

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, IN SUBSTANTIAL FORM, THE AGREEMENT OF SALE AND ASSIGNMENT, BETWEEN THE CITY (SELLER) AND J.B. HUNT TRANSPORT, INC. (PURCHASER), FOR THE SALE OF FLORIDA VOLUNTARY CLEANUP TAX CREDITS, IN THE AMOUNT OF ONE HUNDRED THIRTY-FIVE THOUSAND TWO HUNDRED FORTY DOLLARS AND EIGHTY SEVEN CENTS (\$135,240.87), RELATING TO THE BROWNFIELD SITE REHABILITATION PROJECT HAVING FDEP FACILITY ID #BF131805001; AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE THE FINAL AGREEMENT AND ANY OTHER AGREEMENTS OR DOCUMENTS REQUIRED TO CONSUMMATE THE TRANSACTION.**

**WHEREAS**, a brownfield site is defined as Florida Statutes § 376.79(4) to mean the real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination; and

**WHEREAS**, a brownfield area is defined as Florida Statutes § 376.79(5) to mean a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government resolution; and

**WHEREAS**, the State of Florida has provided, in § 97-277, Laws of Florida, which is codified at Florida Statutes §§ 376.77 – 376.85 (“Brownfields Redevelopment Act”), for the designation by resolution of certain contiguous areas consisting of one or more brownfield sites as “Brownfields Areas,” for the purpose of encouraging “rehabilitation” (including remediation), job creation, and economic development; and

**WHEREAS**, on November 14, 2018, the City Commission adopted Resolution No. 2018-30611, designating the real property located at 340 23<sup>rd</sup> Street and 2200 Liberty Avenue, Miami Beach, Florida 33139, as a brownfield area pursuant to Florida Statutes Section 376.80(2)(a), allowing eligible costs incurred within subsequent fiscal years to be eligible for Voluntary Cleanup Tax Credits; and

**WHEREAS**, in January, 2021, the City retained Fallbrook Tax Credits LLC (Fallbrook), an experienced placement agent of Voluntary Clean-up Tax Credits, to sell Florida Voluntary Cleanup Tax Credits, in the amount of One Hundred Thirty-Five Thousand Two Hundred Forty Dollars and Eighty Seven Cents (\$135,240.87), relating to the Collins Park Garage brownfield area designation (FDEP facility ID #BF131805001) (“Tax Credits”); and

**WHEREAS**, Fallbrook has negotiated the sale of the Tax Credits to J.B. Hunt Transport, Inc. (Buyer), for the total price of \$125,097.80, based upon a value of \$0.925 per Dollar of Tax Credits (“Purchase Price”), which after paying Fallbrook the Placement Fee of \$1,690.51, will net the City a total of \$123,407.29; and

**WHEREAS**, the Administration recommends approving, in substantial form, the Agreement of Sale and Assignment of Florida Voluntary Cleanup Tax Credits, attached to this Resolution as Exhibit “A”, and authorizing the City Manager to execute the final negotiated agreement, and any other agreements or documents required to consummate the transaction, subject to review and form approval by the City Attorney.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, in substantial form, the Agreement of Sale and Assignment, between the City (Seller) and J.B. Hunt Transport, Inc. (Purchaser), for the sale of Florida Voluntary Cleanup Tax Credits, in the amount of One Hundred Thirty-Five Thousand Two Hundred Forty Dollars and Eighty Seven Cents (\$135,240.87), relating to the brownfield site rehabilitation project having FDEP facility ID #BF131805001; and further authorize the City Manager to execute the final agreement and any other agreements or documents required to consummate the transaction.

**PASSED** and **ADOPTED** this \_\_\_\_ day of February, 2021.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

1-27-21  
\_\_\_\_\_  
Date

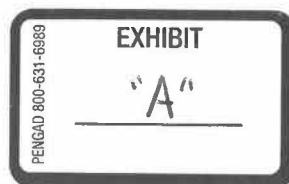
**AGREEMENT OF SALE AND ASSIGNMENT OF  
FLORIDA VOLUNTARY CLEANUP TAX CREDITS**

This Agreement of Sale and Assignment of Florida Voluntary Cleanup Tax Credits (the "Agreement"), effective as of February \_\_, 2021 (the "Effective Date"), is entered into by and among CITY OF MIAMI BEACH, a Florida municipal corporation ("Seller") and J.B. HUNT TRANSPORT, INC., a Georgia corporation ("Purchaser").

WHEREAS, the Seller has received a Tax Credit Certificate from the Florida Department of Environmental Protection ("FDEP") through the Florida Voluntary Cleanup Tax Credit program in the amount of One Hundred Thirty-Five Thousand Two Hundred Forty Dollars and Eighty-Seven Cents (\$135,240.87) (the "Tax Credits") related to and incurred in expenses regarding a Brownfield site rehabilitation project having FDEP Facility ID # BF131805001 (the "Cleanup Site"). Voluntary Cleanup Tax Credit Certificate Number 1106 is 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 One Hundred Twenty-Five Thousand Ninety-Seven Dollars and Eighty Cents (\$125,097.80), which is equal to Ninety-Two and One-Half Cents (\$0.925) 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 original of the Re-issued Tax Credit Certificate (the "Re-issued Tax Credit Certificate") from FDEP and such notification shall include a copy of the Re-issued Tax Credit Certificate. Purchaser and Seller agree that an electronic version or copy of the Re-issued Tax Credit Certificate in a form substantially similar to Exhibit A shall be sufficient to satisfy the receipt requirement of this Section 3. Until the Closing Date, Purchaser will have no right to use the Tax Credits, including the Re-issued Tax Credit Certificate, and Seller will remain the beneficial owner thereof. Purchaser shall pay the Purchase Price to Seller via wire transfer which will be provided separately at the time payment is due..



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.

(b) Authorization. All action on the part of such party and such party's shareholders and directors (as applicable) 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. To the best of its knowledge and belief, 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 applicable 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 Credit 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 warranty of use of the Tax Credits including, but not limited to, 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 (collectively, the "Released Parties").

5. Indemnification. If a court or state agency of competent jurisdiction makes a determination as to the validity of the tax credits that reduces the Tax Credits and requires Purchaser to repay the amount of the reduction, except for (i) a determination based on Purchaser's Florida tax liability without regard to the validity of the Tax Credits or (ii) resulting from any act or omission of Purchaser, then Seller shall, within 14 business days after the court or state agency makes the determination, make a payment to Purchaser in an amount equal to (i) 92.5% of the amount of the reduction and (ii) any interest and penalties imposed that are attributable to the reduction. Seller, however, shall have the right, with Purchaser's reasonable cooperation if necessary or required to effectuate a challenge and/or an appeal, and before making this payment, to challenge and/or 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 challenge and/or appeal, Seller shall make the payment to Purchaser within 14 business days after the date when the final determination is made on the challenge and/or appeal.

To the extent permitted by law, and subject to the limitation on the City's liability, as set forth in Section 768.28, Florida Statutes, 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, covenants, or agreements 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. Nothing contained in this Agreement shall be interpreted as a waiver, by Seller, of its sovereign immunity rights pursuant to Florida Statute Section 768.28.

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 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 Purchaser of any representation, warranty, covenant, or agreement 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.

6. [Intentionally left blank]

7. **Termination.** This Agreement may be terminated by Purchaser if there is a 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 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.

Notwithstanding anything to the contrary in this Agreement, either Seller or Purchaser may elect to terminate this Agreement in the event that the Closing Date does not occur on or before April 15, 2021. In the event this agreement is terminated under this provision, the parties agree to cooperate in order to return all documentation to Seller and place the parties back to the position they were in prior to entering this Agreement.

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.
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 addressed by this Agreement.
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:

Elizabeth Wheaton  
Director, Environment & Sustainability Department  
City of Miami Beach  
1700 Convention Center Drive  
3rd Floor  
Miami Beach, FL 33139

If to Purchaser:

Juli Dorrough  
Vice President, Tax  
J.B. Hunt Transport, Inc.  
615 J.B. Hunt Corporate Drive  
Lowell, AR 72745

[Signature Page Follows]



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

**Purchaser:**

J.B. HUNT TRANSPORT, INC.

**Seller:**

CITY OF MIAMI BEACH

By: \_\_\_\_\_  
Name: Juli Dorrough  
Its: Vice President, Tax

By: \_\_\_\_\_  
Name: Raul J. Aguila  
Its: Interim City Manager

Witness:  
\_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:  
\_\_\_\_\_

Rafael E. Granado, City Clerk

Date: \_\_\_\_\_

# EXHIBIT A

E101248

## Voluntary Cleanup Tax Credit Certificate

This certificate is issued pursuant to Section 376.30781, Florida Statutes (F.S.), to City of Miami Beach, # 59-6000372, in the amount of \$135,240.87, to be applied toward Corporate Income Tax pursuant to s. 220.1845, F.S.

Tax credit certificates are transferable pursuant to Section 220.1845, F.S. A tax credit certificate holder seeking to transfer the certificate to one or more individuals or entities shall submit the original certificate to the Department's Division of Waste Management in Tallahassee along with a signed and notarized letter authorizing the transfer. The letter shall state the name, address, telephone number, and FEID or Social Security number, as applicable, of each transferee, and it shall indicate the portion (in whole or in units of no less than 25%) to be transferred. Such transferred credits may not be transferred again, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Certificate Number:	<u>1106</u>
FDEP Fiscal Year Issued:	<u>2020-2021</u>
Calendar Year:	<u>2018</u>
Site Type:	<u>BF</u>
FDEP Facility ID#:	<u>BF131805001</u>
VCIC Application #:	<u>1077</u>

Tim J.  
Bahr  
Issued by: \_\_\_\_\_  
(Authorized FDEP signature)

Digitally signed by  
Tim J. Bahr  
Date: 2020.07.16  
11:22:34 -04'00'