

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: June 22, 2022
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director, (915) 212-1845
Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing, (915) 212-1218

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 1 – Create an Environment Conducive to Strong Sustainable Economic Development

SUBGOAL: 1.4 Grow the core business of air transportation

SUBJECT:

Discussion and action on the request that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue Purchase Orders for 2022 – 0699 Airport Advertisement at the Chihuahua's Stadium to MountainStar Sports Group, LLC dba El Paso Stadium Operations Company, for a term of three (3) years. The total contract estimated amount is \$386,362.50.

BACKGROUND / DISCUSSION:

The El Paso international Airport will promote initiatives, projects, or announcements at Southwest University Park. This contract is for three years and features branding of the bridge that connects the two buildings located on the eastern side of the park with both stadium and street-facing signage. The package will also include, LED digital ribbon board, pre-game video spot, in-game public address announcement with slideshow, website link and ad, print ad in roster card, and game ball delivery recognized as presenting partner.

SELECTION SUMMARY:

N/A

CONTRACT VARIANCE:

N/A

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$386,362.50

Funding Source: Airport Operations

Account: 562-3000-62030-521170

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: El Paso International Airport

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:

 *FR*

Sam Rodriguez, Chief Operations and Transportation Officer, Aviation Director

**PROJECT FORM
(Exemption)**

Please place the following item on the **Consent Agenda** for the Council Meeting of **June 22, 2022**.

STRATEGIC GOAL No. 1 – Create an Environment Conducive to Strong sustainable Economic Development

The linkage to the Strategic Plan is subsection 1.4 – Grow the core business of air transportation

Award Summary:

Discussion and action on the request that the Director of the Purchasing & Strategic Sourcing Department be authorized to issue Purchase Orders for 2022 – 0699 Airport Advertisement at the Chihuahua's Stadium to MountainStar Sports Group, LLC dba El Paso Stadium Operations Company, for a term of three (3) years. The total contract estimated amount is \$386,362.50. This contract will allow the El Paso International Airport to promote initiatives, projects, or announcements at Southwest University Park.

Contract Variance:

N/A

Department:	El Paso International Airport
Award to:	MountainStar Sports Group, LLC dba El Paso Stadium Operations Company
	El Paso, TX
Term:	Three (3) Years
Year 1:	\$125,000.00
Year 2:	\$128,750.00
Year 3:	\$132,612.50
Total Estimated Amount:	\$386,362.50
Account No.:	562-3000-62030-521170
Funding Source:	Airport Operations Funds
District(s):	All

This purchase is pursuant Texas Local Government Code Exemption 252.022 (16) advertising, other than legal notices.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

RESOLUTION

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

That the City Manager, or designee, is authorized to sign a Letter Agreement by and between the City of El Paso ("Sponsor") and EL PASO STADIUM OPERATIONS COMPANY, a series of MountainStar Baseball, LLC, a Texas series limited liability company (the "Club"), for the purpose of advertisement and promotion of The City of El Paso's International Airport until September 30, 2024.

Dated this ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Evy A. Sotelo
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

March 24, 2022
Cassandra Davisson
El Paso International Airport
6701 Convair Rd
El Paso, TX 79925

Re: El Paso Chihuahuas Corporate Partnership

Dear Cassandra:

The purpose of this Letter Agreement (“Agreement”) is to memorialize the terms of this Sponsorship between EL PASO STADIUM OPERATIONS COMPANY (“EPSOC”), a series of MountainStar Baseball, LLC, a Texas series limited liability company, the owner of a Triple-A Minor League Professional Baseball Club, the El Paso Chihuahuas (the “Club”), which plays its home games at Southwest University Park in El Paso, TX (“Ballpark”) and The City of El Paso (“Sponsor”). While the specific terms of your Sponsorship are described in the attached Exhibit A, which is incorporated by reference, the following provisions define the terms and conditions of our Agreement:

1. **Term:** The effective date of this Agreement is evidenced by the date contained in the signature block of the parties to this Agreement. The expiration date of this Agreement is **September 30, 2024**.
2. **Incorporation of Prior Agreements:** This Agreement contains the entire understanding of EPSOC and Sponsor with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements and understandings between the parties with respect to the subject matter of this Agreement.
3. **Amendment:** No provision of this Agreement may be amended, modified or supplemented or added to except by an agreement in writing, expressly stating that such agreement is an amendment of this Agreement and is signed by both parties to this Agreement.
4. **Assignment:** Sponsor shall not have any right to assign or transfer any of its rights, or to delegate any of its obligations, under this Agreement to any person or entity without the prior written consent of EPSOC. EPSOC has absolute discretion as to whether to grant or withhold that consent.
5. **Capacity:** EPSOC and Sponsor, with respect to itself only, represents and warrants to the other, that (i) it has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement; (ii) the execution, delivery and performance by it of its obligations under this Agreement, and the consummation by it of the transactions contemplated hereunder, have been duly authorized by all necessary corporate action on its part; and (iii) the terms and provisions of the covenants by it under this Agreement constitute valid and legally binding obligations of it enforceable against it in accordance with their respective terms, except to the extent abrogated or limited by bankruptcy, insolvency or other laws affecting creditor’s rights generally. Each of the undersigned represents and warrants that it has authority to cause the entity on behalf of which such person is executing this Agreement to enter into this Agreement.
6. **Relationship of Parties:** EPSOC and Sponsor shall be deemed and construed as independent contractors with respect to one another for all purposes relating to this Agreement, and nothing contained in this Agreement is intended to constitute, nor shall it be deemed or construed as constituting, the creation of any partnership, joint venture, or principal/agent relationship between EPSOC and Sponsor arising out of the existence or exercise by EPSOC or Sponsor of their respective rights under this Agreement.

7. Agreement Provisions: If any clause, provision or part of this Agreement is declared unenforceable, or void by a court of competent jurisdiction or an arbitrator, such illegality or invalidity shall not affect the balance of the terms and provisions which shall remain binding and enforceable.

8. Construction: This Agreement shall not be construed in favor of or against either EPSOC or Sponsor by virtue of the fact that it may have been prepared by counsel for one of the parties or for any other reason, but shall be interpreted reasonably, in light of relevant circumstances and probable intent of the parties. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement.

9. No Third Party Beneficiaries: This Agreement shall inure solely to the benefit of EPSOC and Sponsor, and their respective permitted successors and assigns, and no natural person, entity, or governmental agency or authority shall have any third party beneficiary or other similar rights under or arising from this Agreement.

10. Indemnification: EPSOC shall indemnify, defend and hold harmless Sponsor, and Sponsor's shareholders, directors, officers, employees, agents, successors and assigns, from and against any and all claims, demands, causes of action, actions, suits, liabilities, losses, judgments, damages, penalties, costs or expenses (including reasonable attorneys' fees and costs), that result from, arise out of or relate to any breach by EPSOC of any covenant, representation or warranty made by EPSOC in this Agreement.

11. Intellectual Property: All marks, logos, copyrighted and copyrightable materials of Sponsor (the "Sponsor Intellectual Property") and all goodwill associated there with supplied to EPSOC by Sponsor shall belong to and remain the sole property of Sponsor, and EPSOC shall not have or acquire any right to copy, reproduce, publish or use the Sponsor Intellectual Property except in connection with the specific purposes of this Agreement. EPSOC will have the limited, non-exclusive right to use Sponsor Intellectual Property on a royalty-free basis, in promotions, advertising and website identification as specified herein. Upon the expiration of this Agreement, all rights and privileges granted to EPSOC by this limited license shall immediately terminate, EPSOC's use of the Sponsor Intellectual property shall cease, and EPSOC will either return the Sponsor Intellectual Property and all copies to Sponsor or dispose of the Sponsor Intellectual Property. All marks, logos, copyrighted and copyrightable materials of EPSOC (the "EPSOC Intellectual Property") and all goodwill associated therewith supplied to Sponsor by EPSOC shall belong to and remain the sole property of EPSOC. Sponsor will have the limited, non-exclusive right to use EPSOC Intellectual Property as specified in Exhibit A on a royalty-free basis for the limited purpose of leveraging its sponsorship position. Sponsor shall not have or acquire any right to copy, reproduce, publish or use the EPSOC Intellectual Property unless Sponsor obtains the prior written approval of EPSOC as to all proposed promotional, advertising, identification or other applications prepared by Sponsor prior to its publication, circulation, or display. Sponsor shall place the indicia "SM" or "TM" next to each use of any EPSOC Intellectual Property as applicable. Upon expiration of this Agreement, all rights and privileges granted to Sponsor by this limited license shall immediately terminate, Sponsor's use of the EPSOC Intellectual Property shall cease and Sponsor will return the EPSOC Intellectual Property and all copies thereof to EPSOC or dispose of the same.

Sponsor and EPSOC recognize the great value of the goodwill associated with each party's intellectual property. Each party recognizes that the other party has an interest in maintaining and protecting the image and reputation of its respective intellectual property, and that the other party's intellectual property must be used in a manner consistent with the standards established by that party. This limited license and all rights and duties hereunder are personal to each party and both agree that they shall not, without the prior

written consent of the other party, assign, mortgage, sublicense or otherwise encumber or transfer the limited license or the rights and duties hereunder.

12. **Confidentiality:** EPSOC acknowledges that Sponsor is a Governmental Entity and is subject to the Texas Public Information Act, and Sponsor will comply with EPSOC request for confidentiality to the extent permitted by law.

13. Sponsorship Fees; Property Taxes

(a) Sponsorship Fees. In 2022, Sponsor shall pay EPSOC \$125,000.00, net. In subsequent year(s), there is a 3% escalator.

(b) Payment. For each sponsorship year, Sponsor shall pay to EPSOC or to the order of EPSOC, in immediately available funds, the annual sponsorship fee applicable to that sponsorship year. **Checks should be made payable to El Paso Stadium Operations Company and delivered or sent via trackable mail to 1 Ballpark Plaza, El Paso, TX 79901. A 3% fee will be added to all payments made with a credit card.**

(c) Time of Payment. In each Sponsorship year, 100% of the applicable annual fee shall be due and payable on or before July 1, respectively, pursuant to the following payment schedule (net):

2022

July 1 \$125,000.00

2023

July 1 \$128,750.00

2024

July 1 \$132,612.50

(d) Fully Earned. Except as otherwise expressly provided to the contrary in this Agreement, the annual sponsorship fee is fully earned by EPSOC and payable by Sponsor irrespective of any cancellation, postponement or inability to schedule or host any regular season home games during the applicable sponsorship year. The annual sponsorship fee shall be paid without abatement, deduction or setoff, and shall be absolutely net of, among other things (i) all fees and commissions, if any, payable to third parties engaged by or claiming through Sponsor, all of which fees and commissions shall be the sole responsibility of and shall be paid when due by Sponsor, and (ii) all applicable federal, state, or local taxes or charges, if any, levied, assessed or otherwise payable with respect to the annual sponsorship fee or this Agreement, all of which taxes and charges shall be the sole responsibility of and shall be paid when due by Sponsor.

(e) Personal Property Taxation. Notwithstanding anything to the contrary contained in this Agreement, EPSOC and Sponsor hereby acknowledge and agree that this Agreement creates no possessory or other interest in Sponsor which would be subject to any property taxation.

(f) Cancellation Accommodation. In the event that more than fifteen percent (15%) of the regular season home games are not played when scheduled at the Ballpark in any sponsorship year, are not rescheduled and played during such sponsorship year at the Ballpark, Sponsor's sole and exclusive remedy shall be a reasonable accommodation provided by EPSOC to Sponsor relative to the length of interruption during the Club's season in such sponsorship year which is beyond the period

attributable to such fifteen percent (15%) of the regular season home games. EPSOC and Sponsor shall negotiate in good faith to determine the nature of such accommodation, which may consist of, by way of example only, appropriate “make good” advertising or promotion(s) or a proportional extension of the Term without payment of any additional fee. EPSOC and Sponsor hereby acknowledge and agree that EPSOC shall not be responsible or liable to Sponsor (including, without limitation, for any rebate or refund of all or any portion of any annual sponsorship fee) for the cancellation or postponement of, or the inability to schedule or host, any regular season home games by reason of strike, lockout, rules or regulations of any of the baseball authorities, failure of electric power or other utilities, natural disaster, inclement weather, restrictive governmental laws or regulations enacted or promulgated subsequent to the date of this Agreement, other action or decree of any governmental authority with appropriate jurisdiction, any delay in completion of the construction of the Ballpark, vandalism, riots, insurrections, wars or any other reason.

14. Default and Remedies

(a) Potential Default by EPSOC. A “Potential EPSOC Default” shall exist under this Agreement upon the failure to substantially perform, when required, any of EPSOC’s obligations under this Agreement.

(b) Potential Default by Sponsor. A “Potential Sponsor Default” shall exist under this Agreement upon the failure to substantially perform, when required, any of Sponsor’s obligations under this Agreement.

(c) Cure Periods. Any Potential EPSOC Default or Potential Sponsor Default is curable and shall be deemed cured, if:

(i) within ten (10) days after receipt by the party against whom a Potential Default is alleged (the “PD Party”) from the other party hereto (the “Non-PD Party”) of notice of such Potential Default, the following occurs: (a) with respect to a Potential Default existing by reason of the breach of an obligation to pay money, such money is paid in full, or (b) with respect to a Potential Default existing by reason other than the breach of an obligation to pay money, the PD Party gives the Non-PD Party notice of an intent to cure such Potential Default;

(ii) within thirty (30) days after receipt by the PD Party from the Non-PD Party of notice of a Potential Default existing by reason other than the breach of an obligation to pay money, the PD Party commences the curing of such Potential Default; and

(iii) within one hundred twenty (120) days after receipt by the PD Party from the Non-PD Party of notice of a Potential Default existing by reason other than the breach of an obligation to pay money, the PD Party, in fact, cures such Potential Default.

(d) Event of Default; Remedies. Following the occurrence of any Potential Default, and after the expiration of the cure period applicable thereto, a default (each, an “Event of Default”) on the part of the PD Party shall occur hereunder and the Non-PD Party thereafter shall have the following remedies:

(i) The right to suspend performance by the Non-PD Party of its obligations under this Agreement and to terminate this Agreement as of the date specified in a notice delivered by the Non-PD Party to the PD Party (which date of suspension and termination shall be not

less than fifteen (15) days after the giving of such notice) stating the Non-PD Party's election to exercise such right of suspension and termination; and

(ii) The right to pursue such other remedies as may be available to the Non-PD Party at law or in equity (including, without limitation, interest at the maximum legal rate on any unpaid and delinquent sums owing under the terms of this Agreement).

(e) Remedies Cumulative. No remedy herein conferred upon or reserved to the parties hereto is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

15. Force Majeure Event: It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, any pandemic, epidemic, or materially similar public health emergency, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed..

16. Agreement Subject to Approval by Baseball Authorities: This Agreement is subject to approval by Major League Baseball (MLB), its subsidiaries, and any other relevant authorities with appropriate jurisdiction.

17. Notice: Any written notice, request, demand or communication shall be deemed to have been delivered and received as of the date (i) personally delivered; (ii) sent by email; (iii) three (3) business days after deposit in the United States certified mail, return receipt requested, properly posted; or (iv) the next business day after an overnight delivery service properly posted and addressed to the other party at the addresses provided below:

To EPSOC: El Paso Stadium Operations Company
1 Ballpark Plaza
El Paso, Texas 79901
Attention: Alan Ledford / Brad Taylor
Email Address: aledford@epchihuahuas.com/btaylor@epchihuahuas.com

With a Copy To:

Kemp Smith LLP
221 N. Kansas, Suite 1700
El Paso, Texas 79901
Attention: Gene Wolf
Facsimile No: 915-546-5360

To Sponsor: City of El Paso
El Paso International Airport
6701 Convair Rd
El Paso, TX 79925
Attn: Cassandra Davisson

18. **Texas Law and Choice of Forum:** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas, without giving effect to any conflict of law rules of the State of Texas. This Agreement is performable in El Paso County, Texas.

19. **Arbitration of Disputes:** Pursuant to Texas Government Code Section 2009.005(c), no provision of the Agreement and the Ancillary Agreements providing for the arbitration of disputes concerning the Agreement or any Ancillary Agreement by the parties shall be of force and effect.

20. **Attorneys' Fees:** If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

21. **Funding Contingency:** The Agreement is made contingent upon continuation of the availability of funds designated or appropriated to pay for the Agreement once funding is approved.

Signed on this 14 day of JUNE, 2022.

EPSOC: EL PASO STADIUM OPERATIONS COMPANY

A series of a Texas limited liability company

By:  BRAD TAYLOR

Its: SR. VP + GM

SPONSOR:

The City of El Paso

El Paso International Airport

6701 Convair Rd

El Paso, TX 79925

Attn: Cassandra Davisson

By: Cassandra Davisson

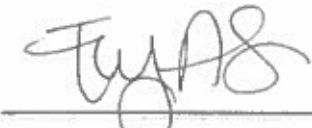
Its: Marketing & Air Service Dev. Mgr.

THE CITY OF EL PASO

Tommy Gonzalez

City Manager

APPROVED AS TO FORM:



Evy A. Sotelo

Assistant City Attorney

EXHIBIT A

2022 Baseball Regular Season Terms and Conditions

EPSOC To Provide:

Ballpark Signage

Franklin Gate Bridge

Digital Signage

LED Digital Ribbon Board Recognition

- Sponsor will receive LED signage exposure at all regular season home games.
 - This LED signage will rotate with other Club partners.
 - All elements to be mutually agreed upon and approved by the Club.
 - Sponsor to receive one (1) pre-game video spot at each regular season home game.
 - Sponsor to be recognized during one (1) in-game public address announcement with a corresponding slide show on the videoboard at each Club regular season home game.
 - Sponsor to receive one (1) advertisement on official Club website with direct link to Sponsor website.

Videoboard Activation

Public Address Announcements

Website Banner Advertisement

Print

Roster Card

- Sponsor to receive one (1) advertisement in the game day roster card.

Promotion

Game Ball Delivery

- Sponsor to be recognized as presenting partner of the game ball delivery at each regular season home game.

Sponsor to Provide:

- Corporate description and URL link for Club's Corporate Partners webpage.
- Miscellaneous logos for use by EPSOC.