

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

**DEPARTMENT:** City Manager's Office

**AGENDA DATE:** April 11, 2023

**CONTACT PERSON NAME / PHONE NUMBER:** Robert Cortinas, Chief Financial Officer (915)-212-1067

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOALS:** Goal 6: Set the Standard for Sound Governance and Fiscal Management

**SUBJECT:**

AN ORDINANCE approving the issuance of the City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project), approving a Fifth Amendment to Master Lease Agreement related to such refunding bonds and approving other matters incident and related thereto.

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**BACKGROUND / DISCUSSION:**

The City, acting by and through its Council, approves the issuance by the Corporation of the Series 2023A Bonds for the financing described in the DDC Resolution, upon the terms and arrangements set forth in the DDC Resolution and the Fifth Supplement.

**PRIOR COUNCIL ACTION:**

The City and the Corporation executed that First Amendment to Master Lease Agreement, dated as of May 1, 2016 in connection with the Corporation's issuance of the Series 2016 Bonds, a Second Amendment to Master Lease Agreement, dated as of July 17, 2020 in connection with the Corporation's issuance of the Series 2020 Bonds, and a Third Amendment to Master Lease Agreement, dated as of June 1, in connection with the Corporation's issuance of the Series 2021 Bonds

The City and the Corporation will execute a Fourth Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing Between the City and the Corporation, dated as of June 1, 2023 in connection with the Corporation's issuance of the Series 2023 Bonds.

**AMOUNT AND SOURCE OF FUNDING:**

Debt service is primarily funded 2% venue project HOT and team revenues

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

**DEPARTMENT HEAD:** *Robert Cortinas*

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE approving the issuance of the City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project), approving a Fifth Amendment to Master Lease Agreement related to such refunding bonds and approving other matters incident and related thereto.

WHEREAS, pursuant to an election held in the City of El Paso, Texas (the “*City*”) on November 6, 2012, the voters of the City authorized the City to provide for the planning, acquisition, establishment, development, construction and financing of a sports and community venue project within the City of the type described and defined in Section 334.001(4)(A) of and permitted by Chapter 334, Local Government Code, as amended (the “*Venue Project Act*”), and described in summary form as a multipurpose coliseum, stadium or other type of arena or facility that is planned for use for one or more professional or amateur sports events, including minor league baseball games and related infrastructure as defined in the Venue Project Act (the “*Project*”), and to impose a tax on the occupancy of a room in hotels located within the City, at a maximum rate of two percent (2%) of the price paid for such room, as authorized by Subchapter H of the Venue Project Act; and

WHEREAS, the City Council (the “*Council*”) of the City authorized the creation of a local government corporation known as the “City of El Paso Downtown Development Corporation” (the “*Corporation*”) pursuant to the provisions of Section 431.001 of the Transportation Code to aid, assist and act on behalf of the City in the performance of the City’s governmental functions, including the financing of the Project; and

WHEREAS, the Corporation issued its “City of El Paso Downtown Development Corporation Special Revenue Bonds, Series 2013A (Downtown Ballpark Venue Project )” (the “*Series 2013 Tax Exempt Bonds*”) and the “City of El Paso Downtown Development Corporation Special Revenue Bonds, Taxable Series 2013B (Downtown Ballpark Venue Project)” (the “*Series 2013 Taxable Bonds*”) pursuant to a Trust Agreement relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing, dated as of August 1, 2013, as amended by a First Amendment to the Trust Agreement dated as of October 15, 2013, and as further supplemented by a First Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated May 1, 2016 (the “*First Supplement*”), a Second Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated July 17, 2020 (the “*Second Supplement*”), and a Third Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2021 (the “*Third Supplement*”) (collectively, as amended and supplemented, the “*Trust Agreement*”), by and between the Corporation and Computershare Trust Company, N.A., as successor to Wells Fargo Bank, National Association, as trustee (the “*Trustee*”); and

WHEREAS, the Corporation and the Trustee entered into the First Supplement in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2016 (Downtown Ballpark Venue Project)” (the “*Series 2016 Bonds*”), the Second Supplement in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2020 (Downtown Ballpark Venue Project)” (the “*Series 2020 Bonds*”), and the

WHEREAS, the Articles of Incorporation and Bylaws of the Corporation require that the Corporation obtain written approval from the Council prior to the consummation of the sale and delivery of any bonds or notes of the Corporation; and

WHEREAS, there have been presented to the Council at this meeting forms of each of the following documents:

1. the DDC Resolution;
2. the Fifth Supplement; and
3. the Fifth Lease Amendment (collectively, the “*Transaction Documents*”);

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

SECTION 1: The facts and recitations contained in the preamble of, and the recitals to, this Ordinance are hereby found and declared to be true and correct legislative findings and are adopted as part of this Ordinance for all purposes. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Fifth Supplement.

SECTION 2: The City, acting by and through its Council, approves the issuance by the Corporation of the Series 2023A Bonds for the financing described in the DDC Resolution, upon the terms and arrangements set forth in the DDC Resolution and the Fifth Supplement.

SECTION 3: The Council hereby approves the Fifth Lease Amendment in substantially the form and substance presented to the Council, and the Mayor, the City Manager or the Chief Financial Officer of the City is hereby authorized and directed, for and on behalf of the City, to execute the Fifth Lease Amendment and the City Clerk or Deputy City Clerk of the City is hereby authorized to attest such officer’s signature on the Fifth Lease Amendment, and such officers are hereby authorized to deliver the Fifth Lease Amendment. Upon execution by the parties thereto and delivery thereof, the Fifth Lease Amendment shall be binding upon the City in accordance with the terms and provisions thereof. Any funds appropriated by the City to make payments due under the Master Lease Agreement, as amended by the First Lease Amendment, Second Lease Amendment, the Third Lease Amendment, the Fourth Lease Amendment, and the Fifth Lease Amendment, shall be and are hereby directed to be deposited to the Venue Project Fund in accordance with the provisions of Section 334.042(c)(5) of the Venue Project Act.

SECTION 4: Pursuant to a City resolution adopted on December 18, 2012, the City established a Venue Project Fund in accordance with Section 334.042 of the Venue Project Act. The City hereby affirms such fund.

SECTION 5: The adoption and execution of the Transaction Documents and the taking of such other actions as may be necessary and appropriate in connection therewith are hereby approved.

SECTION 6: Each of the Mayor, the City Manager, and the Chief Financial Officer of the City is, individually and collectively, authorized and directed to take all action necessary or reasonably required to effectuate the adoption, execution and delivery of the Transaction

APPROVED AND ADOPTED this 11<sup>th</sup> day of April, 2023.

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Oscar Leeser  
Mayor, City of El Paso, Texas

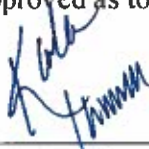
ATTEST:

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Laura D. Prine  
City Clerk, City of El Paso, Texas

(CITY SEAL)

Approved as to Form:



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Karla Nieman  
City Attorney  
City of El Paso, Texas

Approved as to Content:



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Robert Cortinas  
Chief Financial Officer  
City of El Paso, Texas

Approved as to Form:



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Paul A. Braden  
Bond Counsel

## **EXHIBIT A**

### **Resolution of the Corporation**

A RESOLUTION authorizing the issuance of the City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project) for debt service savings; approving a Fifth Supplement to Trust Agreement and a Fifth Amendment to Master Lease Agreement; authorizing the execution of other documents and instruments necessary or convenient to carry out the issuance of such refunding bonds; and resolving other matters incident and related thereto.

WHEREAS, the City of El Paso Downtown Development Corporation (the “**Corporation**”) has been created and organized as a public, nonprofit local government corporation incorporated pursuant to Subchapter D of Chapter 431, Texas Transportation Code, as amended, to aid, assist and act on behalf of the City of El Paso, Texas (the “**City**”) in the performance of the City’s governmental functions; and

WHEREAS, pursuant to an election held in the City on November 6, 2012, the voters of the City authorized the City to provide for the planning, acquisition, establishment, development, construction and financing of a sports and community venue project within the City of the type described and defined in Section 334.001(4)(A) of and permitted by Chapter 334, Local Government Code, as amended (the “**Venue Project Act**”), and described in summary form as a multipurpose coliseum, stadium or other type of arena or facility that is planned for use for one or more professional or amateur sports events, including minor league baseball games and related infrastructure as defined in the Venue Project Act (the “**Project**”), and to impose a tax (the “**HOT**”) on the occupancy of a room in hotels located within the City, at a maximum rate of two percent (2%) of the price paid for such room, as authorized by Subchapter H of the Venue Project Act; and

WHEREAS, the Corporation has previously issued its “City of El Paso Downtown Development Corporation Special Revenue Bonds, Series 2013A (Downtown Ballpark Venue Project )” (the “**Series 2013 Tax Exempt Bonds**”) and the “City of El Paso Downtown Development Corporation Special Revenue Bonds, Taxable Series 2013B (Downtown Ballpark Venue Project)” (the “**Series 2013 Taxable Bonds**”) pursuant to a Trust Agreement relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing, dated as of August 1, 2013, as amended by a First Amendment to the Trust Agreement dated as of October 15, 2013 (collectively, as amended, the “**Original Trust Agreement**”), by and between the Corporation and Wells Fargo Bank, National Association, as trustee; and

WHEREAS, the Corporation and Wells Fargo Bank, National Association entered into a First Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated May 1, 2016 (the “**First Supplement**”), in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2016 (Downtown Ballpark Venue Project)” (the “**Series 2016 Bonds**”), a Second Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated July 17, 2020 (the “**Second Supplement**”), in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2020 (Downtown Ballpark Venue Project)” (the “**Series 2020 Bonds**”), and a Third Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2021 (the “**Third Supplement**”), in connection with the Corporation’s issuance of its “City of El Paso

Downtown Development Corporation Special Revenue Refunding Bonds, Taxable Series 2021 (Downtown Ballpark Venue Project)” (the “**Series 2021 Bonds**”); and

WHEREAS, the Corporation and Computershare Trust Company, N.A. (as successor to Wells Fargo Bank, National Association, the “**Trustee**”) will enter into a Fourth Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2023 (the “**Fourth Supplement**”), in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023 (Downtown Ballpark Venue Project)” (the “**Series 2023 Bonds**”); and

WHEREAS, the City and the Corporation executed that Master Lease Agreement Relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing, dated as of August 1, 2013, between the City and the Corporation (the “**Master Lease Agreement**”), pursuant to which the City leased the Project to the Corporation and the Corporation subleased the Project back to the City; and

WHEREAS, the City and the Corporation executed that First Amendment to Master Lease Agreement, dated as of May 1, 2016 (the “**First Lease Amendment**”), in connection with the Corporation’s issuance of the Series 2016 Bonds, a Second Amendment to Master Lease Agreement, dated as of July 17, 2020 (the “**Second Lease Amendment**”) in connection with the Corporation’s issuance of the Series 2020 Bonds, and a Third Amendment to Master Lease Agreement, dated as of June 1, 2021 (the “**Third Lease Amendment**”) in connection with the Corporation’s issuance of the Series 2021 Bonds; and

WHEREAS, the City and the Corporation will enter into a Fourth Amendment to Master Lease Agreement, dated as of June 1, 2023 (the “**Fourth Lease Amendment**”) in connection with the Corporation’s issuance of the Series 2023 Bonds; and

WHEREAS, under the Master Lease Agreement, First Lease Amendment, Second Lease Amendment, and Third Lease Amendment, the City pays to the Corporation lease payments (the “**Lease Payments**”) at such times and in such amounts as will be sufficient to pay debt service on the Outstanding Parity Bonds, such Lease Payments to be primarily funded from the HOT; and

WHEREAS, Chapter 1207 of the Texas Government Code, as amended (“**Chapter 1207**”), authorizes the Corporation to issue refunding bonds and deposit the proceeds of the sale directly with any place of payment for the refunded bonds, or other authorized depository, and such deposit, when made in accordance with such statute, shall constitute firm banking and financial arrangements for the discharge and final payment of such refunded bonds; and

WHEREAS, the Board of Directors of the Corporation (the “**Board**”) hereby finds and determines that it is in the best interest of the Corporation to issue its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project)” (the “**Series 2023A Bonds**”) to refund the outstanding Series 2021 Bonds for debt service savings; and

WHEREAS, the Series 2023A Bonds will be issued pursuant to the terms of a Fifth Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing Between the Trustee and the Corporation (the “**Fifth Supplement**”), substantially in the form of attached Exhibit A which is hereby incorporated by reference; and

WHEREAS, the Master Lease Agreement will have to be amended pursuant to a Fifth Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing Between the City and the Corporation (the "***Fifth Lease Amendment***"), substantially in the form of attached Exhibit B which is hereby incorporated by reference, to reflect the issuance of the Series 2023A Bonds and defeasance of the Series 2021 Bonds; and

WHEREAS, by City Ordinance adopted on the date hereof, the City Council of the City authorized and approved the issuance of the Series 2023A Bonds by the Corporation and the execution of the Fifth Lease Amendment and;

WHEREAS, there have been presented to the Board forms of each of the following documents:

1. the Fifth Supplement; and
2. the Fifth Lease Amendment; the Fifth Supplement and the Fifth Lease Amendment are collectively referred to herein as the "***Transaction Documents***"; and

WHEREAS, the Board shall by this Resolution, in accordance with the provisions of Chapter 1207, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount of Series 2023A Bonds to be issued, negotiate the terms of sale thereof and approve all final terms of the Series 2023A Bonds and to select the specific maturities (whole or part) of the Series 2021 Bonds to be refunded through payment of the purchase price and cancellation thereof through a tender offer (such transaction, the "***Tender Offer***") or otherwise;

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

SECTION 1: Transaction Documents. The Board hereby finds the form and substance of the Transaction Documents to be satisfactory and proper and hereby determines to proceed with the issuance and sale of the Series 2023A Bonds, the execution of the Transaction Documents (to the extent necessary by the terms thereof) and the taking of such other actions as may be necessary and appropriate in connection therewith. The issuance of the Series 2023A Bonds is found to be in the best interest of the Corporation.

SECTION 2: Approval of Fifth Supplement. The Board hereby approves the Fifth Supplement in substantially the form and substance presented to the Board, as further modified and finalized in accordance with Section 4 hereof, and the Executive Director or Treasurer of the Corporation is hereby authorized and directed, for and on behalf of the Corporation, to execute and deliver the Fifth Supplement and the Secretary, Treasurer or any other Board member or officer of the Corporation is hereby authorized to attest the Fifth Supplement on behalf of the Corporation. Upon execution by the parties thereto and delivery thereof, the Fifth Supplement shall be binding upon the Corporation in accordance with the terms and provisions thereof. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Fifth Supplement.

SECTION 3: Approval of Fifth Lease Amendment. The Board hereby approves the Fifth Lease Amendment in substantially the form and substance presented to the Board, as



further modified and finalized to take into account the pricing delegation set forth in Section 4 hereof, and the Chair or Vice Chair of the Board or the Executive Director or Treasurer of the Corporation is hereby authorized and directed, for and on behalf of the Corporation, to execute and deliver the Fifth Lease Amendment and the Secretary, the Treasurer or any other Board member or officer of the Corporation is hereby authorized to attest to the Fifth Lease Amendment on behalf of the Corporation. Upon execution by the parties thereto and delivery thereof, the Fifth Lease Amendment shall be binding upon the Corporation in accordance with the terms and provisions thereof.

**SECTION 4: Delegation of Authority to Pricing Officer.** As authorized by applicable law including Chapter 1207, each of the Executive Director and the Treasurer of the Corporation (each a “**Pricing Officer**”) is hereby authorized to act on behalf of the Corporation in selling and delivering the Series 2023A Bonds and carrying out the other procedures specified in this Resolution, including, but not limited to, selecting the specific maturities (whole or part) of the Series 2021 Bonds to be refunded or purchased for cancellation in accordance with the invitation to offer bonds for purchase (including all exhibits and/or appendices thereto, the “**Invitation**”), and the method for determining the purchase price for each maturity of the Series 2021 Bonds subject to the Tender Offer, designation of an information agent and tender agent related thereto and the principal amount and purchase price of the Series 2021 Bonds to be tendered pursuant to the Tender Offer and accepted for purchase and cancellation, overseeing the preparation and distribution of the Invitation with respect to the Series 2021 Bonds, overseeing the preparation and execution of a dealer manager agreement and any agreement with the information agent and tender agent relating to the Invitation and the Tender Offer, determining the aggregate original principal amount of the Series 2023A Bonds, the date of the Series 2023A Bonds, any different designation or title by which the Series 2023A Bonds shall be known, the terms of any bond insurance applicable to the Series 2023A Bonds, the price at which the Series 2023A Bonds will be sold, the years in which the Series 2023A Bonds will mature, the principal amount of the Series 2023A Bonds to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment dates, the record date, the price and terms upon and at which the Series 2023A Bonds shall be subject to redemption prior to maturity at the option of the Corporation, as well as any mandatory sinking fund redemption or extraordinary optional redemption provisions, the designation of an escrow agent, if applicable, satisfying the requirements of Chapter 1207, the designation of one or more funds for the payment of the Series 2023A Bonds, and all other matters relating to the issuance, sale and delivery of the Series 2023A Bonds and the Tender Offer, all of which shall be specified in the final executed Fifth Supplement and an approval certificate (the “**Approval Certificate**”) executed by the Pricing Officer, provided that:

- (a) the aggregate original principal amount of the Series 2023A Bonds shall not exceed \$21,750,000;
- (b) the refunding of the Series 2021 Bonds must produce present value debt service savings of at least three percent (3.00%), net of any Corporation contribution;
- (c) the aggregate true interest cost for the Series 2023A Bonds shall not exceed 5.25%; and

(d) the maximum maturity date for the Series 2023A Bonds shall not exceed August 15, 2038.

In establishing the aggregate principal amount of the Series 2023A Bonds, the Pricing Officer shall establish an amount not exceeding the amount authorized in Subsection (a) above, which shall be sufficient in amount to provide for the purposes for which the Series 2023A Bonds are authorized and to pay the costs of issuing the Series 2023A Bonds. Unless otherwise extended by an act of the Board, the delegation made hereby shall expire if not exercised by the Pricing Officer on or prior to 180 days after the adoption of this Resolution. The Series 2023A Bonds shall be sold by negotiated sale to the Purchasers (defined below), at such price(s) and with and subject to such terms as set forth in the Fifth Supplement and/or the Purchase Contract (defined below). The execution of the Purchase Contract shall evidence the sale date of the Series 2023A Bonds by the Corporation to the Purchasers.

If the Pricing Officer determines that bond insurance results in a net reduction of the Corporation's interest costs associated with the Series 2023A Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of the Series 2023A Bonds, to obtain from a municipal bond insurance company (the "**Insurer**") a municipal bond insurance policy in support of the Series 2023A Bonds. To that end, should the Pricing Officer exercise such authority and commit the Corporation to obtain a municipal bond insurance policy, for so long as such policy is in effect, the requirements of the Insurer relating to the issuance of such policy or policies are incorporated by reference into this Resolution and made a part hereof for all purposes, notwithstanding any other provision of this Resolution to the contrary.

**SECTION 5: Purchase of Series 2021 Bonds.** If the Corporation undertakes the Tender Offer for all or a portion of the Series 2021 Bonds, on or prior to the date of the initial delivery of the Series 2023A Bonds (the "**Closing Date**"), the Trustee shall deposit in the Series 2023A Proceeds Account established pursuant to the Fifth Supplement the amount set forth in the Approval Certificate for the purchase for cancellation of the Series 2021 Bonds in accordance with the Invitation. Specifically, each holder of the purchased bonds identified in the Approval Certificate (the "**Purchased Bonds**") will deliver or cause to be delivered its Series 2021 Bonds to the Corporation's DTC ATOP Account as described in the Invitation. The Trustee, on behalf of the Corporation, will complete the purchase by paying the purchase price for the Purchased Bonds from the Series 2023A Proceeds Account according to the instructions described in the Approval Certificate or other written instructions from the Corporation or its financial advisor. The Corporation hereby directs the Trustee, after such payments have been made by the Trustee, on behalf of the Corporation, to cancel the Series 2021 Bonds so purchased.

**SECTION 6: Approval of Dealer Manager.** To effectuate the purchase of the Series 2021 Bonds, the Corporation hereby selects Jefferies LLC as the exclusive dealer manager (the "**Dealer Manager**") to assist the Corporation in conducting the Tender Offer and further authorizes each Pricing Officer to negotiate and execute a Dealer Manager Agreement, and, in conjunction with the Dealer Manager, to execute, acknowledge, modify, deliver, and file with the MSRB any and all documentation related to the Tender Offer. Furthermore, each Pricing Officer is authorized to (i) negotiate the fees and expenses of the information agent and tender agent, whether such agent is hired by the Corporation or by the Dealer Manager, in connection with the Invitation, and (ii) to pay, or reimburse the Dealer Manager for, the fees and expenses of the

information and tender agent, in an amount not to exceed \$25,000, from lawfully available funds of the Corporation.

SECTION 7: Execution - Registration. The Board hereby approves the Series 2023A Bonds in substantially the forms and substance set forth in the Fifth Supplement as presented to the Board, and the Chair or Vice Chair of the Board and the Secretary or the Treasurer of the Corporation are hereby authorized and directed, for and on behalf of the Corporation, to execute the Series 2023A Bonds or have their facsimile signatures placed upon the Series 2023A Bonds, and such officers are hereby authorized and directed to deliver the Series 2023A Bonds in accordance with their terms. Series 2023A Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Corporation on the date of execution of the Fifth Supplement shall be deemed to be duly executed on behalf of the Corporation, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Series 2023A Bonds to the Purchasers and with respect to Series 2023A Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, Texas Government Code, as amended.

SECTION 8: Trustee. Computershare Trust Company, N.A., Dallas, Texas is hereby appointed and confirmed as Trustee and paying agent under the terms of the Fifth Supplement. If such bank shall be unable or unwilling to serve in one or more of such capacities, the Pricing Officer, Chair or Vice Chair of the Board is hereby authorized and directed to designate a commercial bank or other legally authorized entity to serve as Trustee and paying agent in the manner and to the extent described in the Fifth Supplement.

SECTION 9: Sale of Series 2023A Bonds - Official Statement Approval. The Series 2023A Bonds are to be sold by the Corporation to the purchasers named in the Approval Certificate, as the underwriters of the Series 2023A Bonds (collectively, the “**Purchasers**”) in accordance with a bond purchase agreement (the “**Purchase Contract**”), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 4 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Corporation and as the act and deed of the Board.

The Chair and Vice Chair of the Board and the Executive Director, Secretary and/or Treasurer of the Corporation are hereby severally authorized, directed and empowered to prepare, amend, supplement and approve a preliminary official statement for the Series 2023A Bonds (the “**Preliminary Official Statement**”) and a final official statement for the Series 2023A Bonds (the “**Official Statement**”) for use in the proposed offering of such Series 2023A Bonds. The Board hereby authorizes and approves the use and distribution of the Preliminary Official Statement and the Official Statement (that have been approved in accordance with the previous sentence) in the offering of the Series 2023A Bonds and the Pricing Officer is hereby authorized to deem such Preliminary Official Statement “final” for purpose of the Rule on behalf of the Corporation.

SECTION 10: Execution of Tax Certifications. The Chair and Vice Chair of the Board, and the Executive Director, Treasurer, Secretary or any other officer of the Corporation, are each authorized to execute such documents, certificates and receipts, and to make such elections with respect to the tax-exempt status of the Series 2023A Bonds, as they may deem appropriate in

order to consummate the delivery of the Series 2023A Bonds in accordance with the provisions and terms of this Resolution and the Fifth Supplement.

SECTION 11: Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Series 2023A Bonds is subject to the Purchasers being furnished with the final, approving opinion of Norton Rose Fulbright US LLP, Bond Counsel for the Corporation, which opinion shall be dated and delivered the Closing Date. The engagement of such firm as Bond Counsel to the Corporation in connection with the Tender Offer and the issuance of its Series 2023A Bonds is hereby approved and confirmed.

SECTION 12: Further Procedures. Each of the Chair, Vice Chair, Executive Director, Treasurer, Assistant Treasurer, Secretary and Assistant Secretary of the Corporation is, individually and collectively, authorized and directed to take all action necessary or reasonably required to effectuate the issuance of the Series 2023A Bonds and the Tender Offer and for carrying out, giving effect to, and consummating the transactions described in the Series 2023A Bonds, this Resolution, the Transaction Documents, and any other instruments authorized by this Resolution or required to effect the transaction contemplated hereby, including without limitation, the execution and delivery of any closing documents and other certificates and documents in addition to those specifically referenced herein that are required in connection with the issuance of the Series 2023A Bonds.

Furthermore, prior to the initial delivery of the Series 2023A Bonds, any of the Chair, Vice Chair, Executive Director, Treasurer or Bond Counsel to the Corporation are each hereby authorized and directed to approve any changes or corrections to this Resolution or to any of the documents authorized and approved by this Resolution: (i) in order to cure any ambiguity, formal defect, or omission in the Resolution or such other document; (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Series 2023A Bonds by the Attorney General; (iii) as requested by any of the national bond rating agencies to obtain a rating or ratings on the Series 2023A Bonds; or (iv) to accomplish the issuance and delivery of the Series 2023A Bonds and Tender Offer and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Resolution, which determination shall be final. In the event that any officer of the Corporation whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Additionally, the Chair, Vice Chair, Executive Director, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary of the Corporation may execute, authenticate, certify, or endorse or authorize to be executed, authenticated, certified, or endorsed with such officer's facsimile signature instead of the officer's manual signature any written agreement, including a contract, purchase order or surety bond, and any related document, including an application, certificate, or approval. For purposes of this Resolution, "facsimile signature" means a reproduction of the manual signature of an authorized officer that is made by any method.

SECTION 13: Incorporation of Findings and Determinations. The findings and determinations of the Board contained in the preamble hereof are hereby incorporated by

reference and made a part of this Resolution for all purposes as if the same were restated in full in this Section.

SECTION 14: Corporate Officers. As set forth in the Original Trust Agreement, the Executive Director of the Corporation shall at all times be the person serving as the City Manager of the City; the Treasurer of the Corporation shall at all times be the person serving in the capacity of the Chief Financial Officer of the City; and the Secretary of the Corporation shall at all times be the person serving as the City Clerk of the City. The City's Comptroller is hereby confirmed as the Assistant Treasurer of the Corporation and any Alternate City Clerk is hereby confirmed as an Assistant Secretary of the Corporation.

SECTION 15: Severability. If any section, paragraph, clause, or provision of the Resolution shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution. In case any obligation of the Corporation authorized or established by this Resolution or the Series 2023A Bonds is held to be in violation of law as applied to any person or in any circumstance, such obligation shall be deemed to be the obligation of the Corporation to the fullest extent permitted by law.

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

SECTION 17: Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.

*[Remainder of page left blank intentionally.]*



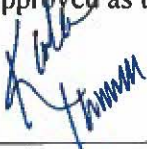
APPROVED AND ADOPTED this 11<sup>th</sup> day of April, 2023.

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

ATTEST:

\_\_\_\_\_  
Laura D. Prine  
Secretary, City of El Paso  
Downtown Development Corporation

Approved as to Form:

  
\_\_\_\_\_  
Karla Nieman  
City Attorney  
City of El Paso, Texas

Approved as to Content:

  
\_\_\_\_\_  
Robert Cortinas  
Treasurer, City of El Paso  
Downtown Development Corporation

Approved as to Form:

  
\_\_\_\_\_  
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**Exhibit A**

**Fifth Supplement**

**FIFTH SUPPLEMENT  
TO  
TRUST AGREEMENT  
RELATING TO THE CITY OF EL PASO, TEXAS  
DOWNTOWN BALLPARK VENUE PROJECT FINANCING**

Between

**COMPUTERSHARE TRUST COMPANY, N.A.,  
as Trustee**

and the

**CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION**

Dated as of June 1, 2023

Securing

**CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION  
SPECIAL REVENUE REFUNDING BONDS, SERIES 2023A  
(DOWNTOWN BALLPARK VENUE PROJECT)**



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**FIFTH SUPPLEMENT TO TRUST AGREEMENT  
RELATING TO THE CITY OF EL PASO, TEXAS  
DOWNTOWN BALLPARK VENUE PROJECT FINANCING**

**THIS FIFTH SUPPLEMENT TO TRUST AGREEMENT RELATING TO THE CITY OF EL PASO, TEXAS DOWNTOWN BALLPARK VENUE PROJECT FINANCING** (this “*Fifth Supplement*”) is made as of June 1, 2023 by and between **Computershare Trust Company, N.A.**, a national banking association duly organized and operating under the laws of the United States of America and duly authorized and empowered to accept and execute trusts of the character set out hereunder, with a corporate trust office in Dallas, Texas, as trustee (as successor to Wells Fargo Bank, National Association, the “*Trustee*”), and the **CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION**, a nonprofit local government corporation duly organized under the laws of the State of Texas (the “*Corporation*”).

**WITNESSETH:**

**WHEREAS**, the Corporation has previously issued its “City of El Paso Downtown Development Corporation Special Revenue Bonds, Series 2013A (Downtown Ballpark Venue Project )” (the “*Series 2013A Bonds*”) and the “City of El Paso Downtown Development Corporation Special Revenue Bonds, Taxable Series 2013B (Downtown Ballpark Venue Project)” (the “*Series 2013B Bonds*”) pursuant to a Trust Agreement relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing, dated as of August 1, 2013, as amended by a First Amendment to the Trust Agreement dated as of October 15, 2013 (collectively, as amended, the “*Original Trust Agreement*”), by and between the Corporation and the Trustee; and

**WHEREAS**, the Corporation and the Trustee entered into a First Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated May 1, 2016 (the “*First Supplement*”), in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2016 (Downtown Ballpark Venue Project)” (the “*Series 2016 Bonds*”), a Second Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated July 17, 2020 (the “*Second Supplement*”), in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2020 (Downtown Ballpark Venue Project)” (the “*Series 2020 Bonds*”), and a Third Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2021 (the “*Third Supplement*”), in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Taxable Series 2021 (Downtown Ballpark Venue Project)” (the “*Series 2021 Bonds*”); and

**WHEREAS**, on a contemporaneous basis herewith, the Corporation and the Trustee are entering into a Fourth Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2023 (the “*Fourth Supplement*”) (the Original Trust Agreement as supplemented by the First Supplement, Second Supplement, Third Supplement, Fourth Supplement and this Fifth Supplement are collectively referred to herein as the “*Trust Agreement*”), in connection with the Corporation’s issuance of its “City of

El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023 (Downtown Ballpark Venue Project)” (the “**Series 2023 Bonds**”); and

**WHEREAS**, the City and the Corporation executed that Master Lease Agreement Relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing, dated as of August 1, 2013, between the City and the Corporation (the “**Master Lease Agreement**”), pursuant to which the City leased the Project to the Corporation and the Corporation subleased the Project back to the City; and

**WHEREAS**, the City and the Corporation executed that First Amendment to Master Lease Agreement, dated as of May 1, 2016 (the “**First Lease Amendment**”), in connection with the Corporation’s issuance of the Series 2016 Bonds, that Second Amendment to Master Lease Agreement, dated as of July 17, 2020 (the “**Second Lease Amendment**”), in connection with the Corporation’s issuance of the Series 2020 Bonds, and that Third Amendment to Master Lease Agreement, dated as of June 1, 2021 (the “**Third Lease Amendment**”) in connection with the Corporation’s issuance of the Series 2021 Bonds; and

**WHEREAS**, on a contemporaneous basis herewith, the City and the Corporation are executing a Fourth Amendment to Master Lease Agreement, dated as of June 1, 2023 (the “**Fourth Lease Amendment**”) in connection with the Corporation’s issuance of the Series 2023 Bonds; and

**WHEREAS**, under the Master Lease Agreement, the City pays to the Corporation lease payments (the “**Lease Payments**”) at such times and in such amounts as will be sufficient to pay debt service on the Outstanding Parity Bonds, such Lease Payments to be primarily funded from the HOT; and

**WHEREAS**, Chapter 1207 of the Texas Government Code, as amended (“**Chapter 1207**”) authorizes the Corporation to issue refunding bonds and deposit the proceeds of the sale directly with any place of payment for the refunded bonds, or other authorized depository, and such deposit, when made in accordance with such statute, shall constitute firm banking and financial arrangements for the discharge and final payment of the refunded bonds; and

**WHEREAS**, Section 3.09 of the Original Trust Agreement, the First Supplement, the Second Supplement, the Third Supplement, and the Fourth Supplement permit the issuance of “Additional Bonds” to refund any Parity Bonds then Outstanding and such Additional Bonds, if and when issued, shall be secured by and made payable equally and ratably on a parity with the Outstanding Parity Bonds from the Trust Estate (including but not limited to the Lease Payments made by the City); and

**WHEREAS**, Sections 3.09 and 10.01 of the Original Trust Agreement, the First Supplement, the Second Supplement, the Third Supplement, and the Fourth Supplement permit the amendment or supplement of the Original Trust Agreement and the Master Lease Agreement, to the extent necessary, to provide for the issuance of such Additional Bonds, including but not limited to amending the Master Lease Agreement to provide for the payment by the City of the Lease Payments to include payment of debt service related to such issue of Additional Bonds; and

**WHEREAS**, pursuant to a resolution adopted on April 11, 2023 (the “Series 2023A Bond Resolution”), the Board of Directors of the Corporation (the “**Board**”) has found and determined

that it is in the best interest of the Corporation to issue its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project)” (the “**Series 2023A Bonds**”) to refund certain of the outstanding Series 2021 Bonds (the “**Refunded Bonds**”) for present value debt service savings; and

**WHEREAS**, the Series 2023A Bonds will be issued as Additional Bonds under the terms of the Original Trust Agreement, the First Supplement, the Second Supplement, the Third Supplement, the Fourth Supplement and pursuant to the terms of this Fifth Supplement; and

**WHEREAS**, the Master Lease Agreement is being amended pursuant to a Fifth Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing Between the City and the Corporation (the “**Fifth Lease Amendment**”) to reflect the issuance of the Series 2023A Bonds and defeasance of certain of the Series 2021 Bonds; (the First Lease Amendment, Second Lease Amendment, Third Lease Amendment, Fourth Lease Amendment, and Fifth Lease Amendment and Master Lease Agreement are collectively referred to herein as the “**Lease Agreement**”);

**NOW THEREFORE**, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto agree to amend and supplement the Original Trust Agreement as follows:

**[End of Recitals]**

**ARTICLE I**  
**DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.01. Definitions.** Unless the context otherwise requires, all capitalized terms not otherwise defined herein shall have the meaning as set forth in Exhibit A to this Fifth Supplement.

**Section 1.02. Rules of Construction.**

(a) *General.* When in this Fifth Supplement the context requires (i) a reference to the singular number includes the plural and vice versa, and (ii) a word denoting gender includes the masculine, feminine, and neuter.

(b) *Headings and Section Titles.* Headings preceding the text of the several Articles and Sections hereof, and the table of contents, are solely for convenience of reference and shall not constitute a part of this Fifth Supplement or affect its meaning, construction, or effect.

**Section 1.03. Preamble and Recitals.** The statements and findings in the preamble and recitals of this Fifth Supplement are hereby adopted and made a part of this Fifth Supplement.

**[End of Article I]**

## **ARTICLE II REPRESENTATIONS AND GRANTING CLAUSES**

**Section 2.01. Master Lease.** The Corporation and the City have entered into the Lease Agreement, which memorializes separate lease transactions between the parties, whereby (i) the City has agreed to lease the Project to the Corporation and the Corporation has agreed to lease the Project from the City (referred to in the Lease Agreement as the “Primary Lease”), and (ii) the Corporation has agreed to sublease the Project back to the City and the City has agreed to sublease the Project back from the Corporation (referred to in the Lease Agreement as the “Sublease”).

**Section 2.02. The Project.** Pursuant to the terms of the Lease Agreement, the City has constructed the Project in accordance with the Development Agreement.

**Section 2.03. Payments.** Under the Lease Agreement, the City, as Sublessee under the Sublease, is obligated to pay to the Corporation or its assigns, but solely from the Venue Project Fund, Lease Payments for the Sublease of the Project.

**Section 2.04. Deposit of Funds.** Under the Lease Agreement, the Corporation is required (as Sublessor under the Sublease and as Lessee under the Primary Lease) to deposit or cause to be deposited with the Trustee all Lease Payments, payments for Operating Expenses (if any), and other money received from the City (as Sublessee under the Sublease or as Lessor under the Primary Lease) pursuant to the Lease Agreement, to be held, credited, and applied in accordance with the terms hereof.

**Section 2.05. Assignment to Trustee.** Pursuant to the Original Trust Agreement, the First Supplement, the Second Supplement, the Third Supplement, and the Fourth Supplement, the Corporation has assigned (and hereby confirms the assignment) to the Trustee, for the benefit of the Bondholders (excluding funds received and deposited into the Operating Fund or funds on deposit in the Rebate Account), all of the Corporation’s present and future right, title, and interest in and to, but none of its obligations, responsibilities, or liabilities under, the Lease Agreement, including, but not limited to, the right to receive the Lease Payments pursuant to the Sublease, and payments for Operating Expenses related to the Project, and other money received pursuant to the Lease Agreement, all as set forth in the Lease Agreement.

**Section 2.06. Trustee.** The Corporation hereby confirms the appointment of the Trustee to act, for and on behalf of the Bondholders, and the Trustee hereby accepts such appointment to: (i) receive the proceeds from the sale of the Parity Bonds; (ii) receive and disburse all Lease Payments, payments for Operating Expenses, and other payments received under the Lease Agreement; (iii) apply and disburse the proceeds from the sale of the Parity Bonds and the payments received hereunder as hereinafter provided; and (iv) perform all the other duties and obligations of the Trustee expressly provided for herein.

**Section 2.07. Authority to Contract.** Each of the parties has authority to enter into this Fifth Supplement and has taken all actions necessary to authorize its execution and delivery by its duly authorized officers signing the signature page hereof and the performance of its respective obligations hereunder.



**Section 2.08. Conditions Precedent Satisfied.** All acts, conditions, and things required by law to exist, happen, and be performed precedent to and in connection with the execution and entering into of this Fifth Supplement have happened, and have been performed in regular and due time, form, and manner required by law, and the parties hereto are now fully empowered to execute and enter into this Fifth Supplement.

**NOW, THEREFORE,** in consideration of the mutual undertakings, provisions, and agreements contained in the Trust Agreement, in order to secure the payment of Bond Payments according to their true intent and meaning and to the extent provided in the Trust Agreement, to secure the performance and observance of all covenants and conditions contained in the Trust Agreement for and in consideration of these premises and of the purchase and acceptance of the Parity Bonds and of the acceptance by the Trustee of the trust originally created in the Original Trust Agreement, as supplemented by the First Supplement, Second Supplement, Third Supplement, and Fourth Supplement and hereby confirmed and for other good and valuable consideration, the receipt of which is hereby acknowledged, this Fifth Supplement has been executed and delivered by the Corporation and the Trustee, and the Corporation by these presents does confirm, grant, bargain, sell, alien, remise, convey, assign, transfer, mortgage, hypothecate, pledge and set over to the Trustee, forever, all of the Corporation's right, title and interest in the Trust Estate, and does grant a security interest therein to the Trustee for the purposes herein expressed.

**TO HAVE AND TO HOLD** all and singular the Trust Estate whether now owned or hereafter acquired unto the Trustee and its successors in trust and to its assigns forever.

**BUT IN TRUST NEVERTHELESS,** for the equal and proportionate benefit, security, and protection of all present and future owners of the Parity Bonds whose Parity Bonds are governed by the Trust Agreement, and to secure the performance of and compliance with the covenants, terms, and conditions of the Trust Agreement, without preference, priority, or distinction, as to lien or otherwise (except as hereinafter expressly provided), of any Bondholder over any other, so that each and every Bondholder shall have the same right, lien, and privilege under the Trust Agreement and shall be equally and ratably secured on a pro rata basis.

**[End of Article II]**

## **ARTICLE III PARITY BONDS**

**Section 3.01. Payments From Trust Estate Only.** All payments to be made by the Trustee under the Trust Agreement to the Bondholders shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Trustee shall have received income or proceeds from the Trust Estate.

**Section 3.02. Method of Payment.** The Trustee is hereby confirmed as paying agent for the Parity Bonds. All Bond Payments made by the Trustee under the Trust Agreement shall be paid to each Bondholder (i) with respect to the Series 2023A Bonds, in accordance with Section 4.03 of this Fifth Supplement, (ii) with respect to the Previously Issued Parity Bonds, in accordance with the Original Trust Agreement, First Supplement, Second Supplement, Third Supplement, and Fourth Supplement, and (iii) with respect to each series of Additional Bonds issued in the future, in accordance with the provisions of the Original Trust Agreement as amended to provide for the issuance of such series of Additional Bonds.

**Section 3.03. Unclaimed Bond Payments.** If money sufficient to make a payment to a Bondholder shall have been made available to the Trustee for the benefit of such Bondholder, and the payment cannot be made, for any reason, it shall thereafter be the duty of the Trustee to hold such money, without liability for interest thereon, for the benefit of such Bondholder. Such Bondholder shall thereafter be restricted exclusively to such money for any claim of whatever nature which he may have under this Fifth Supplement or on, or with respect to, his Parity Bond. Subject to unclaimed property laws of the State, the Trustee's obligation to hold such money shall continue for a period of three years following the date on which the principal of the Parity Bonds became due (whether at maturity, or the date fixed for redemption thereof), or otherwise, as the case may be.

**Section 3.04. Other Distributions.** Any payments of amounts received by the Trustee (other than amounts for Lease Payments which shall be applied in accordance with the provisions of this Fifth Supplement) as to which provision for the application thereof is made in the Lease Agreement, shall be applied to the purpose for which such payments were made in accordance with the terms of the Lease Agreement. The foregoing notwithstanding, any payments for Operating Expenses received by the Trustee from the City, if any, shall be applied in accordance with the provisions of Section 6.07 hereof and upon the written direction of the Corporation.

**Section 3.05. Execution; Temporary Bonds.**

(a) *Execution of Parity Bonds.* The Parity Bonds may be executed on behalf of the Corporation by its Chair or Vice Chair with his or her manual or facsimile signature and may be attested by the manual or facsimile signature of its Secretary or Assistant Secretary, and the official seal of the Corporation shall be impressed or reproduced thereon. All such facsimile signatures shall have the same force and effect as if such officers had manually signed each of the Parity Bonds. The reproduction of the official seal of the Corporation on the Parity Bonds shall have the same force and effect as if the official seal of the Corporation had been impressed on the Parity Bonds. The Series 2023A Bonds shall be executed on behalf of the Corporation by

the Chair or Vice Chair who occupies such office as of the date of adoption of the Series 2023A Bond Resolution with his or her manual or facsimile signature and may be attested by the manual or facsimile signature of the Corporation Secretary or Assistant Secretary who occupies such office as of the date of adoption of the Series 2023A Bond Resolution. In case any officer whose signature or a facsimile of whose signature shall appear on any Parity Bonds shall cease to be such officer before the delivery of such Parity Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, and the Parity Bonds may be issued and delivered as if such officer had remained in office until delivery.

(b) Temporary Bonds. Until Parity Bonds in definitive form of any series are ready for delivery, or by agreement with the purchasers of all Parity Bonds of such series, the Corporation may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of definitive Parity Bonds, subject to the same provisions, limitations, and conditions, one or more printed, lithographed, or typewritten Parity Bonds in temporary form, substantially of the tenor of the Parity Bonds in this Article III described, with appropriate omissions, variations, and insertions as may be required. Parity Bonds in temporary form shall be for such principal amounts as the Corporation shall determine. Until exchanged for Parity Bonds in definitive form, such Parity Bonds in temporary form shall be entitled to the same security, lien, and benefit of this Fifth Supplement and shall have the same rights, remedies, and security hereunder as definitive Parity Bonds to be issued and authenticated hereunder. The Corporation shall, without unreasonable delay, prepare, execute, and deliver definitive Parity Bonds to the Trustee, and thereupon, upon the presentation and surrender of the Parity Bond or Parity Bonds in temporary form to the Trustee at its Designated Office, the Trustee shall cancel the same and authenticate and deliver in exchange therefor a Parity Bond or Parity Bonds of the same maturity, interest rate, and series, in definitive form in an authorized denomination, and for the same aggregate principal amount as the Parity Bond or Parity Bonds in temporary form surrendered. Such exchange shall be made without making any charge therefor to any Bondholder.

### **Section 3.06. Mutilated, Lost, Stolen, or Destroyed Parity Bonds.**

(a) In the event any Parity Bond is mutilated, lost, stolen, or destroyed, the Corporation shall execute and the Trustee shall authenticate and deliver a new Parity Bond of like date, number, series, interest rate, maturity, and denomination as that mutilated, lost, stolen, or destroyed; provided, that, in the case of any mutilated Parity Bond, such mutilated Parity Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen, or destroyed Parity Bond, there shall be first furnished to the Trustee evidence of such loss, theft, or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee and the Corporation. In the event any such Parity Bond shall have matured, or shall be about to mature or have been called for redemption, instead of issuing a duplicate Parity Bond the Corporation may pay the same without surrender thereof, provided that the conditions of this Section shall have been satisfied. The Corporation and the Trustee may charge the owner of such Parity Bond with their reasonable fees and expenses in connection with actions taken under this Section and may require the owner of such Parity Bond to pay any tax, fee, or other governmental charge that may be imposed in relation thereto as conditions precedent to the issuance of any replacement Parity Bond(s). The Corporation shall cooperate with the Trustee in connection with the issue of replacement Parity Bonds, but nothing in this Section shall be construed in derogation of any

rights which the Corporation or the Trustee may have to receive indemnification against liability, or payment or reimbursement of expenses, in connection with the issuance of a replacement Parity Bond.

(b) Every substituted Parity Bond issued pursuant to this Section shall constitute an original additional contractual obligation of the Corporation, whether or not the Parity Bond alleged to have been mutilated, destroyed, lost, or stolen shall be at any time enforceable by anyone, and shall be entitled to all the rights and benefits of this Fifth Supplement equally and proportionately with any and all other Parity Bonds Outstanding of the same series duly issued hereunder.

(c) All Parity Bonds shall be held and owned upon the express condition that the foregoing provisions are, to the extent permitted by law, exclusive with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Parity Bonds, and shall preclude any and all other rights or remedies.

**Section 3.07. Cancellation and Destruction of Surrendered Parity Bonds.** When any Parity Bond shall be delivered to the Trustee for cancellation pursuant to this Fifth Supplement, upon payment of the principal amount and/or interest represented thereby, or for replacement pursuant to Section 3.06 or transfer or exchange pursuant to Section 3.08, such Parity Bond shall be promptly cancelled and cremated or otherwise destroyed by the Trustee pursuant to its retention policy then in effect, and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Corporation from time to time upon request.

**Section 3.08. Negotiability; Registration, Transfer, and Exchange.**

(a) Negotiability. The Parity Bonds shall be and shall have all the qualities and incidents of negotiable instruments under the laws of the State, and the Bondholders, in accepting any of the Parity Bonds, shall be conclusively deemed to have agreed that the Parity Bonds shall be and have all of such qualities and incidents of negotiable instruments.

(b) Registration and Transfer. The Corporation shall cause books (the “**Bond Register**”) for the registration of the Parity Bonds and for the registration of transfer of the Parity Bonds as provided in this Fifth Supplement to be kept by the Trustee, which is hereby appointed the Corporation’s bond registrar and agent for the transfer and exchange of the Parity Bonds and as such shall maintain the books of the Corporation for the registration of the name and address of the owner of each Parity Bond as provided in this Fifth Supplement. The Trustee, for and on behalf of the Corporation, shall keep the Bond Register, in which shall be recorded any and all transfers of ownership of Parity Bonds. No Parity Bonds shall be registered to bearer. Any Parity Bond may be transferred upon the Bond Register upon surrender thereof by the registered Bondholder in person or by his attorney-in-fact or legal representative duly authorized in writing together with a written instrument of transfer in form and with guarantee of signature satisfactory to the Trustee duly executed by the registered Bondholder or his attorney-in-fact or legal representative duly authorized in writing and upon payment by such registered Bondholder of a sum sufficient to cover any governmental tax, fee, or charge required to be paid as provided in this Fifth Supplement. Upon any such registration of transfer, the Corporation shall cause to be executed and the Trustee shall authenticate and deliver in the name of the transferee a new fully

registered Parity Bond or Parity Bonds of authorized denominations and of the same series, maturity or maturities, and interest rate(s) and in the same aggregate principal amount(s), and the Trustee shall enter the transfer of ownership in the Bond Register. No transfer of any Parity Bond shall be effective until entered on the Bond Register. The transferor shall also provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(c) Exchange. Any Parity Bonds, upon surrender thereof at the Designated Office of the Trustee with a written instrument of transfer in form and with guarantee of signature satisfactory to the Trustee, duly executed by the registered owner or his attorney-in-fact or legal representative duly authorized in writing, may be exchanged, at the option of the registered owner thereof, and upon payment by such registered owner of a sum sufficient to cover any governmental tax, fee, or charge required to be paid as provided in this Fifth Supplement, when not prohibited by law, for an equal aggregate principal amount of Parity Bonds of the same series, interest rate, and maturity or maturities and of any authorized denomination and registered in the name of the same registered owner. The Corporation shall cause to be executed, and the Trustee to which Parity Bonds are presented for exchange shall authenticate and deliver Parity Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not then Outstanding, and the Trustee, as bond registrar, shall enter the exchange in the Bond Register.

(d) Costs. Except as provided herein with respect to exchanges for certain temporary Parity Bonds, the cost of printing, lithographing, and engraving of all Parity Bonds shall be deemed to be an ordinary expense of the Trustee, and there shall be no charge to any Bondholder for the registration, exchange, or transfer of Parity Bonds from one Bondholder to another (the charges therefor to be paid by the City as part of the Trustee's fees and expenses), although in each case the Trustee may require the payment by the Bondholder requesting exchange or transfer of any tax, fee, or other governmental charge required to be paid with respect thereto and may require that such amount be paid before any such new Parity Bond shall be delivered.

(e) Payments to Owner. The Corporation and the Trustee may deem and treat the registered Bondholder of any Parity Bond as the absolute owner of such Parity Bond for the purpose of receiving any payment on such Parity Bond and for all other purposes of this Fifth Supplement, whether such Parity Bond shall be overdue or not, and neither the Corporation nor the Trustee shall be affected by any notice to the contrary. Payment of, or on account of, the principal of and interest and redemption premium, if any, on any Parity Bond shall be made to or upon the written order of such registered Bondholder or his attorney-in-fact or legal representative duly authorized in writing. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Parity Bond to the extent of the sum or sums so paid.

(f) Other Matters. The execution and attestation by the Chair or Vice Chair and Secretary or Assistant Secretary of the Corporation of any Parity Bond of any authorized denomination shall constitute full and due authorization of such denomination, and the Trustee

shall thereby be authorized to authenticate and deliver such Parity Bond. New Parity Bonds delivered upon any transfer or exchange shall be valid limited obligations of the Corporation, evidencing the same obligation as the Parity Bonds surrendered, shall be secured by this Fifth Supplement, and shall be entitled to all of the security and benefits hereof to the same extent as the Parity Bonds surrendered. The Trustee shall not be required to transfer or exchange any Parity Bond (i) after the notice calling such Parity Bond for redemption has been given as herein provided or (ii) during a period beginning at the opening of business on the 15<sup>th</sup> day (whether or not a Business Day) next preceding either any Bond Payment Date or any date of selection of Parity Bonds to be redeemed and ending at the close of business on the Bond Payment Date or day on which the applicable redemption is made.

### **Section 3.09. Additional Bonds.**

(a) Right to Issue Additional Bonds. The Corporation shall have the right and power at any time and from time to time, and in one or more series or issues, to authorize, issue, and deliver, at the request of the City, additional parity lease revenue bonds or other obligations (herein called “**Additional Bonds**”), in accordance with law, in any amounts, for the purpose of (i) completing the Project, if necessary, and/or (ii) refunding any Parity Bonds then Outstanding. Such Additional Bonds, if and when authorized, issued, and delivered in accordance with the provisions hereof, shall be secured by and made payable equally and ratably on a parity with the Outstanding Parity Bonds from the Trust Estate (including but not limited to the Lease Payments made by the City, as Sublessee, pursuant to the Sublease, as modified pursuant to clause (b)(ii) below). The Payment Account established pursuant to the Original Trust Agreement shall secure and be used to pay all Additional Bonds as well as the Outstanding Parity Bonds, all on a parity lien basis. No bonds or other obligations shall be issued which may have a lien on the Trust Estate prior and superior to that securing the Parity Bonds.

(b) Conditions Precedent to Issuance of Additional Bonds. No series or issue of Additional Bonds shall be issued or delivered unless the following conditions have all been met:

(i) the laws of this State effective at the time of the authorization of such Additional Bonds shall permit their issuance, and, if required by law, the Attorney General of Texas shall have approved the issuance of such Additional Bonds;

(ii) to the extent necessary, the Financing Documents shall have been appropriately amended or supplemented to provide for the issuance of such Additional Bonds, including but not limited to amending the Lease Agreement to provide for the payment by the City of Lease Payments under the Sublease to include payment of debt service related to such issue of Additional Bonds, subject to annual Appropriation (as defined in the Lease Agreement) by the City Council of the City;

(iii) the principal of such Additional Bonds shall be scheduled to be paid or mature only on August 15 of the years in which such principal is scheduled to be paid or mature, and all interest thereon shall be payable only on February 15 and August 15;

(iv) the Chair of the Board of Directors of the Corporation and the Executive Director of the Corporation shall execute a written certificate to the effect that the Trust

Agreement and the Lease Agreement are in full force and effect, and no Event of Default exists in connection therewith;

(v) the Mayor, City Manager and the Chief Financial Officer of the City shall execute a written certificate to the effect that the Lease Agreement is in full force and effect, no Event of Default exists in connection therewith, and, to the extent applicable, the City has complied with the covenant contained in Section 6.02(g) of the Lease Agreement; and

(vi) if there are any Tax-Exempt Parity Bonds Outstanding at the time of the proposed issuance of Additional Bonds, the Corporation must obtain an opinion of Bond Counsel to the effect that the issuance of the Additional Bonds will not have an adverse effect on the tax exempt status of the Outstanding Tax-Exempt Parity Bonds.

**Section 3.10. No Additional Unrelated Obligations.** As long as any Parity Bonds are Outstanding, the Corporation shall not have the right to issue any bonds, notes, or other obligations with respect to the Project, nor pledge any portion of the revenues derived from the Project or Lease Agreement, for any purpose or in any manner other than as permitted under Section 3.09 hereof.

**[End of Article III]**

## ARTICLE IV SERIES 2023A BONDS

### **Section 4.01. Form, Denomination and Medium of Payment of Series 2023A Bonds.**

The Series 2023A Bonds shall be issuable only as fully registered Series 2023A Bonds without coupons. The definitive Series 2023A Bonds shall be in Authorized Denominations. The definitive Series 2023A Bonds shall be substantially in the form set forth in *Exhibit B*, with such variations, insertions, or omissions as are appropriate and not inconsistent therewith and shall conform generally to the rules and regulations of any governmental authority or usage or requirement of law with respect thereto. Principal of and interest on the Series 2023A Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

### **Section 4.02. Number and Payment Provisions Relating to Series 2023A Bonds.**

(a) *Numbers of Series 2023A Bonds.* The Series 2023A Bonds shall be numbered consecutively from RA-1 upward (except the Initial Series 2023A Bond which shall be numbered IA-1), or in such other manner as the Corporation, with the concurrence of the Trustee, shall determine.

(b) *Interest Accrual Dates of Series 2023A Bonds.* Each Series 2023A Bond shall bear interest from the later of their date of delivery or the most recent Bond Payment Date to which interest has been paid or provided for, or unless, as shown by the records of the Trustee, interest on the Series 2023A Bonds shall be in default, in which event it shall bear interest from the date to which interest has been paid in full.

(c) *Registration and Authentication of Series 2023A Bonds.* The Trustee shall insert the date of registration and authentication of each Series 2023A Bond in the place provided for such purpose in the form of certificate of authentication of the Trustee to be printed on each Series 2023A Bond. If interest on the Series 2023A Bonds shall be in default, the certificate of authentication on the Series 2023A Bonds issued in exchange for Series 2023A Bonds surrendered for transfer or exchange shall be dated as of the date to which interest has been paid in full on the Series 2023A Bonds surrendered.

(d) *Payment of Principal and Interest of Series 2023A Bonds.* Subject to the provisions of Section 4.06(c) hereof, principal of the Series 2023A Bonds shall be payable by check or draft to the owner of each Series 2023A Bond upon presentation and surrender of such Series 2023A Bond, when due, at the Designated Office of the Trustee. Payment of interest on the Series 2023A Bonds shall be made to the persons in whose names the Series 2023A Bonds are registered at the close of business on the Record Date described in each Form of Series 2023A Bond for such payment and shall be paid by check or draft mailed to such persons at their addresses as they appear in the Bond Register or at such other addresses as are furnished to the Trustee in writing by such Bondholders at least five days prior to the Record Date. In addition, interest may be paid by such other method acceptable to the Trustee, requested by, and at the risk and expense of, the Registered Owner.



**Section 4.03. Issuance of Series 2023A Bonds; Maturities; Interest Rates.**

(a) Amount, Dated Date, and Purpose of the Series 2023A Bonds. The Series 2023A Bonds shall be dated the date of delivery of the Series 2023A Bonds (currently anticipated to be [June 6], 2023) and shall be designated **CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION SPECIAL REVENUE REFUNDING BONDS, SERIES 2023A (DOWNTOWN BALLPARK VENUE PROJECT)**, shall be issued in the aggregate principal amount of \$/\_\_\_\_\_/ for the purpose of providing funds (1) for the discharge and final payment of certain outstanding Series 2021 Bonds as identified on Schedule I hereto (the “Refunded Bonds”); and (2) to pay the costs and expenses of issuing the Series 2023A Bonds.

(b) Series 2023A Bonds Principal Amounts and Interest Rates. The Series 2023A Bonds shall bear interest at the rates per annum shown below from their date of delivery (anticipated to be [June 6], 2023) computed on the basis of a 360-day year consisting of twelve 30-day months, payable semiannually on each February 15 and August 15, commencing on [August 15, 2023], until stated maturity or prior redemption, and shall mature on **August 15** in the years and in the amounts shown below, unless earlier called for redemption:

| <u>Year of<br/>Stated Maturity</u> | <u>Principal<br/>Amount (\$)</u> | <u>Interest<br/>Rates (%)</u> |
|------------------------------------|----------------------------------|-------------------------------|
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |

**Section 4.04. Approval and Authentication of Series 2023A Bonds.** The Chair of the Board of Directors is hereby authorized to have control of the Series 2023A Bonds and all necessary records and proceedings pertaining to the Series 2023A Bonds pending their investigation, examination, and approval by the Attorney General of the State; their registration by the Comptroller of Public Accounts of the State (the “**Comptroller**”); and their delivery to the Underwriters. A single Series 2023A Bond in the form of Exhibit B hereof shall be submitted to the Attorney General of Texas for such purpose. The Initial Series 2023A Bond is referred to herein as the “**Initial Series 2023A Bond**.” Upon registration of the Initial Series 2023A Bond, the Comptroller (or a deputy designated in writing to act for such Comptroller) shall manually

sign the Comptroller's Registration Certificate on the Initial Series 2023A Bond. The Initial Series 2023A Bond thus registered shall remain in the custody of the Chair of the Board of Directors (or his designee) until delivered to the Underwriters. The Initial Series 2023A Bond shall be registered in the name of **Jefferies LLC**. Except for the Initial Series 2023A Bond, only such Series 2023A Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit B and duly authenticated by the Trustee shall be entitled to any right, security, or benefit under this Fifth Supplement. Except for the Initial Series 2023A Bond, no Series 2023A Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate upon any such Series 2023A Bond shall be conclusive evidence that such Series 2023A Bond has been authenticated and delivered under this Fifth Supplement and that the owner thereof is entitled to the benefits of the trust hereby created. The Trustee's certificate of authentication on any Series 2023A Bond shall be deemed to have been duly executed by it if (a) signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Series 2023A Bonds, and (b) the date of registration and authentication of the Series 2023A Bond is inserted in the place provided therefor on the certificate of authentication.

**Section 4.05. Delivery of Series 2023A Bonds.** Upon the execution and delivery of this Fifth Supplement, the Corporation shall execute and deliver to the Trustee and the Trustee shall register and authenticate the Series 2023A Bonds and deliver them to the persons designated by the Underwriters.

Prior to the registration and authentication by the Trustee of any of the Series 2023A Bonds, there shall be filed with the Trustee:

- (a) a certified copy of the Series 2023A Bond Resolution;
- (b) a certified copy of the ordinance of the City Council of the City approving the issuance of the Series 2023A Bonds and the execution and delivery of the Fifth Lease Amendment;
- (c) original executed counterparts of the Fifth Supplement and the Fifth Lease Amendment;
- (d) a letter of instructions (which may be in the form of a closing memo) to the Trustee, signed by the Executive Director or the Treasurer of the Corporation, directing the Trustee to authenticate and deliver the Series 2023A Bonds to the Underwriters upon payment to the Trustee for the account of the Corporation of the sum therein specified (including accrued interest, if any), and to deposit the proceeds thereof as provided in this Fifth Supplement;
- (e) a certification by the officer or official of the Corporation charged with the responsibility for issuing the Series 2023A Bonds of the reasonable expectations of the Corporation on the date of the issuance of the Series 2023A Bonds regarding the amount and use of the proceeds of the Series 2023A Bonds evidencing the basis for the tax exemption on the interest on the Series 2023A Bonds;

(f) approving opinion of the Attorney General of the State and registration certificates of the Comptroller of Public Accounts of the State;

(g) opinions dated as of the date of the closing of Bond Counsel in form and substance reasonably satisfactory to the Trustee; and

(h) such other documents, certificates and instruments in connection with the transaction contemplated by this Fifth Supplement as the Trustee or Bond Counsel may reasonably request.

#### **Section 4.06. Book-Entry-Only System.**

(a) *Series 2023A Bonds Delivered to DTC.* Series 2023A Bonds issued in exchange for the respective Initial Series 2023A Bond initially issued to the Underwriters shall be initially issued in the form of a separate single fully registered Series 2023A Bond, as applicable, for each of the respective maturities thereof. Upon initial issuance, the ownership of each such Series 2023A Bond shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“**DTC**”), and except as provided in subsection (b) hereof, all of the Outstanding Series 2023A Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Series 2023A Bonds registered in the name of Cede & Co., as nominee of DTC, the Corporation and the Trustee shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created (“**DTC Participant**”) to hold securities to facilitate the clearance and settlement of securities transaction among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Series 2023A Bonds. Without limiting the immediately preceding sentence, the Corporation and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Series 2023A Bonds, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Series 2023A Bonds, as shown on the Bond Register, of any notice with respect to the Series 2023A Bonds, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of Series 2023A Bonds, as shown in the Bond Register of any amount with respect to principal of or interest on the Series 2023A Bonds. Notwithstanding any other provision of this Fifth Supplement to the contrary, the Corporation and the Trustee shall be entitled to treat and consider the person in whose name each Series 2023A Bond is registered in the Bond Register as the absolute owner of such Series 2023A Bond for the purpose of payment of principal and interest with respect to such Series 2023A Bond, for the purpose of registering transfers with respect to such Series 2023A Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Series 2023A Bonds only to or upon the order of the registered owners, as shown in the Bond Register as provided in this Fifth Supplement, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Corporation’s obligations with respect to payment of principal of and interest on the Series 2023A Bonds to the extent of the sum or sums so paid. No person other than a registered owner, as shown in the Bond Register, shall receive a Series 2023A Bond certificate evidencing the obligation of the Corporation to make payments of principal and interest pursuant to this Fifth Supplement. Upon delivery by DTC to the Trustee of written

notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Fifth Supplement with respect to interest checks being mailed to the registered owner at the close of business on the Record Date, the words “Cede & Co.” in this Fifth Supplement shall refer to such new nominee of DTC.

(b) Successor Securities Depository; Transfers Outside Book-Entry Only Systems. In the event that the Corporation determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Corporation to DTC or that it is in the best interest of the beneficial owners of the Series 2023A Bonds that they be able to obtain certificated Series 2023A Bonds, the Corporation shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Series 2023A Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Series 2023A Bonds and transfer one or more separate Series 2023A Bonds to DTC Participants having Series 2023A Bonds credited to their DTC accounts. In such event, the Series 2023A Bonds shall no longer be restricted to being registered in the Bond Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names registered owners transferring or exchanging Series 2023A Bonds shall designate, in accordance with the provisions of this Fifth Supplement. In connection with any proposed transfer outside the book-entry-only system, the Corporation or DTC shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(c) Payments to Cede & Co. Notwithstanding any other provision of this Fifth Supplement to the contrary, so long as any Series 2023A Bond is registered in the name of Cede & Co., as nominee for DTC, all payments with respect to principal of and interest on such Series 2023A Bond and all notices with respect to such Series 2023A Bond shall be made and given, respectively, in the manner provided in the representation letter of the Corporation to DTC.

(d) DTC Letter of Representations. The officers of the Corporation are herein authorized for and on behalf of the Corporation and as officers of the Corporation to enter into one or more Letters of Representations with DTC establishing the book-entry only system with respect to the Series 2023A Bonds.

#### **Section 4.07. Covenants Regarding Tax-Exempt Status of the Series 2023A Bonds.**

(a) Definitions. When used in this Section, the following terms have the following meanings:

(i) “Closing Date” means the date on which the Series 2023A Bonds are first authenticated and delivered to the initial purchaser against payment therefor.

(ii) “Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

(iii) “Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(iv) “Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Series 2023A Bonds.

(v) “Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(vi) “Nonpurpose Investment” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Series 2023A Bonds are invested and which is not acquired to carry out the governmental purposes of the Series 2023A Bonds.

(vii) “Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(viii) “Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code of the Code, which are applicable to the Series 2023A Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

(ix) “Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Series 2023A Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Covenants of the Corporation and the City.

(i) Not to Cause Interest to Become Taxable. Neither the City nor the Corporation shall use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Series 2023A Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Corporation and the City receive a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Series 2023A Bond, the Corporation and the City shall comply with each of the specific covenants in this Section.

(ii) Limited Private Use and Private Payments. The Series 2023A Bonds are being issued to refund certain outstanding Series 2021 Bonds for present value debt

service savings and, in connection therewith, the City and the Corporation while the Series 2023A Bonds are outstanding and unpaid, covenant and agree that, except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Project shall, at all times prior to the last stated maturity of the Series 2023A Bonds be exclusively owned, operated and maintained by the City and/or the Corporation, and neither the City nor the Corporation will use or permit the use of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity other than a state or local government, unless such use is solely as a member of the general public. Furthermore, except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation will impose or accept any charge or other payment for use of Gross Proceeds of the Series 2023A Bonds or for any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(iii) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall use Gross Proceeds of the Series 2023A Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(iv) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall at any time prior to the final stated maturity of the Series 2023A Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Series 2023A Bonds.

(v) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall take or omit to take any action which would cause the Series 2023A Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(vi) Information Report. The Corporation shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on

Form 8038-G or such other form and in such place as the Secretary of the Treasury may prescribe.

(vii) *Rebate of Arbitrage Profits.* Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The Corporation and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Series 2023A Bond is discharged. However, to the extent permitted by law, the Corporation and/or the City may commingle Gross Proceeds of the Series 2023A Bonds with other money of the Corporation and/or the City, provided that the Corporation and the City separately account for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Corporation and the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Corporation and the City shall maintain such calculations with the official transcript of proceedings relating to the issuance of the Series 2023A Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Series 2023A Bonds by the Underwriters and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Corporation and the City shall pay to the United States out of the Rebate Account or their respective general funds, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State, the amount that when added to the future value of previous rebate payments made for the Series 2023A Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The Corporation and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to

the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(viii) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall, at any time prior to the earlier of the stated maturity or final payment of the Series 2023A Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (vii) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Series 2023A Bonds not been relevant to either party.

(ix) Elections. The Corporation hereby directs and authorizes the Chair, Vice Chair, Treasurer and Secretary of the Board and Executive Director of the Corporation, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Series 2023A Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document. The City hereby directs and authorizes the Mayor, the City Manager and the Chief Financial Officer of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Series 2023A Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(c) Current Refunding. The Series 2023A Bonds are a current refunding of the Refunded Bonds in that the Refunded Bonds will be paid or redeemed within 90 days of the date of the delivery of the Series 2023A Bonds.

**[End of Article IV]**



## ARTICLE V REDEMPTION OF PARITY BONDS

### **Section 5.01. Terms of Redemption.**

(a) *Optional Redemption of Series 2023A Bonds.* The Series 2023A Bonds maturing on and after August 15, 20[\_\_\_], shall be subject to redemption, in whole or in part, in Authorized Denominations, at the request and option of the Corporation, on August 15, 20[\_\_\_], and on any date thereafter, at the redemption price equal to par plus accrued interest to the redemption date.

(b) *Extraordinary Optional Redemption In Whole of Parity Bonds Upon Exercise of Prepayment Option Due to Casualty Loss or Condemnation.* In the event of the exercise by the City of its option to prepay Lease Payments upon a casualty loss or condemnation of the Project and the payment by the City to the Trustee of the Prepayment Option Price, all in accordance with Section 4.13 of the Lease Agreement, the Parity Bonds shall be subject to extraordinary optional redemption prior to their respective stated maturities, in whole but not in part, on the next succeeding Bond Payment Date for which notice can be given in accordance with Section 5.02 of this Fifth Supplement, at a redemption price equal to 100% of the Outstanding principal amount of the Parity Bonds being redeemed plus accrued interest to the date of redemption.

### **Section 5.02. Notice of Redemption.**

(a) If any of the Parity Bonds are called for redemption, the Trustee shall give written notice by first class (postage prepaid) mail not less than 30 days prior to the date fixed for redemption, in the name of the Corporation, of the redemption of such Parity Bonds to the registered owner of each Parity Bond to be redeemed in whole or in part at the address shown on the Bond Register at the close of business on a day not later than the fifth day preceding the date of mailing, which notice shall set forth the following: (i) the maturities of the Parity Bonds to be redeemed; (ii) the CUSIP number, if any, of the Parity Bonds to be redeemed; (iii) the place or places where amounts due upon such redemption will be payable; (iv) if less than all of the Parity Bonds of any maturity are to be redeemed, the letters and numbers or other distinguishing marks, if any, of such Parity Bonds so to be redeemed; (v) in the case of a Parity Bond to be redeemed in part only, the portion of the principal amount to be redeemed; and (vi) that on the redemption date there shall become due and payable upon each Parity Bond to be redeemed the amount of the principal thereon (or of the specified portion of the principal in the case of a Parity Bond to be redeemed in part only), together with interest accrued to the redemption date, and that from and after the redemption date interest thereon shall cease to accrue and be payable. The notice with respect to an optional redemption of Parity Bonds may state (i) that it is conditioned upon the deposit of money, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the redemption date, or (ii) that the Corporation retains the right to rescind such notice at any time prior to the scheduled redemption date if the Corporation delivers a certificate of an authorized representative to the Trustee instructing the Trustee to rescind the redemption notice, and such notice and optional redemption shall be of no effect if such money is not so deposited or if the notice is so rescinded. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the owner of such Parity Bonds actually receives the notice.

(b) Failure to give such notice by mail to any Bondholder, or any defect therein, shall not affect the validity of any proceedings for the redemption of other Parity Bonds.

**Section 5.03. Partial Redemption.**

(a) If less than all of the Parity Bonds of a maturity are called for redemption, the particular Parity Bonds or portions thereof to be redeemed shall be in an Authorized Denomination and, to the extent such bonds are Tax-Exempt Parity Bonds, shall be selected by the Trustee randomly within such maturity. To the extent that the Parity Bonds called for a partial redemption are Taxable Parity Bonds, the Trustee shall select the Taxable Parity Bonds to be redeemed on the basis of a pro rata pass-through distribution of principal in accordance with DTC procedures and provided that, so long as the Taxable Parity Bonds are registered in book-entry-only form and DTC (or a successor securities depository) is the sole registered owner of the Taxable Parity Bonds, the selection of such bonds for redemption shall be made in accordance with the operational arrangements of DTC then in effect. If the DTC operational arrangements do not allow for redemption on the basis of a pro rata pass-through distribution of principal, the Taxable Parity Bonds will be selected for redemption, in accordance with DTC procedures. If the Taxable Parity Bonds are no longer registered in book-entry only form, any redemption of less than all of a maturity of the Taxable Parity Bonds shall be allocated among the registered owners of such bonds on a pro-rata basis as near as possible, taking into account Authorized Denominations.

(b) In selecting Parity Bonds for redemption, the Trustee shall select Parity Bonds to be redeemed in such a manner that all remaining Bondholders own only Authorized Denominations of the Parity Bonds after such redemption. Upon surrender of any Parity Bond for redemption in part, the Corporation shall execute and the Trustee shall authenticate and deliver to the owner thereof a new Parity Bond or Parity Bonds of the same series, interest rate, and maturity and of Authorized Denominations in an aggregate principal amount equal to the unredeemed portion of the Parity Bond so surrendered.

**Section 5.04. Payment Upon Redemption.** On or prior to each redemption date, the Trustee shall make provision from funds available hereunder for the payment of the Parity Bonds to be redeemed on such date by setting aside and holding in trust, (a) an amount from the Redemption Account sufficient to pay the principal of such Parity Bonds, and (b) an amount from the Redemption Account sufficient to pay the premium, if any, and interest on such Parity Bonds. Upon presentation and surrender of any such Parity Bond at the Designated Office of the Trustee on or after the date fixed for redemption, the Trustee shall pay the principal of and premium, if any, on such Parity Bond from the money set aside for such purpose. Interest on any Parity Bond called for redemption maturing prior to or on the date fixed for redemption shall be payable only to the registered owner of such Parity Bond.

**Section 5.05. Effect of Redemption.** Notice of redemption having been given as provided in Section 5.02 hereof, the Parity Bonds or portions thereof designated for redemption shall become and be due and payable on the date fixed for redemption at the redemption price provided for herein, provided funds for their redemption are on deposit at the place of payment at that time, and, unless the Corporation defaults in the payment of the principal thereof, such Parity Bonds or portions thereof shall cease to bear interest from and after the date fixed for

redemption, and shall no longer be protected by the Trust Agreement and shall not be deemed to be Outstanding under the provisions of this Fifth Supplement, whether or not such Parity Bonds are presented and surrendered for payment on such date. If any Parity Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof for redemption, such Parity Bond or portion thereof shall continue to bear interest at the rate set forth therein until paid or until due provision is made for the payment of the same.

**Section 5.06. Cancellation.** All Parity Bonds which have been redeemed, paid, or retired, or received by the Trustee for exchange, shall not be reissued but shall be cancelled and destroyed by the Trustee as provided in Section 3.07.

**[End of Article V]**

## ARTICLE VI ESTABLISHMENT AND ADMINISTRATION OF FUND AND ACCOUNTS

**Section 6.01. Trust Fund.** There is hereby confirmed with the Trustee the special trust fund previously designated as the *City of El Paso, Texas Downtown Ballpark Venue Project Trust Fund* (the “**Trust Fund**”). The Trustee shall keep the Trust Fund separate and apart from all other funds held by it. Within the Trust Fund, there are hereby established, for the benefit of the Bondholders, the separate and distinct accounts and subaccounts more particularly described in this Article (excluding the Rebate Account). On the date of delivery of the Series 2023A Bonds to the initial purchasers thereof (the “**Series 2023A Closing Date**”), the Trustee agrees to accept and deposit the proceeds from the sale of such Parity Bonds pursuant to Sections 6.02 and 6.03 below, which proceeds, together with the City’s contribution, if any, shall thereafter be subject to and be administered pursuant to the terms of this Article.

### **Section 6.02. Establishment and Application of Series 2023A Proceeds Account.**

(a) *Establishment of Series 2023A Proceeds Account.* Within the Trust Fund, there is hereby established a special account to be designated as *City of El Paso Downtown Development Corporation Series 2023A Proceeds Account*, referred to herein as the “**Series 2023A Proceeds Account**.” The Trustee shall administer the Series 2023A Proceeds Account as provided in this Article and shall deposit funds into the Series 2023A Proceeds Account as follows:

(i) On the Series 2023A Closing Date, the Trustee shall deposit the proceeds of the Series 2023A Bonds to the Series 2023A Proceeds Account; and

(ii) On the respective closing date of each series of Additional Bonds, the Trustee shall deposit the amounts set forth, and to the accounts designated, in an amendment or supplement to the Trust Agreement entered into in connection with such series of Additional Bonds.

(b) *Disbursements for Issuance Costs.* Disbursements to pay Issuance Costs for the Series 2023A Bonds (or to reimburse the City for the payment of such Issuance Costs made with available City funds) shall be made by the Trustee from the Series 2023A Proceeds Account upon receipt of a letter of instructions from the Corporation instructing the Trustee to disburse Issuance Costs, approved and executed by the Corporation’s Treasurer or the Corporation’s Executive Director. The initial disbursement of Issuance Costs shall be made on the Series 2023A Closing Date and the initial letter of instructions may be in the form of a closing memo.

(c) *Disbursements for Refunding Purposes.* On [the Series 2023A Closing Date], the Trustee shall withdraw \$[ ] from the Series 2023A Proceeds Account, which the Corporation agrees shall be sufficient to cause the Refunded Bonds to be no longer Outstanding, to refund the Refunded Bonds through purchase and cancellation of such Refunded Bonds. The purchase and cancellation of the Refunded Bonds shall be accomplished in accordance with, and as further described in, the Invitation (as defined in the Series 2023A Bond Resolution).

(d) *Trustee May Rely on Letter of Instructions.* Upon receipt of a fully executed and approved letter of instructions delivered in accordance with this Fifth Supplement and any required attachments, the Trustee shall have no liability on account of any disbursement from the

Series 2023A Proceeds Account in accordance with such letters of instruction provided that it has complied with the procedure required in paragraphs (b) and (c) above.

(e) Transfer to Redemption Account Upon Redemption of All Parity Bonds. Upon a redemption of all Outstanding Parity Bonds pursuant to Section 5.01 hereof, all funds then on deposit in the Series 2023A Proceeds Account shall be transferred to the Redemption Account in accordance with the terms of Section 6.06 hereof, and the Series 2023A Proceeds Account shall be closed.

### **Section 6.03. Confirmation of Payment Account.**

(a) Payment Account. Within the Trust Fund, there has been previously established a special account designated as the “City of El Paso Downtown Development Corporation Downtown Ballpark Venue Financing Payment Account” (the “**Payment Account**”). The Payment Account is being maintained by the Trustee until either the Lease Payments and all other amounts payable under the Lease Agreement (other than Operating Expenses) are paid in full, or the Prepayment Option Price and all other amounts payable under the Lease Agreement (other than Operating Expenses) are paid in full, pursuant to the terms of the Lease Agreement. On the closing date with respect to each series of Parity Bonds, the Trustee shall deposit to the Payment Account proceeds of such series of Parity Bonds representing accrued and/or capitalized interest, if any.

(b) Team Payment Account. In accordance with Section 6.11 of the Original Trust Agreement, the Trustee established the “Team Payment Account” as a subaccount of the Payment Account.

(c) Lease Payments Deposited to Payment Account. Subject to Sections 6.11 of the Original Trust Agreement with respect to Team Payments and Section 7.12 hereof, the Trustee shall deposit to the Payment Account, promptly after the receipt thereof, all Lease Payments, and, all other funds of the Corporation derived pursuant to the Sublease of the Project, payment of the Prepayment Option Price, and such other amounts as may be paid to the Trustee as assignee of the Corporation pursuant to the Financing Documents (except money paid by the City pursuant to the Lease Agreement for Operating Expenses or for deposit to the Rebate Account). Upon closing of the Series 2023A Proceeds Account, any remaining funds on deposit therein shall be deposited, as soon as practicable, by the Trustee in the Payment Account, and used to pay debt service on the Series 2023A Bonds.

(d) Withdrawals by Trustee on Bond Payment Dates. Subject to Section 6.11 hereof and to the extent of funds contained in the Payment Account, the Trustee shall withdraw from such account, on each Bond Payment Date, an amount equal to the amount of interest and principal payments due with respect to the Parity Bonds on such Bond Payment Date and shall cause the same to be applied to the payment of interest and principal payments due on such Bond Payment Date; provided however, that the Team Payment Account and all payments received pursuant to the Team Lease may only be used to pay debt service on the Series 2013B Bonds, the Series 2021 Bonds, and any other Outstanding Taxable Parity Bonds.

(e) Transfers to Redemption Account. Upon a redemption of all Parity Bonds pursuant to Section 5.01 of this Fifth Supplement or Section 6.05(d) of the Original Trust Agreement, all funds in the Payment Account shall be transferred to the Redemption Account. In the event of a partial redemption of the Parity Bonds, one Business Day prior to the date fixed for redemption of the Parity Bonds, the Trustee shall transfer from the Payment Account to the Redemption Account the amount of money required to pay the redemption price of such Parity Bonds to be redeemed, to the extent of the money contained therein.

(f) Deposit of Excess Proceeds. The Trustee shall transfer into the Payment Account any proceeds of a series of Additional Bonds (including investment earnings) that remain on deposit in the related Series Subaccount upon completion of the purpose for which such Additional Bonds were issued. Such proceeds shall be invested at a yield not exceeding the yield on the related series of Parity Bonds (if such Parity Bonds were issued as Tax-Exempt Parity Bonds), and shall be used to pay principal (but not interest) on the related series of Parity Bonds as such principal becomes due. Notwithstanding the foregoing, in the event the Corporation provides the Trustee with an opinion of Bond Counsel to the effect that such remaining proceeds may be used in another manner as described or approved by Bond Counsel without adversely affecting, for federal income tax purposes, the exclusion of interest on such Parity Bonds that are Tax-Exempt Parity Bonds, such proceeds may be used in accordance with the directions provided in such opinion of Bond Counsel.

(g) Article VI Controls Withdrawals and Payments from Payment Account. No amounts shall be withdrawn or transferred from or paid out of the Payment Account except as provided in this Article VI and Article VI of the Original Trust Agreement, as supplemented by the First Supplement, Second Supplement, Third Supplement and Fourth Supplement.

**Section 6.04. No Reserve Account.** No debt service reserve fund or account shall be established in connection with the issuance and delivery of the Series 2023A Bonds.

**Section 6.05. Insurance and Condemnation Account.** In accordance with the Section 6.05 of the Original Trust Agreement, there has been established, within the Trust Fund, an account designated as the City of El Paso Downtown Development Corporation Downtown Ballpark Venue Financing Insurance and Condemnation Account (the “**Insurance and Condemnation Account**”). The Original Trust Agreement governs the terms of such account, including the use of funds therein.

**Section 6.06. Establishment and Application of Redemption Account.** Within the Trust Fund, there has been an account designated the *City of El Paso Downtown Development Corporation Downtown Ballpark Venue Financing Redemption Account* (the “**Redemption Account**”). Money to be used for redemption of Parity Bonds shall be transferred to the Redemption Account at the times and in the amounts required by Section 6.03(e) of this Fifth Supplement and Sections 6.05(d) and 6.05(e) of the Original Trust Agreement. Such money, together with other legally available funds contributed by the City or the Corporation for deposit in the Redemption Account, if any, shall be set aside in the Redemption Account solely for the purpose of redeeming Parity Bonds in advance of their maturity and shall be applied on or after (if such Parity Bonds are submitted for payment after the date fixed for redemption) the date fixed for redemption to the payment of the principal of and interest on the Parity Bonds to be

redeemed upon delivery of such Parity Bonds being redeemed to the Trustee. If there is not sufficient money available to pay in full all Trustee's fees and expenses and interest and principal then due on the Parity Bonds to be redeemed, the Trustee shall apply the money on deposit in the Redemption Account first, to the payment of its reasonable fees and expenses, and second, to the payment of all interest due with respect to such Parity Bonds, pro rata in proportion to the respective aggregate amount of the total amount of interest due, if necessary, and third, to the payment of the principal of such Parity Bonds, pro rata in proportion to the respective amount of the total amount of principal due, if necessary. Any money remaining in the Redemption Account following redemption of, and payment of all principal and interest due with respect to all Parity Bonds, shall be transferred to the City after the payment of the fees and expenses of the Trustee as provided in Section 8.06.

**Section 6.07. Establishment and Application of Operating Fund.** In the event the Sublease is ever terminated in accordance with Section 10.03 of the Lease Agreement, the Original Trust Agreement provides for the establishment of a special trust fund to be designated the *City of El Paso, Texas Downtown Ballpark Venue Financing Operating Fund*, referred to herein as the “***Operating Fund***.” The Original Trust Agreement governs the terms of such fund, including the use of funds therein.

**Section 6.08. Deposit and Investment of Money.**

(a) **Investments.** Money held in the Trust Fund and the Operating Fund shall be invested by the Trustee in Permitted Investments pursuant to written instruction of a Corporation Representative, or, if a Corporation Representative does not provide written instruction for such investment, the Trustee shall invest money on deposit in the Trust Fund and the Operating Fund in the [Wells Fargo Government Money Market Fund]. No money in the Trust Fund shall be invested in any Permitted Investment which matures or becomes due and payable after the Business Day next preceding the date upon which such money will be required by the Trustee for the uses and purposes specified in this Fifth Supplement. Proceeds of the Tax-Exempt Parity Bonds are not to be directed by the Corporation for investment in any Permitted Investments except for a temporary period pending use; such proceeds are not to be used by the Corporation or the City directly or indirectly so as to cause any part of the Tax-Exempt Parity Bonds to be or become “arbitrage bonds” within the meaning of the Code. Any money held in the Redemption Account for more than 30 days will be invested at a yield not materially higher than the yield on the Parity Bonds. The Trustee shall not be liable for the Parity Bonds becoming “arbitrage bonds” as a result of investments it makes pursuant to instructions as required herein. The Corporation acknowledges that to the extent regulations of the Comptroller of the Currency or any other regulatory entity grant the Corporation the right to receive brokerage confirmations of the security transactions as they occur, the Corporation specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Corporation with monthly cash transaction statements, which include the detail for all investment transactions made by the Trustee hereunder. The Corporation may receive brokerage confirmations at no additional cost upon its written request. The Trustee shall be deemed to have complied with the provisions hereof if it materially follows the written instructions of the Corporation.

(b) **Retainage or Disbursement of Earnings.** All interest or income received by the Trustee on the investment of money held in the Series 2023A Proceeds Account, the Payment

Account, the Insurance and Condemnation Account, the Redemption Account, and the Operating Fund shall be retained in such Accounts and the Operating Fund, respectively. All interest or income received by the Trustee on the investment of money held in the Redemption Account shall be transferred to the Payment Account on each Bond Payment Date while any Parity Bonds are Outstanding.

(c) Notice by Trustee to City. Interest or income received by the Trustee on the investment of money held in the Payment Account shall be retained in that account for the purpose of making Bond Payments. Not less than ten (10) Business Days prior to each Lease Payment Date, the Trustee shall give written notice to the City of the amount of the Lease Payment next due and the amount of such investment earnings and other funds then on deposit in the Payment Account, which amount may be applied as a credit to the City's next Lease Payment.

(d) Amounts in Payment Account Credited Against Lease Payments. Except as provided in subsection (c) hereof, amounts deposited in the Payment Account shall be applied as a credit against the Lease Payments due by the City under the Lease Agreement on the Lease Payment Date following the date of deposit.

(e) Trustee Not Liable for Investment Losses. The Trustee shall act only as agent in making or disposing of any investment. The Trustee shall not be liable for any loss resulting from the making or disposition of any investment made pursuant to the provisions of subsection (a) of this Section, and any such losses or penalties shall be charged to the account with respect to which such investment was made.

#### **Section 6.09. Establishment and Application of the Rebate Account.**

(a) Establishment of Rebate Account. Within the Trust Fund, there has been established with the Trustee a special account to be designated the City of El Paso Downtown Development Corporation Downtown Ballpark Venue Financing Rebate Account" (the "***Rebate Account***"). The Original Trust Agreement governs the terms of such account, including the use of funds therein.

(b) Rebate Account Not Part of Trust Estate. Money deposited and held in the Rebate Account shall not be subject to the pledge of this Fifth Supplement but shall be held for the benefit of the United States of America and the Corporation. Investment earnings on any money in the Rebate Account shall be retained therein.

**Section 6.10. Payment of Other Costs.** The Corporation, as Lessee under the Primary Lease, shall require the City, in its capacity as Lessor under the Primary Lease and as evidenced by the City's agreement contained in Section 6.02(b) of the Lease Agreement, to pay from Appropriated Funds (i) all Operating Expenses related to the Project and (ii) the ordinary fees and expenses of the Trustee in accordance with the schedule provided in Exhibit C hereto. Upon termination of the Sublease in accordance with Section 10.03 of the Lease Agreement, any funds received by the Corporation from the City to pay Operating Expenses shall be deposited by the Corporation into the Operating Fund, and utilized by the Corporation (as Lessee under the Primary Lease) to pay Operating Expenses, pursuant to Section 6.07 hereof.



**Section 6.11. Team Payment Account.** Within the Payment Account, there has been established a special subaccount to be designated the *City of El Paso Downtown Development Corporation Downtown Ballpark Venue Financing Team Payment Account* (the “***Team Payment Account***”). The Original Trust Agreement governs the terms of such account, including the use of funds therein.

**[End of Article VI]**

## **ARTICLE VII DEFAULT; LIMITATION OF LIABILITY**

**Section 7.01. Events of Default.** An Event of Default is the occurrence of any one or more of the following:

(a) failure by the Corporation to make the due and punctual payment of the principal of, premium, if any, or interest on any Parity Bond when and as the same shall become due and payable, whether by acceleration or otherwise;

(b) an Event of Default as defined and described in the Lease Agreement shall have happened and is continuing;

(c) any material statement, representation, or warranty made by the Corporation in this Fifth Supplement or in any writing ever delivered by the Corporation pursuant to or in connection with the Lease Agreement is determined to be false, misleading, or erroneous in any material respect;

(d) the filing by the Corporation of a voluntary petition in bankruptcy, or failure of the Corporation promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of the Corporation to carry on its obligations under any of the Financing Documents, or adjudication of the Corporation as a bankrupt or assignment by the Corporation for the benefit of creditors, or the entry by the Corporation into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Corporation in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State laws which may hereafter be enacted;

(e) any event which shall occur or any condition which shall exist, the effect of which is to cause (i) more than \$100,000 of aggregate indebtedness of the Corporation to become due prior to its stated due date, and (ii) a lien to be placed on the Project or the Corporation's Leasehold Estate in the Project, and not released within 60 days; or

(f) a final judgment against the Corporation for an amount in excess of \$100,000 shall be outstanding for any period of 60 days or more from the date of its entry and shall not have been discharged in full or stayed pending appeal, and a lien is placed on the Project or the Corporation's Leasehold Estate in the Project.

The Corporation shall provide written notification to the Trustee at its Designated Office as soon as practicable upon the occurrence of any Event of Default identified in this Section other than paragraph (a) hereof.

### **Section 7.02. Remedies Upon Event of Default.**

(a) Upon the occurrence of an Event of Default, the Trustee shall have the right, to the extent permitted by law, at its option (or, at the written direction of Bondholders owning a majority in aggregate principal amount of the Parity Bonds then Outstanding and upon being indemnified to its satisfaction, shall), and without any further demand or notice, to take one or

any combination of the following remedial steps provided that the right to terminate the Sublease may only occur upon the occurrence of an Event of Default described in Section 7.01(b) which is caused by the City):

(i) with or without terminating the Sublease, declare the principal of all Outstanding Parity Bonds and all unpaid accrued interest thereon to be due and payable immediately, by a notice in writing to the Corporation and the City, and upon any such declaration, such principal and all unpaid accrued interest thereon shall become immediately due and payable; provided, however, that upon the written request of the Bondholders owning not less than 51% in principal amount of the Parity Bonds Outstanding, the Trustee shall declare the principal of all Outstanding Parity Bonds and all unpaid accrued interest to be due and payable immediately;

(ii) terminate the Sublease upon giving 30 days written notice to the City and the Corporation at the expiration of which period of time the City shall immediately surrender possession and control of the Project to the Trustee and the Trustee shall have the right, thereafter, to sublease the Project to any third party for a period up to but not exceeding the remaining Term of the Primary Lease; or

(iii) exercise any rights, powers, or remedies it may have as a secured party under the Uniform Commercial Code of the State, or other similar laws in effect, and shall have the power to proceed with any available right or remedy granted by the Financing Documents under the laws of the State, as it may deem best, including any suit, action, mandamus, or special proceeding in equity or at law or in bankruptcy or otherwise for the collection of all amounts due and unpaid under the Financing Documents, for specific performance of any covenant or agreement contained herein or therein, or for the enforcement of any legal or equitable remedy as the Trustee shall deem most effective to protect the rights aforesaid, insofar as such may be authorized by law.

(b) Notwithstanding any other provision of this Fifth Supplement, the Trustee shall not exercise its option to take possession and control of the Project upon an Event of Default under this Fifth Supplement until indemnified in a manner satisfactory to it for any liability and expense it might incur in carrying out such remedy.

**Section 7.03. Notice of Nonappropriation.** The Corporation, in the Sublease, shall require the City, as Sublessee, to provide the Corporation, the Trustee and the Rating Agencies with written notice within 72 hours of an action which constitutes failure by the City Council of the City to appropriate funds sufficient to pay the Lease Payments due during the succeeding Fiscal Year.

**Section 7.04. Delay; Notice.** No delay or omission to exercise any right or power accruing upon any Event of Default or upon any Event of Nonappropriation shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in the Lease Agreement and this Fifth Supplement it shall not be necessary for the Trustee to give any notice, other than such notice as may be required in the Lease Agreement and this Fifth Supplement.

**Section 7.05. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the parties to this Fifth Supplement is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Financing Documents or now or hereafter existing at law or in equity.

**Section 7.06. No Additional Waiver Implied By One Waiver.** Subject to the requirements of Section 7.11 hereof, the Trustee may waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon written notice to the owners of the Parity Bonds of such waiver provided not less than 10 Business Days prior to the effective date of such waiver. If, prior to the effective date of the waiver set forth in such notice to the Bondholders, the Trustee receives a written direction from Bondholders owning a majority in aggregate principal amount of the Parity Bonds then Outstanding instructing the Trustee not to proceed with such waiver, the Trustee shall be prohibited from exercising such waiver until further instructed to do so by Bondholders owning a majority in aggregate principal amount of the Parity Bonds then Outstanding. If the Trustee does not timely receive the written direction described in the preceding sentence, the waiver shall automatically become effective on the date indicated in such notice to the Bondholders. No waiver of any Event of Default hereunder shall extend or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon or create liability on the Trustee for doing so.

**Section 7.07. Notice of Event of Default.** The Trustee shall give written notice of an Event of Default by registered or certified mail to the Corporation and the City, and by first-class mail, the Bondholders, as soon as practicable following the occurrence of an Event of Default (or an event which with the passage of time could become an Event of Default) of which the Trustee has actual knowledge or is deemed to have knowledge hereunder, but in no event shall such notice be given later than ten Business Days after the City's failure to make any Lease Payment when due (without regard to any grace period) or the occurrence of any other Event of Default of which the Trustee has actual knowledge or has received written notice. If such notice relates to a failure to make an obligated payment or transfer, it shall specify the amount. If such notice relates to a matter other than a failure to make an obligated payment or transfer, it shall specify the manner in which the City has failed to comply with the provisions of the Lease Agreement and demand such compliance. Notice under this Section is not a condition precedent to the exercise of any remedy under this Fifth Supplement.

**Section 7.08. Initiation of Remedies.** All rights of action hereunder may be enforced by the Trustee without the possession of any of the Parity Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee may be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants the Bondholders. Any recovery of judgment shall be for the ratable benefit of the Bondholders.

**Section 7.09. Rights and Remedies of Bondholders.**

(a) No Bondholder shall have any right to institute any suit, action, or proceeding for the enforcement of this Fifth Supplement, the execution of any trust hereof, or any other remedy hereunder unless:

(i) either an Event of Default has occurred, the Sublease is terminated pursuant to an Event of Nonappropriation, or the Trustee has failed to make a payment to a Bondholder when due;

(ii) Bondholders owning not less than 25% of the aggregate principal amount of Parity Bonds Outstanding shall have made written request to the Trustee and shall have offered the Trustee reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its own name;

(iii) such Bondholders have furnished the Trustee indemnification in a manner satisfactory to the Trustee for any liability and expense it might incur in carrying out the aforementioned request; and

(iv) the Trustee shall thereafter (within 60 days after receipt by the Trustee of the written request) fail or refuse to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its, his, or their own name or names.

(b) Such request and furnishing of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Fifth Supplement and to the initiation of any action or cause of action for the enforcement of this Fifth Supplement; however, the Trustee may not, as condition precedent to the execution of the powers and trusts hereunder, request indemnification for liability arising out of the Trustee's negligent or willful action, misconduct, or failure to act.

(c) No one or more of the Bondholders shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Fifth Supplement by its, his, or their action or to enforce any right hereunder except in the manner herein provided, and proceedings shall be instituted, had, and maintained in the manner herein provided and for the ratable benefit of all Bondholders. Nothing in this Fifth Supplement shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of, premium if any, and interest on any Parity Bond at and after the maturity thereof or the obligation of the Trustee to pay the principal of and premium, if any, and interest on each of the Parity Bonds hereunder to the respective Bondholders thereof at the time and place, from the source, and in the manner provided in this Fifth Supplement.

**Section 7.10. Termination of Proceedings.** In the event the Trustee shall have proceeded to enforce any right under the Financing Documents and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then the Bondholders, the Corporation, and the Trustee shall be restored to their former positions and rights under the Financing Documents, and all rights, remedies, and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 7.11. Waivers of Events of Default.** The Trustee shall waive any Event of Default and its consequences and rescind any acceleration of maturity of principal upon the written request of Bondholders owning at least 51% in aggregate principal amount of the Parity Bonds then Outstanding; provided, however, there shall not be waived any Event of Default in the payment of the Lease Payments unless, prior to such waiver, rescission, or the

discontinuance, abandonment, or adverse determination of any proceeding taken by the Trustee on account of any such Event of Default, all arrears of Lease Payments, and all expenses of the Trustee in connection with such Event of Default shall have been paid or provided for. In case of any such waiver or rescission or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Trustee, then the Corporation, the City, the Trustee, and the Bondholders shall be restored to their former positions and rights hereunder and under the Lease Agreement, respectively, but no such waiver or rescission shall extend to any subsequent or other Events of Default or impair any right consequent thereon.

**Section 7.12. Application of Money.** Any moneys held or received by the Trustee pursuant to this Article VII shall be paid to and applied by the Trustee as follows:

(a) With respect to funds other than those held in the Team Payment Account,

(i) FIRST, to the payment of costs and expenses of suit, if any, and the reasonable compensation of the Trustee, its agents, attorneys and counsel (whether engaged directly by the Trustee or at the request of the Trustee), and Bond Counsel; and of all proper expenses, liabilities and advances incurred or made hereunder by the Trustee, and then as follows.

(ii) SECOND, to the payment to the persons entitled thereto of all installments of unpaid interest then due and payable on the Outstanding Parity Bonds in the order in which such installments become due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment; then to the payment, ratably according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Bonds.

(iii) THIRD, to the payment to the persons entitled thereto of the unpaid principal of any of the Parity Bonds which shall have become due and payable (other than Parity Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Fifth Supplement), in the order of their due dates, with interest on the principal amount of the Parity Bonds at the respective rates specified therein from the respective dates upon which the Parity Bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Parity Bonds due and payable on any particular date, together with the interest, then to the payment first of the interest, ratably, according to the amount of the interest due on that date, and then to the payment of the principal according to the amount of the principal due on that date, to the person entitled thereto without any discrimination.

(iv) FOURTH, to the payment of the interest on and the principal of the Parity Bonds, to the purchase and retirement of Parity Bonds and to the redemption of Parity Bonds, all in accordance with the provisions of Article V of this Fifth Supplement.

(b) With respect to funds required to be deposited in the Team Payment Account,

(i) FIRST, to the payment to the persons entitled thereto of all installments of unpaid interest on the Outstanding Taxable Parity Bonds then due and payable in the order in which such installments become due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment; then to the payment, ratably according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in such Parity Bonds.

(ii) SECOND, to the payment to the persons entitled thereto of the unpaid principal of any of the Outstanding Taxable Parity Bonds which shall have become due and payable (other than Parity Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Fifth Supplement), in the order of their due dates, with interest on the principal amount of such Parity Bonds at the respective rates specified therein from the respective dates upon which the Parity Bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Parity Bonds due and payable on any particular date, together with the interest, then to the payment first of the interest, ratably, according to the amount of the interest due on that date, and then to the payment of the principal, ratably, according to the amount of the principal due on that date, to the person entitled thereto without any discrimination.

(c) If the principal of all the Parity Bonds shall have been declared due and payable pursuant to an order of a court of competent jurisdiction, all the moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Parity Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Parity Bond over any other Parity Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preferences except as to any difference in the respective rates of interest specified in the Parity Bonds; provided, however, that the Team Payment Account and all payments received pursuant to the Team Lease may only be used to pay debt service on the Series 2013B Bonds, the Series 2021 Bonds, and any other Outstanding Taxable Parity Bonds.

(d) Whenever money is to be applied pursuant to the provisions of this Section, such money shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such money available for such application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be a Bond Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give notice to the Corporation, the City, and the Bondholders of the deposit with it of any such money and of the fixing of any such payment date and shall not be required to make payment to the owner of any Parity Bond until such Parity Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

(e) Whenever all principal of, premium, if any, and interest on all Parity Bonds have been paid under the provisions of this Section and whenever all fees, expenses, and charges of

the Trustee shall have been paid, and whenever all other costs and expenses have been paid, any portion of the properties comprising the Trust Estate and the Project remaining hereunder shall be paid, transferred, and assigned to the City.

**Section 7.13. No Obligation With Respect to Performance by Trustee.** The Corporation shall have no obligation or liability to any of the other parties or to the Bondholders with respect to the performance by the Trustee of any duty imposed upon it under this Fifth Supplement.

**Section 7.14. No Liability to Bondholders for Lease Payments or Covenants.** Except as expressly provided in this Fifth Supplement, neither the Corporation nor the Trustee shall have any obligation or liability to the Bondholders with respect to the payment of Lease Payments by the City when due or with respect to the performance by the City of any other covenant made by it in the Lease Agreement.

**Section 7.15. No Responsibility for Sufficiency of Lease.** The Trustee shall not be responsible for the sufficiency of the Lease Agreement, the assignment made to it of the right to receive Lease Payments or Operating Expenses, or the value of the Project; provided, however, that the foregoing does not reduce or eliminate any of the Trustee's specified responsibilities or obligations under the Financing Documents. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it on behalf of the Corporation under the terms of and in accordance with this Fifth Supplement. Further, the Trustee shall not be responsible or liable for the loss of investment income resulting from the failure of the Corporation to provide written instructions to the Trustee directing the investment of money held in the Trust Fund; provided that the Trustee invests such money in accordance with the provisions of Section 6.08 hereof.

**Section 7.16. No Liability of Trustee.**

(a) The Trustee shall not be liable to anyone for any delay in the delivery of any property to the Corporation or the City, for any default on the part of any supplier, manufacturer, or builder, or for any defect in any of the property or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the title thereto. The Trustee shall not be liable for actions taken in good faith, or actions taken at the direction of the Bondholders owning a requisite percentage of the Parity Bonds. The Trustee shall not be liable for costs, expenses, suits, judgments, actions, claims, losses, damages, and liabilities whatsoever, including consequential damages, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgments, and legal fees and expenses, directly or indirectly arising out of (i) the use, maintenance, condition, or management of, or from any work or thing done in connection with, the Project by any third party; (ii) any act of negligence of any third party or of any officer, agent, contractor, servant, employee, licensee, or invitee of such third party in connection with the Project or the Lease Agreement; or (iii) the authorization of payment of costs by any third party who is not acting as an attorney, agent, or servant of the Trustee.

(b) The Trustee may perform its powers and duties hereunder by or through such attorneys, agents, and servants as it shall appoint, shall be entitled to rely conclusively upon the



advice of counsel and shall be answerable for only its own negligence or willful misconduct and not for any negligence or willful misconduct of any attorney, agent, or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution (except for its own execution) or validity of this Fifth Supplement or of the Parity Bonds or for any mistake of fact or law. IN NO EVENT SHALL THE TRUSTEE BE LIABLE TO ANY PARTY OR THIRD PARTY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOSS OF BUSINESS ARISING UNDER OR IN CONNECTION WITH THIS FIFTH SUPPLEMENT OR THE OTHER FINANCING DOCUMENTS OR THE OWNERSHIP OF THE BALLPARK, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION. THE TRUSTEE SHALL NOT BE RESPONSIBLE OR LIABLE TO ANY BONDHOLDER TO PAY ANY INTEREST, PRINCIPAL, OR PREMIUM DUE OR TO BECOME DUE ON THE PARITY BONDS EXCEPT OUT OF FUNDS AVAILABLE TO THE TRUSTEE IN THE TRUST FUND OR ANY ACCOUNT THEREIN (EXCLUDING THE REBATE ACCOUNT AND THE OPERATING FUND).

**Section 7.17. Indemnification.**

To the extent permitted by applicable law, the Corporation hereby agrees to indemnify, defend, protect and hold the Trustee harmless from and against any and all losses, liability, damages, costs or expenses that the Trustee may suffer or incur arising out of or in connection with the acceptance or administration of the Trust Agreement or the trusts hereunder or the performance of its duties hereunder. The indemnification obligations of the Corporation set forth in this Section shall survive the termination of this Trust Agreement and the resignation or removal of the Trustee.

**[End of Article VII]**

## **ARTICLE VIII THE TRUSTEE**

**Section 8.01. Employment of Trustee.** In consideration of the recitals hereinabove set forth and for other valuable consideration, the Corporation hereby confirms the appointment of the Trustee, for the benefit of the Bondholders, to: (a) receive the proceeds from the sale of the Parity Bonds and any funds contributed by the City or any other entity for deposit in the Trust Fund; (b) receive all payments to be made pursuant to the Lease Agreement; (c) apply and disburse the proceeds from the sale of the Parity Bonds and the payments received hereunder as provided for herein; and (d) perform all the other duties and obligations of the Trustee expressly provided for herein. The Trustee shall not be required to give any bond or surety in respect of the execution of the trust and powers given to it by this Fifth Supplement.

### **Section 8.02. Rights and Duties of Trustee.**

(a) By executing and delivering this Fifth Supplement, the Trustee accepts the duties and obligations of the Trustee expressly provided in this Fifth Supplement, but only upon the terms and conditions set forth in this Fifth Supplement, and no implied covenants shall be read herein against the Trustee;

(b) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice (electronic, telephonic, telecopy, written, or otherwise), request, direction, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(c) Any request or direction of a Bondholder, the City, or the Corporation mentioned herein shall be sufficiently evidenced by a writing originally signed by a Bondholder Representative, City Representative, or a Corporation Representative, as appropriate;

(d) When in the administration of this Fifth Supplement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering, or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of a Bondholder Representative, City Representative, or a Corporation Representative;

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records, and premises of the City or the Corporation personally or by agent or attorney and to rely on any certifications provided thereby;

(f) The Trustee may consult with legal counsel, and the written advice of such counsel or any opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered, or omitted by the Trustee hereunder in good faith and in reliance thereon;

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Fifth Supplement at the request or direction of any of the Bondholders, unless such Bondholders shall have furnished to the Trustee security or indemnity satisfactory to it against the costs, expenses, and liabilities which might be incurred by it in compliance with such request or direction;

(h) No provision of this Fifth Supplement shall require the Trustee to expend or risk its funds or otherwise incur any financial liability in the performance of any of its duties hereunder;

(i) Subject to Section 7.16(b), the Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers;

(j) The permissive right of the Trustee to do things enumerated in this Fifth Supplement or in the Lease Agreement shall not be construed as duties;

(k) The Trustee shall not be personally liable for any debts contracted or for damages to persons, or personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project;

(l) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Corporation under this Fifth Supplement or of the Corporation, the City, or any other person under the Lease Agreement, and shall not have any liability for the contents of any document submitted to or delivered to any Bondholder in the nature of a preliminary or final placement memorandum, official statement, offering circular, or similar disclosure document;

(m) Upon the occurrence and continuance of an Event of Default, the Trustee shall execute its duties under this Fifth Supplement with the same degree of care and skill a reasonably prudent person would utilize in the conduct of such person's own affairs; and

(n) The Trustee shall not be accountable for the use of any Parity Bonds authenticated or delivered hereunder after such Parity Bonds shall have been delivered in accordance with instructions of the Corporation or for the use by the Corporation of the proceeds from the sale of such Parity Bonds distributed from the Series 2023A Proceeds Account in accordance with the terms of this Fifth Supplement. The Trustee may become the Owner of the Parity Bonds secured hereby with the same rights as any other Bondholder.

**Section 8.03. Removal and Resignation.** A bank or trust company authorized to provide corporate trust services, may be substituted to act as successor trustee under this Fifth Supplement, after payment in full of the current Trustee's fees and expenses upon written request of the Bondholders owning a majority in aggregate principal amount of the Parity Bonds then Outstanding. Such substitution shall not be deemed to affect the rights or obligations of the Bondholders. Upon any such substitution, the Trustee agrees to assign to such substituted Trustee its rights under this Fifth Supplement and the other Financing Documents and deliver all documents and funds held in connection with this Fifth Supplement to such substituted Trustee. Any such successor shall have capital and surplus exclusive of borrowed capital aggregating at least \$50,000,000 and shall be subject to examination or supervision by a federal or state banking authority. The Trustee or any successor may at any time resign by giving mailed notice to all

Bondholders, the City, and the Corporation of its intention to resign and of the proposed date of resignation, which shall be a date not less than 30 calendar days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and the appointment of a successor Trustee shall have been or is approved in writing by the Bondholders owning a majority in aggregate principal amount of the Parity Bonds Outstanding. In the event that a successor Trustee is not appointed within 30 calendar days after such notice is deposited in the United States mail, the Bondholders owning a majority in aggregate principal amount of the Parity Bonds Outstanding or the resigning Trustee may petition the appropriate court having jurisdiction to appoint a successor Trustee. No resignation or removal of the Trustee and appointment of a successor Trustee shall become effective until acceptance of appointment by the successor Trustee.

**Section 8.04. Appointment of Agent.** The Trustee may appoint an agent to exercise any of the powers, rights, or remedies granted to the Trustee under this Fifth Supplement and to hold title to property or to take any other action which may be desirable or necessary.

**Section 8.05. Acquisition, Merger, or Consolidation of Trustee.** Any entity resulting from any acquisition, merger, or consolidation to which the Trustee or any successor to it shall be a party, or any entity in any manner succeeding to all or substantially all of the corporate trust business of the Trustee or any successor Trustee, provided that such entity, if not an affiliate of the Trustee, shall have capital and surplus aggregating at least \$50,000,000, shall be the successor Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

**Section 8.06. Trustee Compensation.** The Trustee shall be entitled to payment by the City in accordance with Section 6.02(c) of the Lease Agreement for the Trustee's fees for ordinary services and expenses based upon the Trustee's Fee Schedule attached hereto as *Exhibit C*.

**Section 8.07. Trustee Notice.** The Trustee shall be required to take notice of any Event of Default hereunder arising from failure by the City to pay Lease Payments when due. Unless a Trustee Representative having direct responsibility for the administration of this Fifth Supplement shall be specifically notified in writing of any other Event of Default by the City, the Corporation, or the Bondholders owning at least 5% in aggregate principal amount of the Parity Bonds then Outstanding, the Trustee shall not be required to take notice or be deemed to have notice of any other Event of Default hereunder. Further, the Trustee shall not be deemed to have notice of any other events or occurrences under the Lease Agreement unless it shall have received actual notice thereof from the City, the Corporation, or Bondholders owning at least 5% in aggregate principal amount of the Parity Bonds Outstanding.

**Section 8.08. Directors, Officers, Employees, and Agents Exempt From Personal Liability.** This Fifth Supplement is solely a corporate obligation of the Trustee and no recourse under or upon any obligation, covenant, or agreement of this Fifth Supplement, or for any claim based hereon, shall be asserted against any past, present, or future director, officer, employee, or agent as such of the Trustee whether by virtue of any law or otherwise. All such liability and claims against such persons are expressly waived as a condition of, and in consideration for, the execution and delivery of this Fifth Supplement and the Parity Bonds.

**Section 8.09. Not Responsible for Recitals or Issuance of Parity Bonds.** The recitals contained herein and in the Parity Bonds (other than the certificate of authentication on such Parity Bonds) shall be taken as the statements of the Corporation and the City, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Fifth Supplement or of the Parity Bonds. The Trustee shall not be accountable for the use or application by the Corporation or the City of any of the Parity Bonds or of the proceeds of such Parity Bonds.

**Section 8.10. No Boycott Israel.** To the extent this Fifth Supplement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Fifth Supplement. The foregoing verification is made solely to enable the Corporation to comply with such Section and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**Section 8.11. Iran, Sudan and Foreign Terrorists Organizations.** The Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on the following page of such officer’s internet website: <https://comptroller.texas.gov/purchasing/publications/divestment.php>. The foregoing representation is made solely to enable the Corporation to comply with such Section and to the extent such Section does not contravene applicable Federal law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

**Section 8.12. No Discrimination Against Fossil-Fuel Companies.** To the extent this Fifth Supplement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Fifth Supplement. The foregoing verification is made solely to enable the Corporation to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and

does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

**Section 8.13. No Discrimination Against Firearm Entities and Firearm Trade Associations.** To the extent this Fifth Supplement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Fifth Supplement. The foregoing verification is made solely to enable the Corporation to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law.

As used in the foregoing verification and the following definitions,

(a) “discriminate against a firearm entity or firearm trade association” (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association,

(b) “firearm entity” means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e. weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e. devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e. a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (i.e. a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and

(c) “firearm trade association” means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder

or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

As used in Sections 8.10 through 8.13, the Trustee understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405 and exists to make a profit.

**[End of Article VIII]**

**ARTICLE IX  
[RESERVED]**

**[End of Article IX]**



**ARTICLE X**  
**AMENDMENT; DEFEASANCE; ADMINISTRATIVE PROVISIONS**

**Section 10.01. Amendment.**

(a) *Amendments Without Consent of Bondholders.* The Corporation and the Trustee, without the consent of the Bondholders, may amend this Fifth Supplement, or other instruments evidencing the existence of a lien as shall not be inconsistent with the terms and provisions hereof for any of the following purposes:

(i) to cure any ambiguity, inconsistency, formal defect, or omission in this Fifth Supplement;

(ii) to grant to or confer upon the Trustee for the benefit of the owners of the Parity Bonds any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or either of them;

(iii) to subject additional revenues to the lien and pledge of this Fifth Supplement;

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

(v) to evidence any succession by the City, the Trustee, or the Corporation and the assumption by such successor of the requirements, covenants, and agreements of the City, the Trustee, or the Corporation in the Financing Documents and the Parity Bonds; or

(vi) to provide for the issuance of Additional Bonds as permitted pursuant to Section 3.09 hereof.

(b) *Amendments Requiring Consent of Bondholders.* Exclusive of the aforementioned types of amendment and subject to the terms and provisions contained in this Section, and not otherwise, the Corporation and the Trustee, with the consent of the Bondholders owning not less than a majority in aggregate principal amount of the Parity Bonds then Outstanding, shall have the right, from time to time, anything contained in this Fifth Supplement to the contrary notwithstanding, to amend the terms or provisions contained in this Fifth Supplement; provided, however, that nothing in this Section shall permit or be construed as permitting: (i) without the consent of each Bondholder so affected, an extension of maturity of the principal of or the interest on any Parity Bond, a reduction in the principal amount of any Parity Bond, or a reduction in the rate of interest thereon; (ii) without the consent of all of the Bondholders, a privilege or priority of any Parity Bond over any other Parity Bond, a reduction in the aggregate principal amount of the Parity Bonds required for consent to such amendment or the creation of any prior or parity liens on the Trust Estate (except for a parity lien on the Trust Estate in connection with the issuance of Additional Bonds).

(c) Notice to Bondholders. If at any time an amendment shall be proposed for any of the purposes of this Section requiring the approval of the Bondholders, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, notify all Bondholders of the proposed amendment in the manner provided by Section 10.06. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file at the Designated Office of the Trustee for inspection by all Bondholders. If, within 60 calendar days after mailing of the notice or such longer period not to exceed 120 calendar days as the Corporation may prescribe, the requisite number of Bondholders at the time notice of such amendment is given shall have consented to and approved the execution thereof as herein provided, no Bondholder shall have any right to object to any of the terms and provisions contained therein or the operation thereof, in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Corporation from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, this Fifth Supplement shall be and is deemed to be modified and amended in accordance with such amendment.

(d) Opinion of Bond Counsel. There shall be filed with the Trustee with respect to each amendment to this Fifth Supplement an opinion of Bond Counsel to the effect that such amendment is authorized or permitted by this Fifth Supplement and that all conditions precedent with respect to the execution and delivery thereof have been fulfilled.

(e) Trustee Not Required to Consent in Certain Cases. The Trustee shall not be required to enter into or consent to any such amendments that affect the Trustee's own rights, duties or immunities under this Fifth Supplement or otherwise.

## **Section 10.02. Defeasance.**

(a) Defeasance of Parity Bonds. Any Parity Bond and the interest thereon shall be deemed to be paid, retired and no longer Outstanding (a "***Defeased Parity Bond***") within the meaning of this Fifth Supplement, except to the extent provided below in this subsection, when payment of the principal of such Parity Bond plus interest thereon to the due date, whether such due date be by reason of maturity or otherwise either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Trustee for such payment (1) lawful money of the United States of America sufficient to make such payment and/or (2) noncallable securities of the types listed in subsection (i) of the definition of Permitted Investments ("***Defeasance Securities***") that mature as to principal and interest in such amounts and at such times (which, in the case of a net defeasance, must be verified in writing by an independent certified public accountant) as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Corporation with the Trustee for the payment of its services until all Defeased Parity Bonds shall have become due and payable. At such time as a Parity Bond shall be deemed to be a Defeased Parity Bond hereunder, such Defeased Parity Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the Trust Estate or this Fifth Supplement, and such principal and interest shall be payable solely from such money and/or Defeasance Securities. Notwithstanding any other provision of this subsection (a) to the contrary, it is hereby provided that any determination not to redeem a Defeased Parity Bond that

is made in conjunction with the payment arrangements specified above in this subsection (a) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Corporation expressly reserves the right to call the Defeased Parity Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Parity Bonds immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Investment of Funds in Defeasance Securities; Substitutions. Any moneys so deposited with the Trustee as set forth in subsection (a) above may, at the written direction of the Corporation, be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and the Corporation may direct the Trustee to substitute any Defeasance Securities for other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) of this Section, and upon receiving an opinion of Bond Counsel to the effect that such investment or reinvestment of money, and/or such substitution of Defeasance Securities, will not adversely affect the exclusion of interest on any Defeased Parity Bonds, that are Tax-Exempt Parity Bonds, for federal income tax purposes. All income from Defeasance Securities received by the Trustee that is not required for the payment of the Defeased Parity Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Corporation, or deposited as directed in writing by the Corporation.

(c) Release of Trust Estate Upon Defeasance of All Parity Bonds. In the event (i) the Parity Bonds delivered pursuant hereto shall become due and payable in accordance with their terms and the whole amount of the principal, premium, if any, and interest so due and payable upon all of the Parity Bonds shall be paid, or (ii) all of the Parity Bonds shall have been defeased pursuant to Section 10.02(a) hereof, and, in either case, if (A) all conditions precedent herein provided for relating to the satisfaction and discharge of this Fifth Supplement have been complied with, (B) irrevocable and satisfactory arrangements have been made with the Trustee, and (C) all administrative expenses and amounts due or to become due hereunder shall have been paid or provided for, then and in either such event described in clause (i) or (ii) above the right, title, and interest of the Trustee and the Corporation under this Fifth Supplement shall thereupon cease, terminate, and become void, and the Trustee shall assign and transfer to, or upon the order of, the City all property (in excess of the amounts required for the foregoing) then held by the Trustee (including the Lease Agreement and all payments thereunder and all balances in any fund or account created under this Fifth Supplement excluding the Rebate Account) and shall execute such documents as may be reasonably required by the City in this regard.

**Section 10.03. Payments Due on Non-Business Days.** If the date for making any payment hereunder or the last date for performance of any act or the exercising of any right provided for in this Fifth Supplement is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, and such payment or act shall be with the same force and effect as if done on the nominal date provided in this Fifth Supplement, and if done on such succeeding Business Day, no interest shall accrue for the period after such nominal date.

**Section 10.04. Recording and Filing.** The Trustee shall be responsible for the recording and filing of continuation statements for any financing statements filed at the time of

issuance of the Series 2023A Bonds and filed copies of which have been provided to the Trustee, and the costs thereof shall be paid by the City as expenses of the Trustee.

Notwithstanding the foregoing paragraph, Chapter 1208, Texas Government Code, applies to the issuance of the Parity Bonds and the pledge of the Trust Estate granted hereunder, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while any Parity Bonds are Outstanding and unpaid such that the pledge of the Trust Estate granted hereunder is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Parity Bonds the perfection of the security interest in such pledge, the Corporation agrees to take such measures as it or its counsel determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in such pledge to occur. This Fifth Supplement constitutes a “security agreement,” as such term is defined in Chapter 1208, Texas Government Code.

**Section 10.05. Trustee to Keep Records.** The Trustee shall keep copies of the Financing Documents, books and records of all money received and disbursed under this Fifth Supplement, and the Bond Register, all of which shall be available for inspection upon reasonable notice by the Corporation, the City, and the Bondholders owning at least 5% in aggregate principal amount of the Parity Bonds Outstanding at any time during regular business hours.

**Section 10.06. Notices.**

(a) All notices, certificates, or other communications hereunder shall be in writing and delivered by certified mail, return receipt requested, telex, telegram, or other electronic transmission, or by express or personal delivery, prepaid, and addressed as follows:

(i) If to Corporation:

City of El Paso Downtown Development Corporation  
c/o Finance Department - City of El Paso  
300 N. Campbell  
El Paso, Texas 79901  
Attention: Treasurer/Chief Financial Officer

(ii) If to City:

City of El Paso, Texas  
300 N. Campbell  
El Paso, Texas 79901  
Attention: City Attorney

(iii) If to Trustee:

Computershare Trust Company, N.A.  
Corporate Trust Operations  
Attention: [\_\_\_\_\_]

MAC: N9300-070  
600 South 4th Street, 7th Floor  
Minneapolis, Minnesota 55415

and

Computershare Trust Company, N.A.  
[\_\_\_\_\_  
MAC: T9216-430  
Dallas, Texas 75202-2711  
Attention: Corporate Trust Operations]

(b) Any party to this Fifth Supplement may designate any additional or different address to which communications shall be delivered by giving at least five days' advance notice thereof to the affected parties.

(c) A provision of this Fifth Supplement which provides for a different method of giving notice or otherwise conflicts with this Section supersedes this Section to the extent of the conflict.

(d) Notices delivered by certified mail shall be deemed received five days after deposit of such notice in the U.S. mail, postage prepaid. Notices delivered by other means shall be deemed received upon receipt.

**Section 10.07. Applicable Law.** This Fifth Supplement shall be construed and governed in accordance with the laws of the State.

**Section 10.08. Severability.** Any provision of this Fifth Supplement found to be prohibited by law shall be ineffective only to the extent of such prohibition and shall not invalidate the remainder of this Fifth Supplement.

**Section 10.09. Execution in Counterparts.** This Fifth Supplement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**Section 10.10. Complete Agreement.** This Fifth Supplement supersedes and takes the place of any and all previous agreements entered into among the parties hereto with respect to the subject matter hereof.

**[End of Article X - Signature Page and Exhibits Follow]**

***IN WITNESS WHEREOF***, the parties have executed and attested this Fifth Supplement by their officers thereunto duly authorized as of the date and year first written above.

**COMPUTERSHARE TRUST COMPANY,  
N.A.  
as Trustee**

**ATTEST:**

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

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

**CITY OF EL PASO DOWNTOWN  
DEVELOPMENT CORPORATION**

**ATTEST:**

By: \_\_\_\_\_  
Laura Prine,  
Secretary

By: \_\_\_\_\_  
Robert Cortinas,  
Treasurer

**APPROVED AS TO FORM ON  
BEHALF OF THE CORPORATION:**

By: \_\_\_\_\_  
Paul A. Braden  
Bond Counsel

**SCHEDULE I**  
**REFUNDED BONDS**



## EXHIBIT A

### GLOSSARY OF TERMS

Unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of the Lease Agreement and the Trust Agreement, as defined below, shall be construed, are used, and are intended to have the following meanings, to wit:

***Additional Bonds*** - The additional parity lease revenue bonds or other obligations which the Corporation reserves the right to issue in the future pursuant to Section 3.09 of the Trust Agreement.

***Additional Tax*** – The additional hotel occupancy tax levied in support of the Project at the rate of two percent (2%) of the consideration paid by an occupant of a hotel room within the City, and as described in Section 2.03 of the Lease Agreement.

***Appropriate, Appropriated or Appropriation*** - The adoption by the City Council of a budget or amendments to the budget for a Fiscal Year which includes the Lease Payments, Operating Expenses, and other payments required, if any, to be made by the City under the Lease Agreement during the respective Fiscal Year.

***Appropriated Funds*** - Funds Appropriated by the City from any money that has not been encumbered to secure the payment of any indebtedness of the City and that may lawfully be used with respect to any payment obligated or permitted under the Lease Agreement, including but not limited to unencumbered and lawfully available revenues derived by the City from the Additional Tax, the general sales and use tax levied by the City, bridge revenues and transfers from City-owned utility systems.

***Authorized Denomination*** - With respect to the Series 2023A Bonds, \$5,000 in principal amount or any integral multiple thereof.

***Ballpark*** - A multipurpose coliseum, stadium or other type of arena or facility that is planned for use for one or more professional or amateur sports events, including minor league baseball games, and related infrastructure as defined in the Venue Project Act.

***Board*** - The Board of Directors of the Corporation.

***Bond Counsel*** - An attorney at law or a firm of attorneys, acceptable to the Corporation, the City, and the Trustee, of nationally-recognized standing in matters pertaining to the issuance of tax-exempt bonds by states and their political subdivisions, initially Norton Rose Fulbright US LLP.

***Bond Payment*** - The semiannual payments made to each Bondholder in accordance with the Trust Agreement.

***Bond Payment Date*** – February 15 and August 15 of each year as long as any Parity Bonds are Outstanding.

***Bond Register*** - The register of owners of the Parity Bonds, maintained by the Trustee.

***Bondholder*** - The person in whose name any Parity Bond is registered in the Bond Register. As used herein, an “owner” or a “holder” of Parity Bonds means a Bondholder.

***Bondholder Representative*** - Any individual bondholder or any director or officer of a Bondholder who is designated as such in writing for the purposes of the Trust Agreement.

***Business Day*** - Any day other than a Saturday, Sunday, legal holiday, or a day on which banking institutions in El Paso, Texas, Dallas, Texas, and/or New York, New York are authorized or required by law or executive order to close.

***Capital Appreciation Bond*** - Any Parity Bond issued pursuant to the terms hereof in which no interest is paid prior to stated maturity or early redemption and in which interest begins to accrete from the date of delivery of such Parity Bond.

***Chapter 1207*** – Chapter 1207, Texas Government Code, as amended.

***City*** - The **CITY OF EL PASO, TEXAS**, a duly created municipal corporation and political subdivision of the State of Texas, operating as a home-rule municipality pursuant to the Texas Local Government Code and its City Charter, together with its successors and permitted assigns.

***City Council*** - The City Council of the City.

***City Representative*** - The Mayor, the City Manager, any Deputy City Manager, the City Clerk, the Chief Financial Officer of the City, and the Comptroller of the City, and any other officer or employee of the City who is designated in writing by resolution or ordinance of the City Council or by a certificate executed by the City Manager or the Chief Financial Officer of the City as a City Representative for the purposes of the Trust Agreement.

***Closing Date*** - With respect to each series of Parity Bonds, the date of initial delivery of and payment for such series of Parity Bonds.

***Club*** - Mountain Star Sports Group, LLC – El Paso Baseball Club Series.

***Code*** - The United States Internal Revenue Code of 1986, as amended, and the regulations and revenue rulings and procedures promulgated thereunder.

***Corporation*** - The *City of El Paso Downtown Development Corporation*, a nonprofit local government corporation created by the City pursuant to the LGC Act, and its successors and permitted assigns.

***Corporation Representative*** - The Chair and Vice Chair of the Board of the Corporation, and the Executive Director and the Treasurer of the Corporation.

***Defeasance Amount*** - An amount which will be sufficient, together with amounts, if any, on deposit in the Payment Account, Insurance and Condemnation Account, Redemption Account, and Series 2023A Proceeds Account, to pay the principal of all Parity Bonds then

Outstanding, the redemption premium, if any, and accrued interest thereon to the next succeeding date fixed for redemption, together with any other amounts then due or past due under the Trust Agreement, including the fees and expenses of Trustee, less the funds held by the Trustee in any account of the Trust Fund (excluding the Rebate Account) as of the redemption date of the Parity Bonds; provided that all amounts due and payable under the Trust Agreement have been paid.

***Designated Office*** - When used with respect to the Trustee, initially, the office of the Trustee situated at [\_\_\_\_\_, Dallas, Texas 75202—2711], Attention: Corporate Trust Services, at which the Trustee conducts its corporate trustee business; provided that, with respect to payments on the Parity Bonds and any exchange, transfer or surrender of the Parity Bonds, means the office of the Trustee situated at 600 South 4th Street, 7th Floor, Minneapolis, Minnesota 55415, Attention: Corporate Trust Services, or such other location designated in writing by the Trustee.

***Development Agreement*** - Ballpark Development Agreement dated as of September 18, 2012 between the City and the Club as amended by a First Amendment to the Ballpark Development Agreement dated as of June 18, 2013.

***Event of Default*** -

(i) As used in the Trust Agreement, those events of default provided for in Section 7.01 of the Original Trust Agreement.

(ii) As used in the Lease Agreement:

(a) failure by the Sublessee to make a Lease Payment from Appropriated Funds within ten calendar days after the due date thereof;

(b) failure by the City to construct the Project in accordance with the terms and conditions the Lease Agreement;

(c) failure by the City or the Corporation to observe and perform any covenant, condition, or agreement, on its part to be observed or performed by it under the Lease Agreement, other than as referred to in (a) or (b) above, and such failure is not cured within 30 calendar days after written notice thereof is provided to the party in default by the other party hereto or the Trustee;

(d) any material statement, representation, or warranty made by the City in the Lease Agreement or in any writing ever delivered by the City pursuant to or in connection with the Lease Agreement is false, misleading, or erroneous in any material respect;

(e) the filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of the City to carry on its operations at the Ballpark, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any

proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State laws which may hereafter be enacted;

(f) any event which shall occur or any condition which shall exist the effect of which is to cause (i) more than \$1,000,000 of aggregate indebtedness of the City to become due prior to its stated due date (exclusive of any optional or mandatory redemptions permitted by the applicable documents related to such indebtedness), or (ii) a lien to be placed on the Ballpark or the City's interest in the Ballpark, and not released within sixty (60) days; or

(g) a final judgment against the City for an amount in excess of \$1,000,000 shall be outstanding for any period of sixty (60) days or more from the date of its entry and shall not have been discharged in full or stayed pending appeal, and a lien is placed on the Ballpark or the City's interest in the Ballpark.

***Event of Nonappropriation*** - The failure of the City to appropriate in the budget adopted prior to the commencement of any Fiscal Year sufficient funds to pay the Lease Payments for such Fiscal Year, or the reduction of any Appropriation to an amount insufficient to permit the City to pay the Lease Payments (in which event, the Event of Nonappropriation shall be retroactive to the beginning of the Fiscal Year in which the reduction is made) from any money that may lawfully be used with respect to any payment obligated or permitted under the Lease Agreement.

***Fifth Lease Amendment*** - The Fifth Amendment to Master Lease dated as of June 1, 2023.

***Fifth Supplement*** - The Fifth Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing made as of June 1, 2023 by and between the Trustee and the Corporation.

***Financing Documents*** - Collectively, the Lease Agreement and the Trust Agreement.

***First Lease Amendment*** - The First Amendment to Master Lease dated as of May 1, 2016.

***First Supplement*** - The First Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing made as of May 1, 2016 by and between the Trustee and the Corporation.

***Fiscal Year*** - Each 12 month fiscal period of the City commencing on September 1 and ending on August 31 of the following year, or such other annual accounting period as the City may hereafter adopt.

***Fourth Lease Amendment*** – The Fourth Amendment to Master Lease dated as of June 1, 2023.

***Fourth Supplement*** - The Fourth Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing made as of June 1, 2023 by and between the Trustee and the Corporation.

***Initial Series 2023A Bond*** - The single fully registered Series 2023A Bond, without interest coupons, initially issued and delivered to the Underwriters in the aggregate principal amount of the Series 2023A Bonds issued under the Trust Agreement and as further described in Section 4.04 thereof.

***Insurance and Condemnation Account*** - That certain account so designated and established in accordance with Section 6.05 of the Original Trust Agreement.

***Issuance Costs*** - The costs of issuance incurred in connection with the sale of a series of Parity Bonds and the execution and delivery of the Lease Agreement, including but not limited to the initial and first year's Trustee's fees and expenses (including fees of Trustee's Counsel), fees and expenses of the City's financial advisor, the Rating Agencies, Bond Counsel, City's legal counsel, Corporation's legal counsel, printing and other costs, the Underwriters' discount (including fees and expenses of Underwriters), the examination fees of the Attorney General of Texas, filing fees, fees of the Municipal Advisory Council of Texas, the Depository Trust Company, CUSIP Bureau, and other miscellaneous costs and expenses.

***Lease Agreement*** - The **MASTER LEASE AGREEMENT RELATING TO THE CITY OF EL PASO, TEXAS DOWNTOWN BALLPARK VENUE PROJECT FINANCING**, dated as of August 1, 2013, by and between the Corporation and the City and any duly authorized and executed amendment thereto, including the First Lease Amendment, Second Lease Amendment, Third Lease Amendment, Fourth Lease Amendment and Fifth Lease Amendment.

***Lease Payment*** - (i) On each August 5, while any Parity Bonds are Outstanding under the Trust Agreement, an amount of money equal to the full amount of the principal installment (or Maturity Amount, in the case of Capital Appreciation Bonds) coming due on the Parity Bonds on such date, either pursuant to a mandatory sinking fund redemption or upon maturity of the Parity Bonds; and (ii) on each Lease Payment Date thereafter, while any Parity Bonds are Outstanding under the Trust Agreement, an amount of money which, when added to the amount then on deposit in the Payment Account, will equal the amount of interest to become due on the Parity Bonds on such Lease Payment Date. Attached as Exhibit E to the Lease Agreement is an initial schedule of Lease Payments to be in effect following the issuance of the Series 2023A Bonds.

***Lease Payment Date*** - Each August 5 and February 5 (or the next Business Day thereafter if such day is not a Business Day) for so long as the Lease Agreement is in effect.

***Leasehold Estate*** - An interest in Real Property granting to its holder a right of exclusive possession for a specified duration, subject to the payment of rent and other conditions placed upon the continued effectiveness and validity thereof included within a lease.

***Lessor*** - The City, in its capacity as the lessor of the Ballpark under the Primary Lease, and its successors and permitted assigns.

**Lessee** - The Corporation, in its capacity as the lessee of the Ballpark under the Primary Lease, and its successors and permitted assigns.

**LGC Act** – Collectively, Subchapter D of Chapter 431, Texas Transportation Code, as amended; Chapter 394, Texas Local Government Code, as amended; and the Texas Non-Profit Corporation Act (formerly Article 1396, Vernon’s Texas Civil Statutes, as amended), now codified in the Texas Business Organizations Code as the Texas Nonprofit Corporation Law, as defined in Section 1.008 of the Texas Business Organizations Code, as amended.

**Maturity Amount** - The total amount of principal and accreted interest coming due on the stated maturity date of a Parity Bond that is issued as a Capital Appreciation Bond.

**Net Proceeds** - Any insurance proceeds or condemnation award paid with respect to the Ballpark remaining after payment of all expenses incurred in the collection thereof.

**Non-HOT Appropriated Funds** – The meaning set forth in Section 6.07 of the Lease Agreement.

**Operating Expenses** - The meaning set forth in Section 6.02(e) of the Lease Agreement.

**Operating Fund** - The “Operating Fund” so designated and to be established by the Trustee pursuant to Section 6.07 of the Trust Agreement upon the termination of the Sublease.

**Original Trust Agreement** - The **TRUST AGREEMENT RELATING TO THE CITY OF EL PASO, TEXAS DOWNTOWN BALLPARK VENUE PROJECT FINANCING**, dated as of August 1, 2013, between the Corporation and the Trustee, as amended by a First Amendment to the Trust Agreement dated October 15, 2013 and any other duly authorized and executed amendment thereto.

**Outstanding** - As of the date of determination, all Parity Bonds theretofore issued and delivered under the Trust Agreement, except:

(1) Parity Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(2) Parity Bonds for whose payment or redemption money in the necessary amount has been theretofore deposited in an account, other than the “Payment Account” identified in Article VI of the Trust Agreement, with the Trustee holding such money in trust irrevocably for the holders of such Parity Bonds;

(3) Parity Bonds in exchange for or in lieu of which other Parity Bonds have been registered and delivered pursuant to the Trust Agreement; and

(4) Parity Bonds alleged to have been mutilated, destroyed, lost, or stolen which have been paid as provided in the Trust Agreement.

**Parity Bonds** - The Previously Issued Parity Bonds, the Series 2023A Bonds and any Additional Bonds.

***Payment Account*** - That certain account so designated and established by the Trustee pursuant to Section 6.03 of the Trust Agreement.

***Permitted Encumbrances*** - The matters described on Exhibit H to the Lease Agreement.

***Permitted Investments*** - Any of the following, to the extent permitted by applicable law, including but not limited to Chapter 2256 of the Texas Government Code, and the Corporation's investment policy:

(i) bills, interest-bearing notes, bonds, or other direct obligations of the United States, including United States Treasury State and Local Government Series, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest;

(ii) obligations issued, or fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof;

(iii) certificates of deposit issued by a nationally or state chartered bank (which may include the Trustee), provided either that (A) such bank is currently rated not lower than "AA" (or its equivalent) by the Rating Agencies, and the principal amount of any such certificate of deposit in excess of the amount insured by the FDIC or by the FDIC as manager for the Savings Association Insurance Fund, shall be fully secured in accordance with Section 2256.010, Texas Government Code, and collateralized by the pledge and deposit of securities described in (i) and (ii) of this definition in an amount and with maturities that meet all applicable standards established by the Rating Agencies for funds held for payment of securities rated "AAA" (or its equivalent) by them, that the Trustee has a perfected first priority security interest in the collateral, that the Trustee or any agent has possession of the collateral, and that such obligations are free and clear of claims by third parties, or (B) the principal amount of and interest to be earned on any such certificate of deposit does not exceed the amount insured by the FDIC or by the FDIC as manager for the Savings Association Insurance Fund;

(iv) fully collateralized direct repurchase agreements having a defined termination date, secured by obligations of the United States of America or its agencies and instrumentalities, in market value of not less than the principal amount of such agreement and accrued interest thereon, pledged and deposited with a third party acting solely for the Trustee, selected or approved by the Corporation, and placed through a primary government securities dealer, as defined by the Board of Governors of the Federal Reserve System, or a nationally or state chartered bank (which may include the Trustee), provided that such dealer or bank is currently rated not lower than "AA" (or its equivalent) by the Rating Agencies, the Trustee has a perfected first priority security interest in the collateral, and that such obligations are free and clear of claims by third parties; and

(v) money market funds whose assets are invested exclusively in those investment vehicles set forth in (i) or (ii) of this definition, provided that such money market fund is currently rated not lower than "AA" (or its equivalent) by the Rating Agencies.

The Trustee shall be entitled to assume that any investment which at the time of purchase is a Permitted Investment remains a Permitted Investment thereafter, absent actual receipt of

written notice to the contrary. The Trustee shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of or investment in such Permitted Investment.

***Prepayment Option Date*** - In the event of damage, destruction, or condemnation of the Ballpark as described in Section 4.13 of the Lease Agreement, the date established pursuant to such Section 4.13.

***Prepayment Option Price*** - An amount which will be sufficient to pay the principal of all Parity Bonds then Outstanding and accrued interest thereon to the date fixed for redemption in accordance with Section 5.01(d) of the Trust Agreement, together with any other amounts then due or past due hereunder, including the fees and expenses of the Trustee, less the funds held by the Trustee in any account of the Trust Fund (other than the Rebate Account) as of the redemption date of the Parity Bonds.

***Previously Issued Parity Bonds*** – Means the currently Outstanding Series 2013A Bonds, Series 2013B Bonds, Series 2016 Bonds, Series 2020 Bonds, Series 2021 Bonds and Series 2023 Bonds.

***Primary Lease*** - The conveyance of the Leasehold Estate in the Ballpark from the City to the Corporation in accordance with the Lease Agreement, particularly Section 3.01 thereof.

***Project*** – Collectively, the Ballpark, together with the related infrastructure financed in connection therewith, and the Real Property together with all improvements constructed thereon and also including any and all items of personal property situated respectively thereon by the City whether now owned or hereafter acquired or refinanced with proceeds of any series of Parity Bonds for and on behalf and use of the City or the Corporation, including but not limited to any and all furniture, fixtures, machinery and equipment and any and all other items of personal property.

***Project Costs*** - All costs or payment of design, acquisition, construction, installation, and financing of the Project, including but not limited to architectural, engineering, installation, and management costs; project coordination and supervisory costs; administrative costs; capital expenditures relating to design, construction, and installation; financing payments; sales tax, if any, on the Project; costs of feasibility, environmental, appraisal, and other reports; inspection costs; permit fees; filing and recording costs; title insurance premiums; survey costs; Issuance Costs; fees and expenses of legal counsel to the Corporation and the City; and all other costs related to the Project or the financing thereof, authorized by the Venue Project Act; provided; however, that the term Project Costs does not include any costs to operate and maintain the Ballpark beginning one year after construction of the Project is completed.

***Rating Agencies*** - Fitch Ratings, Moody's Investors Service, and S&P Global Ratings, a division of S&P Global Inc.

***Real Property*** - The real property of the City described in Exhibit B of the Lease Agreement upon which the Ballpark is situated or will be constructed or installed which includes the site of the City's current City Hall.



***Rebate Account*** - That certain account so designated by the Trustee pursuant to Section 6.09 the Trust Agreement, and referred to herein in Section 9.03.

***Rebate Analyst*** - A certified public accountant, financial analyst, Bond Counsel, or any firm of the foregoing selected by the Corporation, experienced in making the arbitrage and rebate calculations required under the Code.

***Record Date*** - The last Business Day of the month next preceding the month in which a Bond Payment Date occurs.

***Redemption Account*** - That certain account so designated and established in accordance with Section 6.06 of the Trust Agreement.

***Refunded Bonds*** – The specific maturities of the Series 2021 Bonds which are defeased with the proceeds of the Series 2023A Bonds.

***Regulations*** - Any proposed, temporary, or final income tax regulations issued pursuant to sections 103 and 141 through 150 of the Code, which are applicable to the Parity Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary, or final income tax regulation designed to supplement, amend, or replace the specific Regulation referenced.

***Second Lease Amendment*** – The Second Amendment to Master Lease dated as of July 17, 2020.

***Second Supplement*** - The Second Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing made as of July 17, 2020 by and between the Trustee and the Corporation.

***Series 2013A Bonds*** -The City of El Paso Downtown Development Corporation Special Revenue Bonds, Series 2013A (Downtown Ballpark Venue Project), dated as of August 1, 2013, and issued in the original aggregate principal amount of \$45,125,000.

***Series 2013B Bonds*** - The City of El Paso Downtown Development Corporation Special Revenue Bonds, Taxable Series 2013B (Downtown Ballpark Venue Project), dated as of August 1, 2013, and issued in the original aggregate principal amount of \$15,660,000.

***Series 2013B Subaccount of the Venue Project Fund*** – The separate subaccount established by the City within the Venue Project Fund in which all payments received under the Team Lease shall be deposited.

***Series 2016 Bonds*** - The City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2016 (Downtown Ballpark Venue Project), dated June 29, 2016, and issued pursuant to the First Supplement in the original aggregate principal amount of \$17,665,000.

***Series 2020 Bonds*** – The City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2020 (Downtown Ballpark Venue Project), dated

as of the date of their initial delivery, and issued pursuant to the Second Supplement in the original aggregate principal amount of \$655,000.

***Series 2021 Bonds*** - The City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Taxable Series 2021 (Downtown Ballpark Venue Project), dated as of the date of their initial delivery, and issued pursuant to the Third Supplement in the original aggregate principal amount of \$26,820,000.

***Series 2023 Bonds*** – The City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023 (Downtown Ballpark Venue Project), dated as of the date of their initial delivery, and issued pursuant to the Fourth Supplement in the original aggregate principal amount of \$[\_\_\_\_\_].

***Series 2023A Bonds*** – The City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project), dated as of the date of their initial delivery, and issued pursuant to this Fifth Supplement in the original aggregate principal amount of \$[\_\_\_\_\_].

***Series 2023A Bond Resolution*** - The resolution adopted by the Board of the Corporation on April 11, 2023, authorizing the issuance of the Series 2023A Bonds and approving the Financing Documents and other related matters.

***Series 2023A Proceeds Account*** - That certain account so designated and established in accordance with Section 6.02 of this Fifth Supplement.

***State*** - The State of Texas.

***Sublease*** - The conveyance of a Leasehold Estate in the Ballpark, being the Corporation's Leasehold Estate in the Ballpark acquired under the Primary Lease, conveyed back to the City as Sublessee, in accordance with the terms of the Lease Agreement, particularly Section 3.02 thereof.

***Sublessee*** - The City, in its capacity as the sublessee of the Ballpark under the Sublease, and its successors and permitted assigns.

***Sublessee Representative*** - The Mayor, the City Manager, any Deputy City Manager, the City Clerk, the Chief Financial Officer of the City, and the Comptroller of the City, and any other officer or employee of the City who is designated in writing by resolution or ordinance of the City Council or by a certificate executed by the City Manager or the Chief Financial Officer of the City as a Sublessee Representative for the purposes of the Lease Agreement.

***Sublessor*** - The Corporation, in its capacity as the sublessor of the Ballpark under the Sublease, and its successors and permitted assigns.

***Sublessor Representative*** - The Chair and Vice Chair of the Board of the Corporation, and the Executive Director, any Assistant Executive Director and the Treasurer of the Corporation.

***Taxable Parity Bonds*** - The Series 2013B Bonds, the Series 2021 Bonds, and each series of Additional Bonds for which Bond Counsel has not delivered an opinion on the date of issuance thereof to the effect that such Additional Bonds are obligations described by section 103 of the Code and as such, the interest on which is not excludable from “gross income” for federal income tax purposes.

***Tax-Exempt Parity Bonds*** - The Series 2013A Bonds, the Series 2016 Bonds, the Series 2020 Bonds, the Series 2023 Bonds, the Series 2023A Bonds and each series of Additional Bonds for which Bond Counsel has delivered an opinion on the date of issuance thereof to the effect that such Additional Bonds are obligations described by section 103 of the Code, the interest on which is excludable from “gross income” for federal income tax purposes.

***Team Lease*** - The Ballpark Lease Agreement dated as of October 11, 2012 among the City, the Club and Mountain Star Sports Group, LLC and as amended by a First Amendment to the Ballpark Lease Agreement dated as of June 18, 2013.

***Term of the Primary Lease*** - The term of the Primary Lease as determined pursuant to Section 5.01 of the Lease Agreement.

***Term of the Sublease*** - The term of the Sublease as determined pursuant to Section 5.02 of the Lease Agreement.

***Third Lease Amendment*** – The Third Amendment to Master Lease dated as of June 1, 2021.

***Third Supplement*** - The Third Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing made as of June 1, 2021, by and between the Trustee and the Corporation.

***Trust Agreement*** - the Original Trust Agreement, the First Supplement, the Second Supplement, the Third Supplement, the Fourth Supplement, the Fifth Supplement and any subsequent amendment or supplement to the Original Trust Agreement.

***Trust Estate*** - All right, title, and interest of the Corporation (i) in and under the Lease Agreement including, but not limited to, all Lease Payments and other payments (other than payments for Operating Expenses) paid or payable by the City to the Corporation or the Trustee pursuant to the Lease Agreement and other income, charges, and funds realized from the lease of the Ballpark, and (ii) in and under the Trust Agreement including, but not limited to, all funds and investments in the Trust Fund (excluding the Rebate Account) and all funds deposited with the Trustee pursuant to the Financing Documents (excluding funds transferred to the Trustee for deposit in the Operating Fund or the Rebate Account), all subject to and in accordance with the Trust Agreement.

***Trust Fund*** - The “Trust Fund” so designated and established pursuant to Section 6.01 of the Trust Agreement, consisting of the Series 2023A Proceeds Account, the Payment Account, the Insurance and Condemnation Account, the Redemption Account, and all subaccounts created under such Accounts.

***Trustee*** – Computershare Trust Company, N.A., successor to Wells Fargo Bank, National Association, and its successors and permitted assigns.

***Trustee Representative*** - Any Executive Vice President, any Senior Vice President, any Vice President, or any other trust officer, who by virtue of his position with the Trustee has been authorized by the board of directors of the Trustee to execute trust agreements similar to the Trust Agreement and related documents.

***Underwriters*** - The firm or syndicate of investment banking firms identified in the bond purchase agreement related to the issuance and sale of a series of Parity Bonds.

***Venue Project Act*** - Chapter 334 of the Texas Local Government Code, as amended.

***Venue Project Fund*** – The fund established by the City pursuant to Section 334.042 of the Venue Project Act and pursuant to a resolution of the City Council adopted on December 18, 2012.

**EXHIBIT B**

**FORM OF DEFINITIVE AND INITIAL SERIES 2023A BOND**

**[FORM OF DEFINITIVE SERIES 2023A BOND]**

RA-\_\_

PRINCIPAL AMOUNT  
\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION  
SPECIAL REVENUE REFUNDING BOND, SERIES 2023A  
(DOWNTOWN BALLPARK VENUE PROJECT)**

|                                |                                         |                                   |                           |
|--------------------------------|-----------------------------------------|-----------------------------------|---------------------------|
| <b>Interest Rate</b><br>_____% | <b>Maturity Date</b><br>August 15, 20__ | <b>Dated Date</b><br>[____], 2023 | <b>CUSIP No.</b><br>_____ |
|--------------------------------|-----------------------------------------|-----------------------------------|---------------------------|

**Registered Owner:** \_\_\_\_\_

**Principal Amount:** \_\_\_\_\_ **Dollars**

***THE CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION***, a nonprofit local government corporation and public instrumentality (hereinafter called the “***Corporation***”) duly created by the CITY OF EL PASO, TEXAS (the “***City***”) and duly organized and existing under the laws of the State of Texas, for value received, hereby promises to pay, but only from the source as hereinafter provided, to the Registered Owner specified above, or registered assigns, on the Maturity Date specified above (unless this Bond shall have been called for redemption and payment of the redemption price shall have been duly made or provided for), the Principal Amount specified above, and in like manner to pay interest on such Principal Amount remaining unpaid from the “Bond Payment Date” (defined below) next preceding the date of registration and authentication of this Bond (unless this Bond is registered and authenticated as of a Bond Payment Date, in which event this Bond shall bear interest from such Bond Payment Date or unless, as shown by the records of the hereinafter referred to Trustee, interest on the hereinafter referred to Bonds shall be in default, in which event this Bond shall bear interest from the date to which interest has been paid in full, or unless no interest shall have been paid on the Bonds, in which event this Bond shall bear interest from the date of initial delivery of the Bonds as shown on the records of the Trustee), at the per annum Interest Rate specified above, on August 15, 20[23], and semiannually thereafter on each February 15 and August 15 thereafter (each a “***Bond Payment Date***”) until such Principal Amount is paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may become applicable hereto. Principal of and premium any, on this Bond are payable by check or draft in lawful money of the United States of America by presentation and surrender of this Bond at the designated corporate trust office of **COMPUTERSHARE TRUST COMPANY, N.A.**, successor to

Wells Fargo Bank, National Association, as trustee, or its successor in trust (the “**Trustee**”), initially its corporate trust office located in Minneapolis, Minnesota, or at the duly designated office of any duly appointed alternate or successor paying agent (the “**Designated Office**”).

**INTEREST ON THIS BOND IS COMPUTED** on the basis of a 360-day year consisting of twelve 30-day months. Payment of interest on this Bond shall be made to the Registered Owner hereof and shall be paid in lawful money of the United States of America by check or draft mailed to the person in whose name this Bond is registered, at his address as it appears on the Bond Register of the Corporation maintained by the Trustee, as bond registrar, on behalf of the Corporation (or at such other addresses as are furnished to the Trustee in writing by the Registered Owner at least five days prior to the Record Date), at the close of business on the last Business Day of the month next preceding the month in which a Bond Payment Date occurs (the “**Record Date**”). In addition, interest may be paid by such other method, acceptable to the Trustee, requested by, and at the risk and expense of, the Registered Owner. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such payment (a “**Special Record Date**”) will be established by the Trustee, if and when funds for the payment thereof have been received from the Corporation. Notice of the Special Record Date and of the scheduled payment date of the past due payment, which shall be 15 calendar days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of the Registered Owner appearing on the Bond Register of the Trustee at the close of business on the last Business Day next preceding the date of mailing of such notice.

**THIS BOND IS ONE OF A SERIES OF BONDS**, dated as of the date of their initial delivery, authorized by the Corporation in accordance with the Constitution and laws of the State of Texas in the principal amount of \$[\_\_\_\_\_] (the “**Bonds**”) providing funds (1) for the discharge and final payment of certain outstanding Series 2021 Bonds of the Corporation (the “**Refunded Bonds**”); and (2) to pay the costs and expenses of issuing the Bonds.

**THE BONDS ARE ALL ISSUED UNDER AND ARE EQUALLY AND RATABLY SECURED** and entitled to the protection given by a *Trust Agreement Relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing*, dated as of August 1, 2013 as amended by a *First Amendment to the Trust Agreement dated as of October 15, 2013* and supplemented by the *First Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of May 1, 2016, the *Second Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of July 17, 2020, the *Third Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of June 1, 2021, the *Fourth Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of June 1, 2023, and the *Fifth Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of June 1, 2023 (collectively, the “**Trust Agreement**”), duly executed and delivered by and between the Corporation and the Trustee. Reference is hereby made to the Trust Agreement and to all indentures supplemental thereto for a description of the property subject to the lien and security interest of the Trust Agreement, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties, and obligations of the Corporation, the Trustee, and the Bondholders, and the provisions regulating the manner in which the terms of the

Trust Agreement and the *Lease Agreement Relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing*, dated as of August 1, 2013 as amended by the *First Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of May 1, 2016, the *Second Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of July 17, 2020, the *Third Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of June 1, 2021, the *Fourth Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of June 1, 2023, and the *Fifth Amendment to Master Lease Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing* dated as of June 1, 2023, between the Corporation and the City (collectively, the “**Lease Agreement**”), may be modified, to all of which provisions the owner of this Bond, on behalf of himself and his successors in interest, assents by acceptance hereof.

**THE PROJECT** is owned by the City but, (i) the City, as the “Lessor” under the “Primary Lease” created under the Lease Agreement, has granted a “Leasehold Estate” in the Project to the Corporation, as the “Lessee” under the Primary Lease, and (ii) the Corporation, as the “Sublessor” under the “Sublease” created under the Lease Agreement, has granted a Leasehold Interest in the Project back to the City, as the “Sublessee” under the Sublease, all pursuant to the terms of the Lease Agreement. The Corporation is obligated to pay the debt service payments and other costs associated with the Bonds from amounts received pursuant to the Sublease. The City is obligated pursuant to the Sublease, but solely from Appropriated Funds (as defined in the Lease Agreement), to pay to the Corporation such lease payments (the “**Lease Payments**”) as will be sufficient to pay the principal of and interest on the Bonds, as the same mature and become due. The City is further obligated, pursuant to the Primary Lease, to pay from lawfully available Appropriated Funds all “Operating Expenses” (as defined in the Lease Agreement) related to operating and maintaining the Project in good repair, all of which payments are subject to the annual appropriation of funds by the City in sufficient amounts. The Corporation has assigned its right, title, and interest in and to, but not its obligations, responsibilities, or liabilities under, the Lease Agreement to the Trustee.

**THIS BOND IS PAYABLE SOLELY FROM LEASE PAYMENTS** TO BE MADE BY THE CITY OF EL PASO, TEXAS; PROVIDED HOWEVER, THAT PAYMENTS RECEIVED UNDER THE TEAM LEASE MAY ONLY BE USED TO PAY DEBT SERVICE ON THE OUTSTANDING TAXABLE PARITY BONDS. THIS BOND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OF THE CORPORATION, THE STATE OF TEXAS, THE CITY OF EL PASO, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF TEXAS, WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION WHATSOEVER, BUT THIS BOND SHALL BE A LIMITED OR SPECIAL OBLIGATION OF THE CORPORATION PAYABLE SOLELY FROM THE FUNDS PROVIDED THEREFOR AS PROVIDED IN THE TRUST AGREEMENT. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, THE CITY OF EL PASO, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF TEXAS IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS BOND OR THE INTEREST OR ANY PREMIUM THEREON OR OTHER COSTS INCIDENT THERETO. NEITHER THE MEMBERS OF THE BOARD OF DIRECTORS OF THE CORPORATION NOR ANY PERSON EXECUTING

THIS BOND SHALL BE LIABLE PERSONALLY ON THIS BOND BY REASON OF THE ISSUANCE THEREOF.

***THE OBLIGATION OF THE CITY OF EL PASO, TEXAS*** TO MAKE LEASE PAYMENTS IS A CURRENT EXPENSE, PAYABLE SOLELY FROM FUNDS ANNUALLY APPROPRIATED BY THE CITY FOR SUCH USE FROM ANY UNENCUMBERED AND LAWFULLY AVAILABLE FUNDS TO THE PAYMENT THEREOF. THE LEASE MAY BE TERMINATED ANNUALLY BY THE CITY WITHOUT ANY PENALTY, AND THERE CAN BE NO ASSURANCE THAT THE CITY WILL ANNUALLY RENEW THE LEASE. IF THE LEASE IS TERMINATED, THE CITY WILL HAVE NO FURTHER OBLIGATION TO MAKE LEASE PAYMENTS REGARDLESS OF WHETHER ANY BONDS REMAIN OUTSTANDING. THE LEASE AND THE OBLIGATIONS OF THE CITY THEREUNDER DO NOT CONSTITUTE A PLEDGE, LIABILITY, OR A CHARGE UPON THE FUNDS OF THE CITY AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE STATE OF TEXAS, THE CITY THE CORPORATION, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF TEXAS.

***THE BONDS ARE ISSUABLE ONLY IN THE FORM OF FULLY REGISTERED BONDS*** without coupons in denominations of \$5,000 in principal amount, or any integral multiple thereof. Subject to the conditions and upon the payment of charges provided in the Trust Agreement, the owner of any Bond or Bonds issued under the Trust Agreement may, if not prohibited by law, surrender the same (together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or his attorney duly authorized in writing) in exchange for an equal aggregate principal amount of Bonds of the same series, interest rate, and maturity or maturities, and of any denominations authorized as above described. This Bond is transferable as provided in the Trust Agreement by the Registered Owner in person or by the owner's attorney duly authorized in writing at the Designated Office of the Trustee upon surrender of this Bond accompanied by a duly executed instrument of transfer, in form and with guarantee of signature satisfactory to the Trustee, and upon payment of any governmental charges or taxes incident to such transfer. Upon any such transfer, a new Bond or Bonds in the same aggregate principal amount and of the same series, interest rate, and maturity or maturities will be issued to the transferee. The Corporation and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof (whether or not this Bond shall be overdue) for the purpose of receiving payment of, or on account of, the principal of, premium, if any, and interest due on this Bond and for all other purposes, and the Corporation and the Trustee shall not be affected by any notice to the contrary.

***WHENEVER THE BENEFICIAL OWNERSHIP*** of this Bond is determined by a book entry at a securities depository for the Bonds, the foregoing requirements of holding, delivering or transferring this Bond shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

***THE BONDS MATURING ON OR AFTER AUGUST 15, 20[ ]*** shall be subject to redemption, in whole or in part, in Authorized Denominations (defined in the Trust Agreement), at the request and option of the Corporation, on August 15, 20[ ], with funds derived from any available and lawful source, at the redemption price of the principal amount of Bonds called for



redemption, plus accrued interest thereon to the date fixed for redemption. The Corporation shall determine the maturity or maturities, and the principal amount of Bonds within each maturity, to be redeemed. If less than all Bonds of a maturity are to be redeemed, the particular Bonds to be redeemed shall be selected by the Trustee randomly.

***IN THE EVENT OF THE EXERCISE BY THE CITY OF ITS OPTION TO PREPAY LEASE PAYMENTS UPON A CASUALTY LOSS OR CONDEMNATION*** of the Project and the payment by the City to the Trustee of the Prepayment Option Price, all in accordance with Section 4.13 of the Lease Agreement, the Bonds shall be subject to extraordinary optional redemption prior to their respective stated maturities, in whole but not in part, on the next succeeding Bond Payment Date for which notice can be given in accordance with Section 5.02 of the Trust Agreement, at a redemption price equal to 100% of the Outstanding principal amount of the Bonds being redeemed plus accrued interest to the date of redemption.

***IF LESS THAN ALL OF THE BONDS ARE CALLED FOR REDEMPTION*** under any of the circumstances set forth above, the particular Bonds or portions thereof to be redeemed shall be selected ratably among maturities and randomly within each maturity.

***IN THE EVENT ANY OF THE BONDS*** (or any portions thereof, which shall be in amounts equal to \$5,000 principal amount or an integral multiple thereof) are called for redemption as aforesaid, notice thereof identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee by mailing a copy of the redemption notice by first class mail (postage prepaid) not less than 30 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed in whole or in part at the address shown on the Bond Register at the close of business on a day not later than the fifth day preceding the date of mailing; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any other Bonds. Such notice shall set forth the following: (i) the maturities of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the place or places where amounts due upon such redemption will be payable; (iv) if less than all of the Bonds of any maturity are to be redeemed, the letters and numbers or other distinguishing marks, if any, of such Bonds so to be redeemed; (v) in the case of a Bond to be redeemed in part only, the portion of the principal amount to be redeemed; and (vi) that on the redemption date there shall become due and payable upon each Bond to be redeemed the amount of the principal thereon (or of the specified portion of the principal in the case of a Bond to be redeemed in part only), together with interest accrued to the redemption date, and that from and after the redemption date interest thereon shall cease to accrue and be payable. The notice with respect to an optional redemption of Bonds or an extraordinary optional redemption of Bonds may state (i) that it is conditioned upon the deposit of money, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the redemption date, or (ii) that the Corporation retains the right to rescind such notice at any time prior to the scheduled redemption date if the Corporation delivers a certificate of an authorized representative to the Trustee instructing the Trustee to rescind the redemption notice, and such notice and optional redemption shall be of no effect if such money is not so deposited or if the notice is so rescinded. All Bonds or portions thereof so called for redemption shall cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit with the Trustee, and shall no longer be protected by the Trust Agreement and shall not be deemed to be Outstanding under the provisions of the Trust Agreement.

***THIS BOND AND THE SERIES OF WHICH IT FORMS A PART***, as may be outstanding from time to time, are issued pursuant to and in full conformity with the Trust Agreement and a resolution duly adopted by the governing body of the Corporation under the authority of and in full conformity with the laws of the State of Texas, particularly the provisions of Chapter 1207, Texas Government Code, as amended. This Bond and the series of which it forms a part are payable solely from “***Appropriated Funds***” as provided in the Trust Agreement and the Lease Agreement. Pursuant to the provisions of the Lease Agreement, Lease Payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid to the Trustee for the benefit of the Bondholders and have been duly pledged by the Corporation for that purpose. The Corporation has reserved the right to issue “***Additional Bonds***” on a parity with the Bonds for purposes of refunding any of the Bonds, completing the Project, or making additional extensions and improvements to the Project which, when issued in compliance with law and the terms and conditions of the Trust Agreement, may be payable equally and ratably with the Bonds from Lease Payments paid from Appropriated Funds received by the Corporation from the City.

***THE OWNER OF THIS BOND SHALL HAVE NO RIGHT*** to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Trust Agreement, or to institute, appear in, or defend any suit or other proceedings with respect thereto except as provided in the Trust Agreement. In certain events, on the conditions, in the manner, and with the effect set forth in the Trust Agreement, the principal of all of the Bonds issued under the Trust Agreement and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrue thereon. Modifications or alterations of the Trust Agreement, or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Trust Agreement.

***IT IS HEREBY CERTIFIED, RECITED, AND DECLARED*** that all acts, conditions, and things required to exist, happen, and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form, and manner as required by law in order to make this Bond a valid and legal revenue obligation of the Corporation and that the issuance of the Bonds, together with all other obligations of the Corporation, does not exceed or violate any constitutional or statutory limitation applicable to the Corporation.

*[Remainder of Page Intentionally Left Blank]*

***IN WITNESS WHEREOF, THE CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION*** has caused this Bond to be executed by its Chair or Vice Chair by his or her manual or facsimile signature, has caused its official seal to be impressed or reproduced hereon, and has caused this Bond to be attested by its Secretary or Assistant Secretary by his or her manual or facsimile signature.

**CITY OF EL PASO DOWNTOWN  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Chair, Board of Directors

**ATTEST:**

\_\_\_\_\_  
Secretary

[Corporate Seal]

**FORM OF TRUSTEE'S AUTHENTICATION CERTIFICATE**

**TRUSTEE'S AUTHENTICATION CERTIFICATE**

It is hereby certified that this Bond has been issued under the provisions of the Trust Agreement described in this Bond; and that this Bond has been issued in exchange for or replacement of a Bond or Bonds, or a portion of a Bond or Bonds of an issue which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: \_\_\_\_\_

**COMPUTERSHARE TRUST COMPANY,  
N.A., as Trustee**

By: \_\_\_\_\_  
Authorized Representative

## FORM OF ASSIGNMENT

### ASSIGNMENT

FOR VALUE RECEIVED, the undersigned Registered Owner of this Bond, or duly authorized representative or attorney thereof, hereby assigns this Bond to (Print or type Assignee's name and address, including zip code) \_\_\_\_\_

\_\_\_\_\_  
(Assignee's Social Security or Taxpayer Identification Number) \_\_\_\_\_  
\_\_\_\_\_ and hereby irrevocably constitutes and appoints \_\_\_\_\_

attorney to transfer the registration of this Bond on the Bond Register kept by the Trustee with full power of substitution in the premises.

Dated \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Trustee, which requirements will include membership or participation in STAMP or such other signature guaranty program as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

\_\_\_\_\_  
NOTICE: The signature above must correspond with name of the Registered Owner as it appears upon the front of this Bond in every particular, without alteration or enlargement or any change whatsoever

## FORM OF INITIAL SERIES 2023A BOND

The form of Initial Series 2023A Bond shall be identical to the Form of Definitive Series 2023A Bond set forth in *Exhibit B* to this Fifth Supplement, except that it shall be numbered IA-1, the Form of Comptroller's Registration Certificate set forth below shall appear thereon instead of the Form of Trustee's Authentication Certificate, and the following shall be substituted for the heading and first paragraph:

PRINCIPAL AMOUNT  
\$[\_\_\_\_\_]

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION  
SPECIAL REVENUE REFUNDING BOND, SERIES 2023A  
(DOWNTOWN BALLPARK VENUE PROJECT)

Registered Owner: Jefferies LLC

Principal Amount: [\_\_\_\_\_] DOLLARS

Dated Date: [June 6], 2023

*THE CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION*, a nonprofit local government corporation and public instrumentality duly organized and existing under the laws of the State of Texas (hereinafter called the “*Corporation*”) for value received, hereby promises to pay, but only from the source as hereinafter provided, to the Registered Owner specified above, or registered assigns, on August 15 of each Year of Maturity specified below (unless this Bond shall have been called for redemption and payment of the redemption price shall have been duly made or provided for), the Principal Amount specified below, and in like manner to pay interest on such Principal Amount from time to time remaining unpaid from the “Bond Payment Date” (defined below) next preceding the date of registration and authentication of this Bond (unless this Bond is registered and authenticated as of a Bond Payment Date, in which event this Bond shall bear interest from such Bond Payment Date or unless, as shown by the records of the hereinafter referred to Trustee, interest on the hereinafter referred to Bonds shall be in default, in which event this Bond shall bear interest from the date to which interest has been paid in full, or unless no interest shall have been paid on the Bonds, in which event this Bond shall bear interest from the date of initial delivery of the Bonds as shown on the records of the Trustee), at the per annum Interest Rate specified below, on August 15, 20[23], and semiannually thereafter on each February 15 and August 15 until such Principal Amount is paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may become applicable hereto:

| <u>Year of<br/>Stated Maturity</u> | <u>Principal<br/>Amount (\$)</u> | <u>Interest<br/>Rates (%)</u> |
|------------------------------------|----------------------------------|-------------------------------|
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |

| <u>Year of<br/>Stated Maturity</u> | <u>Principal<br/>Amount (\$)</u> | <u>Interest<br/>Rates (%)</u> |
|------------------------------------|----------------------------------|-------------------------------|
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |
| 20__                               |                                  |                               |

***THE PAYMENT OF PRINCIPAL OF THIS BOND*** is payable by check or draft in lawful money of the United States of America by presentation and surrender of this Bond at the corporate trust office of Computershare Trust Company, N.A., successor to Wells Fargo Bank, National Association, as trustee, or its successor in trust (the “***Trustee***”), located in Minneapolis, Minnesota, or at the duly designated office of any duly appointed alternate or successor paying agent (the “***Designated Office***”).

*[The remainder of this page intentionally left blank]*

**FORM OF COMPTROLLER'S REGISTRATION CERTIFICATE**

**COMPTROLLER'S REGISTRATION CERTIFICATE**

**OFFICE OF COMPTROLLER:**

**REGISTER NO:** \_\_\_\_\_

**STATE OF TEXAS:**

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts of  
the State of Texas

*[The remainder of this page intentionally left blank.]*



## **EXHIBIT C**

### **TRUSTEE'S FEE SCHEDULE**

Acceptance Fee: \$\_\_\_\_\_ for the Series 2023A Bonds;

Annual Administration Fee: \$\_\_\_\_\_ for the Series 2023A Bonds

plus, reasonable out of pocket expenses incurred in the administration of this issue, including legal fees associated with the closing.

**Exhibit B**

**Fifth Lease Amendment**

## **FIFTH AMENDMENT TO MASTER LEASE AGREEMENT**

This FIFTH AMENDMENT TO THE MASTER LEASE AGREEMENT, (this “**Amendment**”) is dated as of June 1, 2023 by and among the City of El Paso, a Texas home rule city (the “**City**”), and the City of El Paso Downtown Development Corporation, a local government corporation created under Chapter 431 of the Texas Transportation Code (the “**Corporation**”).

### **RECITALS**

WHEREAS, the City and the Corporation have previously entered into a Master Lease Agreement executed by the parties on August 1, 2013 (the “**Original Agreement**”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Original Agreement; and

WHEREAS, the City and the Corporation entered into the First Amendment to Master Lease Agreement, dated May 1, 2016 (the “**First Amendment**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2016 (Downtown Ballpark Venue Project)” (the “**Series 2016 Bonds**”), the Second Amendment to Master Lease Agreement, dated July 17, 2020 (the “**Second Amendment**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2020 (Downtown Ballpark Venue Project)” (the “**Series 2020 Bonds**”), and the Third Amendment to Master Lease Agreement, dated June 1, 2021 (“**Third Amendment**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Taxable Series 2021 (Downtown Ballpark Venue Project)” (the “**Series 2021 Bonds**”); and

WHEREAS, on a contemporaneous basis herewith, the City and the Corporation are entering into a Fourth Amendment to Master Lease Agreement, dated June 1, 2023 (the “**Fourth Amendment**”, and together with the Original Agreement, the First Amendment, the Second Amendment and the Third Amendment, the “**Agreement**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023 (Downtown Ballpark Venue Project)” (the “**Series 2023 Bonds**”); and

WHEREAS, the Corporation has previously issued the Series 2013A Bonds and the Series 2013B Bonds pursuant to the Trust Agreement, as amended by a First Amendment to the Trust Agreement dated as of October 15, 2013, as supplemented by a First Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated May 1, 2016, a Second Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated July 17, 2020, and a Third Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2021; and

WHEREAS, on a contemporaneous basis herewith, the Corporation is issuing the Series 2023 Bonds pursuant to the terms of a Fourth Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2023

(collectively, as amended and supplemented, the “**Trust Agreement**”) Between Computershare Trust Company, N.A., successor to Wells Fargo Bank, National Association, as trustee (the “Trustee”) and the Corporation; and

WHEREAS, Chapter 1207 of the Texas Government Code, as amended (“***Chapter 1207***”) authorizes the Corporation to issue refunding bonds and deposit the proceeds of the sale directly with any place of payment for the refunded bond, or other authorized depository, and such deposit, when made in accordance with such statute, shall constitute firm banking and financial arrangements for the discharge and final payment of such refunded bonds; and

WHEREAS, the Board of Directors of the Corporation hereby finds and determines that it is in the best interest of the Corporation to issue its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project)” (the “**Series 2023A Bonds**”) to refund certain outstanding Series 2021 Bonds (the “**Refunded Bonds**”) for present value debt service savings; and

WHEREAS, the Series 2023A Bonds will be issued pursuant to the terms of a Fifth Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing Between the Trustee and the Corporation; and

WHEREAS, by Resolution of the Corporation (the “**Bond Resolution**”) and City Ordinance, each dated April 11, 2023, the Board of Directors of the Corporation and the City Council of the City respectively authorized and approved the issuance of the Series 2023A Bonds by the Corporation and this amendment to the Original Agreement;

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

## ARTICLE I

### AMENDMENTS TO AGREEMENT

**Section 1.01.** Article XVIII is hereby added to the Agreement by inserting the following:

#### ARTICLE XVII THE SERIES 2023A BONDS

**Section 17.01 Issuance and Sale of the Series 2023A Bonds.** Subject to applicable terms, limitations, and procedures, the Corporation will issue and sell the Series 2023A Bonds to refund the Refunded Bonds for present value debt service savings and pay costs of issuance, at such interest rate and/or discount, and other terms as approved by the Corporation and in accordance with applicable law.

**Section 17.02 Cooperation By City.** The City shall take the action(s), enter into the agreement(s), provide the certification(s) contemplated by this Lease Agreement, and

otherwise cooperate with the Corporation and its agents to effect the lawful issuance and sale of the Series 2023A Bonds.

### **Section 17.03 Compliance with Rule 15c2-12.**

(a) **Definitions.** As used in this Section, the following terms have the meanings ascribed to such terms below:

***“Financial Obligation”*** means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

***“MSRB”*** means the Municipal Securities Rulemaking Board.

***“Rule”*** means SEC Rule 15c2-12, as amended from time to time.

***“SEC”*** means the United States Securities and Exchange Commission.

(b) **Annual Reports.** In accordance with the provisions of the Rule, the City is an “obligated person,” as that term is applied in the Rule, for whom financial or operating data has been presented in the “Final Official Statement,” as defined in the Rule, prepared in connection with the authorization, sale and delivery of the Series 2023A Bonds. Consequently, the City, as such obligated person, enters into the undertaking described in this Section in compliance with the Rule.

(i) The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning in or after 2023, financial information and operating data with respect to the City of the general type included in the Official Statement and described in Exhibit C hereto, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

(ii) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB’s Internet Website or filed with the SEC.

(c) Event Notices. The City and the Corporation (also an “obligated person” as that term is applied in the Rule) shall provide notice of any of the following events with respect to the Series 2023A Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Series 2023A Bonds, or other material events affecting the tax status of the Series 2023A Bonds;
- (vii) Modifications to rights of holders of the Series 2023A Bonds, if material;
- (viii) Series 2023A Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Series 2023A Bonds, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership, or similar event of the City or the Corporation, which shall occur as described below;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the City or the Corporation or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (xv) Incurrence of a Financial Obligation of the City or the Corporation, if material, or agreement to covenants, events of default, remedies, priority rights, or other

similar terms of a Financial Obligation of the City or the Corporation, any of which affect security holders, if material; and

(xvi) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City or the Corporation, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding subsection (c)(xii) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City or the Corporation in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City or the Corporation, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City or the Corporation, and (b) the City and the Corporation intend the words used in the immediately preceding subsections (c)(xv) and (c)(xvi) in this Section to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

**Section 17.04 Covenants Regarding Tax-Exempt Status of the Series 2023A Bonds.**

(d) Definitions. When used in this Section, the following terms have the following meanings:

(i) “Closing Date” means the date on which the Series 2023A Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

(ii) “Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

(iii) “Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(iv) “Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Series 2023A Bonds.

(v) “Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(vi) “Nonpurpose Investment” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Series 2023A Bonds are invested and which is not acquired to carry out the governmental purposes of the Series 2023A Bonds.

(vii) “Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(viii) “Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code of the Code, which are applicable to the Series 2023A Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

(ix) “Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Series 2023A Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(e) Covenants of the Corporation and the City.

(i) Not to Cause Interest to Become Taxable. Neither the City nor the Corporation shall use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Series 2023A Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Corporation and the City receive a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Series 2023A Bond, the Corporation and the City shall comply with each of the specific covenants in this Section.

(ii) Limited Private Use and Private Payments. The Series 2023A Bonds are being issued to refund certain outstanding Series 2021 Bonds for present value debt service savings and, in connection therewith, the City and the Corporation while the Series 2023A Bonds are outstanding and unpaid, covenant and agree that, except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Project shall, at all times prior to the last stated maturity of the Series 2023A Bonds be exclusively owned, operated and maintained by the City and/or the Corporation, and neither the City nor the Corporation will use or permit the use of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity other than a state or local government, unless such use is solely as a member of the general public. Furthermore, except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation will impose or accept any charge or other payment for use of Gross Proceeds of the Series 2023A Bonds or for any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such



Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(iii) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall use Gross Proceeds of the Series 2023A Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(iv) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall at any time prior to the final stated maturity of the Series 2023A Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Series 2023A Bonds.

(v) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall take or omit to take any action which would cause the Series 2023A Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(vi) Information Report. The Corporation shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary of the Treasury may prescribe.

(vii) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

1. The Corporation and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Series 2023A Bond is discharged. However, to the extent permitted by law, the Corporation and/or the City may commingle Gross Proceeds of the Series 2023A Bonds with other money of the

Corporation and/or the City, provided that the Corporation and the City separately account for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

2. Not less frequently than each Computation Date, the Corporation and the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Corporation and the City shall maintain such calculations with the official transcript of proceedings relating to the issuance of the Series 2023A Bonds until six years after the final Computation Date.

3. As additional consideration for the purchase of the Series 2023A Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Corporation and the City shall pay to the United States out of the Rebate Account or their respective general funds, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State, the amount that when added to the future value of previous rebate payments made for the Series 2023A Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

4. The Corporation and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(viii) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall, at any time prior to the earlier of the stated maturity or final payment of the Series 2023A Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (vii) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Series 2023A Bonds not been relevant to either party.

(ix) Elections. The Corporation hereby directs and authorizes the Chair, Vice Chair, Treasurer and Secretary of the Board and Executive Director of the Corporation, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Series 2023A Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document. The City hereby directs and authorizes the Mayor, the City Manager and the Chief Financial Officer of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Series 2023A Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(f) Current Refunding. The Series 2023A Bonds are a current refunding of the Refunded Bonds in that the Refunded Bonds will be paid or redeemed within 90 days of the date of the delivery of the Series 2023A Bonds.

**Section 1.02.** The following definitions are hereby added to Exhibit A to the Agreement:

***Series 2023A Bond Resolution*** – The resolution adopted by the Board of the Corporation on April 11, 2023, authorizing the issuance of the Series 2023A Bonds and approving the Financing Documents and other related matters.

***Series 2023A Bonds*** – The **City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project)**, dated as of [June 6], 2023, and issued pursuant to the Trust Agreement in the original aggregate principal amount of \$[\_\_\_\_\_].

**Section 1.03.** The Agreement is hereby amended by deleting Exhibit E to the Agreement in its entirety and inserting in its place the attached new Exhibit E.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.01. Representations of Corporation.** The Corporation hereby represents and warrants to the City as follows:

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

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

(c) this Amendment is a legal, valid and binding obligation of the Corporation enforceable against such party in accordance with its terms; except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency,

reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time;

(d) there is no action, proceeding or investigation pending or, to the knowledge of the Corporation, threatened or affecting the Corporation, which may adversely affect the ability of the Corporation to fulfill and perform its obligations and other undertakings under this Amendment or the Agreement. The Corporation is not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the transactions contemplated in and by this Amendment; and

(e) the Corporation is a local government corporation duly formed, validly existing, and in good standing under the laws of the State of Texas.

**Section 2.02. Representations of the City.** The City hereby represents and warrants to the Corporation as follows:

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

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

(c) this Amendment is a legal, valid and binding obligation of the City enforceable against such party in accordance with its terms; except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time;

(d) there is no action, proceeding or investigation pending or, to the knowledge of the City, threatened or affecting the City, which may adversely affect the ability of the City to fulfill and perform its obligations and other undertakings under this Amendment or the Agreement. The City is not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the transactions contemplated in and by this Amendment; and

(e) the City is a municipal corporation duly formed and validly existing under the laws of the State of Texas.

### **ARTICLE III**

#### **MISCELLANEOUS**

**Section 3.01. Effective Date.** This Amendment shall be effective as of the date of its execution by all the parties hereto (the "**Effective Date**").

**Section 3.02. Capitalized Terms.** Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

**Section 3.03. Prior Agreements Confirmed.** Except as otherwise expressly modified by the terms hereof, all of the remaining terms of the Agreement remain in effect and are hereby ratified and affirmed.

**Section 3.04. Partial Invalidity.** If any section of this Amendment or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Amendment or the application of such Section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section hereof shall be valid and enforceable to the fullest extent permitted by law.

**Section 3.05. Time of the Essence.** Time is of the essence with respect to all sections of this Amendment.

**Section 3.06. Successors and Assigns.** This Amendment and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

**Section 3.07. Counterparts.** This Amendment may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

**Section 3.08. Governing Law.** **THIS AMENDMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS NOTWITHSTANDING ANY CHOICE-OF-LAW OR CONFLICT-OF-LAW PRINCIPLE THAT MIGHT DICTATE A DIFFERENT GOVERNING LAW.** In the event of any proceedings regarding this Amendment, the Parties agree that the venue shall be the state courts of Texas located in El Paso County or any Federal court whose jurisdiction includes El Paso County, Texas.

*[Signatures and acknowledgements appear on following pages]*

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

**CITY OF EL PASO, TEXAS**

By: \_\_\_\_\_  
Name: Oscar Leeser  
Its: Mayor  
Date: \_\_\_\_\_

**Approved as to Form:**

**Approved as to Content:**

\_\_\_\_\_  
Karla Nieman  
City Attorney

\_\_\_\_\_  
Robert Cortinas  
Chief Financial Officer

**Approved as to Form:**

\_\_\_\_\_  
Paul A. Braden  
Bond Counsel

**CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: Robert Cortinas  
Its: Treasurer  
Date: \_\_\_\_\_

**EXHIBIT E**

**LEASE PAYMENTS**

*[Insert combined debt service schedule for all outstanding Parity Bonds]*

**EXHIBIT B**

**Fifth Lease Amendment**



## **FIFTH AMENDMENT TO MASTER LEASE AGREEMENT**

This FIFTH AMENDMENT TO THE MASTER LEASE AGREEMENT, (this “**Amendment**”) is dated as of June 1, 2023 by and among the City of El Paso, a Texas home rule city (the “**City**”), and the City of El Paso Downtown Development Corporation, a local government corporation created under Chapter 431 of the Texas Transportation Code (the “**Corporation**”).

### **RECITALS**

WHEREAS, the City and the Corporation have previously entered into a Master Lease Agreement executed by the parties on August 1, 2013 (the “**Original Agreement**”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Original Agreement; and

WHEREAS, the City and the Corporation entered into the First Amendment to Master Lease Agreement, dated May 1, 2016 (the “**First Amendment**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2016 (Downtown Ballpark Venue Project)” (the “**Series 2016 Bonds**”), the Second Amendment to Master Lease Agreement, dated July 17, 2020 (the “**Second Amendment**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2020 (Downtown Ballpark Venue Project)” (the “**Series 2020 Bonds**”), and the Third Amendment to Master Lease Agreement, dated June 1, 2021 (“**Third Amendment**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Taxable Series 2021 (Downtown Ballpark Venue Project)” (the “**Series 2021 Bonds**”); and

WHEREAS, on a contemporaneous basis herewith, the City and the Corporation are entering into a Fourth Amendment to Master Lease Agreement, dated June 1, 2023 (the “**Fourth Amendment**”, and together with the Original Agreement, the First Amendment, the Second Amendment and the Third Amendment, the “**Agreement**”) in connection with the Corporation’s issuance of its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023 (Downtown Ballpark Venue Project)” (the “**Series 2023 Bonds**”); and

WHEREAS, the Corporation has previously issued the Series 2013A Bonds and the Series 2013B Bonds pursuant to the Trust Agreement, as amended by a First Amendment to the Trust Agreement dated as of October 15, 2013, as supplemented by a First Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated May 1, 2016, a Second Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated July 17, 2020, and a Third Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2021; and

WHEREAS, on a contemporaneous basis herewith, the Corporation is issuing the Series 2023 Bonds pursuant to the terms of a Fourth Supplement to Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing, dated June 1, 2023

(collectively, as amended and supplemented, the “**Trust Agreement**”) Between Computershare Trust Company, N.A., successor to Wells Fargo Bank, National Association, as trustee (the “Trustee”) and the Corporation; and

WHEREAS, Chapter 1207 of the Texas Government Code, as amended (“***Chapter 1207***”) authorizes the Corporation to issue refunding bonds and deposit the proceeds of the sale directly with any place of payment for the refunded bond, or other authorized depository, and such deposit, when made in accordance with such statute, shall constitute firm banking and financial arrangements for the discharge and final payment of such refunded bonds; and

WHEREAS, the Board of Directors of the Corporation hereby finds and determines that it is in the best interest of the Corporation to issue its “City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project)” (the “**Series 2023A Bonds**”) to refund certain outstanding Series 2021 Bonds (the “**Refunded Bonds**”) for present value debt service savings; and

WHEREAS, the Series 2023A Bonds will be issued pursuant to the terms of a Fifth Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing Between the Trustee and the Corporation; and

WHEREAS, by Resolution of the Corporation (the “**Bond Resolution**”) and City Ordinance, each dated April 11, 2023, the Board of Directors of the Corporation and the City Council of the City respectively authorized and approved the issuance of the Series 2023A Bonds by the Corporation and this amendment to the Original Agreement;

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

## ARTICLE I

### AMENDMENTS TO AGREEMENT

**Section 1.01.** Article XVIII is hereby added to the Agreement by inserting the following:

#### ARTICLE XVII THE SERIES 2023A BONDS

**Section 17.01 Issuance and Sale of the Series 2023A Bonds.** Subject to applicable terms, limitations, and procedures, the Corporation will issue and sell the Series 2023A Bonds to refund the Refunded Bonds for present value debt service savings and pay costs of issuance, at such interest rate and/or discount, and other terms as approved by the Corporation and in accordance with applicable law.

**Section 17.02 Cooperation By City.** The City shall take the action(s), enter into the agreement(s), provide the certification(s) contemplated by this Lease Agreement, and

otherwise cooperate with the Corporation and its agents to effect the lawful issuance and sale of the Series 2023A Bonds.

**Section 17.03 Compliance with Rule 15c2-12.**

(a) **Definitions.** As used in this Section, the following terms have the meanings ascribed to such terms below:

“**Financial Obligation**” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“**MSRB**” means the Municipal Securities Rulemaking Board.

“**Rule**” means SEC Rule 15c2-12, as amended from time to time.

“**SEC**” means the United States Securities and Exchange Commission.

(b) **Annual Reports.** In accordance with the provisions of the Rule, the City is an “obligated person,” as that term is applied in the Rule, for whom financial or operating data has been presented in the “Final Official Statement,” as defined in the Rule, prepared in connection with the authorization, sale and delivery of the Series 2023A Bonds. Consequently, the City, as such obligated person, enters into the undertaking described in this Section in compliance with the Rule.

(i) The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning in or after 2023, financial information and operating data with respect to the City of the general type included in the Official Statement and described in Exhibit C hereto, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

(ii) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB’s Internet Website or filed with the SEC.

(c) Event Notices. The City and the Corporation (also an “obligated person” as that term is applied in the Rule) shall provide notice of any of the following events with respect to the Series 2023A Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Series 2023A Bonds, or other material events affecting the tax status of the Series 2023A Bonds;
- (vii) Modifications to rights of holders of the Series 2023A Bonds, if material;
- (viii) Series 2023A Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Series 2023A Bonds, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership, or similar event of the City or the Corporation, which shall occur as described below;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the City or the Corporation or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (xv) Incurrence of a Financial Obligation of the City or the Corporation, if material, or agreement to covenants, events of default, remedies, priority rights, or other

similar terms of a Financial Obligation of the City or the Corporation, any of which affect security holders, if material; and

(xvi) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City or the Corporation, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding subsection (c)(xii) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City or the Corporation in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City or the Corporation, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City or the Corporation, and (b) the City and the Corporation intend the words used in the immediately preceding subsections (c)(xv) and (c)(xvi) in this Section to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

**Section 17.04 Covenants Regarding Tax-Exempt Status of the Series 2023A Bonds.**

(d) Definitions. When used in this Section, the following terms have the following meanings:

(i) “Closing Date” means the date on which the Series 2023A Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

(ii) “Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

(iii) “Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(iv) “Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Series 2023A Bonds.

(v) “Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(vi) “Nonpurpose Investment” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Series 2023A Bonds are invested and which is not acquired to carry out the governmental purposes of the Series 2023A Bonds.

(vii) “Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(viii) “Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code of the Code, which are applicable to the Series 2023A Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

(ix) “Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Series 2023A Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(e) Covenants of the Corporation and the City.

(i) Not to Cause Interest to Become Taxable. Neither the City nor the Corporation shall use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Series 2023A Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Corporation and the City receive a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Series 2023A Bond, the Corporation and the City shall comply with each of the specific covenants in this Section.

(ii) Limited Private Use and Private Payments. The Series 2023A Bonds are being issued to refund certain outstanding Series 2021 Bonds for present value debt service savings and, in connection therewith, the City and the Corporation while the Series 2023A Bonds are outstanding and unpaid, covenant and agree that, except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Project shall, at all times prior to the last stated maturity of the Series 2023A Bonds be exclusively owned, operated and maintained by the City and/or the Corporation, and neither the City nor the Corporation will use or permit the use of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity other than a state or local government, unless such use is solely as a member of the general public. Furthermore, except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation will impose or accept any charge or other payment for use of Gross Proceeds of the Series 2023A Bonds or for any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such

Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(iii) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall use Gross Proceeds of the Series 2023A Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(iv) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall at any time prior to the final stated maturity of the Series 2023A Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Series 2023A Bonds.

(v) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall take or omit to take any action which would cause the Series 2023A Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(vi) Information Report. The Corporation shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary of the Treasury may prescribe.

(vii) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

1. The Corporation and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Series 2023A Bond is discharged. However, to the extent permitted by law, the Corporation and/or the City may commingle Gross Proceeds of the Series 2023A Bonds with other money of the

Corporation and/or the City, provided that the Corporation and the City separately account for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

2. Not less frequently than each Computation Date, the Corporation and the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Corporation and the City shall maintain such calculations with the official transcript of proceedings relating to the issuance of the Series 2023A Bonds until six years after the final Computation Date.

3. As additional consideration for the purchase of the Series 2023A Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Corporation and the City shall pay to the United States out of the Rebate Account or their respective general funds, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State, the amount that when added to the future value of previous rebate payments made for the Series 2023A Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

4. The Corporation and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(viii) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, neither the City nor the Corporation shall, at any time prior to the earlier of the stated maturity or final payment of the Series 2023A Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (vii) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Series 2023A Bonds not been relevant to either party.



(ix) Elections. The Corporation hereby directs and authorizes the Chair, Vice Chair, Treasurer and Secretary of the Board and Executive Director of the Corporation, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Series 2023A Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document. The City hereby directs and authorizes the Mayor, the City Manager and the Chief Financial Officer of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Series 2023A Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(f) Current Refunding. The Series 2023A Bonds are a current refunding of the Refunded Bonds in that the Refunded Bonds will be paid or redeemed within 90 days of the date of the delivery of the Series 2023A Bonds.

**Section 1.02.** The following definitions are hereby added to Exhibit A to the Agreement:

***Series 2023A Bond Resolution*** – The resolution adopted by the Board of the Corporation on April 11, 2023, authorizing the issuance of the Series 2023A Bonds and approving the Financing Documents and other related matters.

***Series 2023A Bonds*** – The **City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project)**, dated as of [June 6], 2023, and issued pursuant to the Trust Agreement in the original aggregate principal amount of \$[\_\_\_\_\_].

**Section 1.03.** The Agreement is hereby amended by deleting Exhibit E to the Agreement in its entirety and inserting in its place the attached new Exhibit E.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.01. Representations of Corporation.** The Corporation hereby represents and warrants to the City as follows:

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

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

(c) this Amendment is a legal, valid and binding obligation of the Corporation enforceable against such party in accordance with its terms; except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency,

reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time;

(d) there is no action, proceeding or investigation pending or, to the knowledge of the Corporation, threatened or affecting the Corporation, which may adversely affect the ability of the Corporation to fulfill and perform its obligations and other undertakings under this Amendment or the Agreement. The Corporation is not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the transactions contemplated in and by this Amendment; and

(e) the Corporation is a local government corporation duly formed, validly existing, and in good standing under the laws of the State of Texas.

**Section 2.02. Representations of the City.** The City hereby represents and warrants to the Corporation as follows:

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

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

(c) this Amendment is a legal, valid and binding obligation of the City enforceable against such party in accordance with its terms; except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time;

(d) there is no action, proceeding or investigation pending or, to the knowledge of the City, threatened or affecting the City, which may adversely affect the ability of the City to fulfill and perform its obligations and other undertakings under this Amendment or the Agreement. The City is not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the transactions contemplated in and by this Amendment; and

(e) the City is a municipal corporation duly formed and validly existing under the laws of the State of Texas.

### **ARTICLE III**

#### **MISCELLANEOUS**

**Section 3.01. Effective Date.** This Amendment shall be effective as of the date of its execution by all the parties hereto (the "**Effective Date**").

**Section 3.02. Capitalized Terms.** Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

**Section 3.03. Prior Agreements Confirmed.** Except as otherwise expressly modified by the terms hereof, all of the remaining terms of the Agreement remain in effect and are hereby ratified and affirmed.

**Section 3.04. Partial Invalidity.** If any section of this Amendment or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Amendment or the application of such Section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section hereof shall be valid and enforceable to the fullest extent permitted by law.

**Section 3.05. Time of the Essence.** Time is of the essence with respect to all sections of this Amendment.

**Section 3.06. Successors and Assigns.** This Amendment and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

**Section 3.07. Counterparts.** This Amendment may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

**Section 3.08. Governing Law.** **THIS AMENDMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS NOTWITHSTANDING ANY CHOICE-OF-LAW OR CONFLICT-OF-LAW PRINCIPLE THAT MIGHT DICTATE A DIFFERENT GOVERNING LAW.** In the event of any proceedings regarding this Amendment, the Parties agree that the venue shall be the state courts of Texas located in El Paso County or any Federal court whose jurisdiction includes El Paso County, Texas.

*[Signatures and acknowledgements appear on following pages]*

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

**CITY OF EL PASO, TEXAS**

By: \_\_\_\_\_  
Name: Oscar Leeser  
Its: Mayor  
Date: \_\_\_\_\_

**Approved as to Form:**

**Approved as to Content:**

\_\_\_\_\_  
Karla Nieman  
City Attorney

\_\_\_\_\_  
Robert Cortinas  
Chief Financial Officer

**Approved as to Form:**

\_\_\_\_\_  
Paul A. Braden  
Bond Counsel

**CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: Robert Cortinas  
Its: Treasurer  
Date: \_\_\_\_\_

## **EXHIBIT E**

### **LEASE PAYMENTS**

*[Insert combined debt service schedule for all outstanding Parity Bonds]*