

ORDINANCE NO. **019455**

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

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 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 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 (the "**Fourth Lease Amendment**"), in connection with the Corporation's issuance of the Series 2023 Bonds; and

WHEREAS, the Board of Directors of the Corporation has found and determined that the Series 2021 Bonds should now be refunded through the issuance of "City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2023A (Downtown Ballpark Venue Project)" (the "**Series 2023A Bonds**"); and

WHEREAS, on a contemporaneous basis herewith, the Board of Directors of the Corporation has adopted a Resolution, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (the "**DDC Resolution**"), authorizing the issuance of the Series 2023A Bonds 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**"); 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, 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

Documents, the issuance of the Series 2023A Bonds and for carrying out, giving effect to, and consummating the transactions described in the Series 2023A Bonds, this Ordinance, the Transaction Documents, and any other instruments authorized by this Ordinance or required to effect the transactions 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.

SECTION 7: The Mayor, City Manager or the Chief Financial Officer of the City are each authorized 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 the Transaction Documents.

SECTION 8: Prior to the initial delivery of the Series 2023A Bonds, any of the City Manager, the Chief Financial Officer of the City or bond counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance 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, or (iii) to accomplish the issuance and delivery of the Series 2023A Bonds and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, such determination shall be final. In the event that any official of the City 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.

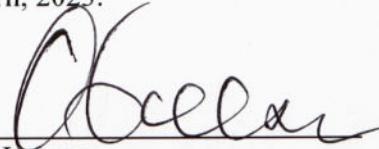
Additionally, the Mayor, the City Manager, and the Chief Financial Officer of the City may execute, authenticate, certify, or endorse or authorize to be executed, authenticated, certified, or endorsed with such officer's facsimile signature instead of the officer's manual signature any written agreement, including a contract, purchase order or surety bond, and any related document, including an application, certificate, or approval. For purposes of this Ordinance, "facsimile signature" means a reproduction of the manual signature of an authorized officer that is made by any method.

SECTION 9: It is officially found, determined and declared that the meeting at which this Ordinance 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 Ordinance, was given, all as required by Chapter 551 of the Texas Government Code, as amended. This Ordinance is found and deemed to be a public security authorization for the purposes of Section 1201.028 of the Texas Government Code.

SECTION 10: This Ordinance shall take effect and be in full force immediately from and after its adoption on the date hereof in accordance with the provisions of Texas Government Code, Section 1201.028, as amended.

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APPROVED AND ADOPTED this 11th day of April, 2023.

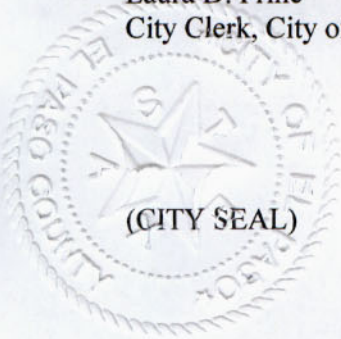


Oscar Leeser
Mayor, City of El Paso, Texas

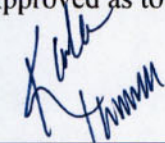
ATTEST:



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



Approved as to Form:



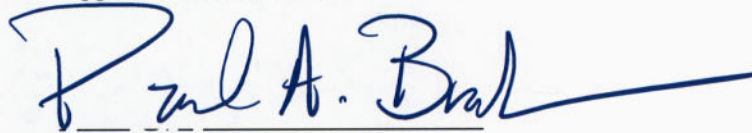
Karla Nieman
City Attorney
City of El Paso, Texas

Approved as to Content:



Robert Cortinas
Chief Financial Officer
City of El Paso, Texas

Approved as to Form:



Paul A. Braden
Bond Counsel

EXHIBIT A

Resolution of the Corporation

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]