

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

DEPARTMENT: Office of the Chief Financial Officer
AGENDA DATE: April 11, 2016
CONTACT PERSON/PHONE: Dr. Mark Sutter, Chief Financial Officer, 212-1063

DISTRICT(S) AFFECTED: All

SUBJECT:

Introduction of an ordinance approving a First Amendment to the Master Lease Agreement relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing; and resolving other matters incident and related thereto.

BACKGROUND / DISCUSSION:

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).

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.

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 June 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.

PRIOR COUNCIL ACTION:

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 Hotel Occupancy Taxes (HOT).

AMOUNT AND SOURCE OF FUNDING:

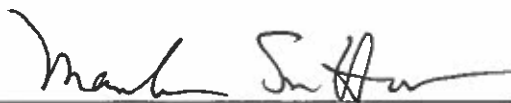
Debt service is primarily funded from Hotel Occupancy Taxes (HOT) and Team Revenues.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



ORDINANCE NO. _____

AN ORDINANCE approving a First Amendment to the Master Lease Agreement Relating to the City of El Paso, Texas, Downtown Ballpark Venue Project Financing; and resolving 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 (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 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 June 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 (the “*Trustee*”); 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 June 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, 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, the Board of Directors of the Corporation has found and determined that certain of the Series 2013 Tax Exempt Bonds should now be refunded through the issuance of

“City of El Paso Downtown Development Corporation Special Revenue Refunding Bonds, Series 2016 (Downtown Ballpark Venue Project)” (the “*Series 2016 Bonds*”); and

WHEREAS, the Master Lease Agreement will have to be amended pursuant to a First 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 “*Lease Amendment*”), attached hereto as Exhibit A and incorporated herein by reference, to reflect the issuance of the Series 2016 Bonds and defeasance of the Series 2013 Tax Exempt Bonds;

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.

SECTION 2: The Lease Amendment in substantially the form and substance presented to the Council at this meeting is hereby approved, 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 Lease Amendment and the City Clerk or Deputy City Clerk of the City is hereby authorized to attest to such officer’s signature on the Lease Amendment, and such officers are hereby authorized to deliver the Lease Amendment. Upon execution by the parties thereto and delivery thereof, the 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 as amended by the Lease Amendment in accordance with the terms of the Master Lease and the 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 3: Each of the Mayor of the City, 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 Lease Amendment and for carrying out, giving effect to, and consummating the transactions described in the Series 2016 Bonds, this Ordinance, the Lease Amendment and any other instruments authorized by this Ordinance or required to effect the transactions contemplated hereby.

SECTION 4: 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.

SECTION 5: This Ordinance shall take effect immediately upon its passage.

[Remainder of page left blank intentionally.]

APPROVED AND ADOPTED this ___ day of _____, 2016.

Oscar Leeser
Mayor, City of El Paso, Texas

ATTEST:

Richarda Duffy Momsen
City Clerk, City of El Paso, Texas

(CITY SEAL)

Approved as to Form:

Approved as to Content:

Don W. Minton
Assistant City Attorney
City of El Paso, Texas

Mark Sutter
Chief Financial Officer
City of El Paso, Texas

EXHIBIT A

Lease Amendment

(See Attached)

FIRST AMENDMENT TO MASTER LEASE AGREEMENT

This FIRST AMENDMENT TO THE MASTER LEASE AGREEMENT, (this "**Amendment**") is dated as of the May 1, 2016 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**"); 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 (collectively, as amended, the "***Original Trust Agreement***");

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 said statute, shall constitute firm banking and financial arrangements for the discharge and final payment of such refunded bonds;

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 2016 (Downtown Ballpark Venue Project)" (the "***Series 2016 Bonds***") to restructure the Series 2013A Bonds indebtedness,

WHEREAS, the Series 2016 Bonds will be issued pursuant to the terms of a First Supplement To Trust Agreement Relating to the City of El Paso, Texas Downtown Ballpark Venue Project Financing Between the Trustee and the Corporation;

WHEREAS, by City Resolution dated April 11, 2016, the City Council of the City authorized and approved the issuance of the Series 2016 Bonds by the Corporation;

WHEREAS, the parties would like to amend the terms of 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 ORIGINAL AGREEMENT

Section 1.01. Article XIV is hereby added to the Master Lease Agreement by inserting the following:

ARTICLE XIV
THE SERIES 2016 BONDS

Section 14.01 Issuance and Sale of the Series 2016 Bonds. Subject to applicable terms, limitations, and procedures, the Corporation will issue and sell the Series 2016 Bonds to finance the Project 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 14.02 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 2016 Bonds.

Section 14.03 Covenants Regarding Tax-Exempt Status of the Series 2016 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 2016 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 2016 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 2016 Bonds are invested and which is not acquired to carry out the governmental purposes of the Series 2016 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 2016 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 2016 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 2016 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 2016 Bond, the Corporation and the City shall comply with each of the specific covenants in this Section.

(ii) Limited Private Use and Private Payments.

1. The Series 2016 Bonds are being issued to restructure the Series 2013A Bonds indebtedness and, in connection therewith, the City and the Corporation while the Series 2016 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 2016 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 2016 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 2016 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 2016 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 2016 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 2016 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 2016 Bond is discharged. However, to the extent permitted by law, the Corporation and/or the City may commingle Gross Proceeds of the Series 2016 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 2016 Bonds until six years after the final Computation Date.

3. As additional consideration for the purchase of the Series 2016 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 2016 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 2016 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 2016 Bonds not been relevant to either party.

(ix) *Elections.* The Corporation hereby directs and authorizes the President, Treasurer and Secretary of the Board of Directors 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 2016 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 2016 Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

Section 1.02. The Original Agreement is hereby amended by deleting Exhibit E to the Original 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 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 Original 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;

(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 Original 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 Original Agreement.

Section 3.03. Prior Agreements Confirmed. Except as otherwise expressly modified by the terms hereof, all of the remaining terms of the Original 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:

Don W. Minton
Assistant City Attorney

Mark Sutter
Chief Financial Officer

CITY OF EL PASO DOWNTOWN DEVELOPMENT CORPORATION

By: _____
Name: Tommy Gonzalez
Its: Executive Director
Date: _____

EXHIBIT E
LEASE PAYMENTS

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