

**AGREEMENT OF SALE AND ASSIGNMENT OF  
FLORIDA VOLUNTARY CLEANUP TAX CREDITS**

This AGREEMENT OF SALE AND ASSIGNMENT OF FLORIDA VOLUNTARY CLEANUP TAX CREDITS ("Agreement"), effective as of \_\_\_\_\_, 202\_ (the "Effective Date"), is entered by and between City of Oakland Park, a Florida municipal corporation (the "Seller"), and \_\_\_\_\_ (the "Purchaser").

WHEREAS, the Seller received four (4) Tax Credit Certificates from the Florida Department of Environmental Protection in the aggregate amount of \_\_\_\_\_ (\$\_\_\_\_\_) (the "Tax Credits") related to and incurred in expenses regarding a Florida state-approved remediation (the "Cleanup Site"). The Tax Credit Certificates are attached hereto as Exhibit "A".

NOW, THEREFORE, the participants hereto agree as follows:

1. Effective as of the Closing Date (hereinafter defined), Seller hereby agrees to transfer, sell, assign and deliver to Purchaser all of its right, title and interest in and to the Tax Credits granting full power to the Purchaser to use the Tax Credits and to effect, in the name of the Purchaser individually, all legal rights as Seller may have held with respect to the Tax Credits sold and assigned to the Purchaser.

2. In consideration of Seller's transfer, sale, assignment and delivery of the Tax Credits hereunder, the **Purchaser hereby agrees to pay to Seller** \_\_\_\_\_ (\$\_\_\_\_\_) which is equal to \_\_\_\_\_ (\$0.\_\_\_\_) per Dollar (\$1.00) of the Tax Credits (the "Purchase Price"), on the Closing Date.

3. The closing in connection with the transfer of the Tax Credits from Seller to Purchaser will be deemed to have occurred the date that Seller receives the Purchase Price from Purchaser (the "Closing Date"). Within five (5) business days of the Effective Date, the Purchaser and/or Seller will execute such other documentation that may be reasonably necessary and/or required by the State of Florida to transfer the Tax Credits and for the Purchaser to utilize the Tax Credits (the "Transfer Documents") and Seller shall submit the Transfer Documents to the FDEP to transfer the Tax Credits to Purchaser. Purchaser agrees to pay to Seller the Purchase Price within five (5) business days of Purchaser receiving notification from Seller that Seller has received the originals of the Re-issued Tax Credit Certificates (the "Re-issued Tax Credit Certificates") from FDEP and such notification shall include a copy of the Re-issued Tax Credit Certificates. Purchaser and Seller agree that an electronic version or copy of the Re-issued Tax Credit Certificates in a form substantially similar to Exhibit A shall be sufficient to satisfy the receipt requirement of this Section 3. Until the Closing Date, the Purchaser shall have no right to use the Tax Credits, including the Re-issued Tax Credit Certificates, and the Seller will remain the beneficial owner thereof. Purchaser shall pay the Purchase Price to Seller via wire transfer to the following account (or make payment by other method agreed by the parties):

Bank Name:

ABA:

Account Name:

Account Number:

Reference: Florida Voluntary Cleanup Tax Credit Purchase

#### 4. **Representations, Warranties and Covenants.**

4.1 Mutual Representations and Warranties. Each party hereto represents and warrants to the other party hereto as follows:

(a) Organization; Power. If such party is a legal entity, such party is duly organized and validly existing and in good standing under the laws of its state of organization. Such party has all requisite power and authority to execute and deliver this Agreement and all other documents necessary to effectuate the transfer of the Tax Credits, and to carry out and perform the provisions of this Agreement and such other documents. Such party is duly qualified and is authorized to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on such party's ability to perform its obligations under this Agreement.

(b) Authorization. All action on the part of such party and such party's shareholders and directors necessary for the authorization, execution, and delivery of this Agreement has been taken.

(c) Binding Effect. This Agreement, when executed and delivered by a party, will constitute a valid and binding obligation of such party, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

4.2 Seller Representations, Warranties and Covenants. Seller represents, warrants and covenants to Purchaser as follows:

(a) Seller is the owner of the Tax Credits, and Seller has not allocated, transferred, assigned or otherwise disposed of, or agreed to allocate, transfer, assign, or otherwise dispose of, the Tax Credits to any person other than Purchaser. The Tax Credits are free and clear of all security interests, charges, claims, encumbrances, or other liens. Seller further represents that: (i) the Tax Credits were originally issued to the Seller; (ii) it has not taken any action in connection with the Cleanup Site which prevents Purchaser or its successors and assigns from claiming the full amount of the Tax Credits or which causes the Tax Credits and the assignment and transfer hereunder to be cancelled, revoked, terminated, reduced, disallowed or recaptured; and (iii) it has complied with, and will comply with the Florida statutes, rules and regulations related to the Tax Credits and any directive, procedure, release, ruling or other written guidance explaining or interpreting the Tax Credits.

(b) The execution, delivery and performance of this Agreement by

Seller will not, directly or indirectly (with or without notice or lapse of time), constitute a breach or violation of or a default under (i) any statute, law, rule, regulation, judgment or order, (ii) Seller's charter, limited liability company or member agreement or any other organizational document of it, or (iii) any agreement to which Seller is a party or bound.

(c) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Seller, its property, its subsidiaries or the project that generated the Tax Credits is pending or, to the best knowledge of the Seller, threatened that could be expected to have an adverse effect on Seller's performance of this Agreement or prevent the consummation of the transactions contemplated hereby.

(d) No consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated by this Agreement, except such as have been obtained or will be obtained prior to the Closing Date in connection with the transfer of the Tax Credits to Purchaser.

4.3 No Warranty as to Use. Seller specifically disclaims any implied warranty of use of the Tax Credits including, but not limited to, the reduction of the Purchaser's Florida corporate tax liability.

4.4 Purchaser Representations, Warranties and Covenants. Purchaser represents warrants and covenants to Seller as follows:

(a) Tax Advisors. Purchaser has reviewed with its own tax advisors the Federal and state tax consequences of the transfer of the Tax Credits, the application of such Tax Credits as a credit against Purchaser's tax liability and the eligibility of Purchaser to utilize the Tax Credits. In determining whether or not to execute and deliver this Agreement, Purchaser relies solely on the advice of such advisors and, except for the representations, warranties and covenants of the Seller in this Agreement, not on any statements or representations of Seller or any of its affiliates, subsidiaries, partners, members, shareholders, managers, principals, officers, directors, employees, representatives, agents or other persons in similar positions.

5. **Indemnification.** If a court or state agency of competent jurisdiction makes a determination that reduces the Tax Credits and requires Purchaser to repay the amount of the reduction, except for a determination based on Purchaser's Florida tax liability without regards to the Tax Credits, or resulting from any act or omission of Purchaser, then Seller shall, within ten (10) business days after the court or state agency makes the determination, make a payment to Purchaser in an amount equal to (i) the amount of the reduction and (ii) any interest and penalties imposed that are attributable to the reduction. Seller, however, shall have the right, before making this payment, to appeal the determination made by the court or state agency as the case may be at Seller's expense. If Seller is unsuccessful in the appeal, Seller shall make the payment to Purchaser within ten (10) business days after the date when the final determination is made on the appeal.

Seller shall indemnify, defend and hold harmless Purchaser and its affiliates and their respective directors, officers, employees, and representatives (including without limitation any successor to any of the foregoing) from and against any and all claims, demands, actions, suits

and proceedings, and any settlements or compromises relating thereto and reasonable attorneys' fees and expenses in connection therewith, and any losses, liabilities, costs and expenses relating to, resulting from or arising out of (i) any breach of its representations, warranties or covenants contained in this Agreement, or (ii) the failure of Seller to comply with any applicable law that may be applicable in connection with the transfer of the Tax Credits to Purchaser.

Purchaser shall indemnify, defend and hold harmless Seller and its affiliates and their respective directors, officers, employees, and representatives (including without limitation any successor to any of the forgoing) from and against any and all claims, demands, actions, suits and proceedings, and any settlements or compromises relating thereto and reasonable attorneys' fees and expenses in connection therewith, and any losses, liabilities, costs and expenses relating to, resulting from or arising out of (i) any breach of Purchaser of any representation, warranty or covenant contained in this Agreement, or (ii) the failure of Purchaser to comply with any applicable law that may be applicable in connection with the transfer of the Tax Credits to Purchaser.

Indemnification shall be subject to Section 768.28, Florida Statutes.

6. **Confidentiality and Non-Disclosure.** The Seller is a public agency subject to Chapter 119, Florida Statutes. The terms of this Agreement and all other non-public information of and about a party, whether or not such information is marked or identified as confidential and proprietary information, is and shall remain confidential and proprietary information of the party ("Confidential Information"), and the other parties shall maintain in confidence and shall not use or disclose in any manner whatsoever the other party's Confidential Information received by or provided to it during the course of Agreement, except as necessary to fulfill its obligations hereunder or as required by the provisions of Chapter 119, Florida Statutes. Both Purchaser and Seller agree to abide by Exhibit B,

7. **Additional Requirements.** Purchaser will abide by the Additional Requirements as stated in Exhibit C pertaining to Scrutinized Companies, Non-Discrimination & Equal Opportunity Employment, Ethics & Conflict of Interest.

8. **Termination.** This Agreement may be terminated by Purchaser if there is a material breach of any representation, warranty, covenant or obligation of Seller contained in this Agreement and such breach shall not have been cured within ten (10) days after the delivery of notice thereof to Seller. This Agreement may be terminated by Seller if there is a material breach of any representation, warranty, covenant or obligation of Purchaser contained in this Agreement and such breach shall not have been cured within ten (10) days after the delivery of the notice thereof to Purchaser.

Either Seller or Purchaser may elect to terminate this Agreement in the event that the Closing Date does not occur on or before \_\_\_\_\_.

If this Agreement is terminated, all further obligations of the parties under this Agreement shall terminate; provided, however, that no party shall be relieved of any obligation or other liability arising from any breach by such party of any provision of this Agreement.

The termination rights provided in this Section 7 shall not be deemed to be exclusive. Accordingly, the exercise by the parties hereto of their respective right to terminate this Agreement pursuant to this Section 7 shall not be deemed to be an election of remedies and shall not be deemed to prejudice, or to constitute or operate as a waiver of, any other right or remedy that the parties may be entitled to exercise (whether under this Agreement, under any other contract, under any statute, rule or other legal requirement, at common law, in equity or otherwise).

Notwithstanding this Section 7, this Agreement may not be terminated after the transactions contemplated hereby have been consummated.

8. All parties hereto acknowledge that they have read and understand the contents of this Agreement and acknowledge that no promise or representation has been made to them by any of the parties hereto or anyone acting for them except as is expressly stated herein and that they execute this document knowingly, voluntarily and as their own free act and deed.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10. No party shall assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other party; provided, however, that a party may assign any or all of its rights and interests hereunder to one or more of its affiliates but the assigning party shall remain liable and responsible for the performance of its obligations hereunder.

11. No third party is entitled to rely on any of the representations, warranties and agreements contained in this Agreement. The parties assume no liability to any third party because of any reliance on the representations, warranties and agreements contained in this Agreement.

12. This Agreement constitutes the entire agreement among the parties and contains all of the agreements between the parties with respect to the subject matter. This Agreement supersedes any and all other agreements, either oral or written, between the parties with respect to the subject matter.

13. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to principles or rules regarding conflicts of laws.

15. This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which will constitute one and the same agreement.

16. No change or modification to this Agreement shall be valid unless made in writing and signed by all the parties to this Agreement.

17. No failure on the part of any person or entity to exercise any power, right, privilege

or remedy under this Agreement, and no delay on the part of any person or entity in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No person or entity shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such person or entity; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

18. Any notice to be given or served upon any party to this Agreement must be in writing, unless otherwise indicated, and shall be deemed to have been given (a) upon receipt, in the event of personal service by actual delivery (including by facsimile or delivery service); (b) upon posting, if deposited in the United States mail with proper postage and dispatched by certified mail; or (c) upon receipt, if notice is given other than by personal service or by certified mail. All notices shall be given to the parties at the following addresses:

If to Seller:

Andrew Thompson, CGFO  
Director, Financial Services  
City of Oakland Park  
3650 N.E. 12th Avenue  
Oakland Park, FL 33334

If to Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREFORE, the parties have made this Agreement effective the day and year first above written.

**PURCHASER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SELLER:**

City of Oakland Park

By: \_\_\_\_\_  
Name: David Hebert  
Its: City Manager

## **EXHIBIT A**

[Copies of Applicable Tax Credits]

## **Exhibit B – Public Records**

The Seller is a public agency subject to Chapter 119, Florida Statutes. The Purchaser shall comply with Florida's Public Records Law. Specifically, the Purchaser shall:

Keep and maintain public records required by the SELLER to perform the service;

Upon request from the SELLER's custodian of public records, provide the SELLER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;

Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, PURCHASER shall destroy all copies of such confidential and exempt records remaining in its possession after the PURCHASER transfers the records in its possession to the SELLER; and

Upon completion of the Agreement, PURCHASER shall transfer to the SELLER, at no cost to the SELLER, all public records in PURCHASER's possession. All records stored electronically by the PURCHASER must be provided to the SELLER, upon request from the SELLER's custodian of public records, in a format that is compatible with the information technology systems of the SELLER.

The failure of PURCHASER to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which SELLER may terminate the Agreement in accordance with the terms set forth herein.

**IF THE PURCHASER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PURCHASER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**



**RENEE M SHROUT, CMC**  
**SELLER CLERK**  
**SELLER OF OAKLAND PARK**  
**3650 NE 12 AVENUE**  
**OAKLAND PARK, FL 33334**  
**954-630-4298**  
**[RENEES@OAKLANDPARKFL.GOV](mailto:RENEES@OAKLANDPARKFL.GOV)**

## **Exhibit C – Additional Requirements**

C.1 Scrutinized Companies. PURCHASER certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, PURCHASER agrees to observe the requirements of Section 287.135, F.S. for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the CITY may immediately terminate this Agreement for cause if the PURCHASER, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of this Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

C.2 Non-Discrimination & Equal Opportunity Employment. During the performance of this Agreement, neither PURCHASER nor its subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. PURCHASER will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion,

demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship. PURCHASER shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. PURCHASER further agrees that he/she/it will ensure that all subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

C.3 Ethics and Conflict of Interest. PURCHASER shall avoid all conflicts of interests, as well as appearances of conflicts of interests, throughout the term of this Agreement. PURCHASER shall not at any time during the term of this Agreement represent any party seeking approvals, permits, or licenses, of any kind from the City. Nothing set forth in this Agreement shall preclude or limit PURCHASER's ability to engage in outside work or employment which is not in conflict with the duties and responsibilities set forth herein.