

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

DEPARTMENT: Engineering & Construction Management

AGENDA DATE: Regular Agenda, March 6, 2012

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

DISTRICT AFFECTED: 8 Rep. Niland

SUBJECT:

Discussion and Action on a Resolution that the City Manager be authorized to sign a Contract of Sale between the CITY OF EL PASO and KEYSTONE DAM, LTD., a Texas limited partnership, for the purchase of approximately 29.11 acres of property on Doniphan Drive and adjacent to the Keystone Heritage Park, more particularly described as: all of Lots 25 and 26, Block 3, Keystone Business Park, Lots 16, 17, 18, 19, 20 and a portion of Lots 21, 22, ~~23~~, and Lot 24, Block 3, Keystone Business Park, being a portion of A.F. Miller Survey No. 213, J.F. Driscoll Survey No. 372, C.A. Engelsfreund Survey No. 112, and G.A. Wilson Survey No. 91, City of El Paso, El Paso County, Texas; and that the City Manager, or her designee, be authorized to sign any necessary documents, including contract extensions, to accomplish the intent of this Resolution.

BACKGROUND / DISCUSSION:

This contract of sale is to purchase approximately 29.11 acres of land, which is strategically located near the current site of the Northwest Municipal Service center. This acquisition will allow for future growth and expansion. The City will pay for all closing cost, to include \$100,000 of earnest monies. The City's consideration for the property will consist of both cash (1,675,000) and the transfer of the property located at 601 N. Oregon (Saddleblanket). The City will receive as credit the purchase price of the Saddleblanket (1,262,114.98). Title to 601 N. Oregon will transfer immediately an affiliate of the El Paso Community Foundation as the proposed location of the Artspace project.

PRIOR COUNCIL ACTION:

May 17, 2011- authorize staff to negotiate a contract

AMOUNT AND SOURCE OF FUNDING:

Environmental Services Revenue Bonds and 2010 CO's

BOARD / COMMISSION ACTION:

(N/A)

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

DEPARTMENT HEAD: _____



Information copy to appropriate Deputy City Manager

CITY CLERK DEPT.
2012 MAR -1 AM 10:30

CITY CLERK DEPT.

2012 MAR -1 PM 1:32

RESOLUTION

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

That the City Manager be authorized to sign a Contract of Sale between the CITY OF EL PASO and KEYSTONE DAM, LTD., a Texas limited partnership, for the purchase of approximately 29.11 acres of property on Doniphan Drive and adjacent to the Keystone Heritage Park, more particularly described as: all of Lots 25 and 26, Block 3, Keystone Business Park, Lots 16, 17, 18, 19, 20 and portion of Lots 21, 22, 23, and 24, Block 3 Keystone Business Park, being a portion of A.F. Miller Survey No. 213, J.F. Driscoll Survey No. 372, C.A. Engelsfreund Survey No. 112, and G.A. Wilson Survey No. 91, City of El Paso, El Paso County, Texas; and

That the City Manager, or her designee, be authorized to sign any necessary documents, including contract extensions, to accomplish the intent of this Resolution.

APPROVED this _____ day of _____ 2012.

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:



R. Alan Shubert, P.E., City Engineer
Engineering and Construction Management

STATE OF TEXAS §
 § **CONTRACT OF SALE**
COUNTY OF EL PASO §

This Agreement is by and between the **CITY OF EL PASO**, hereinafter referred to as the "City," and **KEYSTONE DAM, LTD., a Texas limited partnership**, hereinafter collectively referred to as the "Seller."

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

1. Description of Property. The Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the real property located in El Paso County, Texas described in Exhibit "A" attached, together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway, street or alley, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property."

2. Consideration. The City's consideration for the Property shall consist of both cash and the transfer of certain City owned real property to the El Paso Community Foundation (EPCF) or to another supporting organization of EPCF (the "EPCF Entity").

2.1 Real Property Consideration. The real property to be transferred by the City as part of the consideration is Lots 1 through 10, Block 1, Satterthwaite Addition, an addition to the City of El Paso, Texas, hereinafter referred to as the "EPCF Property" and municipally known as 601 N. Oregon, El Paso, Texas, for which the City paid **One Million Two Hundred Sixty Two Thousand One Hundred Fourteen and 98/100 Dollars (\$1,262,114.98)**. The City shall transfer the EPCF Property by executing a Special Warranty Deed into the EPCF Entity (the EPCF Entity Deed) and delivering the EPCF Entity Deed to Stewart Title Company of El Paso pursuant to instructions to record the EPCF Entity Deed the same day that the Deed from Seller granting title to the Property to the City is recorded.

2.2 Monetary Consideration. The monetary portion of the consideration for the Property shall be a total of **One Million Six Hundred Seventy Five Thousand and 00/100 DOLLARS (\$1,675,000)**.

3. Earnest Money. Seller agrees to execute this Agreement prior to it being placed on City Council agenda for approval. After City Council approval and within three (3) business days of execution of the Agreement by the City, the City will place the amount of \$100,000 in earnest money with Lone Star Title Company attn: John Martin at 6701 N. Mesa Street, El Paso, Texas 79912 (the "Title Company"). The date the earnest money is deposited with the Title Company shall be the Effective Date of this Contract for all purposes. The balance of the cash amount of the purchase price will be payable in cash at the closing.

4. Conditions to City's Obligations. The obligations of the Seller 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 City, at or prior to Closing.

4.1 Title Insurance. Within three (3) business days after the Effective Date of this Agreement, the City at its expense will order a title commitment ("Commitment"), 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 Property, in an amount to be decided by the City ("Owner's Policy").

4.2 Title Objections. The City will give the Seller written notice on or before the expiration of ten (10) business days after the later of the 1) Effective Date; 2) the date the City receives a current Title Commitment; and 3) the date the City receives the survey described in 4.3 below, that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The Seller must either (i) promptly eliminate or modify all unacceptable matters to the reasonable satisfaction of the City; or (ii) notify City in writing of any of the objections raised by City that Seller cannot or will not cure. If Seller notifies City in writing that Seller cannot or will not cure the objection, City shall have 3 business days from receipt of the written notice within which to terminate this Agreement and have the Earnest Money returned to it in full, or City will be deemed to have waived its objections to title except for those objections relating to outstanding liens against the Property. The City has no obligation under this paragraph or elsewhere in this Agreement to object to such liens, and the City has no obligation to close unless such liens are removed in their entirety as a condition to the Closing.

4.3 Survey. Within 10 days from the Effective Date, Seller will provide to the City and the Title Company a survey of the Property that is insurable by the Title Company. The City shall have ten (10) business days after receipt of the survey to object to anything shown on it that was not shown on previous surveys given to the City by Seller.

5. Representations and Warranties of Seller. The Seller hereby represents, covenants, and warrants to the City, as follows:

5.1 Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

5.2 Legal and Authorized Transactions. No person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

5.3 Mechanic's Lien. To the best of Seller's knowledge and belief, (i) no action has been taken, suffered or permitted by or on behalf of the Seller, 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 Property or any part thereof or interest therein; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the

Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller.

5.4 Litigation. To the best of Seller's knowledge and belief, there is no pending litigation or litigation contemplated by Seller before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or property and no third party has threatened any such litigation.

5.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

5.6 Compliance With Law. To the best of Seller's knowledge and belief, the Property is in compliance with all applicable laws, ordinances, rules and regulations of any Government or any agency, body or subdivision, including any environmental issues related to the Seller's activities thereof.

5.7 Taxes. No state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment. The Seller agrees to pay the prorated taxes due on the Property for the year 2012, through the date of Closing.

5.8 Pre-Closing Claims. To the best of Seller's knowledge and belief, there are no pending or threatened claims being made by any third person or entity against Seller arising from or connected with the use of the Property or its present or past condition.

(a) The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing.

(b) **The Seller agrees to indemnify and hold the City harmless from and against any and all claims, injuries, liabilities, losses, damages, or expenses, including attorneys fees and court costs, pertaining to claims arising out of the Property that accrued prior to and arising from events that occurred prior to the date of Closing, and of which Seller has actual knowledge as of the date of Closing, and arising from any of the following: (i) testing or inspection obligations required by federal or state environmental agencies; (ii) pending environmental investigations or cases by the Texas Commission on Environmental Quality known to the Seller; or (iii) the acts or omissions of the Seller on the Property. The Seller and the City each agree to promptly inform the other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such**

communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

5.9 Authority. The Seller has full right, power and authority to convey the Property to the City and to consummate this transaction as provided in this Agreement without the joinder of any other person or entity.

5.10 Title. The Seller has good and indefeasible title to a fee simple estate in the Property, subject to no exceptions other than those shown on the Title Commitment.

5.11 Condition of Property Prior to Closing. Prior to Closing, the Seller shall not create or permit to be created any easement or other encumbrance on the Property without the prior written consent of the City.

5.12 Knowing Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) a knowing breach of any representation or warranty of the Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller, all of which shall survive the Closing hereof.

5.13 Survival. All representations, warranties, covenants and agreements of the Seller made in this document, including without limitation any indemnity obligations, shall survive the execution and delivery hereof and of the Deed as well as the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have been discharged in full.

6. Closing. The closing of the purchase of the Property ("Closing") shall take place at the offices of the Title Company. The Closing shall occur on the same day as the EPCF closing.

6.1 Real Property Taxes. The Seller agrees to pay any past due taxes on the Property. Seller agrees to pay the taxes due on the Property for the year 2012, prorated through the day of Closing.

6.2 Closing Costs.

(a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.

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

(c) Escrow fees, if any, shall be paid by the City.

6.3 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Special Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem

taxes for the year of Closing which shall be prorated to the date of Closing, and (ii) the standard printed exceptions contained in the usual form of the Owner's Policy.

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

6.5 Special Provisions. The City shall not be responsible for any real estate commissions related to the sale, and Seller shall be solely responsible for the payment of agents with whom it has contracted.

7. Simultaneous Closing of EPCF Property. Seller has required the City to transfer title to the EPCF Property to the EPCF Entity as part of the consideration for the Property. Seller further requires that the closing of the Property and the closing of the EPCF Property be simultaneous since Seller desires a charitable deduction for the value of the EPCF Property. The closing of the EPCF Property shall be at Stewart Title Company attn: Cindy Bilbe at 415 N. Mesa Street, El Paso, TX 79902. The closing of the EPCF Property will take place according to the terms of the Contract between the City and the EPCF entity as may be amended by the City and the EPCF entity. The City's Deed of the EPCF Property must be tendered to Stewart Title no later than one business day after the City is given notice by Lone Star Title that it has received the executed Deed from Seller into the City for the Property and all other closing documents fully executed by Seller. If Stewart Title is not able to close for reasons involving EPCF, the Closing shall be extended for up to 20 business days so that EPCF can resolve any issues. Thereafter neither Seller nor the City shall have any obligation to close under this Contract and the Seller's Deed shall be returned to the Seller and the City's Deed shall be returned to the City and the Earnest Money shall be returned to the City.

8. Default.

8.1 Breach by Seller. In the event that the Seller shall fail to fully and timely perform any of Seller's obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default or the termination of this Agreement in accordance with its terms, the Earnest Money will be returned to the City and the City may enforce specific performance of this Agreement.

8.2 Breach by City. In the event that City shall fail to consummate the sale of the Property for any reason, except the termination of this Agreement in accordance with its terms, the Seller shall have a right to receive the Earnest Money, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and the Seller agrees to accept and take such cash payment as Seller's total, reasonable damages and relief and as the Seller's sole, exclusive remedy hereunder in such event

9. Miscellaneous.

9.1 Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement 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:

Seller:	Keystone Dam Ltd. c/o CIC Limited, Inc. 6006 N. Mesa, Suite 105 El Paso, Texas 79912	Copy to: Gwen Pulido 5809 Acacia Circle El Paso, Texas 79912
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City:	City Manager City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196	Copy to: Risher S. Gilbert 201 E. Main Street, Suite 1501 El Paso, TX 79902
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10. Entire Agreement/Governing Law. **This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by both parties. This Agreement 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.**

10.1 Time. Time is of the essence in this Agreement and each and every provision hereof.

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

10.3 Survival of Provisions. The terms contained in this Agreement, 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 Agreement for any reason is held invalid, this invalidity will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had never existed.

10.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

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

By: CIC Limited, Inc., its general partner

By: Chris A. Cummings, President

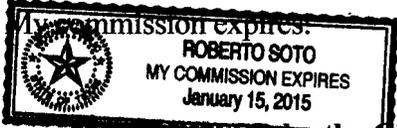
ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 13th day of Feb, 2012 by Chris A. Cummings, President of CIC Limited, as general partner of Keystone Dam, Ltd., a Texas limited partnership.

Roberto Soto

Notary Public, State of Texas



EXECUTED by the City of El Paso to be effective as of the ____ day of ____, 2012.

CITY OF EL PASO

By: _____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Sylvia Borunda Firth
Sylvia Borunda Firth, City Attorney

Alan Shubert
Alan Shubert, City Engineer

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2012 by Joyce Wilson, City Manager of the City of El Paso.

My commission expires: _____
Notary Public, State of Texas

Receipt of a fully executed copy of the Contract and the Earnest Money Deposit of \$100,000.00 from the City of El Paso this ____ day of _____, 2012 (the "Effective Date").

LONE STAR TITLE COMPANY:

By: _____
John Martin, President

Approximately 29.11 acres being composed of approximately 3.41 acres known as all of Lots 25 and 26, Block 3, Keystone Business Park, and approximately 25.70 acres known as Lots 16, 17, 18, 19, 20, a portion of Lots 21, 22, 23, and Lot 24, Block 3, Keystone Business Park described in the following metes and bounds.

METES AND BOUNDS DESCRIPTION

FIELD NOTE DESCRIPTION of a portion of A.F. Miller Survey No. 213, J.F. Driscoll Survey No. 372, C.A. Engelsfreund Survey No. 112, and G.A. Wilson Survey No. 91, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a found iron rod located at the northwesterly boundary corner of Lot 38, Block 5, Pacific Park Subdivision, same being the easterly right-of-way line of Hidden Way (60' R.O.W.), **THENCE**, Leaving said northwesterly boundary corner, and leaving said easterly right-of-way line, North 64°19'00" East, a distance of 370.69 feet to the **POINT OF BEGINNING** of the herein described parcel;

THENCE, North 25°14' 00" West, a distance of 12.65 feet to a found iron rod for corner;

THENCE, North 77°54'43" West, a distance of 517.48 feet to a found iron rod for corner;

THENCE, North 87°59'14" West, a distance of 459.89 feet to a found iron rod for corner;

THENCE, South 56°02' 43" West, a distance of 250.53 feet to a set iron rod for corner;

THENCE, North 33°59 '00" West, a distance of 297.47 feet to a set iron rod for corner;

THENCE, South 56°01 '00" West, a distance of 30.31 feet to a found iron rod for corner;

THENCE, 29.53 feet along the arc of a curve to the left, whose radius is 562.00 feet, whose interior angle is 03°00'39", whose chord bears South 57°31'20" West, a distance of 29.53 feet to a point for corner;

THENCE, North 34°01' 44" West, a distance of 76.00 feet to a found iron rod for corner;

THENCE, North 56°01 '00" East, a distance of 30.31 feet to a found iron rod for corner;

THENCE, 44.53 feet along the arc of a curve to the right, whose radius is 638.00 feet, whose interior angle is 03°59'55", whose chord bears North 58°00'57" East, a distance of 44.52 feet to a found iron rod;

THENCE, North 34°01' 44" West, a distance of 130.46 feet to a found iron rod for corner;

THENCE, North 45°36' 00" East, a distance of 400.78 feet to a found iron rod for corner;

THENCE, North 44°24' 00" West, a distance of 371.28 feet to a found iron rod for corner;

THENCE, 1339.12 feet along the arc of a curve to the left, whose radius is 988.03 feet, whose interior angle is 77°39'19", whose chord bears South 81°37'23" East, a distance of 1238.95 feet to a found iron rod;

THENCE, North 88°23' 28" East, a distance of 287.41 feet to a found iron rod for corner;

THENCE, North 01°00' 10" West, a distance of 184.51 feet to a found iron rod for corner;

THENCE, South 40°06' 02" East, a distance of 339.94 feet to a found iron rod for corner;

THENCE, South 47°56' 58" West, a distance of 77.87 feet to a found iron rod for corner;

THENCE, South 40°06' 02" East, a distance of 400.00 feet to a found iron rod for corner;

THENCE, South 00°00' 00" East, a distance of 117.12 feet to a found iron rod for corner;

THENCE, South 64°19' 00" West, a distance of 563.14 feet to a found iron rod and the **POINT OF BEGINNING** of the herein described lot and containing 1,119,592.47 square feet or 25.7023 Acres of land more or less.

Carlos M. Jimenez
Registered Professional Land Surveyor
Texas No. 3950
CAD CONSULTING COMPANY.
1790 Lee Trevino Suite #503
El Paso, Texas 79936
(915) 633-6422



Keystone Dam

Proposed Purchase

**Keystone Heritage Park
(Archaeological Conservancy)**

**Keystone Heritage Park
(The City of El Paso)**

**City of El Paso
Northwest Corral
and EPWU/PSB**

 GIS
GEOGRAPHIC INFORMATION SYSTEMS 

The features represented on this map are in the Texas State Plane Coordinate system, Central Zone, NAD 83, units feet, using the Lambert Conformal Conic projection.

This map was generated using ArcGIS by the GIS Division for the City of El Paso, Texas.
Two Civic Center Plaza, 79901 (915) 541-4719

This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data.

The GIS Division makes no claim to its accuracy or completeness.

March 1, 2012

0 125 250 500 Feet