

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

DEPARTMENT: **Engineering & Construction Management**

AGENDA DATE: **Introduction February 28, 2012**
 Public Hearing March 6, 2012

CONTACT PERSON/PHONE: **R. Alan Shubert, City Engineer**

DISTRICT AFFECTED: **8 Rep. Niland**

SUBJECT:

An ordinance authorizing the City Manager to sign a contract of sale and any other necessary documents between the City of El Paso and La Frontera Conservation Fund which allow the City to convey lots 1- 10, both inclusive, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas; also known and numbered at 601 N. Oregon, El Paso, Texas.

BACKGROUND / DISCUSSION:

The City Council has passed various ordinances to promote development and redevelopment in the Downtown area. On December 7, 2010 the City and the El Paso Community Foundation (EPCF) entered into an Economic Development Grant Agreement for the development of a nonprofit project to be located in downtown in association with Artspace Projects, Inc. The City of El Paso is working to purchase 27.6 acres from Keystone Dam, Ltd., and as partial consideration, Keystone has agreed to apply as credit against the purchase the amount of One Million Two Hundred Sixty Two Thousand One Hundred Fourteen and 98/100 Dollars (\$1,262,114.98), being the agreed upon fair market value. Concurrently, the City will transfer ownership of the Saddleblanket to EPCF to be used as the future location of Artspace Projects, Inc. a mixed-use economic development project. This item will be considered during the public hearing on March 6, 2012 with the related contracts for the implementation of the Artspace project.

The contract of sale to purchase the 27.6 acres from Keystone Dam, Ltd will be placed on the agenda in conjunction on March 6, 2012.

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

N/A
Revenue generating

BOARD / COMMISSION ACTION:

(N/A)

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

DEPARTMENT HEAD: _____

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT OF SALE AND ANY OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF EL PASO AND LA FRONTERA CONSERVATION FUND WHICH WILL ALLOW THE CITY TO CONVEY LOTS 1 THROUGH 10, BOTH INCLUSIVE, BLOCK 1, SATTERTHWAITE ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS; ALSO KNOWN AND NUMBERED AS 601 N. OREGON, EL PASO, TEXAS.

WHEREAS, the City of El Paso (the "City") is the owner of certain real property legally described as: Lots 1 through 10, both inclusive, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas, also known as 601 N. Oregon, El Paso, El Paso County, Texas (the "Saddleblanket Property"); and

WHEREAS, on December 19, 2006, the City Council adopted Ordinance No. 016528, establishing Tax Increment Financing Reinvestment Zone Number Five, City of El Paso, Texas ("the Zone"), in accordance with the Tax Increment Financing Act, as amended (Chapter 311 of the Texas Tax Code, hereinafter called the "Act"), to promote development and redevelopment in the Downtown El Paso area through the use of tax increment financing, as amended; and

WHEREAS, on March 10, 2009 by Ordinance No. 017081, the City Council adopted the Final Project Plan and Reinvestment Zone Financing Plan for the Zone, as amended ("Project Plan"); and

WHEREAS, Section 272.001(b)(6) of the Texas Local Government Code provides that the City may sell the Property without public auction, as it is City-owned property located within the Zone, which the City desires to have developed under the Project Plan adopted by the City for Zone; and

WHEREAS, Section 311.008 of the Act further provides that the City may exercise any power necessary and convenient to carry out the objectives of the statute including the power to acquire real property by purchase, condemnation, and other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable; and

WHEREAS, on December 7, 2010, in recognition of the importance of the arts for quality of life and the economic benefits derived from the arts, the City and the El Paso Community Foundation (EPCF) entered into an Economic Development Grant Agreement concerning the development of a nonprofit project to be located in downtown El Paso in association with Artspace Projects, Inc.; and

WHEREAS, the City desires to acquire approximately 27.6 acres of real property (the "Keystone Property") from Keystone Dam, Ltd., and as partial consideration for that conveyance, Keystone Dam, Ltd. has agreed to apply as a credit against the purchase the amount of One Million Two Hundred Sixty Two Thousand One Hundred Fourteen and 98/100 Dollars (\$1,262,114.98), being the agreed upon fair market value of the Saddleblanket Property, provided the City concurrently transfers ownership of the Saddleblanket Property to EPCF, as it is a mutually desired location to site the Artspace Projects, Inc. mixed-use economic development project in downtown El Paso; and

WHEREAS, La Frontera Conservation Fund, on behalf of EPCF and in conjunction with the efforts of EPCF and Artspace Projects, Inc. agrees to accept donation and the conveyance of the Saddleblanket Property from the City for the limited purpose of subsequently transferring the Saddleblanket Property to Artspace Projects, Inc. or an affiliate of that entity, which will construct or cause to be constructed a high density mixed-use and affordable rental housing development on the Saddleblanket Property, consistent with the downtown redevelopment and revitalization objectives outlined in the Project Plan for the Zone, and in a manner consistent with the December 7, 2010 Agreement, as may be amended from time to time; and

WHEREAS, the City Council finds that the conveyance of the City's interest in the Saddleblanket Property to La Frontera Conservation Fund on behalf of EPCF serves a public purpose, is advisable, and provides adequate consideration to the City given the value of the credit received by the City in the Keystone Property acquisition; and further the redevelopment of the Saddleblanket Property will significantly further implementation of the Project Plan for the Zone as a catalyst project; and

WHEREAS, the public purpose will be maintained by the terms and conditions of the parties' contract of sale, and certain use restrictions to be referenced in the conveyance deed.

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

1. That the City Manager be authorized to sign a Contract of Sale, including any contract extensions, Special Warranty Deed, and all other related and necessary documents, in the form and substance approved by the City Attorney's Office, to convey the following property to **La Frontera Conservation Fund**:

Lots 1 through 10, both inclusive, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas; also known and numbered as 601 N. Oregon, El Paso, El Paso County, Texas

2. That the statements and facts set forth in the recitals of this Ordinance are true and correct and are incorporated as part of this Ordinance.

PASSED AND ADOPTED this ____ day of _____, 2012.

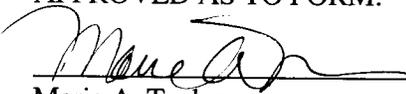
THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Marie A. Taylor,
Assistant City Attorney

APPROVED AS TO CONTENT:

Deborah Hamlyn, Deputy City Manager
Community Services

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE
(601 N. Oregon –TIRZ No. 5)

This Contract of Sale (“Contract”) is entered into this _____ day of _____, 2012, by and between the **CITY OF EL PASO, TEXAS** (the “City”) and **LA FRONTERA CONSERVATION FUND**, a 501(c)(3) support organization of the El Paso Community Foundation (the “Buyer”).

RECITALS

1. The City is the owner of certain real property legally described as: Lots 1 through 10, both inclusive, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas, also known as 601 N. Oregon, El Paso, El Paso County, Texas (the “Saddleblanket Property”).
2. On December 19, 2006, the City Council adopted Ordinance No. 016528, establishing Tax Increment Financing Reinvestment Zone Number Five, City of El Paso, Texas (“the Zone”), in accordance with the Tax Increment Financing Act, as amended (Chapter 311 of the Texas Tax Code, hereinafter called the “Act”), to promote development and redevelopment in the Downtown El Paso area through the use of tax increment financing, as amended.
3. On March 10, 2009 by Ordinance No. 017081, the City Council adopted the Final Project Plan and Reinvestment Zone Financing Plan for the Zone, as amended (“Project Plan”).
4. Section 272.001(b)(6) of the Texas Local Government Code provides that the City may sell the Saddleblanket Property without public auction, as it is City-owned property located within the Zone, which the City desires to have developed under the Project Plan adopted by the City for the Zone.
5. Section 311.008 of the Act further provides that the City may exercise any power necessary and convenient to carry out the objectives of the statute including the power to acquire real property by purchase, condemnation, and other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable.
6. On December 7, 2010, in recognition of the importance of the arts for quality of life and the economic benefits derived from the arts, the City and the El Paso Community Foundation (“EPCF”) entered into an Economic Development Grant Agreement concerning the development of a nonprofit project to be located in downtown El Paso in association with Artspace Projects, Inc.
7. The City now desires to acquire approximately 27.6 acres of real property (the “Keystone Property”) from Keystone Dam, Ltd., and as partial consideration for that conveyance, Keystone Dam, Ltd. has agreed to apply as a credit against the purchase price the amount of One Million Two Hundred Sixty Two Thousand One Hundred Fourteen and 98/100 Dollars (\$1,262,114.98), being the agreed upon fair market value of the Saddleblanket

Property, provided the City concurrently transfers ownership of the Saddleblanket Property to EPCF, or its designated affiliate, as it is a mutually desired location for the Artspace Projects, Inc. project in downtown El Paso.

8. Buyer, in conjunction with the efforts of EPCF and Artspace Projects, Inc., agrees to accept conveyance of the Property on behalf of EPCF with the intent of facilitating the development and construction of a high density mixed-use, arts-oriented affordable rental housing development on the Property containing studio/work and gallery spaces, pursuant to the downtown redevelopment and revitalization objectives outlined in the Project Plan for the Zone, and in a manner consistent with the December 7, 2010 Agreement, amended by restatement on even date herewith (and as may be later amended from time to time, the Grant Agreement).
9. The City has found that the conveyance of the City's interest in the Saddleblanket Property to Buyer serves a public purpose, is advisable, and provides adequate consideration to the City given the value of the credit received by the City in the purchase of the Keystone Property.

NOW THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I. GENERAL CONDITIONS OF SALE

1. Purchase and Sale.

1.1 Description of Property. Upon and subject to the terms, provisions, and conditions, set forth in this Contract, the City hereby agrees to sell and convey and the Buyer hereby agrees to acquire and accept the Saddleblanket Property:

1.2 Consideration. The consideration for the conveyance of the Saddleblanket Property to be received by the City shall be a credit of One Million Two Hundred Sixty Two Thousand One Hundred Fourteen and 98/100 Dollars (\$1,262,114.98) towards the purchase price of the Keystone Property from Keystone Dam, Ltd. and other good and valuable consideration, the sufficiency of which are hereby acknowledged.

2. **Special Warranty Deed with Restrictions, Covenants.** Conveyance of the Saddleblanket Property shall be made by special warranty deed in substantially the form of Exhibit A attached hereto (the "Deed") and shall be subject to the terms and conditions of the Grant Agreement. The conveyance and Deed shall be subject to any existing easements, deed, or other restrictions, reservations, rights-of-way, dedications and any other encumbrances, whether of record or apparent in fact on the Saddleblanket Property. Further, conveyance of the Saddleblanket Property will be subject to a restrictive covenant running with the land that Buyer, its successors or assigns, will not in violation of any applicable laws, discard, place, or store upon such land, any radioactive materials or other hazardous wastes that would or might contaminate or otherwise damage the groundwater supply or resources of the City of El Paso.

3. **Conditions to Buyer's Obligations.** The obligations of the Buyer hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the Buyer, at or prior to Closing.

3.1 Title Insurance. The Buyer at its expense will order a title commitment ("Commitment") from Stewart Title Company accompanied by copies of all recorded documents affecting the Property for the issuance of an Owner's Policy of Title Insurance with respect to the Saddleblanket Property, in an amount to be decided by the Buyer ("Owner's Policy"). Buyer, at its sole cost and expense, may cause the Commitment to be updated before the Closing. It shall be the sole responsibility of Buyer to satisfy itself that title is acceptable. Buyer shall obtain and bear the costs of title insurance.

3.2 Title Objections. If after receipt of the original or an updated Commitment, Buyer determines that the condition of the title set forth in the Commitment is unacceptable to Buyer in its reasonable business judgment, and such unacceptable condition has not previously been approved by Buyer (or deemed approved by Buyer failing to timely make objection thereto), Buyer shall so notify the City in writing specifying such objectionable matters on or before five (5) days after the date Buyer actually receives a copy of such original or updated Commitment, together with copies of the instruments referenced therein. Following receipt of such notice from the Buyer, the City may, but is not obligated to, undertake action to eliminate or modify all unacceptable matters to the reasonable satisfaction of the Buyer. If (a) the City is unable or unwilling to cure the title objection within ten (10) days following Buyer's written notice thereof or (b) the City gives written notice to Buyer that it is unwilling or unable to cure Buyer's title objection, Buyer may, as Buyer's sole and exclusive remedies, either (a) terminate this Contract within five (5) days after expiration of such ten (10) day period, or (b) maintain this Contract in effect and proceed to purchase the Saddleblanket Property at the Closing subject to such defects not cured by the City. If Buyer fails to notify the City its election within the prescribed five (5) day period, the Buyer shall be deemed to have selected alternative (b) immediately above with the effect that Buyer has waived its right to terminate this Contract pursuant to this Section 3.2.

3.3 Inspection Period. During the inspection period, which will begin upon the Effective Date and terminate thirty (30) days thereafter ("Inspection Period"), Buyer shall have the right to physically inspect and to cause one or more engineers or other representatives of Buyer to physically inspect the Saddleblanket Property. Buyer shall make such inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Saddleblanket Property will be solely Buyer's expense. The City shall cooperate with Buyer in all reasonable respects in making such inspections. The City hereby reserves the right to have a representative present at the time Buyer conducts any inspection of the Saddleblanket Property. Buyer shall notify the City not less than one (1) business day in advance of making any such inspection. In making any inspection, Buyer will treat and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Contract as strictly confidential. **BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY AND ALL INJURIES, LOSSES, LIENS, CLAIMS, JUDGMENTS, LIABILITIES, COSTS, EXPENSES OR DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS) SUSTAINED BY OR THREATENED AGAINST THE CITY WHICH RESULT FROM OR ARISE OUT OF ANY INSPECTIONS BY BUYER OR ITS AUTHORIZED**

REPRESENTATIVES PURSUANT TO THIS PARAGRAPH. Notwithstanding any provision herein to the contrary, the indemnity contained in the preceding sentence shall survive the termination of this Contract or the Closing. In the event Buyer determines as a result of the foregoing that the condition of the Saddleblanket Property is deficient in any respect or that the Saddleblanket Property is not suitable for any other reason in Buyer's sole and absolute discretion, Buyer may elect to terminate this Contract by delivering written notice thereof to the City prior to the expiration of the Inspection Period. Failure of Buyer to timely elect to terminate this Contract shall be deemed a waiver by Buyer of its right to do so pursuant to this Section 3.3.

4. **Representations of City.** The City hereby represents to Buyer, to the extent allowed by law, and to the best of its knowledge, as follows, which representations shall be deemed given as of the Effective Date and as of the Closing:

4.1 Parties in Possession. At the time of closing, other than the Buyer, there are no parties in possession of any portion of the Saddleblanket Property as lessees, tenants at sufferance, or otherwise.

4.2 Mechanic's Lien. (i) No action has been taken, suffered or permitted by or on behalf of the City, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Saddleblanket Property or any part thereof or interest therein; and (ii) no liens or lien claims, choate or inchoate, arising from the City's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Saddleblanket Property; and (iii) except as expressly disclosed by the City to Buyer in the documents relating to this transaction, the City has not entered into any contracts or agreements relating to the use or ownership of the Saddleblanket Property or by which any person or entity agreed to provide labor, services or materials in regard to the Saddleblanket Property or the business of the City.

4.3 Litigation. There is no pending or contemplated litigation before or by any court of law pertaining to the Saddleblanket Property or which involve incidents occurring on the Saddleblanket Property including, but not limited to, claims of damage to persons or property.

4.4 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Saddleblanket Property as a result of the City's ownership.

4.5 Compliance With Law. All laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the City's ownership, use or development of the Saddleblanket Property have been complied with.

4.6 Taxes. While the City owned the Saddleblanket Property, it was exempt from ad valorem taxes.

4.7 Pre-Closing Claims. City agrees that the Buyer's acceptance of title to the Saddleblanket Property under the conveyance documents should not create any liability on the Buyer's part to third parties that have claims of any kind against the City in connection with the Saddleblanket Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the City.

4.8 Condition of Property Prior to Closing. Prior to Closing, the City shall not create or permit to be created any easement, restriction, encumbrance or other condition affecting the Saddleblanket Property without the prior written consent of the Buyer. Buyer accepts the Saddleblanket Property in its present condition, provided the City, at City's expense, shall complete the specific demolition work and treatments identified in **Exhibit "B"** as a condition to and prior to the Closing date. All required permits will be obtained, and demolition work and treatments will be performed by persons who are licensed or otherwise authorized by law to provide such demolition work and treatments. The Closing date will be extended up to 60 days, if necessary, to afford the City sufficient time to complete demolition work and treatments.

4.9 **"AS IS, WHERE IS"**. THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND COVENANTS OF THE CITY CONTAINED IN SECTION 4.1 THROUGH 4.8 ABOVE, THE BUYER ACCEPTS THE SADDLEBLANKET PROPERTY AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY CONTAINED HEREIN AND EXCEPT FOR THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE SADDLEBLANKET PROPERTY; (B) THE SUITABILITY OF THE SADDLEBLANKET PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE SADDLEBLANKET PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SADDLEBLANKET PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE SADDLEBLANKET PROPERTY, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND COVENANTS OF THE CITY CONTAINED IN SECTION 4.1 THROUGH 4.8 ABOVE, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE SADDLEBLANKET PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE SADDLEBLANKET PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE CITY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE SADDLEBLANKET PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE SADDLEBLANKET PROPERTY REFLECTS THAT ALL OF THE SADDLEBLANKET PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

4.10 ENVIRONMENTAL MATTERS. AFTER CLOSING, BETWEEN THE CITY AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, **THE BUYER SHALL INDEMNIFY, HOLD HARMLESS, AND RELEASE THE CITY FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE SADDLEBLANKET PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. THE BUYER SHALL INDEMNIFY, HOLD HARMLESS AND RELEASE THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE CITY'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE CITY'S REPRESENTATIVES. THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE SADDLEBLANKET PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE CITY IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE SADDLEBLANKET PROPERTY.**

IN PARTICULAR, THE BUYER ACKNOWLEDGES THAT THERE MAY BE ASBESTOS ON THE SADDLEBLANKET PROPERTY AND THAT IT MUST COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS IN ADDRESSING ANY ASBESTOS.

4.11 Survival. All agreements of the City made in this document and related financing documents shall survive the execution and delivery hereof of the Deed and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

5. **Buyer Representations and Warranties.** Buyer represents and warrants to the City that: (a) there are no attachments, executions or assignments for the benefit of creditors, generally, or voluntary or involuntary proceedings in bankruptcy or under any other debtor-relief laws pending or threatened against Buyer; and (b) Buyer has full right, power and authority to enter into this Contract and, at Closing, will have the right, power and authority to consummate the transactions contemplated thereby and all required corporate, partnership or other action necessary to authorize Buyer to enter into and consummate the transaction contemplated herein has been or upon Closing, will have been taken, and the joinder of no person or entity other than Buyer will be necessary to execute and deliver such documents and instruments at Closing and to perform all the obligations of Buyer hereunder applicable thereto.

6. **Closing.** The closing of this transaction ("Closing") shall take place at the offices of Stewart Title Company, 415 North Mesa, El Paso, Texas 79901 on or before seven (7) days from the expiration of the Inspection Period, subject to delays due to the City's efforts to cure any title

objection under Article I, Section 3.2. and/or complete the demolition work and/or treatments under Section 4.8.

6.1 Possession. Possession of the Saddleblanket Property will be transferred to the Buyer upon Closing.

6.2 Closing Costs.

(a) All recording fees arising from the recordation of documents necessary to vest good title to the Saddleblanket Property in the Buyer shall be paid by the Buyer.

(b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Saddleblanket Property shall be paid by the Buyer.

6.3 City's Obligations. At Closing, the City shall deliver the Deed to the Buyer, conveying the Saddleblanket Property and any related easements, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) the standard printed exceptions contained in the usual form of the Owner's Policy, and (ii) any other exceptions set forth in the Title Policy which the Buyer has approved pursuant to Section 3.1 above.

6.4 Other Obligations. Each party shall do all other acts, or deliver any other instruments or documents contemplated herein that are required or helpful to be done or delivered, in order to consummate this transaction.

7. **Default/Termination.**

7.1 Breach by City. In the event that the City shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the sale of the Saddleblanket Property for any reason, except the Buyer's default, or the termination of this Contract in accordance with its terms, the City agrees to absorb the costs the City may have incurred in preparation for the sale of the Saddleblanket Property.

7.2 Breach by the Buyer. In the event that the Buyer shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the purchase of the Saddleblanket Property for any reason, except the City's default, or the termination of this Contract in accordance with its terms, the Buyer agrees to absorb the costs the Buyer may have incurred in preparation for the acquisition of the Saddleblanket Property.

ARTICLE II. GENERAL PROVISIONS

1. **Notices.** Any notice, demand, direction, request, or other instrument authorized or required by this Contract to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

City: City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: Planning and Economic Development
City of El Paso
2 Civic Center Plaza, 7th Floor
El Paso, Texas 79901-1196
Attn: Director

Buyer: La Frontera Conservation Fund
c/o El Paso Community Foundation
333 N. Oregon, 2nd Floor
El Paso, Texas 79901

Copy to: Scott Hulse PC
1100 Chase Tower
201 East Main Drive
El Paso, Texas 79901
Attn: G. Russell Hill

2. **Entire Agreement / Governing Law.** This Contract constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Contract, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Contract shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

3. **Time.** Time is of the essence in this Contract and each and every provision hereof.

4. **Severability.** If any provision of this Contract shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

5. **Survival of Provisions.** The terms contained in this Contract, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

6. **Binding Effect.** This Contract shall be binding upon the parties hereto and their respective successors and assigns.

7. **Assignability.** Neither party may assign its interest in this Contract without the prior written consent of the other party, provided, however, that Buyer may assign this contract to any other entity controlled by or under common control with Buyer. Any attempt to assign this Contract without prior written consent of the other party will be of no effect and will be an event of default hereunder.

8. **Compliance.** In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the Buyer is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Saddleblanket Property examined by an attorney of its own selection.

9. **Effective Date.** As used herein, "Effective Date" shall mean the date of the approval of City Council of an Ordinance authorizing the sale of the Saddleblanket Property pursuant to the terms of this Contract.

10. **Condition to Closing.** The obligations of the City and Buyer to close the transaction contemplated herein are conditioned upon the closing of the contract between the City and Keystone Dam, Ltd. for the acquisition of the Keystone Property.

[Signatures on Following Page]

The above instrument, together with all conditions thereto is hereby executed by the City this ____ day of _____, 20_____.

CITY OF EL PASO
A Municipal Corporation

By _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Deborah G. Hamlyn
Deputy City Manager,
Community Services



Marie A. Taylor
Assistant City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20____, by Joyce Wilson, City Manager of the City of El Paso.

My Commission Expires:

Notary Public, State of Texas

The above instrument, together with all conditions thereto, is hereby executed by La Frontera Conservation Fund as Buyer, this ____ day of _____, 20_____.

BUYER: LA FRONTERA CONSERVATION FUND

Name (Printed)/Title: _____

[Acknowledgment on Following Page]

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of **LA FRONTERA CONSERVATION FUND**, a Texas non-profit corporation on behalf of said corporation.

My Commission Expires:

Notary Public, State of Texas

EXHIBIT "A"
(Special Warranty Deed)
[ATTACHED]

Exhibit "A"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

DATE: _____, 2012

GRANTOR: THE CITY OF EL PASO, TEXAS, a Texas municipal corporation

GRANTOR'S MAILING ADDRESS (including county):

#2 Civic Center Plaza
El Paso, Texas 79901-1196
El Paso County, Texas

GRANTEE: LA FRONTERA CONSERVATION FUND

GRANTEE'S MAILING ADDRESS (including county):

La Frontera Conservation Fund
c/o El Paso Community Foundation
333 N. Oregon, 2nd Floor
El Paso, Texas 79901
El Paso County, Texas

CONSIDERATION: Ten Dollar (\$10), and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged

PROPERTY (INCLUDING ANY IMPROVEMENTS):

Lots 1 through 10, both inclusive, Block 1, SATTERTHWAITE ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the City Block Map in the Office of the County Clerk of El Paso County, Texas.

RESTRICTIONS, CONDITIONS, AND RESERVATIONS FROM EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements;

2. Standby fees, taxes and assessments by any taxing authority for the calendar year of 2012 and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, and those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous year, prorated to the date hereof, which GRANTEE agrees to assume;

3. Property is subject to a restrictive covenant to the effect that any purchaser, its successors or assigns, will not, for a period of at least seventy-five (75) years, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the GRANTOR;

4. Claims by the Tigua Indian Tribe of Ysleta del Sur Pueblo, as evidenced by that certain Affidavit concerning filing of notice of Claim to the Ysleta Grant and Aboriginal Title Areas, executed by Julian Granillo, Governor of the Ysleta del Sur Pueblo Indian Tribe, also known as the Tigua Indian Community, dated April 12, 1993, filed on April 16, 1993 in Volume 2553, Page 1958, of the Real Property Records, El Paso County, Texas;

5. Terms, conditions, stipulations and assessments of the Order from the Texas Natural Resource Conservation Commission creating the El Paso Downtown Management District of El Paso County dated March 10, 1997, recorded in Volume 3223, Page 1138, Real Property Records of El Paso County, Texas;

6. Any and all restrictions, reservations, covenants, conditions, easements, and other matters, if any, relating to the Property, whether shown of record or not in the hereinabove mentioned County and State, and to all zoning laws, regulations, and ordinances of municipal and/or other governmental authorities, if any, relating to the hereinabove described Property.

7. _____
[any other exceptions set forth in the Title Policy]

8. USE RESTRICTIONS.

The Property is being conveyed to GRANTOR subject to the terms and conditions contained in the Amended (By Restatement) Economic Development Grant Agreement dated _____, 2012, by and between Grantor and Grantee.

GRANT AND CONVEYANCE:

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance, and warranty, GRANTS, SELLS, and CONVEYS to the GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S successors and assigns forever. The GRANTOR binds the GRANTOR and the GRANTOR'S successors and assigns to warrant and forever defend all and singular the property to the GRANTEE and the GRANTEE'S successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the

Reservations From and Exceptions to Conveyance and Warranty, when the claim is by, through, or under the GRANTOR but not otherwise.

The GRANTOR has executed and delivered this Deed, and the GRANTEE by recording this Deed has accepted this Deed and has purchased the Property, "AS IS, WHERE IS, AND WITH ALL FAULTS," AND EXCEPT AS TO THE EXPRESS REPRESENTATIONS AND COVENANTS GIVEN BY GRANTOR IN THE CONTRACT OF SALE DATED FEBRUARY ___, 2012 BETWEEN GRANTOR AND GRANTEE (THE "CONTRACT") AND THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE GRANTOR AND THE GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS, COVENANTS, AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE GRANTEE MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) PRESENT ZONING AND SURFACE CONDITIONS; AND (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND COVENANTS GIVEN IN THE CONTRACT, THE GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE GRANTOR. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE GRANTOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE GRANTOR AND PURCHASED BY THE GRANTEE SUBJECT TO THE FOREGOING.

AFTER CLOSING, BETWEEN THE GRANTOR AND THE GRANTEE, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS WILL BE THE SOLE RESPONSIBILITY OF THE GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE **GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES** THE GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **THE GRANTEE INDEMNIFIES, HOLDS HARMLESS AND**

RELEASES THE GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE GRANTOR'S REPRESENTATIVES. THE GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE GRANTOR IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

When the context of this instrument requires, singular nouns and pronouns will include the plural.

GRANTOR: THE CITY OF EL PASO, TEXAS,
A Municipal Corporation

Joyce Wilson, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2012, by JOYCE WILSON, as the City Manager of THE CITY OF EL PASO, TEXAS, a Texas home-ruled municipal corporation on behalf of said corporation as GRANTOR.

My Commission Expires:

Notary Public, State of Texas

ACCEPTANCE

LA FRONTERA CONSERVATION FUND accepts the terms, covenants, obligations and conditions of this deed.

BUYER: LA FRONTERA CONSERVATION FUND

By: _____
NAME (PRINTED)/TITLE: _____

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, as _____ of **LA FRONTERA CONSERVATION FUND**, a Texas non-profit corporation, on behalf of said corporation.

My Commission Expires:

Notary Public, State of Texas
Notary's name printed:

AFTER RECORDING RETURN TO:

PREPARED IN THE LAW OFFICE OF:

City Attorney's Office
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

EXHIBIT "B"

Demolition —Scope of Work
[ATTACHED]

Saddle Blanket Building Demolition

SOLICITATION No. 2012-070

SCOPE OF WORK

BASE BID:

Work under Base Bid for the SADDLE BLANKET BUILDING DEMOLITION project is comprised of asbestos abatement, demolition and stabilization.

Asbestos Abatement consists of the removal and proper disposal of asbestos-containing materials (ACMs) present at the Saddle Blanket building. Demolition of the subject property consists of the demolition and the proper disposal of the existing improvements as indicated on the plans. Included are the chain link fence, block walls, concrete loading aprons, concrete sidewalks, concrete steps, pipe bollards and chain, landscaping with irrigation lines, asphalt and concrete parking lot, steel structures and any other incidental work items associated with the completion of this project.

Stabilization of the site consists of grading the site according to the plans, covering the site with geotextile fabrics and 2 inches of ¾-inch gravel. A permanent fence is required for the perimeter of the site.

As indicated on the plans the metal beams within the building envelope shall be removed with care, salvaged and recycled. All steel material shall be recycled, contractor is to provide load tickets to the owner showing location receiving material and the load weights.

The contractor is also responsible to remove existing asbestos materials from the site as shown in the asbestos survey produced by AMEC. Asbestos material shall be disposed of as per all pertinent rules and laws. No demolition of building will be permitted until asbestos is removed.

The contractor shall furnish the necessary vehicular and pedestrian traffic and safety control during operations as well as erecting the storm water pollution control elements. The contractor shall also comply with all current regulations.

The project will be accomplished as shown below or as approved by the City of El Paso Engineering & Construction Management Department. All work shall begin at Notice to Proceed, and must be completed within the indicated time frame.

- A single Notice to Proceed shall be issued for the entire project and liquidated damages shall apply at the end of the project duration.

Prior to commencement of any work contractor should submit and obtain approval from El Paso Engineering & Construction Management Department for the Sequence of Construction, Schedule of Work, Traffic Control Plan, and Haul/Waste Route to an approved disposal site. Contractor shall provide written approved documentation from the owner or operator of the waste site.

Prior to commencement of any work contractor should submit and obtain approval from City of El Paso Engineering and Construction Management Services Department for the Storm Water Pollution Prevention Plan.

The description of this scope of work, as shown above, is only a general overview of this project. Contractor shall refer to the project plans and specifications for further information.

This is a Lump Sum Project



Saddleblanket
601 N. Oregon