

## FACILITY MANAGEMENT AGREEMENT

THIS FACILITY MANAGEMENT AND TOURISM AGREEMENT ("**Agreement**") is made and entered into effective this 12<sup>th</sup> day of July 2021 by and between EL PASO SPORTS COMMISSION, a Texas non-profit corporation ("**Manager**"), and the County of El Paso, Texas, a political subdivision of the State of Texas ("**County**").

### RECITALS

1. **WHEREAS**, County owns the real property in El Paso, Texas, graphically depicted in **Exhibit B** attached hereto including, without limitation, the indoor arena facilities, including the Events Center and the Judging Area known as the "El Paso County Coliseum," the Hockey Events Center with all facilities, machinery, attachments, and appurtenances attaching thereto, which shall hereafter be referred to as the "Facilities."
2. **WHEREAS**, Manager has operated the Facilities for County since 2003 for the purpose of providing a vehicle for marketing, soliciting, and conducting direct out-of-town tourist promotion and advertising and conducting public relations activities for sporting events, concerts, dances, tournaments, and other gatherings and to maximize the use of the Facilities and other county tourism facilities and through such advertising and promotion, bring visitors to El Paso County. Manager has also operated the El Paso Sports Commission Tourist Promotion Program since 2011 for the purpose of promoting sporting tournaments, with an emphasis on youth amateur sports, and other events to bring tourists and visitors to El Paso County ("**Tourist Promotion Program**").
3. **WHEREAS**, County has selected Manager to provide such services for the benefit of the County of El Paso, under new terms, as provided in this Agreement; and
4. **WHEREAS** Manager holds itself out as an organization whose principals have substantial experience and expertise in the tourism industry and the management, operation and marketing of the Facilities; and
5. **WHEREAS**, County has determined to grant to Manager, and Manager has agreed to accept, authority and responsibility to manage, operate and market the Facilities within the terms of this Agreement and continue the Tourist Promotion Program under the terms of a separate agreement

The Parties accordingly agree as follows:

## AGREEMENT

### ARTICLE I

## DEFINITIONS

The following words shall, unless the context otherwise requires, have the meanings ascribed to them below.

“Affiliate” of a specified person means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person. This includes but is not limited to for-profit and non-profit subsidiaries, including the Manager’s subsidiary, El Paso Events, Inc. Without limiting the forgoing, such term shall include any entity for which any officer of Manager serves as an officer thereof, or any entity for which a member of Manager’s governing body serves on the governing body thereof.

“Advertising” shall include, without limitation, all announcements, acknowledgments, banners, signs, showbills, promotional materials, handouts and promotional product sampling giveaways, and other audio or visual commercial messages displayed, announced or otherwise presented in the Facilities including, without limitation, video messages.

“Agreement” shall mean this Facility Management and Tourism Agreement.

“Authorized Representative” shall mean the person or persons named in Section 2.4, acting within the scope of authority given such person by the Party on whose behalf they act.

“Authorized Project” shall have the meaning assigned to it in Section 3 of this Agreement.

“Authorizing Legislation” shall mean Chapter 352 of the Texas Tax Code.

“Base Revenue Target” shall mean the minimum amount the Manager is expected to generate in Net Revenue annually for operating the Facilities. The Base Revenue Target shall be TWO HUNDRED AND SEVENTY-FIVE THOUSAND AND 0/100 DOLLARS (\$275,000) for the first year of the Agreement, THREE HUNDRED AND SEVENTY-FIVE THOUSAND AND 0/100 DOLLARS \$375,000 for the second year of the agreement, and FOUR HUNDRED THOUSAND AND 0/100 DOLLARS \$400,000 for the third year of the Agreement, if the Agreement is renewed for a third year, as provided in Section 2.4

“Budget” shall mean any budget to be prepared by Manager under the provisions of Article 4.

“Capital Expenditure(s)” shall mean all expenditures for building additions, alterations or improvements, to include purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to generally accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year. Each Budget shall set forth the anticipated Capital Expenditures to be made during the Fiscal Year to which the Budget relates and the five (5) and ten (10) year Capital Expenditures forecast.

“Commissioners Court” shall mean the Commissioners Court of the County of El Paso, Texas.

"County" shall have the meaning assigned to it in the opening paragraph of this Agreement.

"County Administrator" shall mean the person appointed by the Commissioners Court to oversee the administrative functions of the County. The County Administrator may delegate her authority under this contract.

"Commencement Date" shall be July 12, 2021.

"Depository" shall mean the place in which the Manager shall maintain its bank accounts for the funds required to be maintained under this Agreement.

"Event(s)" shall mean all revenue or nonrevenue producing entertainment, cultural, religious, governmental, civic and all other activities and events which are conducted at or on behalf of the Facility.

"Facility" or "Facilities" shall mean collectively the real property in El Paso, Texas, graphically depicted in **Exhibit B** attached hereto including, without limitation, parking lots, the indoor arena facilities, including the Events Center, Hockey Event Center, and the Judging Area known as the "El Paso County Coliseum," with all facilities, machinery, attachments, and appurtenances attaching thereto, and any other facilities of the County which are managed by the Manager.

"Fiscal Year" shall mean a period of twelve (12) months' time beginning on October 1 and ending on the immediately following September 30, inclusive, or such other fiscal year as shall be established from time to time by County.

"Food and Beverage Services" shall mean the operation of all food, beverage, and catering services at all Facilities defined in and covered under the Agreement.

"Governmental Entities" shall mean the federal government, the State of Texas, the City and County of El Paso, or any county, municipality (or any entity created by a municipality), governmental" or quasi-governmental entities, including the Local Health Authority of El Paso, having jurisdiction or other authority over the Manager.

"Hotel Occupancy Tax Revenue" shall mean the money paid by County to Manager from the hotel occupancy tax imposed and collected by County in accordance with the Authorizing Legislation.

"Incentive Fees" shall mean those fees payable to Manager under Section 8.3.

"Intellectual Property Rights" shall mean any and all rights existing from time to time in a specified jurisdiction under patent law, copyright law, moral rights law, trade-secret law, semiconductor chip protection law, trademark law, unfair competition law, or other similar rights.

"Management Fees" shall mean those fees payable to Manager under Section 8.1.

"Manager" shall have the meaning assigned to it in the opening paragraph of this Agreement.

"Marketing Plan" shall have the meaning assigned to it in Section 3.6.

"Material Breach" shall have the meaning provided in Section 11.1

"Material Contract" shall be those contracts which have a term that extends beyond the term of this Agreement and which may not be cancelled by Manager or County without penalty or premium, payable to such Person.

"Net Revenues" shall mean Operating Revenues minus any portion of such Operating Revenues which is used to pay Operating Expenses.

"Non-profit Organization" is any organization that qualifies for non-profit status under the United States Internal Revenue Code of 1986. and for purposes of Incentive Fees is defined as supporting the mission of non-profits through the use of venues at a discounted rate in which the non-profit is at risk for the success or failure of the event and the proceeds of the event..

"Operating Expenses" shall mean only expenses authorized by Chapter 352 of the Texas Tax Code. Operating Expenses shall exclude any loss or damage suffered by Manager or its Authorized Representatives as a result of (1) any uninsured negligent act or omission of Manager; (2) any act or omission of Manager not in good faith or involving gross negligence, or intentional misconduct; (3) subject to the provisions of Section 3.3, a knowing violation of law, except that in the case of a strict liability law, any violation thereof; (4) any transaction from which Manager derives an improper personal benefit; or (5) any Material Breach on the part of Manager. Furthermore, Operating Expenses shall exclude the salaries, health insurance, and worker's compensation insurance of the Manager, which shall be paid using the Management Fee.

"Operating Expenses Allowance" shall have the meaning provided in Section 8.2

"Operating Revenues" shall mean all gross receipts (including, without limitation, seat user fees and surcharges), revenues, income, and cash received or collected, as determined on an accrual basis, by Manager (1) for the use of, operation, or admission to, the Facilities or any portions thereof; (2) for the right to sell, or in respect of the sale of, any product or advertising in or involving the Facilities including all rents, royalties, and concessions from tenants, Food and Beverage Services revenues, concessionaires, and licensees, as applicable; (3) solely from interest on or proceeds of investment of any accounts required to be maintained under Article 6, and expressly excluding the interest or proceeds from any other funds maintained by County in a separate account; (4) for rental or use of any Facility; (5) for sale of personal seat licenses, and the sale or licensing of naming rights; (6) as fees for services rendered at or by the Facility, including parking; (7) from the Hotel Occupancy Tax Revenues; and (8) from marquee advertising revenue; but excluding in all events, sums received or collected by Manager for and on behalf of and actually paid to a user of the Facilities.

"Party" or "Parties" refers to the parties to this Agreement.

"Person" means a natural person, a corporation (for profit or not-for-profit), an association, a

partnership (general or limited), a joint venture, a trust, a government or political department, subdivision, or agency, or any other entity.

"Prompt Payment" means payment in accordance with prudent business practices, and in compliance with Chapter 2251 of the Texas Government Code, as amended, or successor statute ("Prompt Payment Act").

"Rates and Charges" shall mean those standard fees, rates and charges to be charged to the public for use of the Facilities, depending on the type of use category. In no event shall any category of use apply to only one specific user of the Facilities, either in theory or in practice. The initial Rates and Charges will be attached hereto as Exhibit C within 30 days of the Commencement Date and shall be updated or changed from time to time by the Commissioners Court of the County.

"Sponsorship Funds" shall have the meaning assigned to it in Section 3 of this Agreement.

Other terms defined within this Agreement have the meanings given to them.

## ARTICLE 2

### INTRODUCTION

2.1 Grant of Authority. County hereby grants to Manager, and Manager hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of County, to provide those management and tourism services to County as are set forth in this Agreement in connection with Manager's management, operation, marketing and administration of the Facilities, and in connection therewith, to perform or furnish or cause to be performed or furnished, subject to the provisions hereof, and subject to the availability of funds, all of such services upon the terms and subject to the limitations of this Agreement. Manager and County acknowledge and agree that Manager shall retain control of the Facilities as the manager, administrator and operator thereof pursuant to this Agreement, but, subject to the limitations set forth in this Agreement, that Manager may delegate certain specific and limited responsibilities related to the management, operation, marketing and administration of the Facilities to third parties, but shall retain the exclusive authority with respect to the management, operation, marketing and administration of the Facilities.

2.2 Exclusion of Affiliate from Facility Matters. In an effort to ensure compliance with the Guidelines, as defined in Section 12.19, Manager agrees to exclude any Affiliates from conducting business relating in any way to the Facility, effective 90 days from the Effective Date. This includes, but is not limited to, the management, operation, marketing, and administration of the Facilities.

2.3 Nature of Relationship. The parties hereto agree that the only relationship created by this Agreement is that between County, as owner of the Facilities, and Manager, as an independent contractor, for certain management and tourism assigned to Manager by County and that Manager is an independent contractor, not an agent, employee, joint venturer or partner of County. Neither Party shall be subject to any obligations or liabilities of the other Party or its employees, or agents, incurred in the performance of this Agreement, unless expressly authorized herein. Manager is an independent

contractor, and nothing contained in this Agreement shall constitute or designate Manager or any of its employees as employees of County. Neither Manager nor its employees shall be entitled to any of the benefits established for employees of the County, nor be covered by the County's Workers' Compensation Program.

#### 2.4 Term.

- (a) The term of this Agreement (the "Term") shall commence as of the Commencement Date and shall expire for any and all purposes, unless terminated earlier under the terms of this Agreement, on September 30, 2023. If the Manager is able to meet or exceed the Base Revenue Target in the second year of this Agreement, from October 1, 2022 through September 30, 2023 the contract shall automatically renew for an additional twelve (12) months on October 1, 2023 and shall terminate on September 30, 2024. If the Manager is unable to meet the Base Revenue Target in the second year of this Agreement, the County may allow this Agreement to expire on September 30, 2023, may terminate as allowed in this Agreement, or may exercise an option to renew this Agreement for one additional year, upon written approval by both Parties. Notwithstanding anything to the contrary, the Term shall not be extended, except as provided in this Section 2.4(a), or as otherwise agreed to in writing by the parties.
- (b) Contract Administration. County hereby appoints its County Administrator as Contract Administrator and Authorized Representative and Manager hereby appoints El Paso Sports Commission's President as its Authorized Representative. Each Authorized Representative shall act as liaison and contact person between the Parties in matters concerning the administration of this Agreement. Each Party shall have the right to designate a substitute Authorized Representative by providing written notice to the other Party. If either Party desires to do any act hereunder which requires the other Party's approval, such request shall be submitted in writing to the other Party's Authorized Representative. The Authorized Representative, or authorized substitute, shall respond to such request within fifteen (15) days after receipt, or, if there is no response within the fifteen (15) day period, the request will be deemed approved.

### ARTICLE 3

#### RESPONSIBILITIES OF MANAGER

3.1 Standard of Care. Subject to the limitations set forth in this Agreement and the Budget, Manager shall exercise its diligent, good faith efforts in managing and operating the Facilities with the goal to optimize Operating Expenses and maximize Operating Revenues. In this connection, the parties agree that Manager, in establishing and implementing its booking policies, may schedule not only those events that generate substantial direct revenue to the Facilities, but also those events that produce less direct revenue but, in Manager's good faith judgment, generate either a significant economic, cultural, educational or other benefit to County or otherwise serve the public interest; provided that (i) subject to Section 3.6(v) no use of the Facilities shall be permitted without imposing the Rates and Charges established herein, and, (ii) Hotel Occupancy Tax Revenue may only be expended in accordance with Chapter 352 of the Texas Tax Code .

Manager shall perform its obligations hereunder in conformity with the reasonable standard to which an operator of a comparable multi-purpose public entertainment facility providing the services described

hereunder would operate, given the limitations of the Budget and other limitations herein.

3.2 Duty and Liability. Manager shall owe to County a duty to perform its obligations under this Agreement and to conduct the management and operation of the Facilities at all times with integrity and good faith and in a manner which is in the best interests of the Facilities and the County and consistent with the terms of this Agreement.

3.3 Compliance with the Law: Duty. Manager shall comply with all applicable laws, rules, regulations, ordinances relating to the use and operation of the Facilities and, in particular, any regulations or ordinances regulating the allocation of the Hotel Occupancy Tax Revenues. Additionally, Manager shall comply, and shall ensure third party compliance, with applicable laws, ordinances, rules and regulations relating to all operations, including, but not limited to, sanitation, safety and health, and shall maintain, and shall ensure third party maintenance of, all necessary licenses and permits, including any necessary liquor licenses and permits which shall be Manager's responsibility to obtain and maintain. County shall cooperate with Manager to accomplish the foregoing.

3.4 Taxes. Manager shall bill and collect, or shall cause to be billed and collected, all required sales and use taxes on all meals, drinks, and other services rendered on or from the Facilities and, where applicable, shall require any lessees, or contractors, to collect all required sales and use taxes on all meals, drinks, and other services rendered on or from the Facilities. If the parties disagree as to taxability of any meals or services, Manager shall promptly obtain a ruling from the appropriate governmental authority. Manager shall indemnify County against any liability or assessment, including related interest and penalties, arising from a tax assessment and shall pay reasonable collection expenses, attorney's fees and costs incurred in connection with the enforcement of such indemnity. This provision shall survive termination of the Agreement.

3.5 Funding Limitations. Notwithstanding anything to the contrary set forth in this Agreement, County recognizes and agrees that performance by Manager of its responsibilities under this Article 3 and otherwise under this Agreement is in all respects subject to and expressly conditioned upon County's provision of funds to Manager for such purposes as herein provided including, without limitation, funding of adequate Hotel Occupancy Tax Revenues necessary to pay all Operating Expenses and Capital Expenditures, in addition to the Management Fees payable to Manager hereunder, to enable Manager to fulfill such responsibilities, and in all respects is limited by the Rates and Charges and Budgets approved by County from time to time. In the event of such funding limitations, and absent a contractual default by Manager, Manager shall be excused from the performance of any duty, responsibility or obligation under this Article 3 or otherwise under this Agreement, except to the extent that the Manager will be responsible for all surrender of funds and property related to the Facilities, as provided in this Agreement, and shall not be deemed in default for such period of time as such performance is prevented by a funding limitation of the County. In the event of such funding limitations, Section 10.5 (Contingent Funding Availability Termination Clause) shall apply.

3.6 Management Duties and Responsibilities. Subject to the limitations set forth in this Agreement and the Budget, Manager, or a person or persons designated by Manager, shall perform the following services (or cause the same to be performed) throughout the Term hereof:

- (a) Manage and operate the Facilities. Toward that end, Manager shall market, solicit, and conduct direct out-of-town tourist promotion and advertising and conduct public relations activities for sporting events, concerts, dances, tournaments, and other gatherings with the goal to maximize the use of the Facilities. All funds received by Manager for the Operating Expenses which remain unspent at the close of any Fiscal Year, may be expended by Manager only in furtherance of this Agreement and may not be spent for any of Manager's

activities not included within the scope of this Agreement, or as additional compensation in addition to the Management Fee. Such unspent funds shall be held in a Depository for use only for future Operating Expenses, in accordance with Section 8.2 (Operating Expenses).

(b) Manage and operate the Facilities and any facilities ancillary thereto (such as parking facilities) and impose Rates and Charges, subject to Section 3.6(v)) for their use in a manner that will promote and ~~fulfill~~ the purposes for which the Facilities was constructed, as set forth in the Recitals to this Agreement.

(c) Prepare and present a marketing plan (the "Marketing Plan") for review and approval by the El Paso County Commissioners Court, as contemplated in Article 5 setting forth the services to be performed by Manager including the following:

(i) market, solicit, advertise, and conduct public relations activities for conventions, tourism, and other gatherings to maximize use of the Facilities;

(ii) service conventions, music and film events, special events and other meetings for the Facilities; and

(d) Negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (a) with persons or organizations who/that desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Facility or who desire otherwise to use the Facility or any part thereof or (b) that otherwise pertain to the use, operation and occupancy of the Facility or any part thereof, subject to the limitations set forth herein.

(e) Solicit, prepare, negotiate and execute multi-use agreements requiring significant advance booking, except that no agreements to use the Facility shall extend beyond the end of the Term of this Agreement without the written consent of the County.

(f) Use any trade or service marks of the County in connection with its performance of the work; provided that the Manager shall first confirm with the County whether any particular mark is, in fact, a mark that the County is authorized to use. The Manager acknowledges that the County has adopted logos and trademarks, which may be used on Manager's stationery, bulletins, displays, posters and media and press releases.

(g) Negotiate, execute and perform all contracts, licenses and other agreements with all sub-contractors, including, but not limited to, public relations firms, advertising agencies and concessionaires selected by Manager for the provision of services including, but not limited to, public relations, advertising and the sale of food, beverages, souvenirs, novelties and programs.

(h) Select, schedule, and coordinate the efforts of all parties involved in the operation of the Facilities and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article 4.



(i) Plan, coordinate, and administer operation of the Facilities and continue to identify, select, and train the Facilities staff.

(j) Retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with the County Attorney where necessary or appropriate.

(k) Coordinate the work of all parties performing work in connection with the operation of the Facilities.

(l) Monitor actual and projected Operating Expenses, advise County if projected costs exceed the amounts set forth in the Budgets, and, upon County's request, submit to County proposals for the increase in Rates and Charges and/or reduction of expenses to within Budget amounts, but only if such increases or reductions are operationally feasible;

(m) Pay, within 60 days of receipt, all undisputed invoices, contract payments, or other financial obligations regarding the operation of the Facilities.

(n) Devise and implement procedures submitted to the Authorized Representative for review that are reasonably designed to keep the Facility in good order and condition, subject to ordinary wear and tear, and maintain the Facility in such order and condition;

(o) Attend regular meetings with County quarterly, or as otherwise reasonably requested by County, to facilitate communications and coordination of activities relating to the Facilities ;

(p) Prepare and present no later than March 2022 a status report ("Status Report") for the El Paso County Commissioners Courts, to include the progress of the implementation of the Marketing Plan, an update on how Facility events are impacting local tourism, and a general update on the operation of the Facility. Additionally, manager shall provide such Status Report annually in March and any other time as requested by the El Paso County Commissioners Court, upon reasonable notice;

(q) Within 60 days of this the Commencement Date, create and implement a system ("Hotel Event Information System") whereby all local hotels will be informed of all events held at the Facility, including contact information for the event organizers, within a reasonable time after the Manager confirms the event. Additionally, Manager will provide all event organizers with a list of all local hotels ahead of the event in an effort to maximize occupancy in local hotel rooms. Such supporting documentation shall also be included in the Status Report.

(r) Solicit, prepare, negotiate and execute production agreements with international, national and/or local event producers with the goal to maximize the utilization of the Facility;

(s) Recommend and supervise the implementation of a project reporting system with respect to marketing, finance and operational requirements;

(t) Cooperate with and assist County in the procurement of all facility improvements

and new furniture, fixtures and equipment for the Facilities, if any, subject to the applicable limitations of the Budget;

(u) Prepare, recommend and implement operating policies and procedures, including financial and clerical policies, and rules and regulations for the Facilities, as approved by County, which shall not be unreasonably withheld or delayed;

(v) Within 30 days of the Commencement Date, propose schedules of Rates and Charges for the use of the Facility, which may be revised or amended from time to time by the Commissioners Court of the County, with the understanding of County that the rental rate for particular events may be negotiated by Manager from time to time and thus may differ from the established rental rate schedule, subject to the Guidelines established by the Treasury. Manager shall communicate any variations from the Rates and Charges in its quarterly meeting with the County and shall include any variations from the Rates and Charges in its Status Report. The County shall review such variations for compliance with the Guidelines as established by the Treasury.

(w) Implement a financial accounting system for the Facilities as provided to the El Paso County Auditor for review and approval;

(x) Purchase equipment, materials, supplies and inventories necessary for the operation of the Facilities through vendors selected by Manager, subject to applicable law and subject to Section 7.4 of this Agreement.

(y) Provide and coordinate ticketing and box office services for Events at the Facilities through the ticket concessionaire selected by Manager, subject to the provisions of Section 2.2 hereof.

(z) Provide and coordinate risk management services for the Facilities with respect to the insurance to be provided by Manager under Section 9.2 of this Agreement, and in connection therewith, advise County of insurable risks that County may choose to insure, in its sole discretion.

(aa) Plan, coordinate and administer the operation of security and crowd control services at the Facility.

(bb) Conduct a preliminary operations and engineering assessment of the Facility in order to prioritize any items that may require immediate attention, including identifying potential compliance issues with respect to the Americans with Disabilities Act.

(cc) Monitor energy consumption at the Facility and coordinate efforts to minimize such energy consumption and thus maximize energy conservation;

(dd) Perform such other consulting, administrative, management and tourism services, as applicable, relating to the Facilities as reasonably requested by County; and

(ee) Furnish all services necessary to accomplish the foregoing requirements of this Section 3.6.

(ff) Solicit and acquire title sponsors and underwriters for the Facilities.

Notwithstanding any other provision of this Agreement, Manager shall have the exclusive right to solicit and acquire title sponsors and underwriters for the Facilities. All funds (“**Sponsorship Funds**”) from title sponsors or underwriters shall be deposited within five (5) working days of receipt to the El Paso County Auditor. The Auditor shall split the Sponsorship Funds as follows (a) County shall keep 30% of the Sponsorship Funds; and (b) County shall pay to Manager 70% of the Sponsorship Funds (“**Manager Sponsorship Funds**”), within ten (10) business days of receipt, such funds to be segregated in a separate account, to be used by Manager for the exclusive purpose of repairing or demolishing existing structures and improvements or constructing new structures or improvements at the Facilities (an “**Authorized Project**”). When Manager wishes to expend Manager Sponsorship Funds, a construction budget and schedule detailing the proposed use of such funds for an Authorized Project shall be presented to the County for approval of the Authorized Project. All Sponsorship Funds shall be counted as Facilities Net Revenues in the fiscal year received by Manager. Any unused Manager Sponsorship Funds shall be remitted to the County upon termination of the Agreement.

(gg) Performance Bond. Within thirty (30) days of the execution of this Agreement by both parties, Manager shall purchase, and provide to the County, a performance bond in the amount of \$100,000.00 to secure its performance pursuant to this Agreement. The performance bond will be in the form of a bond executed by a surety company authorized by the Texas Insurance Commission to do business in Texas and acceptable to County, or in the form of an Irrevocable Letter of Credit, issued by a financial institution acceptable to County. A surety company acceptable to County will be licensed in the State of Texas and will have been in business with a record of successful continuous operation for at least five (5) years in the State of Texas. The surety company will not expose itself to any loss, on anyone risk in an amount exceeding ten percent (10%) of its surplus, to policy holders, provided any risk, or portion of any risk, will have been reinsured and such reinsurance will be deducted in determining the limitation of applicable risk. If at any time The County, for justifiable cause, will be or become dissatisfied with any Surety or Sureties upon the Performance bond, Manager will within five (5) consecutive calendar days after notice from County to do so, substitute as acceptable bond (or bonds) in such form and sum and signed by such other Surety or Sureties as may be satisfactory to County.

(hh) Meet or exceed the Base Revenue Target and submit all Net Revenues to the County on an ongoing basis throughout the year, as Net Revenue is received by Manager.

3.7 Violation of any provision of this Section 3 shall constitute a Material Breach of this Agreement, as provided in Section 11.1.

#### ARTICLE 4

##### RECORDS, ACCOUNTS AND REPORTS

4.1 Books. Manager shall maintain adequate books of account with respect to its management and operation of the Facilities in accordance with generally accepted accounting principles and industry standards, including any variations required by applicable state law to the extent applicable to the Facilities, and as may otherwise be reasonably requested by County.

4.2 Access to Information. County shall have the right to obtain from Manager, at any time upon reasonable prior notice, but not later than 14 calendar days after such request, such information and to inspect such books and records concerning the management and operation of the Facilities as may be reasonably necessary to inform County concerning the Facilities and its operations.

4.3 Audit of Facility Operations.

(a) Monthly audit reports - Within 15 calendar days after the end of each month, Manager shall furnish to County a report ("Report") regarding the Facilities financial performance during the prior month, including all Operating Expenses and Operating Revenues. The Report shall be substantially in the form mutually agreed to by the parties. Manager shall also submit to the County the following reports: (1) all bank statements and reconciliations on all of Manager's bank accounts and credit card statements, (2) Credit Card statements, (3) attraction reports; (4) Excel Hotel Occupancy Tax Fund expense control sheet, showing all expenses paid by HOT funds for the month, and (5) copies of all concession commission payments. Said reports shall conform to the reporting requirements as prescribed by the El Paso County Auditor in writing, additional supportive documentation for deposits and expenses will be requested for audit samples including, but not limited to, copies of all invoices, payments, contract payments, and payroll payments made by Contractor during the month. Requested supportive documentation shall be submitted to the County within ten business days of the request. The County may request additional monthly audit reports, as needed to ensure compliance with federal, state, and local laws, including federal tax laws.

(b) Annual audit report - Not later than one hundred and twenty (120) days after the end of each fiscal year, Manager shall furnish to County, a balance sheet, a statement of the profit or loss and a statement of changes in financial condition for the Facilities, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm selected by Manager. All costs incurred in complying with this Section shall be Operating Expenses.

4.4 General Audit Right of the Facilities Operations. Notwithstanding anything to the contrary in this Agreement, County shall have the right to conduct a financial, operational, and/or compliance audit, at its sole cost and expense, at any time during Manager's normal business hours, of the books and records of Manager related to this Agreement, including but not limited to any event or other expense that the Manager has in relation to the Facilities. Manager shall account separately for the receipts and expenditures related to each of the following activities: (A) the Manager, (B) the Facilities, including but not limited to rent, parking, commissions, concessions, ticket sales, and all other revenue and (C) other services performed upon County's reasonable request. The Manager shall make the records relating to the handling and expenditure of funds under this Agreement available to the County's Authorized Representative or a person designated by County, excluding Manager's competitors or potential competitors, subject to the provisions of Section 4.8.

4.5 Capital Improvements Budgets. Manager shall submit to County a Budget for projected Capital Expenditures for each Fiscal Year. The budget shall be subject to the procedures customarily employed by County in connection with the development, approval, and implementation of capital budgets. In addition, if Manager at any time becomes aware of any condition that jeopardizes the structural soundness or operational capability of the Facility, or the public safety, Manager shall so advise County in writing, and shall include recommendations for remedial action to the extent practical in such situation. County shall, within such time as is reasonable under the circumstances if same are made available by Commissioners Court, make available the funds (each an "Emergency Expenditure") necessary to correct such condition if such funds have not been allocated in the Budget; provided, however, that Manager shall have the right to expend any available funds to prevent or attempt to prevent or mitigate an imminent danger of damage to

property or injury or death to persons. Failure of County to provide such Emergency Expenditures, if such funds are not otherwise available in the Budget, shall relieve Manager of all liability relating to or arising from such conditions; provided, however, that the foregoing shall not be interpreted to obligate County to indemnify Manager from any third-party claims and costs.

- 4.6 Annual Operating Budget. Manager shall submit an annual operating budget for each Fiscal Year. The budget shall be subject to the procedures customarily employed by County in connection with the development, approval, and implementation of operating budgets. Manager may at any time submit to County for its approval amendments to a Budget to reflect unanticipated revenues or expenses or other changes. The annual operating budget shall be consistent with the Marketing Plan.
- 4.7 Budget Approval. County shall review within ten days, all proposed Budgets and any amendments thereto which are submitted by Manager and shall promptly communicate to Manager any comments or suggested revisions thereto. Final approval of any Budget shall be completed in accordance with procedures applicable to other comparable County budgets, and must include approval by the El Paso County Commissioners Court. In the event Manager would like to amend the Budget, it shall submit such request to County in writing. Such budget amendment will be considered for approval by the El Paso County Commissioners Court. The Parties agree to negotiate all Budget matters in good faith and to meet as often as may be necessary following submission of the outstanding Budget to resolve any outstanding Budget issues. Notwithstanding the Parties' good faith efforts, if a proposed Budget has not been approved prior to the first day of the period to which it relates, the Budget for the previous period shall continue to control.
- 4.8 Texas Public Information Act. Notwithstanding anything to the contrary in the Agreement, the Parties acknowledge and agree that County is a political subdivision of the State of Texas. As such, County is subject to the requirements of the Texas Public Information Act, Government Code Chapter 552. In the event that County receives a request for information that is confidential, or a trade secret, under the Agreement, County will provide Applicant an opportunity to enforce its privacy rights pursuant to section 552.305 of the Texas Government Code or other relevant law. If County receives a public information request affecting Applicant's confidential information or trade secrets under this Agreement, County will submit a request to the Texas Attorney General to withhold such information. County will also provide reasonable notice to Applicant so that Applicant may submit a brief to the Texas Attorney General on its own behalf.

## ARTICLE 5

### MARKETING PLAN

- 5.1 Marketing Plan. A written marketing plan shall be submitted by Manager to County Administrator or his/her designee each year by June 30<sup>th</sup> of said year. The marketing plan for the first year of this Agreement shall be submitted within 90 days of the Effective Date. The Marketing plan will be reviewed by the El Paso County Commissioners Court and will require approval by the El Paso County Commissioners Court within a reasonable time period after submittal.
- 5.2 Marketing Plan Criteria. The marketing of the Facilities and all marketing plans shall be consistent with the following requirements:

(a) The marketing plans shall be consistent with the required allocation of uses of "Tax Collections" as set forth in the Authorizing Legislation and applicable County policies.

(b) The El Paso County Commissioners Court shall have authority to approve each marketing plan and shall retain the exclusive right to approve subsequent revisions to the same.

(c) The marketing plan shall include, but not be limited to, a description of the proposed program of action for the upcoming Fiscal Year. It shall contain a specific numerical goal regarding the bookings for the Facilities and quantifiable goals against which success may be measured. In addition, the annual operating Budget submitted by Manager shall be presented in such a way as to associate direct costs, where applicable, to the programs presented in the marketing plan. The marketing plan shall contain marketing goals and programs relating to the Facilities. In addition, the marketing plan shall include tourism, and sports marketing goals and programs. Upon approval of the marketing plan by the El Paso County Commissioners Court, Manager shall implement the plan and allocate funds within budgeted limits without further action on the part of County.

## ARTICLE 6

### REMITTANCE OF ALL FACILITIES AND PROGRAM REVENUES TO THE COUNTY AND HOTEL TAX REVENUE SEGREGATED ACCOUNTING AND DEPOSIT PROCEDURES.

- 6.1 Facility and Program Revenue Deposits. Net Revenues shall be deposited to the County in accordance with the procedures submitted by the Manager to the El Paso County Auditor and approved by the El Paso County Auditor in writing, and in no event shall said revenues be deposited to the County later than five (5) working days after receipt of such revenues.
- 6.2 Hotel Tax Funds Segregation. All Hotel Occupancy Tax funds shall be segregated by Manager in a separate banking account at all times while within Manager's care, custody, and control in accordance with Texas Tax Code Chapter 352. Manager shall assume a fiduciary duty with regard to all Facility and program revenues until they are deposited to the County. Manager acknowledges that the funds provided by the County pursuant to this agreement for the Management Fee and the Operating Expenses Allowance are Hotel Occupancy Tax revenues which shall be expended only for the purposes authorized by Chapter 352 of the Texas Tax Code. Manager shall indemnify and reimburse the County for any and all hotel tax revenues which are not expended pursuant to Chapter 352 of the Texas Tax Code. All hotel tax revenues shall be segregated in a separate bank account from all other funds of Manager from any other source, including any incentive fees paid hereunder. Manager shall assume a fiduciary duty with regard to all hotel tax revenues received hereunder.
- 6.3 Indemnification for Unlawful Expenditure of Hotel Occupancy Tax Revenues. Manager shall indemnify and reimburse the County for any and all Hotel Occupancy Tax Revenues which are not expended pursuant to Chapter 352 of the Texas Tax Code. Upon Manager discovering or upon notice from County that Hotel Occupancy Tax Revenues were not expended pursuant to Chapter 352 of the Texas Tax Code, Manager shall reimburse County within 10 business days of such discovery or notification.
- 6.4 Hotel Occupancy Tax Revenue Statute Violations Grounds for Material Breach. Violation of the expenditure and fund segregation requirements of Texas Tax Code Chapter 352 shall constitute a material breach of this Agreement.
- 6.5 Violation of this Article. Violation of any provision of this Article 6 shall constitute a material breach of this Agreement.

## ARTICLE 7

### POWER AND FUNCTIONS

- 7.1 Sale of Property. Manager shall have no authority to sell or otherwise dispose of, or to encumber or alienate any personal or real property owned by County, without the prior written consent of County.
- 7.2 Contracts. Manager shall have no authority, without the prior written consent of County, to enter into Material Contracts that extend past the end date of this Agreement. All contracts entered into by Manager shall provide that the same are for the benefit of County and are assignable to County without the other contracting party's prior consent and, notwithstanding any contrary provision hereof, upon termination of this Agreement for any reason, Manager agrees that County shall have the right to and County shall assume in writing any or all then outstanding contracts (i.e., all Material Contracts and all other contracts entered into by Manager to the extent that they are consistent with the then existing Budget) affecting the Facilities. Manager shall reduce to writing all agreements entered into by Manager regarding the scope of services to be performed hereunder clearly stating the rights and obligations of each party thereto. This provision applies to all legally binding agreements, including, but not limited to, concession agreements, and facility use agreements. All agreements shall have defined payment terms. All Material Contracts shall be presented to the County prior to their execution by Manager for approval by the El Paso County Commissioners Court.
- 7.3 Employees. Employees now or hereafter hired by Manager in connection with the management services provided by Manager shall be employees of Manager and not of County. Manager shall submit all job descriptions of its employees and all employment expenses to the El Paso County Auditor for review and approval. Additionally, in the event that the County identifies employment expenses outside of normal salary and allowable benefits, the County may request and the Manager shall submit the relevant part of the employment contract relating to such expenses upon request as substantiation for the expense. Upon Manager discovering or upon notice from County that Hotel Occupancy Tax Revenues were not expended pursuant to Chapter 352 of the Texas Tax Code, Manager shall reimburse County within 10 business days of such discovery or notification.
- 7.4 Purchase of Supplies and Services. Subject to the limitations set forth in this Agreement and applicable law, if any, regulating the purchase of goods and services by County or other governmental authorities, Manager shall have full authority and discretion as to the purchase of all equipment, materials, supplies and inventories, and services reasonably required by it in the management of the Facilities but shall make a good faith effort to make all such purchases at the best price available as known to Manager, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by Manager.
- Manager agrees to publicly advertise and solicit one or more competitive bids from Persons, but not including any of Manager's Affiliates, whenever Manager considers purchasing goods or services under this Agreement.
- Manager shall not allocate or impose any costs or expenses related to its operations or Affiliate operations which are not related to Manager's provisions of management services to the Facility.
- 7.5 Settlement of Claims. Manager has been advised by County (and County shall continually keep Manager apprised of) of County's procedures and requirements in respect of settlement of third-party claims filed against County or with respect to the Facilities. Manager agrees to comply with such settlement claims and procedures as it has

been advised of in writing by County so long as such settlement procedures do not delay a proposed settlement by Manager which delay may result in the assessment of a civil or criminal penalty against Manager, and County shall have the right to participate in any proposed settlement negotiations to the extent of its interest. Manager and County agree to cause their respective legal counsels to coordinate with one another in connection with the settlement of claims, and all costs and expenses thereof, including the settlement itself, shall be deemed an Operating Expense in accordance with the terms and provisions of this Agreement.

7.6 County's Covenant Against Interference. Except to the extent to ensure compliance with federal, state, and local laws, including federal tax laws, and the Guidelines, County covenants and agrees that neither it nor its Authorized Representatives shall interfere in any manner with Manager's exclusive right and authority under this Agreement and, specifically, that neither it nor its Authorized Representatives shall initiate or intervene in any manner whatsoever in negotiations with existing or prospective lessees, users, advertisers, service contractors or other persons doing business or seeking to do business with the Facilities, nor shall neither it nor its Authorized Representatives solicit, request or seek any services, contributions, gifts, favors, tickets, gratuities or other benefits from Manager or any person doing business with the Facilities.

7.7 Equipment and Fixtures for Use and Improvements.

- (a) Inventory of Buildings, Fixtures and Equipment. Within 90 days of the Effective Date and by June 15th of each year during the term of this Agreement, Manager and County shall inventory County's Facilities buildings, furniture, fixtures, equipment, and consumable goods with a value in excess of \$5,000. Manager agrees to accept the buildings, furniture, fixtures, equipment, and consumable goods in "as is" condition. Upon termination of the Agreement, Manager shall surrender such building, furniture, fixtures, equipment, and consumable goods, and any replacements to County in good condition, normal wear and tear excepted.
- (b) Maintenance of Buildings, Fixtures and Equipment. Manager shall provide the equipment listed in Exhibit B, attached hereto and made a part hereof, in good condition and repair at its own expense and shall surrender all buildings, fixtures, and equipment in good condition upon termination of this Agreement, normal wear and tear excepted. The fixtures and equipment provided by County for use in the performance of this Agreement shall be maintained by Manager to ensure compliance with good business practices and applicable laws concerning building conditions, sanitation, safety and health. Any modifications or alterations to the Facilities or fixtures, (whether structural or non- structural) made by Manager shall comply with the Americans with Disabilities Act or any other similar law, at County's expense. Manager shall take reasonable and proper care of the Facilities, fixtures, and equipment under its custody and control and shall notify County of any known deficiencies. All property owned by County shall remain the property of County and anything purchased with any funds paid to Manager herein shall be and remain the property of County.
- (c) Maintenance of Facilities. Manager agrees to maintain the Facilities according to the standards detailed below. Breach of this provision shall be a material breach of this Agreement.
  - Manager shall keep the Facilities, fixtures, and equipment maintained at general existing levels and shall perform preventative maintenance on all equipment as recommended by the manufacturer. Manager shall keep detailed records regarding its preventive maintenance activities including dates of service, service performed, person performing the service, and the cost thereof.
- (d) Capital Expenditures for Equipment and Facilities. In the event that capital expenditures in excess of \$5,000.00 are necessary for equipment, fixtures, or the Facilities in the sole judgment of County, County shall pay for such capital expenditures as are necessary in the judgment of County. Manager shall pay, with the Operating Expenses Allowance, for any and all, each and every, needed capital expenditure for equipment, fixtures, and for the Facilities of less than \$5,000.00. Any and all capital expenditures for



equipment and fixtures greater than \$5,000 made by Manager shall be reported within fifteen (15) days of receipt of the fixture or equipment to the El Paso County Auditor and the El Paso County Purchasing Agent so that they may be bar coded and added to the property inventory of County pursuant to state law.

- (e) Disposition of Facilities, Fixtures, and Equipment Upon Termination. Manager shall, at the expiration of the Term or upon termination of this Agreement, return to County, the Facilities, fixtures, and all equipment and consumable goods in the amounts received by Manager upon commencement of this Agreement, furnished to it or purchased by it, in good condition, except for (i) ordinary wear and tear; (ii) loss or damage occurring without the negligence of Manager; (iii) damage occurring through fire, flood, theft or other unavoidable occurrences without the negligence of Manager.

## ARTICLE 8

### FEES AND EXPENSES

- 8.1 Annual Management Fees. For services to be performed by Manager, County shall pay to Manager for each year following the Commencement Date an annual management fee (the "Management Fee"), as shown on Exhibit A "Management Fee," such sum to be paid, in each year, in twelve (12) equal installments on or before the first business day of the month throughout the Term hereof. The Management Fee shall be prorated for any partial year or month during such period. The Parties acknowledge that, in addition to this Agreement, they are parties to an agreement for the Tourist Promotion Program, in which the Manager receives compensation for its marketing services, separate from the Facilities, as provided in that Agreement ("Tourist Promotion Program Compensation"). In no event shall the total compensation paid in any one month period to Manager, including the Tourist Promotion Program Compensation, the Management Fee, and the Operating Expenses Allowance together, as defined below in Section 8.2, exceed 83% of the average gross Hotel Occupancy Tax revenues received by the County in the prior three (3) month period ("83% Cap Amount"). In the event that the Tourist Promotion Program Compensation, the Management Fee, and the Operating Expenses Allowance together will exceed the 83% Cap Amount, each of the Tourist Promotion Program Compensation, the Management Fee, and the Operating Expenses Allowance shall be reduced pro rata so as not to exceed, in total, the 83% Cap Amount. For avoidance of doubt, the 83% Cap Amount shall not apply to any Annual Incentive due hereunder. However, the Annual Incentive shall not exceed 100% of the Management Fee received by the Manager in any contract year. Manager shall not be entitled to any compensation in addition to the Management Fee and the Annual Incentive, as described in this Agreement.
- 8.2 Operating Expenses. For all Operating Expenses related to the Facilities, including utility payments, County shall pay to Manager for each year following the Commencement Date an annual Operating Expenses Allowance (the "Operating Expenses Allowance"), as shown on Exhibit A, such sum to be paid, in each year, in twelve (12) equal installments on or before the first business day of the month throughout the Term hereof. The Operating Expenses Allowance shall be prorated for any partial year or month during such period. The Operating Expenses Allowance shall be used for Manager solely to pay for Operating Expenses. In no event shall the total compensation of the Management Fee plus the Operating Expenses Allowance paid in any three month period to Manager exceed the 83% Cap Amount. In the event that the Manager does not expend its monthly Operating Expenses Allowance, the Manager shall hold the excess funds in the Depository for use only for future Operating Expenses, as provided in the Budget. Manager shall not use the Operating Expenses Allowance as compensation for its management services.

8.3 Incentive Fees. Manager shall be entitled to performance-based incentive payments for each Fiscal Year during the Term of this Agreement (the "Annual Incentive"), calculated as follows:

(i) Annual Incentive fee calculation:

(a). 50% of all Operating Revenue generated; except that the Annual Incentive fee may not exceed the Incentive Payment Cap, as defined above.

(ii). The Annual Incentive fees determined pursuant to this Section 8.3 shall be payable to Manager within 30 days after County's receipt of an invoice from Manager, accompanied by the supporting documentation to reflect the entire Operating Revenue received by the Manager for the event or events relating to the invoice.

(iii). No later than one hundred twenty (120) days after the end of each Fiscal Year, Manager shall furnish County an external auditor's report and audited financial statements regarding the above performance measures, to include supporting documentation of all Operating Revenue received by the Manager. All costs incurred in complying with this audit shall be an Operating Expense and Manager's obligation to provide such audited reports to County shall be contingent upon inclusion of funding in Budget for same.

8.4 Cap on Performance Based Incentive Payments. Notwithstanding anything herein to the contrary, (i) the Management Fee set forth in Section 8.1 shall comprise at least 50% of all compensation received by the Manager from or with respect to the use, operation and/or management of the Facilities in any Fiscal Year, and (ii) the aggregate of all of Manager's Management Fee payable pursuant to Section 8.2 or otherwise and any other compensation payable to the Manager from or with respect to the use, operation and/or management of the Facilities shall not exceed fifty percent (50%) ("Incentive Payment Cap") of the total compensation earned and paid to Manager with respect to the use, operation and/or management of the Facilities in any Fiscal Year. In the event such Annual Incentive fees exceed the Incentive Payment Cap, the Annual Incentive fee shall be reduced to an amount equal to the Incentive Payment Cap.

An independent certified public accountant ("CPA"), mutually acceptable to the Manager and the County, shall make an annual certification in writing to the County that the Manager is in compliance with this Section no later than one hundred twenty (120) days after the end of each Fiscal Year. Such written certification shall be an Operating Expense. The Manager shall cooperate with the CPA and make its books and records reasonably available to the CPA in order for the CPA to conduct the necessary due diligence to make such certification. The County shall have access to all books and records associated with such certification, including allowing the County to copy such documents as needed, so long as any information is not shared with competitors or potential competitors, subject to the provisions of Section 4.8.

8.5 Close out of Original Management Agreement. Manager and County acknowledge that they were previously parties to a Management Agreement, dated September 22, 2003, as amended six times thereafter ("Original Management Agreement"). In connection with closing out that Original Management Agreement, the parties agree as follows:

(a) Manager shall reimburse County any overpayment made to the Manager for

the Original Management Agreement. For example, if the Manager received payment on July 1<sup>st</sup> for the full amount allotted under the Original Management Agreement and this new Agreement becomes effective on July 15<sup>th</sup> at a lower rate, Manager shall reimburse the County the difference between the two rates for the time that it did not perform under the Original Management Agreement. Such reimbursement shall be made to the County within 30 days of the effective date of this Agreement.

- (b) For any funds submitted to and being held by Manager in a Depository for Operating Expenses under the Original Management Agreement, Manager shall continue to keep those funds in such Depository for Operating Expenses under this new Agreement and shall include such funds in the Budget.
- (c) For any funds submitted to and being held by Manager in a Depository for Sponsorship Funds or Manager Sponsorship Funds under the Original Management Agreement, Manager shall continue to keep those funds in such Depository for Authorized Projects under this new Agreement and shall include such funds in the Budget.
- (d) For all other funds being held by Manager in a Depository for the Facilities or the Tourist Promotion Program under the Original Management Agreement, Manager shall continue to keep those funds in such Depository under this new Agreement and shall include such funds in the Budget.
- (e) Manager shall submit any Sponsorship Funds that were kept by the Manager pursuant to the Original Management Agreement to the County Auditor, in accordance with Section 3.6(ff) of this Agreement.
- (f) The County and Contractor were a party to a lawsuit styled *Maelby Campos and Raul Torres, Plaintiffs, v. County of El Paso, TX and El Paso Sports Commission, Inc.* Defendants filed in the United States District Court, El Paso Division, Cause No. EP-10-CV-00340-PRM (the "Lawsuit"). The Lawsuit has been resolved by settlement agreement ("Settlement Agreement"). Under the Settlement Agreement, the County and Contractor, in addition to satisfying other requirements, were required to make certain modifications to the Facilities ("Required Modification"). Manager represents that it has made the Required Modifications related to the Lawsuit identified in the Original Management Agreement in an amount that did not exceed \$100,000.
- (g) Within 90 days of the Effective Date, Manager and County shall review the list of "Inventory of County Provided Buildings, Fixtures, Equipment, and Consumable Goods at the Facilities" as provided in the Original Management Agreement and ensure that all items on that list worth more than \$5,000 are accounted for and included on the inventory list to be created, pursuant to Section 7.7 of this Agreement. Notwithstanding anything to the contrary in this Agreement, the County reserves its rights to any and all claims, actions, causes of action, charges, judgments, grievances, obligations, rights, demands, debts, sums of money, wages, bonuses, fees, damages, attorney's fees, costs, losses, liabilities or accountings of whatever nature, in connection with the "Inventory of County Provided Buildings, Fixtures, Equipment, and Consumable Goods at the Facilities" as provided in the Original Management Agreement.

## ARTICLE 9

### INSURANCE

9.1 Workers' Compensation Insurance. Each party shall maintain workers' compensation as required by state law covering all of its employees employed in connection with the services to be performed hereunder.

9.2 Comprehensive/Commercial/Automobile Insurance. Manager shall maintain during the term of this Agreement, coverages for all types of insurance listed below and in the limits stated below for each occurrence, including, but not limited to, Personal Injury Liability, Broad Form Property Damage Liability, Blanket Contractual Liability and Products Liability, covering all of the activities of Manager under the Agreement and shall provide County with a certificate evidencing such policies. In the event that Manager subcontracts food and/or liquor service responsibilities hereunder, Manager shall require the same insurance coverages required hereunder to be maintained by any subcontractor upon the same terms and conditions and in the same amounts as required of Manager herein. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice to the County of El Paso. The County of El Paso shall be named as an additional insured under Manager's policies of insurance.

- (a) Workmen's Compensation Insurance - Statutory Limits Employer's Liability Insurance - \$1,000,000.00 (accident or disease)
- (b) Commercial General Liability Policy(ies) that cover Premises, Products and Completed Operations, and Liquor Liability:
  - \$2,000,000.00 per occurrence
  - \$2,000,000.00 general policy annual aggregate (including products and completed operations, personal injury, and advertising injury)
  - \$2,000,000.00 liquor liability (each common cause and annual aggregate)
- (c) Automobile Liability coverage on all county-owned vehicles, Manager- owned, non-owned, and hired vehicles for business use with policy limits of at least \$1,000,000 per person and per occurrence and Collision, Theft & Fire Loss Insurance sufficient to cover the replacement cost of the vehicles owned by County.

9.3 Indemnity. Manager or its INSURER will INDEMNIFY, DEFEND AND HOLD, the County, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF RELATED TO THIS AGREEMENT,. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the county as required by any law, the County will promptly forward to Manager every demand, notice, summons or other process received by the County in any claim or legal proceeding contemplated herein. Manager will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Manager may deem expedient; and 3) defend or cause to be defended on behalf of the County all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages, Manager will pay all judgements finally establishing liability of the County in actions defended by Manager pursuant to this section along with all attorney's fees and costs incurred by the County including interest accruing to the date of payment by Manager, and premiums on any appeal bonds. The County, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest.

The County will not be responsible for any loss of or damage to the Manager's property from any cause.

9.4 Waiver of Subrogation. The parties release each other and their respective Authorized Representatives from any claims for damage to any person, the Facility or any fixtures, personal property, improvements and alterations of either Party in or about the Facility that are caused by or result from risks insured against under any insurance policies required to be carried by the parties hereto under this Agreement, whether or not the cause thereof results from the negligence (whether ordinary or gross) of any Party to this Agreement. The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

## ARTICLE 10 TERMINATION

10.1 Termination for Cause. Either Party may terminate this Agreement for cause by written notice upon the occurrence of a Material Breach, as defined in Section 11.1, by the other Party and the failure of the breaching Party to cure the Material Breach in accordance with Section 11.1.

10.2 Automatic Termination. This Agreement shall terminate automatically, without action or notice by either Party, upon the occurrence of any of the following: Manager files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other state or federal insolvency act or law not dismissed within sixty (60) days thereof, or any action by Manager indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property; the making by such Party of an assignment for the benefit of creditors, the inability of Manager or its admission in writing of its inability to pay its debts as they mature, or the liquidation, dissolution or termination of the corporate or partnership existence of Manager.

10.3 Surrender of Improvements. Upon expiration or termination of this Agreement, Manager shall promptly surrender the Facility to County, leaving all equipment, supplies, manuals, books, records, and inventories that are the property of County or from funds made available by County, and County shall immediately make all payments due Manager as set forth in this Agreement. Manager shall also deliver all documents, records, and other non-proprietary work product generated by Manager for County during the Term of this Agreement.

10.4 Payment of Funds Upon Termination of the Agreement. Within 90 days of the termination of this Agreement, and after all liabilities and obligations of the Manager are paid, satisfied, and discharged in accordance with applicable law, Manager agrees to return, transfer, convey, or distribute to County all property and funds in its possession that were derived pursuant to this Agreement from any sources, other than the Manager's compensation earned under this Agreement including without limitation Manager's Annual management Fee pursuant to Section 8.1.

10.5 Contingent Funding Availability Termination Clause. County may terminate this Agreement at the end of any Fiscal Year during the term of this Agreement or any renewal thereof if sufficient funds intended to satisfy the payment obligations of the County hereunder are not available for inclusion in the adopted budget of the County for its upcoming fiscal year, so long as the County has made its fund sufficiency determination in good faith. County's obligation for performance of this

Agreement is contingent upon the availability of sufficient Hotel Occupancy Tax funds from which payment under this Agreement can be made. No legal liability on the part of County for any payment from Hotel Occupancy Tax funds may arise for performance under this Agreement unless and until sufficient Hotel Occupancy Tax funds are received by County for performance.

10.6 Performance During Ongoing Pandemic. The Parties understand that they are entering into this Agreement during an unprecedented and unpredictable time of a global pandemic. If, as a result of national, state, or local law, including but not limited to Local County Judge or Local Health Authority orders, the Manager is unable to perform its obligations under this Agreement for a period beyond thirty days, then upon written notice received within the thirty (30) days, the Manager shall be excused from further performance under this Agreement, except to the extent that the Manager will be responsible for all surrender of funds and property related to the Facilities, as provided in this Agreement.

10.7 Termination for Legal Events. In the event that the County's bond or other legal counsel makes the County aware that the then-current management agreement (including any Manager arrangements with any of its affiliates) does not comply with applicable law (including federal tax laws), the County shall give notice of such non-compliance to the Manager. Upon receipt of such notice, the Manager and the County shall use their respective best efforts to amend, restate, and/or otherwise change the management agreement only to the extent necessary to be in compliance with all applicable laws in such counsel's reasonable opinion. If within 75 days of the Manager's receipt of notice of non-compliance, the parties cannot come to mutual agreement on the appropriate changes to correct such non-compliance, then the County shall have the right to terminate this Agreement upon written notice to the Manager and thereafter the County shall have no further liability to the Manager or any of its Affiliates.

## ARTICLE 11

### BREACH

11.1 Material Breach. Each of the following shall constitute a "Material Breach" under this Agreement:

(a) Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for thirty (30) days after notice has been given to the breaching Party; and

(b) Failure to perform any other material obligation under this Agreement, or a material violation of any provision of Section 6 of this Agreement, if the failure to perform or violation (if curable) is not cured within thirty (30) days after written notice has been given to the breaching Party ("Cure Period"). If the default cannot be remedied within the Cure Period but the breaching party has made a diligent effort to effect a cure, the Cure Period may be extended at the non-breaching party's sole discretion for a reasonable time, which extension may not be unreasonably withheld. The non-breaching party, in its sole discretion, shall determine what constitutes "a reasonable time" and what constitutes "a diligent effort" for purposes of this provision. If the non-breaching party agrees to extend the Cure Period past the 30 days, the non-breaching party shall notify the breaching party, in writing, of the expiration date of the extended cure period.

(c) Failure to meet the Base Revenue Target for any year of this Agreement.

(d) Violation of any provision in Section 6 of this Agreement.

11.2 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at the rate set forth in the Prompt Payment Act.

11.3 Notice of Breach. Each Party shall promptly notify the other Party of any act or omission believed to be a breach of this Agreement. In order to be effective for purposes of Section 11.1 or 11.2, a notice of a breach must state that it is a notice of breach and must specify in detail the act or omission alleged to constitute a breach of this Agreement.

11.4 Rights of Non-Breaching Party. If a Material Breach occurs and is not waived in writing by the non-breaching Party, then the non-breaching Party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law or in equity:

(a) The right to cure, at the breaching Party's cost and expense, any Material Breach and recover such costs together with interest thereon as provided in Section 11.2, together with reasonable attorney's fees and costs of court.

(b) The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 11.2, together with reasonable attorney's fees and costs of court incurred in collecting the same.

(c) The right to sue to collect damages suffered by the non-breaching Party by reason of the occurrence of a Material Breach other than breach in the payment of money, together with reasonable attorney's fees and costs of court incurred in such proceedings.

(d) The right to terminate this Agreement; and/or

(e) The right to injunctive relief including seeking specific performance of the breached obligation, together with reasonable attorney's fees and costs of court incurred in such proceedings.

## ARTICLE 12

### MISCELLANEOUS

12.1 Notices. Unless expressly otherwise provided elsewhere in this Agreement, any election, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or three (3) days after mailing the same (by certified mail, return receipt required) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, or when telecopied, telegraphed or telexed to a Party, at such Party's address set forth below or at such other address as may designate by written notice given to the other in accordance with the foregoing.

To County:

County of El Paso

Attn: Chief  
Administrator  
500 E. San Antonio  
Ave, Ste 306A  
El Paso, TX 79901\_\_\_\_

Copt to:

County of El Paso  
Attn: County Auditor  
800 E. Overland Ave,  
Ste 406  
El Paso, TX 79901

To Manager:

El Paso Sports Commission  
ATTN: President  
4100 E. Paisano  
El Paso, Texas 79905

Notice shall, in all events, be effective upon receipt by the addressee except that notice by facsimile electronic transmission shall, if received after 5:00 p.m. on any day which is not a business day, be deemed received on the next following business day.

12.2 Amendments. This Agreement may be amended only by the written consent of the parties.

12.3 Title and Captions. All articles or section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. Except as specifically otherwise provided, reference to "Articles," "Sections," and "Exhibits" are to be Articles and Sections of and Exhibits to this Agreement.

12.4 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

12.5 Severability. Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

12.6 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, but this provision shall not be deemed to permit any assignment by a Party of any of its rights or obligations under this Agreement except as expressly provided herein.



12.7 Assignment. A Party (the "first Party") shall not voluntarily assign or encumber its interest in this Agreement without first obtaining the other Party's (the "second Party") written consent, provided, however, that such consent shall not be withheld or delayed unreasonably. Any assignment or encumbrance without the second Party's consent shall be voidable and, at the second Party's election within thirty (30) days of actual knowledge of an assignment or encumbrance, shall constitute a default which shall be a Material Breach unless the assignment or encumbrance is rescinded within thirty (30) days after the second Party has given the first Party written notice of the second Party's election to treat the assignment or encumbrance as a default. The provisions of this Section 12.7 shall not prohibit or restrict Manager's entering into subleases, contracts, concessions or licenses for the operation of any portion of the Facility or of the business conducted in the Facility, subject to the terms of Section 7.1 of this Agreement. Furthermore, Manager shall have the right to pledge its rights to receive the fees to be paid Manager hereunder to any bank, insurance company, savings association, federal savings bank or other institutional lender providing credit to Manager.

12.8 Further Action. Whenever one Party to this Agreement in good faith has reason to question the other Party's intent to perform, it may demand in writing that the other Party give written assurance of its intent to perform. In the event that a demand is made, and no assurance is given within ten (10) calendar days of receipt of the written inquiry, the demanding Party may treat this failure as an anticipatory repudiation of this Agreement unless the other Party performs as required by this Agreement.

12.9 Entire Agreement. The Exhibits attached to this Agreement are expressly incorporated into this Agreement and made a part hereof for any and all purposes. In the event of a conflict between the express provisions of Articles One through Twelve of this Agreement and any language contained in any of the Exhibits incorporated herein, the provisions contained in Articles One through Twelve shall prevail. This Agreement, including the incorporated Exhibits is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the Parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though accepting or acquiescing Party has knowledge of the performance and opportunity for objection. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party.

12.10 Waiver of Rights under Prior Agreements. Upon the effective date of this Agreement, the Manager and County fully release, acquit and discharge each other of and from any and all claims, actions, causes of action, charges, judgments, grievances, obligations, rights, demands, debts, sums of money, wages, bonuses, fees, damages, attorney's fees, costs, losses, liabilities or accountings of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted, in law or equity, contract or tort or otherwise, arising out of all prior agreements between the County and Manager, except as provided in Section 8.5 of this Agreement. The parties agrees that all prior agreements between the parties shall hereby be terminated and shall have no further force or effect.

12.11 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

12.12 Applicable Law: Attorneys' Fees. This Agreement calls for performance and shall be performable in El Paso, Texas and shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas (without giving effect to principles of conflicts of law thereof), along with any applicable provisions of federal law or local laws. Venue for any dispute arising hereunder shall be exclusively in El Paso, Texas. The prevailing Party in any litigation or other similar proceeding relating hereto shall be entitled to recover the reasonable attorneys' fees and other costs incurred by the prevailing Party in such action.

12.13 Force Majeure. If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as is effected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch. The period of suspension shall have no impact on the Term of this Agreement. The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, Insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands or the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

12.14 No Third-Party Beneficiary. Any agreement to perform any obligation or pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of Manager, County and the respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements and assumptions shall not inure to the benefit of any obligee, whomever, it being the intention of the undersigned that no one shall be or be deemed to be a third-party beneficiary of this Agreement.

12.15 Gratuities and Kickbacks. Manager hereby represents and agrees that neither Manager nor any of its Affiliates have directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value to any public official as a reward to secure Managers appointment or confirmation as manager or operator of the Facilities. Manager further agrees that it, nor any of its Affiliates will directly or indirectly pay, offer, promise to pay, contribute, or promise to contribute any money or thing of value to any public official as a reward to secure Managers appointment or confirmation as manager or operator of the Facilities.

12.16 No Discrimination. Manager acknowledges and agrees that it will not knowingly discriminate in violation of applicable federal, state and local laws and regulations on the basis of race, religion, age, disability, ethnic background, national origin, gender, gender identity, or sexual orientation, in any of its

employment practices or procurement practices with respect to the management of the Facilities or any services provided therefrom.

12.17 Office Space. County hereby grants to Manager the privilege and license to use, at Manager's sole option, the office space located in the Facilities (the "Office Space") and all furniture and equipment therein (the "F&E"). The Office Space and F&E may be used by Manager from the Commencement Date until the termination of this Agreement. Upon termination of Manager's license to use the Office Space, Manager shall return the Office Space and F&E to County in good condition, normal wear and tear excepted, provided that Manager shall have the right to purchase or lease any or all of the F&E at the then fair market value or rental thereof, as applicable.

12.18 Survival. Each Party shall remain obligated to the other Party under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including, but not limited to, the indemnification provisions hereunder.

12.19 Tax Exempt Bonds Compliance. The Manager understands that the County has and may in the future finance improvements to the Facilities, including any Authorized Project, with proceeds of bonds, the interest of which is excludable from "gross income" for federal income tax purposes, and that, therefore, this Agreement has to comply with the management contract's safe-harbor guidelines of Rev. Proc. 2017-13, I.R.B. 2017-6, as amended and superseded ("Guidelines"). County and Manager represent that compensation for the services provided by Manager is reasonable, and it is consistent with industry standards. In furtherance thereof, the Manager agrees (a) that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the County with respect to the Facilities; (b) not to claim any depreciation or amortization deduction, investment tax credit, or deduction that an owner would otherwise be allowed with respect to the Facilities; (c) that the County bear the risk of loss upon damage or destruction of the managed property (for example, due to force majeure); (d) to not share in the net losses from the operation of the Facilities; and (e) to not have its compensation based on net profits derived from the Facilities. The County and the Manager agree to ensure that throughout the Term: (i) no more than 20 percent of the voting power of the governing body of the County is vested in the directors, officers, shareholders, partners, members, and employees of the Manager, in the aggregate; (ii) the Commissioners Court of the County does not include the chief executive officer (or a person with equivalent management responsibilities) of the Manager or the chairperson (or equivalent executive) of the Manager's governing body; and (iii) the chief executive officer of the Manager is not the chief executive officer of the County or any of the qualified user's related parties (within the meaning of section 1.150-1(b) of the Treasury Regulations). Manager and County agree to make a good-faith effort to amend the Agreement, to the extent necessary to ensure compliance with the Guidelines. In no event will the Term of this Agreement exceed the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the Facilities. Additionally, notwithstanding anything to the contrary in this Agreement, and in order to comply with the Guidelines, Manager agrees to cooperate with County to ensure compliance with the Guidelines, including but not limited to allowing access to all records to ensure that there is no sharing of operational net profits, no sharing of operational net losses, and allowing the County to exercise a significant degree of control over the Facilities, all as described in the Guidelines.

12.20 Compliance with Non-Discrimination Laws. The Manager agrees that its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local laws in the performance of this Agreement, including, but not limited to, the Americans with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws. The Manager further agrees that its employees, officers, agents, and subcontractors will not

knowingly engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, in violation of applicable federal, state and local laws and regulations or knowingly any of the accommodations, advantages, facilities, or services offered to the general public with respect to the management of the Facilities or any services therefrom.

12.21 Breach of Representations. Manager shall promptly notify County of the discovery by Manager that any representation of Manager contained in this Agreement is or becomes untrue or will be untrue at any time during the term of the Agreement. If the County determines that any representation is untrue or becomes untrue, the County may pursue any and all remedies otherwise available at law or in equity.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Facility Management and Tourism Agreement to be executed by their respective duly authorized representatives as of the date first above written.

**EL PASO COUNTY**

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Ricardo A.  
Samaniego  
County Judge

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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Erica Rosales Nigaglioni  
Assistant County Attorney

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Betsy Keller  
County Administrator

**El Paso Sports Commission:**

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Omar Ropele, President

**Exhibit "A"**  
**MANAGEMENT**  
**FEE AND**  
**OPERATING**  
**EXPENSES**  
**ALLOWANCE**

**MANAGEMENT**  
**FEE**

Management Fee:	\$60,000/month* (\$720,000 annually)
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In no event shall the Management Fee exceed \$60,000 per month and \$720,000 annually.

**OPERATING EXPENSES ALLOWANCE**

Operating Expense Allowance: July 12, 2021 through September 2022:	\$115,000/month* (\$1,699,032 total for the first term)
Operating Expense Allowance: October 2022 through September 2023:	\$125,000/month (\$1,500,000 annually)
Operating Expense Allowance: October 2023 through September 2023:	\$135,000/month** (\$1,620,000 annually)

\*The Operating Expense Allowance for the month of July will be prorated to begin July 12, 2021.

\*\*The Operating Expense Allowance for October 2023 through September 2023 will be effective only in the event that the contract is renewed, as provided in this Agreement.

In no event shall the total compensation paid in any one month period to Manager, including the Tourist Promotion Program Compensation, the Management Fee, and the Operating Expenses Allowance together, as defined below in Section 8.2, exceed 83% of the gross Hotel Occupancy Tax revenues received by the County in the prior three (3) month period ("83% Cap Amount").

# Exhibit B

# EL PASO COUNTY COLISEUM



Shelter-PI

Image © 2021 Maxar Technologies



Exhibit "C"

Rates and Charges