

CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION

AGENDA ACTION ITEM

AGENDA DATE: October 15, 2013

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

SUBJECT:

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

Discussion and action to approve a Resolution approving the First Amendment to the Trust Agreement Relating To The City of El Paso, Texas Downtown Ballpark Venue Project Financing and resolving other matters incident and related thereto. [Carmen Arrieta-Candelaria, Chief Financial Officer (915) 541-4011]

BACKGROUND / DISCUSSION:

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

The City of El Paso Downtown Development Corporation (the "Corporation") and Wells Fargo Bank, National Association (the "Trustee") entered into a Trust Agreement relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing on August 1, 2013 (the "Trust Agreement"). In the September 27, 2013 Supplement to the Ballpark Development Agreement, Mountain Star Sports Group, LLC (the "Club") agreed that the City will not be obligated to pay any portion of the guaranteed maximum price for the ballpark in excess of \$52,545,810. In addition the Club agreed that it will pay for any project costs, excluding the cost of issuance, in excess of an aggregate Project cost of \$64 million.

This first amendment to the August 1, 2013 Trust Agreement will allow the Trustee to accept Club funds or letters of credit which will fund additional amounts of the cost to construct the ballpark that were mentioned above and in the Supplement to the Ballpark Development Agreement of September 27, 2013. The first amendment to the Trust agreement calls for the establishment of two additional separate segregated subaccounts of the Ballpark Project account; the Club GMP Subaccount and the Club Excess Project Costs Subaccount. The Club Guaranteed Maximum Price Subaccount will hold funds for project costs over the City's portion of the Guaranteed Maximum Price. The Club Excess Project Costs Subaccount will hold funds for other additional project costs not currently contemplated but deemed necessary by the Club during the course of construction of this facility. Funds will be drawn first from any cash that is available in the subaccounts and then from the letters of credit. The Trustee has received two irrevocable letters of credit as called for in the agreement.

Corporation staff in addition to Mr. Paul Braden, outside counsel, will be on hand to address this item.

PRIOR BOARD ACTION:

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

Yes, the Board approved action of similar resolutions on May 28, 2013; June 18, 2013; and August 1, 2013

AMOUNT AND SOURCE OF FUNDING:

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

n/a

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

Treasurer of the LGC: Carmen Arrieta-Candelaria

A RESOLUTION approving the First Amendment to the Trust Agreement Relating To The City of El Paso, Texas Downtown Ballpark Venue Project Financing and resolving other matters incident and related thereto.

WHEREAS, the City of El Paso Downtown Development Corporation (the “*Corporation*”) and Wells Fargo Bank, National Association, as trustee (the “*Trustee*”) have previously entered into a Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated as of August 1, 2013 (the “*Trust Agreement*”); and

WHEREAS, pursuant to the terms of a Supplement to the Ballpark Development Agreement dated September 27, 2013 (the “*Supplement*”), Mountain Star Sports Group, LLC—El Paso Baseball Club Series (the “*Club*”) agreed that (i) the City will not be obligated to pay any portion of the guaranteed maximum price (“*GMP*”) for the “Final Completion of the Ballpark Improvements Work” (as defined in the Development Agreement) in excess of \$52,545,810 (“*City Portion of GMP*”); (ii) the Club shall be responsible for payment of any amount by which the approved GMP exceeds the City Portion of GMP (“*Club Portion of GMP*”); and (iii) the Club shall be responsible for any Project Costs (excluding Issuance Costs) which cause the Project to exceed an aggregate of \$64 million; and

WHEREAS, pursuant to the terms of the Supplement, the Club is required to fund such additional amounts by depositing, or causing the deposit of, cash or irrevocable and unconditional letters of credit with the Trustee; and

WHEREAS, the Corporation and the Trustee would like to amend the terms of the Trust Agreement to allow the Trustee to accept such Club funds or letters of credit and such an amendment is permitted under Section 10.01(a) of the Trust Agreement, without the consent of the Bondholders;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION THAT:

SECTION 1: First Amendment. The First Amendment to the Trust Agreement, substantially in the form attached hereto as Exhibit A and incorporated herein by reference (the “*First Amendment*”), is hereby approved. The Executive Director of the Corporation is hereby authorized and directed, for and on behalf of the Corporation, to execute and deliver the First Amendment and the Secretary, Treasurer or Assistant Treasurer of the Corporation is hereby authorized to attest to such officer’s signature on the First Amendment on behalf of the Corporation. Upon execution by the parties thereto and delivery thereof, the First Amendment shall be binding upon the Corporation in accordance with the terms and provisions thereof.

SECTION 2: Incorporation of Recitals. The findings and determinations contained in the recitals hereto are hereby incorporated by reference and made a part of this Resolution for all purposes as if the same were restated in full in this Section.

SECTION 3: Annual Meeting. The Board of Directors of the Corporation hereby deems the meeting held on August 1, 2013 as the Corporation’s annual meeting which is required to be held in August of each year in accordance with the Corporation’s bylaws.

SECTION 4: Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Trust Agreement.

SECTION 5: Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 6: Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.

APPROVED AND ADOPTED this ____ day of October, 2013.

Oscar Leeser
Chair, Board of Directors
City of El Paso
Downtown Development Corporation

ATTEST:

Richarda Duffy Momsen
Secretary, City of El Paso
Downtown Development Corporation

Approved as to Form:

Approved as to Content:

Sylvia B. Firth
City Attorney, City of El Paso

Carmen Arrieta-Candelaria

Carmen Arrieta-Candelaria
Treasurer, City of El Paso
Downtown Development

EXHIBIT A
FIRST AMENDMENT TO THE TRUST AGREEMENT

FIRST AMENDMENT TO TRUST AGREEMENT

This FIRST AMENDMENT (this “*Amendment*”) TO THE TRUST AGREEMENT RELATING TO THE CITY OF EL PASO, TEXAS DOWNTOWN BALLPARK VENUE PROJECT FINANCING, is dated as of October 15, 2013 (the “*Effective Date*”) by and between by and between **Wells Fargo Bank, National Association**, a national banking association duly organized and operating under the laws of the United States of America, with a corporate trust office in Dallas, Texas, as trustee (the “*Trustee*”), and the **City of El Paso Downtown Development Corporation**, a nonprofit local government corporation duly organized under the laws of the State of Texas (the “*Corporation*”).

RECITALS

WHEREAS, the Corporation and the Trustee have previously entered into a Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated as of August 1, 2013 (the “*Trust Agreement*”); and

WHEREAS, pursuant to the terms of a Supplement to the Ballpark Development Agreement dated September 27, 2013 (the “*Supplement*”), a copy of which has been previously provided to the Trustee, the Club agreed that (i) the City will not be obligated to pay any portion of the guaranteed maximum price (“*GMP*”) for the “Final Completion of the Ballpark Improvements Work” (as defined in the Development Agreement) in excess of \$52,545,810 (“*City Portion of GMP*”); (ii) the Club shall be responsible for payment of any amount by which the approved GMP exceeds the City Portion of GMP (“*Club Portion of GMP*”); and (iii) the Club shall be responsible for any Project Costs (excluding Issuance Costs) which cause the Project to exceed an aggregate of \$64 million; and

WHEREAS, pursuant to the terms of the Supplement, the Club is required to fund such additional amounts by depositing, or causing the deposit of, cash or irrevocable and unconditional letters of credit with the Trustee; and

WHEREAS, the Corporation and the Trustee would like to amend the terms of the Trust Agreement to allow the Trustee to accept such Club funds or letters of credit and such an amendment is permitted under Section 10.01(a) of the Trust Agreement which provides, in relevant part, that the Corporation and the Trustee, without the consent of the Bondholders, may amend the Trust Agreement:

(i) to cure any ambiguity, inconsistency, formal defect, or omission in the Trust Agreement; and

(ii) to add to the covenants and agreements contained in the Trust Agreement other covenants and agreements thereafter to be observed for the protection of the Bondholders or to surrender or limit any right, power, or authority herein reserved to or conferred upon the Corporation;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I:

AMENDMENTS TO TRUST AGREEMENT

Section 1.1 Section 6.02 of the Trust Agreement is hereby amended by adding the following new subsections:

(h) *Club Subaccounts.* The Trustee shall establish two additional separate, segregated subaccounts of the Project Account, one of which will be entitled the “*Club GMP Subaccount*” and the other the “*Club Excess Project Costs Subaccount.*” The Corporation shall designate whether cash or letters of credit received by the Trustee from or on behalf of the Club to pay Project Costs are to be deposited into the Club GMP Subaccount, the Club Excess Project Costs Subaccount or such additional subaccounts which may be established under the provisions of Section 6.02(n) hereof.

(i) *Club GMP Subaccount.* The Trustee has received Irrevocable Letter of Credit No. 90900227 and Irrevocable Letter of Credit No. 90900228, each in the amount of \$4,072,875 (aggregating \$8,145,750) (collectively, the “***GMP Letter of Credit***”) and drawn on WestStar Bank, El Paso, Texas (the “***Issuing Bank***”) to be held by the Trustee to fund certain Project Costs payable from the Club GMP Subaccount in accordance with the terms hereof. To the extent the Corporation submits a Requisition Requesting Disbursement of Project Costs which indicates payments are to be made from the Club GMP Subaccount, then the Trustee shall use funds on deposit in the Club GMP Subaccount to make payments in accordance with such Requisition. Unless otherwise instructed by the Corporation in writing, all payments of Project Costs designated by the Corporation to be made from the Club GMP Subaccount shall be made first from cash on deposit in the Club GMP Subaccount prior to any draws being made on the GMP Letter of Credit. To the extent there are not sufficient funds available and on deposit in the Club GMP Subaccount on the day that the Corporation submits a Requisition Requesting Disbursement of Project Costs which indicates payments are to be made from the Club GMP Subaccount, then the Trustee shall on the next Business Day present a sight draft to the Issuing Bank requesting a draw under the GMP Letter of Credit in the amount by which the Project Costs to be paid from the Club GMP Subaccount exceed the cash in the Club GMP Subaccount. Any such sight draft shall be accompanied by a signed statement of the Trustee substantially in the form of attached **Exhibit G.** Only a copy of the GMP Letter of Credit shall accompany any partial draws under the GMP Letter of Credit and the Trustee should retain the original GMP Letter of Credit until the final draw thereunder or receipt of specific written instructions of the Corporation to otherwise release the GMP Letter of Credit. The proceeds of any draw on the GMP Letter of Credit shall be deposited into the Club GMP Subaccount and used to make payments of the Project Costs in accordance with the submitted Requisition. All draws made under the GMP Letter of Credit (or reductions in the available amount of the GMP Letter of Credit made in accordance with subsection (k) below) shall be made 50% from Irrevocable Letter of Credit No. 90900227 and 50% from Irrevocable Letter of Credit No. 90900228.

(j) *Club Excess Project Costs Subaccount.* The Club may periodically make, or cause to be made, additional deposits of funds or irrevocable and unconditional letters of credit with the Trustee to fund certain Project Costs. The Trustee shall accept any such additionally deposited funds or letters of credit and hold them in, or for the benefit of, the Club Excess Project Costs Subaccount. To the extent the Corporation submits a Requisition Requesting Disbursement of Project Costs which indicates payments are to be made from the Club Excess Project Cost Subaccount, then the Trustee shall use funds on deposit in the Club Excess Project Cost Subaccount to make payments in accordance with such Requisition. Unless otherwise instructed by the Corporation, all payments of Project Costs designated by the Corporation to be made from the Club Excess Project Cost Subaccount shall be made first from cash on deposit in the Club Excess Project Costs Subaccount prior to any draws being made on any letter of credit held by the Trustee for the benefit of the Club Excess Project Costs Subaccount. To the extent there are not sufficient funds available and on deposit in the Club Excess Project Cost Subaccount on the day that the Corporation submits a Requisition Requesting Disbursement of Project Costs which indicates payments are to be made from the Club Excess Project Cost Subaccount, then the Trustee shall on the next Business Day present a sight draft to the bank which issued the letter of credit being held in the Club Excess Project Costs Subaccount requesting a draw thereunder in the amount of (i) the sum by which the Project Costs to be paid from the Club Excess Project Costs Subaccount exceed the cash in the Club Excess Project Costs Subaccount if the letter of credit permits multiple partial draws thereunder; or (ii) the total face amount of the applicable letter of credit if such letter of credit does not permit multiple, partial draws. To the extent multiple draws are permitted under the terms of any letter of credit, only a copy of such letter of credit should accompany any such partial draws and the Trustee shall retain the original letter of credit until the final draw thereunder or receipt of specific written instructions of the Corporation to otherwise release such letter of credit. The proceeds of any draw on a letter of credit held for the benefit of the Club Excess Project Costs Subaccount shall be deposited into the Club Excess Project Costs Subaccount and used to make payments of the Project Costs in accordance with the submitted Requisition.

(k) *Reduction of Available Amount Under Club Letters of Credit.* In the event the Club deposits (or causes the deposit of) cash to pay Project Costs which would have otherwise been paid with a letter of credit held by the Trustee (including the GMP Letter of Credit) and the Trustee pays Project Costs from such cash instead of drawing on any letter of credit held to pay Project Costs, then, unless otherwise instructed by the Corporation in writing, the Trustee shall release a portion of the applicable letter of credit equal to the amount of the Project Costs paid with cash by delivering a Reduction Certificate to the issuing bank in substantially the form of attached **Exhibit H**. The Corporation shall indicate its agreement with the amount of any such reduction in the available amount under the letter credit by countersigning the Reduction Certificate.

(l) *Expiration of Letters of Credit.* To the extent the Trustee is still holding any letters of credit for the benefit of any subaccount of the Project Account

within 45 days of their respective stated expiration dates and a final disbursement of Project Costs has not yet occurred in accordance with the terms of the Trust Agreement, then the Trustee shall provide written notice to the Corporation and the Club of the pending expiration of such letters of credit on a date which is at least thirty (30) days prior to the stated expiration dates of such letters of credit. Notwithstanding anything in this Section 6.02 to the contrary and in the event a substitute letter of credit has not been provided to the Trustee, the Corporation may, within five (5) Business Days prior to the stated expiration date of any such letter of credit, instruct the Trustee to draw on any such letter of credit held for the benefit of the Project Account in the event a final disbursement of Project Costs has not occurred in accordance with the terms of the Trust Agreement and the Trustee shall make such draw and deposit the funds in the applicable subaccount of the Project Account to pay Project Costs in accordance with the terms of the Trust Agreement.

(m) Closing of Club Subaccounts. In the event there are any funds remaining in the Club GMP Subaccount or the Club Excess Project Costs Subaccount following a final disbursement of Project Costs and the delivery of a Certificate of Completion for the Project in accordance with the terms of the Trust Agreement, then the Corporation shall provide the Trustee with a written letter of instruction directing the Trustee as to how to disburse such funds.

(n) Subsequent Actions. If requested by written letters of instructions issued by the Corporation, the Trustee shall establish additional subaccounts of the Project Account to separately account for other funds deposited under the Trust Agreement. To the extent instructed to do so, the Trustee shall accept additional funds or letters of credit and deposit them to appropriate accounts or subaccounts created under the terms of this Trust Agreement, as amended by the First Amendment to the Trust Agreement dated as of October 15, 2013, in accordance with the terms of written letters of instructions issued by the Corporation.

Section 1.2 The Trust Agreement is hereby amended by deleting **Exhibit D** (*Form of Requisition Requesting Disbursement of Project Costs*) to the Trust Agreement in its entirety and inserting in its place the attached **Exhibit D-1** to this Amendment.

ARTICLE II:

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations of the Trustee. The Trustee hereby represents and warrants to the Corporation as follows:

(a) the execution, delivery and performance of this Amendment by the Trustee is within the Trustee's authority and power and has been duly authorized by all necessary action of the Trustee;

(b) the Trustee has full power and legal right to execute and deliver this Amendment and to perform and observe the provisions of this Amendment;

(c) this Amendment is a legal, valid and binding obligation of the Trustee enforceable against such party 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; and

(d) there is no action, proceeding or investigation pending or, to the knowledge of the Trustee, threatened or affecting the Trustee, which may adversely affect the ability of the Trustee to fulfill and perform its respective obligations and other undertakings under this Amendment or the Trust Agreement.

Section 2.2 Representations of the Corporation. The Corporation hereby represents and warrants to the Trustee as follows:

(a) the execution, delivery and performance of this Amendment by the Corporation are within the Corporation's powers, and have been duly authorized by all necessary action on the part of the Corporation;

(b) the Corporation has full power and legal right to execute and deliver this Amendment and to perform and observe the provisions of this Amendment;

(c) this Amendment is a legal, valid and binding obligation of the Corporation enforceable against such party 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; and

(d) there is no action, proceeding or investigation pending or, to the knowledge of the Corporation, threatened or affecting the Corporation, which may adversely affect the ability of the Corporation to fulfill and perform its obligations and other undertakings under this Amendment or the Trust Agreement.

ARTICLE III:

MISCELLANEOUS

Section 3.1 Effective Date; Opinion of Bond Counsel. This Amendment shall be effective as of the Effective Date after its execution by all the parties hereto. Prior to its execution hereof, the Trustee has received an Opinion of Bond Counsel which satisfies the requirements of Section 10.01 (d) of the Trust Agreement.

Section 3.2 Capitalized Terms. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Trust Agreement.

Section 3.3 Prior Agreement Confirmed. Except as otherwise expressly modified by the terms hereof, all of the remaining terms of the Trust Agreement remain in effect and are hereby ratified and affirmed.

Section 3.4 Partial Invalidity. If any section of this Amendment or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Amendment or the application of such Section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section hereof shall be valid and enforceable to the fullest extent permitted by law.

Section 3.5 Time of the Essence. Time is of the essence with respect to all sections of this Amendment.

Section 3.6 Successors and Assigns. This Amendment and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

Section 3.7 Counterparts. This Amendment may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

Section 3.8 Governing Law. **THIS AMENDMENT 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.**

[Signatures and acknowledgements appear on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the Effective Date.

**WELLS FARGO BANK, NATIONAL
ASSOCIATION,**
as Trustee

By: _____
Name: _____
Title: _____

**CITY OF EL PASO DOWNTOWN
DEVELOPMENT CORPORATION**

ATTEST:

By: _____
Richarda Duffy Momsen
Secretary, City of El Paso
Downtown Development Corporation

By: _____
Joyce Wilson,
Executive Director, City of El Paso
Downtown Development Corporation

Approved as to Form:

Approved as to Content:

Sylvia B. Firth
City Attorney, City of El Paso

Carmen Arrieta-Candelaria
Treasurer, City of El Paso
Downtown Development

EXHIBIT D-1

**FORM OF REQUISITION REQUESTING
DISBURSEMENT OF PROJECT COSTS**

Requisition No. _____

**REQUISITION REQUESTING DISBURSEMENT OF PROJECT COSTS FROM THE
PROJECT ACCOUNT ESTABLISHED PURSUANT TO THE TRUST AGREEMENT
RELATING TO THE CITY OF EL PASO, TEXAS DOWNTOWN BALLPARK VENUE
PROJECT FINANCING**

1. The sums requisitioned hereunder are for the payment of obligations incurred with respect to the acquisition, design, construction, improvement, or equipping of the Project, and each item is a proper charge against the referenced Subaccount of the Project Account. Each item identified in paragraph 2 below qualifies as a Project Cost due and payable as provided for in the *Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing*, dated as of August 1, 2013, as amended by the First Amendment to the Trust Agreement dated as of October 15, 2013 (collectively, as amended, the “*Trust Agreement*”) between the **CITY OF EL PASO, TEXAS DOWNTOWN DEVELOPMENT CORPORATION** (the “*Corporation*”) and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (the “*Trustee*”). Terms capitalized but not defined in this Requisition shall have the meaning given such terms in the Trust Agreement.

2. The following sums are requisitioned for payment:

Item No.	Amount	Payee's Invoice No	Name, address of Payee	Purpose

[or attach invoices or a schedule of payees, amounts, and payment delivery information]

OR

2. The City has used available funds to pay for the following Project Costs related to the Series 2013 Bonds and is requesting reimbursement for the payment of such Costs:

[attach invoices or a schedule of payees and amounts]

3. All of the sums requisitioned in this Requisition are to be withdrawn from the following subaccounts of the Project Account in the following amounts:

\$_____ from the Series 2013A Subaccount

\$_____ from the Series 2013B Subaccount

\$_____ from the Club GMP Subaccount

\$_____ from the Club Excess Project Costs Subaccount.

4. To the extent any payment of Project Costs is being requested to be made from the Club GMP Subaccount, the Corporation hereby represents that (i) such Project Costs are attributable to the AIA A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor dated January 8, 2013, as amended (the “**Construction Contract**”) and (ii) at least \$52,545,810 of Project Costs attributable to the Construction Contract have been paid prior to such request for payment from sources other than the Club GMP Subaccount.

5. To the extent any payment of Project Costs is being requested to be made from the Club Excess Project Costs Subaccount, the Corporation hereby represents that either (i) at least \$64 million of Project Costs (excluding Issuance Costs) have been paid prior to such request for payment from sources other than the Club GMP Subaccount or the Club Excess Project Costs Subaccount; or (ii) such payment is otherwise authorized to be made in accordance with the terms of the Development Agreement, as amended or supplemented to the date of such Requisition.

6. To the extent any payment of Project Costs is being requested to be made from the Club GMP Subaccount or the Club Excess Project Costs Subaccount, a copy of this Requisition has been provided to the Club by the Corporation.

7. Check as applicable:

☐ (a) This Requisition is for Project Costs (or to reimburse the City for Project Costs it paid with other available funds) which have not been the basis of a prior or contemporaneous Requisition. None of the amount requested in this Requisition is for retainage (“**Retainage**”) required to be retained under a construction contract related to the Project.

☐ (b) [**Only applicable for final payment under a construction contract**] This Requisition is for Project Costs (or to reimburse the City for Project Costs it paid with other available funds) which have not been the basis of a prior or contemporaneous Requisition. This Requisition includes payment of the retainage (“**Retainage**”) required to be retained under a construction contract related to the Project.

8. The work, material, and equipment or other property covered by this Requisition have been performed or delivered to the Project site or stored off-site as approved and are, to the best of our knowledge and belief, in accordance with all applicable building, zoning, land use, environmental protection, sanitary laws, rules, and regulations, all applicable insurance requirements and the provisions of the related Project construction contract, the Plans and Specifications, and the Trust Agreement. All permits, licenses, and approvals required for the items covered by this Requisition have been properly obtained.

9. Based on information currently available and subject to the accuracy of account balances and earnings projections with respect to the Project Account, the amount remaining in

the Project Account, after payment of the sums requisitioned hereunder, is sufficient to complete the Project.

10. The respective representations of the City and the Corporation contained in the Trust Agreement, are true and correct as of this date, and there is not a material breach of any of the covenants contained therein. The City certifies that, with respect to all items covered by this Requisition, it has complied with the provisions of the Trust Agreement and the related Project construction contract(s). Submitted herewith are certificates or documents, if any, required to be submitted pursuant to the Trust Agreement.

11. The City certifies that it has received all waivers of lien and other certifications and representations required to be provided by the contractor or vendor in the construction contract(s) which is related to the payment of Project Costs being requested to be paid (or for which the City is requesting reimbursement) pursuant to this Requisition.

[12. This is the Final Requisition, and the Certificate of Completion of the City required by Section 6.01(e) of the Lease Agreement is attached.]

**CITY OF EL PASO DOWNTOWN
DEVELOPMENT CORPORATION**

**APPROVED BY THE CITY OF
EL PASO, TEXAS:**

By: _____

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

[Must be signed by Corporation Representative and City Representative]

DRAFT
10/10/13

EXHIBIT G

**FORM OF DRAWING CERTIFICATE FOR
GMP LETTER OF CREDIT**

(See Attached)

[On Trustee Letterhead]

WestStar Bank
500 North Mesa Street
El Paso, Texas 79901-9100

Re: WestStar Bank Letter of Credit No. _____ dated as of October 7, 2013

Ladies and Gentlemen:

Wells Fargo Bank, National Association, as trustee (the “**Trustee**”) under the terms of a Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated as of August 1, 2013, as amended by that First Amendment to the Trust Agreement dated as of October 15, 2013 (collectively, the “**Trust Agreement**”), between the City of El Paso Downtown Development Corporation (the “**Corporation**”) and the Trustee, hereby certifies as follows with respect to that certain Irrevocable Letter of Credit No. _____ dated October 7, 2013 (the “**Letter of Credit**”), which has been established by you for the account of the Applicant in favor of the Trustee:

1. The undersigned is an authorized representative of the Trustee and hereby demands payment in the amount of \$_____ under the Letter of Credit to provide for the payment of Project Costs as specified in Requisition No. _____ which has been submitted to the Trustee by the Corporation.

2. The draft drawn under the Letter of Credit is being made in accordance with the Trust Agreement. Based on representations made by the Corporation, Trustee is authorized to make a partial draw on the Letter of Credit to pay Project Costs required to be paid under AIA A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor dated January 8, 2013, as amended (the “**Construction Contract**”) and at least \$52,545,810 of Project Costs have been previously paid under the Construction Contract.

3. Payment by the Bank pursuant to this drawing shall be made to _____, ABA Number _____, Account Number _____, Attention: _____, Re: _____.

In Witness Whereof, this Certificate has been executed this ____ day of _____, 201__.

Wells Fargo Bank, National Association, as Trustee

By:_____

[Title of Authorized Representative]

EXHIBIT H

**FORM OF REDUCTION CERTIFICATE
(LETTER OF CREDIT)**

Reduction Certificate

[Issuing Bank]

Re: Letter of Credit No. _____

Ladies and Gentlemen:

Wells Fargo Bank, National Association, as trustee (the “**Trustee**”) under the terms of a Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated as of August 1, 2013, as amended by the First Amendment to the Trust Agreement dated as of October 15, 2013 (collectively, the “**Trust Agreement**”), between the City of El Paso Downtown Development Corporation (the “**Corporation**”) and the Trustee, hereby certifies as follows with respect to that certain Irrevocable Letter of Credit No. _____ dated _____ (the “**Letter of Credit**”), which has been established by you for the account of the Applicant in favor of the Trustee:

1. Upon receipt of this Certificate by you, the Issuing Bank, the available amount of the Letter of Credit (the “**Available Amount**”) should be reduced by \$_____, and thereafter the Available Amount on the Letter of Credit shall equal \$_____.

2. The amount of the reduction in the Available Amount has been computed in accordance with the provisions of the Trust Agreement and agreed to by the Corporation as represented by its execution of this Certificate below.

In Witness Whereof, this Certificate has been executed this _____ day of _____, 201__.

Wells Fargo Bank, National Association, as Trustee

By: _____
Name:
Title:

Agreed to by the City of El Paso Downtown Development Corporation

By: _____
Name:
Title: