

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

**DEPARTMENT:** Tax Department

**AGENDA DATE:** July 14, 2015

**CONTACT PERSON NAME AND PHONE NUMBER:** David Childs, Ph.D., Tax Assessor Collector, 212-1736

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

The City Manager has the authority to sign the Settlement Agreement between the City and Key Bank National Association and that the City Council approves the tax refund of the voluntary overpayment in the amount of \$6,037.95.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

Approve property tax overpayment refund in the amount agreed to by the parties through the settlement agreement. This action would allow us to comply with state law which requires approval by the legislative body, of refunds of tax overpayments, greater than \$2,500.00.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

Council has previously considered refunds of tax overpayments on a routine basis.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A

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**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

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

**DEPARTMENT HEAD:**

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

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

**WHEREAS**, on June 2, 2014 Key Bank National Association, through its division, Key Equipment Finance, f/k/a Equipment Finance, Inc. ("Key") voluntarily tendered a check to the City in the amount of \$47,050.42 for the payment of the 2014 taxes for personal property account 1157-999-1168-0334; and

**WHEREAS**, the amount tendered by Key as payment for the 2014 taxes was to be held in an escrow account to be applied toward the 2014 taxes when they became due and any excess funds would be refunded to Key; and

**WHEREAS**, a dispute arose whether the payment of \$47,050.42 was for the estimated 2014 taxes assessed against all the personal property associated with account 1157-999-1168-0334 or solely based on the estimated value of Key's Varian True Beam Accelerator; and

**WHEREAS**, the City and Key agree to settle and resolve the dispute in accordance with the terms of the Settlement Agreement; and

**WHEREAS**, the City will refund Key the voluntary overpayment of \$6,037.95 pursuant to Section 31.11 of the Texas Tax code.

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

The City Manager has the authority to sign the Settlement Agreement between the City and Key Bank National Association and that the City Council approves the tax refund of the voluntary overpayment in the amount of \$6,037.95.

**ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015.**

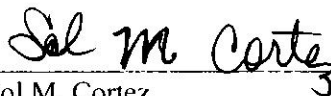
THE CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leescr  
Mayor


ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sol M. Cortez  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
David W. Childs, Tax Assessor-Collector  
Tax Office

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Key Bank National Association, through its division, Key Equipment Finance, f/k/a Key Equipment Finance, Inc. (hereinafter called "Key") and The City of El Paso, on behalf of itself and all local governmental taxing entities for which it collects taxes (hereinafter "City"), and are referred to hereinafter as the "Parties."

### RECITALS

**WHEREAS**, Ladida Land Company, LLC dba Cancer Treatment Center, Teresa A. Reed, Individually and dba Cancer Treatment Center and Border Medical Specialist, P.A. (Collectively "Cancer Treatment Center") were delinquent in payment of taxes, penalties, and interest on personal property accounts 1157-999-1168-0334 for tax years 2012 and 2013, and 1157-999-1209-5434 for tax year 2011; and

**WHEREAS** on March 20, 2014 an Application for Tax Warrant was filed by the City of El Paso, Tax Assessor Collector, pursuant to Section 33.22 of the Property Tax Code under Cause No. 2014DTX0241, *City of El Paso vs. Ladida Land Company, LLC, DBA Cancer Treatment Center* in the County Court at Law No. 5 in El Paso County; and

**WHEREAS** on May 7, 2014 an Amended Tax Warrant was issued by the Court directing any peace officer in the County to seize as much personal property of Cancer Treatment Center for the payment of \$353,589.61 in delinquent taxes, penalties, interest and attorney's fees and further ordering the sale of the seized personal property if the taxes remained unpaid within ten days of Tax Warrant being served on the Cancer Treatment Center; and

**WHEREAS** on May 20, 2014 El Paso County Sheriff's Office executed the Amended Tax Warrant against the Cancer Treatment Center for payment of taxes, penalties, interest and attorney's fees; and

**WHEREAS**, a piece of equipment identified as a "Varian True Beam Accelerator" was seized along with other personal property located at 7825 N. Mesa under the Amended Tax Warrant and whereas Key, a creditor/lienholder of the Cancer Treatment Center had a lien on the "Varian True Beam Accelerator," Key voluntarily paid the amount of delinquent taxes due under the Amended Tax Warrant and sought to remove the Varian True Beam Accelerator from the premises; and

**WHEREAS**, the El Paso Consolidated Tax Office notified Key that it would also seek collection of the 2014 estimated taxes as provided by Section 33.21 of the Texas Property Tax Code in the amount of \$47,050.42 for account 1157-999-1168-0334, which had not been billed and were not yet delinquent; and

**WHEREAS**, on June 2, 2014, a check in the amount of \$47,050.42 was tendered to the City by Key as payment for the estimated 2014 taxes for personal property account 1157-999-

1168-0334, which was to be held in an escrow account to be applied toward the 2014 taxes when they became due, and any excess funds would be refunded to Key; and

**WHEREAS**, a dispute arose as to whether the payment of \$47,050.42 was for the estimated 2014 taxes assessed against all the personal property associated with account 1157-999-1168-0334, or was for the estimated 2014 taxes based on the value attributed solely to the Varian True Beam Accelerator; and

**WHEREAS**, the Parties have agreed to settle and resolve those disputes in accordance with the terms of this Settlement Agreement.

### **CONSIDERATION**

FOR AND IN CONSIDERATION in the total tax refund sum of SIX THOUSAND THIRTY SEVEN AND 95/100 (\$6,037.95) DOLLARS, receipt of which is hereby acknowledged by Key Equipment Finance, the Parties hereby release and forever discharge each other as follows:

### **MUTUAL RELEASE**

Now, therefore, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. Release by Key. Key does hereby release and forever discharge the City and its public officials, agents, representatives, employees and all local governmental taxing entities participating in the subject tax assessment, of and from all claims, demands, damages, actions and causes of action, including claims for refunds, indemnity or contribution, and costs and attorney's fees relating directly or indirectly to any and all Cancer Treatment Center personal property accounts for all years including 2011, 2012, 2013 and 2014, or to the performance or non-performance by the City of any and all obligations required of the City.
2. Refund to Key. Key does hereby acknowledge that the City has no remaining obligations, and that Key has been fully refunded for the 2014 taxes paid to the City for the assessment of the Cancer Treatment Center personal property account 1157-999-1168-0334.
3. Release by City. The City does hereby release and forever discharge Key and its agents, servants, representatives, employees, officers, directors, subsidiaries and affiliated entities from all claims, demands, damages actions and causes of action, including claims for indemnity or contribution, and costs and attorney's fees relating directly or indirectly to the Cancer Treatment Center personal property accounts.
4. No Admission of Liability. Neither the execution of this Settlement Agreement nor any provision or term hereof shall constitute an admission of liability or fault on the part of any party hereto. The Parties acknowledge that this Settlement Agreement and Mutual

Release is intended as a settlement of any and all claims made against each other, which claims are denied and disputed by the party against whom made.

5. No Reduction of Tax Assessment. This Settlement Agreement does not affect the tax assessment or reduce the tax liability on personal property account 1157-999-1168-0334 and the City may enforce the collection of the remaining balance of taxes, penalties or interest against the Cancer Treatment Center.
6. Execution of Settlement Agreement. This Settlement Agreement has been duly executed by the Parties and is the valid and binding agreement of the Parties, enforceable against the Parties in accordance with its terms. The Parties have the ability to enter into this Settlement Agreement and to consummate the transactions provided for herein.
  - a. No other person is required to consent to the Parties' execution and delivery of this Settlement Agreement.
  - b. The execution and delivery of this Settlement Agreement will not result in the breach of any contract, agreement, commitment, indenture, mortgage, pledge agreement, note, bond, license, or other instrument or any obligation to which the Parties are now a party, or by which any of the properties or assets of the Parties may be bound or affected, or constitute a violation by the Parties of any law, rule or regulation, of any administrative agency or governmental body, or any order, writ, injunction or decree of any court, administrative agency, or governmental body.
  - c. None of the representations or warranties of the Parties under this Settlement Agreement contains or will contain any untrue statement of a material fact, or omits or will omit any fact necessary to make the statements herein or therein not misleading.
  - d. The Parties are the sole beneficial owner of the claims released and no other person or entity has any ownership or equitable interest therein. Key acknowledges that the City is the operating agent for all El Paso County local governmental taxing entities.
7. Acknowledgment. Each of the Parties to this Settlement Agreement represents and warrants that it has carefully read this Settlement Agreement, that it fully understands its final and binding effect, that it has had an opportunity to consult with an attorney of its own choosing prior to signing this Settlement Agreement, that the person signing this Settlement Agreement on its behalf has the power and authority to execute and deliver this Settlement Agreement on behalf of the party whom he/she represents, and that he/she is signing this Settlement Agreement voluntarily and without coercion or duress.
8. Miscellaneous.
  - a. This Settlement Agreement shall be construed in accordance with the laws of the State of Texas, including questions relating to conflicts of law.

b. This Settlement Agreement is the full and integrated understanding among the Parties and is intended to supersede any prior or contemporaneous understandings or agreements.

d. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Settlement Agreement.

e. Each Party and its counsel has reviewed this Settlement Agreement and any rule of contract interpretation to the effect that ambiguities or uncertainties are to be interpreted against the drafting party or the party who caused it to exist shall not be employed in the interpretation of this Settlement Agreement.

f. Each Party shall promptly sign and deliver all additional documents and instruments and perform all acts reasonably requested of the other Party necessary to perform its obligations and carry out the intent expressed in this Settlement Agreement.

g. The failure of any Party to insist upon the strict performance of any of the terms or provisions of this Settlement Agreement, or to exercise any option, right or remedy herein or therein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by any Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

h. In the event that any portion of this Settlement Agreement shall be declared invalid by order or decree of judgment of a court, this Settlement Agreement shall be construed as if such portion had not been inserted herein, except when such construction would constitute a substantial deviation.

i. Except as expressly set forth above or as otherwise expressly provided herein, the agreements and covenants herein are made specifically for the benefit of the Parties to this Settlement Agreement and no rights in favor of third parties are created hereunder.

j. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

(SIGNATURE BEGIN ON NEXT PAGE)

IN WITNESS WHEREOF THE PARTIES CAUSE THIS SETTLEMENT AGREEMENT TO BE EXECUTED ON THE 23<sup>rd</sup> DAY OF June, 2015.

Key Bank National Association,  
through its division, Key Equipment Finance,  
f/k/a Key Equipment Finance, Inc.

By: [Signature]  
Vice President

State of Colorado §  
County of Boulder §

SUBSCRIBED AND SWORN to, before me by (name), (title) of Key Bank National Association, through its division, Key Equipment Finance, f/k/a Key Equipment Finance, Inc., on the 23 day of June, 2015, to certify which witness my hand and official seal (if required).

[Signature]  
Notary Public in and for the  
State of Colorado

My commission expires:  
\_\_\_\_\_



[SIGNATURES CONTINUE ON NEXT PAGE]

Approved as to form

City of El Paso

Sal M. Cortez  
Assistant City Attorney

By: \_\_\_\_\_  
Tomás González  
City Manager

State of Texas           §  
                                  §  
County of El Paso       §

SUBSCRIBED AND SWORN to, before me by Tomás González, City Manager for the City of El Paso on the \_\_\_\_ day of \_\_\_\_\_, 2015, to certify which witness my hand and official seal (if required).

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My commission expires:  
  
\_\_\_\_\_