3,699,087
2031	2,491,442	1,208,319		3,699,761
2032	2,490,756	1,208,292		3,699,048
2033	2,495,730	1,205,892		3,701,622
2034	2,490,962	1,206,121		3,697,083
2035	2,492,183	1,207,881		3,700,064
2036	2,493,876	1,206,626		3,700,502
2037	2,495,791	1,207,356		3,703,147
2038	2,492,676	1,209,769		3,702,445
2039	2,494,531	1,208,565		3,703,096
2040	2,494,531	1,208,565	(3,705,560)	(2,464)
TOTALS	67,314,265	32,596,023	(3,705,560)	96,204,728





	Fiscal Year	Total Revenues	Total Debt	Coverage	Excess Revenues over Debt
	2013	1,746,667	-	-	1,746,667
1	2014	3,357,451	3,700,528	0.91	(343,077)
2	2015	3,289,002	3,702,268	0.89	(413,266)
3	2016	3,372,940	3,700,078	0.91	(327,138)
4	2017	3,459,337	3,699,516	0.94	(240,179)
5	2018	3,548,265	3,700,458	0.96	(152,193)
6	2019	3,684,040	3,702,274	1.00	(18,234)
7	2020	3,778,260	3,699,338	1.02	78,922
8	2021	3,875,244	3,702,058	1.05	173,186
9	2022	3,975,076	3,699,421	1.07	275,655
10	2023	4,077,839	3,700,775	1.10	377,064
11	2024	4,234,469	3,697,635	1.15	536,834
12	2025	4,343,360	3,699,608	1.17	643,752
13	2026	4,455,452	3,700,813	1.20	754,639
14	2027	4,570,842	3,696,692	1.24	874,150
15	2028	4,689,627	3,702,463	1.27	987,164
16	2029	4,865,195	3,697,412	1.32	1,167,783
17	2030	4,991,077	3,699,087	1.35	1,291,990
18	2031	5,120,667	3,699,761	1.38	1,420,906
19	2032	5,254,075	3,699,048	1.42	1,555,027
20	2033	5,391,416	3,701,622	1.46	1,689,794
21	2034	5,588,753	3,697,083	1.51	1,891,670
22	2035	5,734,314	3,700,064	1.55	2,034,250
23	2036	5,884,169	3,700,502	1.59	2,183,667
24	2037	6,038,448	3,703,147	1.63	2,335,301
25	2038	6,197,281	3,702,445	1.67	2,494,836
26	2039	5,485,698	3,703,096	-	1,782,602
	2040	-	(2,464)	-	2,464
	<b>TOTALS</b>	<b>121,008,964</b>	<b>96,204,728</b>		<b>24,804,236</b>

If HOT passes,  
Estimated  
Difference between  
the *Revenues* and  
the *Cost* to Finance  
Ballpark

Surplus of  
Ballpark related  
revenues and  
HOT revenues  
is \$24.804  
million





	Fiscal Year	Excess Revenues over Debt	Cumulative Excess Revenues over Debt	Breakdown of General vs HOT	
				General	HOT
	2013	1,746,667	1,746,667		1,746,667
1	2014	(343,077)	1,403,590		(343,077)
2	2015	(413,266)	990,324		(413,266)
3	2016	(327,138)	663,186		(327,138)
4	2017	(240,179)	423,007		(240,179)
5	2018	(152,193)	270,814		(152,193)
6	2019	(18,234)	252,580		(18,234)
7	2020	78,922	331,501	78,922	
8	2021	173,186	504,688	173,186	
9	2022	275,655	780,343	275,655	
10	2023	377,064	1,157,407	377,064	
11	2024	536,834	1,694,241	536,834	
12	2025	643,752	2,337,993	643,752	
13	2026	754,639	3,092,632	719,959	34,681
14	2027	874,150	3,966,782	723,284	150,866
15	2028	987,164	4,953,946	726,642	260,522
16	2029	1,167,783	6,121,729	783,321	384,463
17	2030	1,291,990	7,413,720	786,746	505,244
18	2031	1,420,906	8,834,626	790,206	630,700
19	2032	1,555,027	10,389,653	793,700	761,327
20	2033	1,689,794	12,079,446	797,230	892,564
21	2034	1,891,670	13,971,117	856,742	1,034,928
22	2035	2,034,250	16,005,366	860,342	1,173,908
23	2036	2,183,667	18,189,034	863,978	1,319,689
24	2037	2,335,301	20,524,334	867,651	1,467,650
25	2038	2,494,836	23,019,170	871,360	1,623,476
26	2039	1,782,602	24,801,772	-	1,782,602
	2040	2,464	24,804,236	-	2,464
	TOTALS	24,804,236	24,804,236	12,526,574	12,277,662

If HOT passes,  
Estimated  
Difference between  
the **Revenues** and  
the **Cost** to Finance  
Ballpark

General -\$12.526  
million

Excess HOT revenues -  
\$12.277 million – Goes  
back to Debt





## If the HOT fails, then General Fund picks up the difference between Ballpark-related Revenue and Debt payments

	Fiscal Year	Ticket Surcharge	Rent	General Fund Revenues					Total Revenues
				Sales Tax	Parking (1)	Parking (2)	Other	Offset of Water	
	2013	-	-	-	-	-	-	-	-
1	2014	218,396	200,000	179,805	24,000	132,000	2,755,833	(16,750)	3,493,284
2	2015	218,396	50,000	181,603	24,000	133,320	2,930,695	(16,918)	3,521,097
3	2016	218,396	50,000	183,420	24,000	134,653	2,987,577	(17,087)	3,580,959
4	2017	218,396	50,000	185,254	24,000	136,000	3,045,850	(17,258)	3,642,242
5	2018	218,396	50,000	187,106	24,000	137,360	3,118,999	(17,430)	3,718,431
6	2019	240,236	70,000	188,977	26,400	138,733	3,151,734	(17,604)	3,798,476
7	2020	240,236	70,000	190,867	26,400	140,121	3,140,871	(17,780)	3,790,714
8	2021	240,236	70,000	192,776	26,400	141,522	3,135,486	(17,958)	3,788,461
9	2022	240,236	70,000	194,704	26,400	142,937	3,129,865	(18,138)	3,786,003
10	2023	240,236	70,000	196,651	26,400	144,366	3,129,058	(18,319)	3,788,391
11	2024	266,443	92,000	198,617	29,040	145,810	3,072,025	(18,502)	3,785,433
12	2025	266,443	92,000	200,603	29,040	147,268	3,070,614	(18,687)	3,787,281
13	2026	266,443	92,000	202,609	29,040	148,741	3,063,544	(18,874)	3,783,503
14	2027	266,443	92,000	204,635	29,040	150,228	3,065,371	(19,063)	3,788,655
15	2028	266,443	92,000	206,682	29,040	151,731	3,060,379	(19,254)	3,787,021
16	2029	292,651	116,200	208,749	31,920	153,248	3,001,325	(19,446)	3,784,646
17	2030	292,651	116,200	210,836	31,920	154,780	2,997,400	(19,641)	3,784,146
18	2031	292,651	116,200	212,944	31,920	156,328	2,997,417	(19,837)	3,787,623
19	2032	292,651	116,200	215,074	31,920	157,891	2,995,925	(20,035)	3,789,625
20	2033	292,651	116,200	217,225	31,920	159,470	2,987,602	(20,236)	3,784,832
21	2034	318,858	142,820	219,397	35,040	161,065	2,931,412	(20,438)	3,788,154
22	2035	318,858	142,820	221,591	35,040	162,676	2,925,989	(20,643)	3,786,331
23	2036	318,858	142,820	223,807	35,040	164,302	2,922,304	(20,849)	3,786,282
24	2037	318,858	142,820	226,045	35,040	165,946	2,919,437	(21,057)	3,787,088
25	2038	318,858	142,820	228,305	35,040	167,605	2,911,973	(21,268)	3,783,333
26	2039	-	-	-	-	-	3,789,644	-	3,789,644
	2040	-	-	-	-	-	(12,874)	-	(12,874)
	<b>TOTALS</b>	<b>6,682,918</b>	<b>2,505,100</b>	<b>5,078,281</b>	<b>732,000</b>	<b>3,728,102</b>	<b>79,225,455</b>	<b>(473,074)</b>	<b>97,478,781</b>

Revenues needed →





	Fiscal Year	Tax-Exempt	Taxable	Reserve Fund	Total Debt
	2013	-	-		-
1	2014	2,279,537	1,213,747		3,493,284
2	2015	2,309,270	1,211,827		3,521,097
3	2016	2,371,339	1,209,620		3,580,959
4	2017	2,430,470	1,211,772		3,642,242
5	2018	2,505,872	1,212,559		3,718,431
6	2019	2,586,899	1,211,577		3,798,476
7	2020	2,577,319	1,213,395		3,790,714
8	2021	2,574,767	1,213,694		3,788,461
9	2022	2,573,815	1,212,188		3,786,003
10	2023	2,574,256	1,214,135		3,788,391
11	2024	2,576,090	1,209,343		3,785,433
12	2025	2,574,323	1,212,958		3,787,281
13	2026	2,574,058	1,209,445		3,783,503
14	2027	2,574,960	1,213,695		3,788,655
15	2028	2,576,938	1,210,083		3,787,021
16	2029	2,575,058	1,209,588		3,784,646
17	2030	2,574,358	1,209,788		3,784,146
18	2031	2,574,665	1,212,958		3,787,623
19	2032	2,575,817	1,213,808		3,789,625
20	2033	2,572,494	1,212,338		3,784,832
21	2034	2,574,606	1,213,548		3,788,154
22	2035	2,576,583	1,209,748		3,786,331
23	2036	2,573,079	1,213,203		3,786,282
24	2037	2,573,785	1,213,303		3,787,088
25	2038	2,573,285	1,210,048		3,783,333
26	2039	2,576,206	1,213,438		3,789,644
	2040	2,576,910	1,211,250	(3,801,034)	(12,874)
	TOTALS	68,556,759	32,723,056	(3,801,034)	97,478,781

If HOT *fails*,  
 Estimated  
 Difference between  
 the *Revenues* and  
 the *Cost* to Finance  
 Ballpark

*Difference in  
 cost to finance  
 with HOT vs  
 cost to finance  
 with Lease  
 Revenues is  
 \$1,274,053*

*No excess revenues to fund  
 debt or offset general fund  
 expenses available*





## Component 3

### Relocation Costs

**(IT relocation improvements,  
records/archiving and moving of  
staff and FF&E)**



# SUMMARY OF RELOCATION

Type of Cost	Estimated Costs
IT Relocation	\$1,820,276*
Records/ Archiving	\$450,000
Moving Costs	\$1,650,000
<i>Totals</i>	<i>\$3,920,276</i>

***Costs Allocated from Unassigned General Fund Balance –  
No Tax Rate Impact for One-Time Use of Funds***

*\*Net of CIP projects already budgeted*





# City Hall Relocation Plan and Related Capital Improvement Plan

	Component	Type of Project	Funded by:	Cost
	Component 1	Capital Improvement Plan Project	Debt funded by COs	\$29,238,924
	Component 2	Capital Improvement Plan Project	Revenue bonds funded by HOT and other applicable revenues	\$52,000,000
	Component 3	General Fund expense	General Fund Unassigned Fund Balance	\$3,920,276



**Combined CIP:**  
**\$81,238,924**



## Agenda Item Related to CIP and Relocation Costs

Discussion and action on a Resolution to authorize the creation of the City of El Paso 2013 City Hall Relocation and Ballpark Capital Improvement Plan (“CIP”) in order to establish the relocation projects and the public sports facility project in the amount of \$81,238,924; to authorize the use of a combination of Certificates of Obligation, revenue bonds, or other allowable sources for the CIP pursuant to the City’s Debt Management Policy and applicable state laws; to authorize the City Manager to allocate funds out of the unassigned general fund balance in the City of El Paso FY2013 Budget in an amount not to exceed \$3,920,276 for Information Technology projects, records and archiving projects, and moving costs related to the relocation of City Hall; and to authorize the City Manager to establish funding sources and execute any and all documents, including budget transfers, necessary for the execution of the CIP and associated relocation costs.