

Meeting Date: 4/14/15

Agenda Item

2

REQUESTED COMMISSION ACTION:

<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Ordinance	<input checked="" type="checkbox"/> Resolution	<input type="checkbox"/> Consideration/ Discussion	<input type="checkbox"/> Presentation
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SHORT TITLE A Resolution of the City Commission of the City of Pompano Beach, Florida, approving and authorizing the proper City officials to execute a purchase agreement for State tax credits between the City of Pompano Beach and Dish DBS Corporation; Providing an effective date.

**Summary of Purpose and Why:**

The City received three (3) Voluntary Cleanup Tax Credit (VCTC) Certificates with a combined tax credit value of \$664,588.57 from the Florida Dept. of Environmental Protection for the successful remediation of the Public Library/Civic Campus site. In April of 2014 the City contracted with Clocktower Tax Credits LLC (Clocktower) to assist in marketing the City's tax credits received under the VCTC program to maximize the City's return on investment. One tax credit certificate has previously been purchased by Sherwin Williams Company which had a tax credit value of \$274,799. Clocktower has notified the City that Dish DBS would like to purchase the two remaining tax credit certificates, which have a combined tax credit value of \$389,789.57. Dish DBS is offering to purchase the tax credits at \$0.91 on the dollar for a total purchase price of \$354,708.51. Staff recommends approval of this purchase agreement. Once the agreement has been executed, Clocktower will be responsible for filing the transfer documents with the State of Florida and managing the transfer of funds from Dish DBS to the City.

- (1) Origin of request for this action: Finance Department
- (2) Primary staff contact: Suzette Sibble, Finance Director Ext. 4680
- (3) Expiration of contract, if applicable: Upon completion of transfer of tax credit certificates and transfer of funds to City
- (4) Fiscal impact and source of funding: City will yield \$354,708.51

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Finance	<u>3/23/15</u>	<u>Approval</u>	<u>Suzette Sibble</u>
City Attorney	<u>3/23/15</u>		<u>[Signature]</u>
Budget	<u>3-24-15</u>	<u>Approval</u>	<u>[Signature]</u>

[Signature]

City Manager

[Signature]

**ACTION TAKEN BY COMMISSION:**

Ordinance Workshop	Resolution	Consideration	Results:	Results:
1 <sup>st</sup> Reading	1 <sup>st</sup> Reading			
2 <sup>nd</sup> Reading				



FINANCE DEPARTMENT  
MEMO 15-15

Date: March 19, 2015

To: Mayor and City Commissioners

From: Suzette Sibble, Finance Director

Via: Dennis Beach, City Manager

**Re: Purchase Agreement for Sale of Voluntary Clean-up tax Credits**

The City of Pompano Beach (the "City") received a total of three (3) Voluntary Cleanup Tax Credit Certificates with a combined value of \$664,588.57 (the "Tax Credits") from the Florida Department of Environmental Protection ("FDEP"), pursuant to its successful remediation of the Public Library/Civic Campus site. In 1998, the Florida Legislature created the Voluntary Cleanup Tax Credit (VCTC) to encourage participants to conduct voluntary cleanup of certain dry cleaning solvent contaminated sites and brownfield sites in designated brownfield areas. Participants may be private or public entities, but they must meet the eligibility criteria established under Sections 376.3078, 376.30781, and 376.82, F.S., as applicable, and they must enter into either a Voluntary Cleanup Agreement, for dry cleaning solvent cleanup, or a Brownfield Site Rehabilitation Agreement. The State of Florida currently appropriates \$5 million a year for these tax credits. Maximum award for an applicant in one year is \$500,000. When all work is completed on a specific project, eligible entities can apply for a "completion bonus" tax credit award of up to 25% of all the allowed expenditures for the entire project. Tax credits may be utilized to offset an entity's Florida corporate income tax liability. As local governments do not have Florida corporate income tax liability, the City would like to contract with a broker who would sell these tax credits to an entity with such liability. Entities would have a period of five (5) years over which they would be able to apply the credits to reduce their Florida corporate tax liability.

In April of 2014, the City contracted with Clocktower Tax Credits, LLC (Clocktower) to assist in marketing the City's tax credits received under the VCTC Program to maximize the City's optimum return on investment. Clocktower has previously sold one of the City's tax credit certificates to Sherwin-Williams Company for \$0.91 for each dollar of tax credit for a purchase price of \$250,067.21. Clocktower has notified the City that Dish DBS would like to purchase the two remaining tax credit certificates, which have a combined tax credit value of \$389,789.57. Dish DBS is offering to purchase the tax credits at \$0.91 on the dollar for a total purchase price of \$354,708.51. Staff recommends approval of this purchase agreement.

Staff recommends approval of the attached purchase agreement. Once the purchase agreement has been executed, Clocktower will be responsible for filing the required transfer documents and forms with the State of Florida, and managing the transfer of funds from the DBS Dish Corporation to the City.



**City Attorney's Communication #2015-381**  
December 19, 2014

**TO:** Suzette Sible, Finance Director  
**FROM:** Gordon B. Linn, City Attorney  
**RE:** Resolution – Purchase Agreement for State Tax Credits

As requested in your email dated December 18, 2014, the above-referenced resolution is attached and captioned as follows:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PURCHASE AGREEMENT FOR STATE TAX CREDITS BETWEEN THE CITY OF POMPANO BEACH AND DISH DBS CORPORATION; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

---

GORDON B. LINN

GBL/jrm  
l:cor/finance/2015-381

Attachment

RESOLUTION NO. 2015-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PURCHASE AGREEMENT FOR STATE TAX CREDITS BETWEEN THE CITY OF POMPANO BEACH AND DISH DBS CORPORATION; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That an Agreement between the City of Pompano Beach and Dish DBS Corporation, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Dish DBS Corporation.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

**Purchase Agreement for State Tax Credits**

This Purchase Agreement for State Tax Credits ("Agreement") is dated as of \_\_\_\_\_, 2015 by and between **DISH DBS Corporation**, a Colorado Corporation, with its principal place of business at 9601 South Meridian Boulevard, Englewood, CO 80112, or an affiliate ("Investor"), and **City of Pompano Beach**, a Florida municipal corporation, with its principal place of business at 110 West Atlantic Boulevard, Pompano Beach, FL 33060 ("Owner").

In consideration of the mutual promises of the parties hereto and other valuable consideration, the receipt of which is mutually acknowledged, the parties agree as follows:

**Project:** **Public Library and Civic Campus – Pompano Beach, Florida**

Voluntary cleanup of a Brownfield site which qualifies for Tax Credits as described below.

**Tax Credits:** "Tax Credits" means the two Florida Voluntary Cleanup Tax Credit ("VCTC") Certificates in the total amount of **\$389,789.57** ("Tax Credit Certificates") issued as follows:

<u>Certificate #</u>	<u>Certificate Amount</u>	<u>Issue Date</u>
291	\$252,390.00	07/09/2013
366	\$137,399.57	07/20/2014

**Statutory Authority:** Section 376.30781 of the Florida Statutes

**Owner:** **City of Pompano Beach**

**Administering Agency:** Florida Department of Environmental Protection, Division of Waste Management ("FDEP")

**Investment Structure:** The Owner has expended costs integral to the rehabilitation of the Project site. Such costs, as certified by an independent certified public accountant ("CPA"), have qualified for Tax Credits under the statute, and the FDEP has issued or will issue the Tax Credit Certificates to Owner. Owner agrees to sell such Tax Credit Certificates, and Investor or an affiliate will purchase the Tax Credit Certificates, in the amount and in the manner described herein.

Investor will have no interest in or liability arising from the Project, other than the right to use the Tax Credits so transferred.

**Purchase Price:** **\$354,708.51**, (provided, however, in the event that the total face amount on the Tax Credit Certificates transferred is other than **\$389,789.57**, the Purchase Price shall be **\$0.91** for each dollar of tax credit available to be transferred to the Investor and shown on the new Tax Credit Certificates).

**Transaction** Each party will pay for its own legal and other expenses incurred in this

Expenses: transaction, if any.

Both parties acknowledge that Clocktower Tax Credits, LLC ("Clocktower") is the broker of record in this transaction. Clocktower was engaged by Owner and Owner shall pay Clocktower a fee for brokering this transaction.

Due Diligence: Investor is entitled to, and Owner agrees to provide, certain due diligence materials for the Tax Credit Certificates including but not limited to a copy of the Applicant's Affidavit, the CPA Certification, and the Technical Professional Certification from each VCTC application to the FDEP (collectively, the "Due Diligence Materials"). Such Due Diligence Materials shall be provided by Owner to Investor upon execution of this Agreement.

Investor represents that it will proceed diligently with its due diligence review and will act in good faith to complete this transaction in a timely manner, and will notify Owner in writing that it either will or will not proceed with the purchase no later than ten (10) days after Investor's receipt of all the Due Diligence Materials (the "Inspection Period").

In the event that Investor, in Investor's sole and absolute discretion, for any reason or no reason whatsoever, is not satisfied with the results of its review of the Due Diligence Materials prior to expiration of the Inspection Period then, in such event, Investor may terminate this Agreement by giving written notice of termination to Owner prior to the expiration of the Inspection Period, with a copy to Clocktower.

Transfer Procedure: In the event that Investor does not so terminate this Agreement prior to the expiration of the Inspection Period, then Investor shall give notice of its acceptance in writing to Owner, with a copy to Clocktower.

Owner shall then surrender the Tax Credit Certificates to FDEP and authorize FDEP to issue new tax credit certificates ("New Certificates") to Investor or its designated transferee, as directed by Investor, in accordance with the transfer provision of the Statute, with delivery as directed by Investor. Owner's transfer instructions to FDEP shall include a request that review copies of the New Certificates be provided to Clocktower before the New Certificates are delivered to Investor. Transfer designee information and delivery instructions are listed in Exhibit A attached.

Owner shall use certified mail or a courier service to submit the Tax Credit Certificates and transfer instructions to the FDEP. Owner shall send a copy of the submitted transfer instructions to Investor and Clocktower.

The FDEP is expected to deliver draft copies of the New Certificates to Clocktower within thirty (30) days of its receipt of the transfer

instructions from Owner. Clocktower shall promptly review the New Certificates for accuracy. Upon determining the accuracy of the New Certificates, Clocktower shall give notice to FDEP that the New Certificates should be delivered to Investor.

Upon receipt of the New Certificates, Investor shall give notice to Clocktower that the New Certificates have been received in good order. Investor shall deliver the Purchase Price to Owner by check or wire/ACH transfer within five (5) days of receipt by Investor of undisputed New Certificates. Owner shall promptly give notice to Clocktower and Investor confirming receipt of funds.

Investor shall have the option to terminate this Agreement in the event that Owner fails to submit to FDEP the request to transfer the Tax Credit Certificates within ten (10) days of Investor giving notice to Owner of its intent to proceed, or in the event that FDEP fails to issue New Certificates by July 31, 2015.

In the event that a New Certificate is issued incorrectly, Owner and Clocktower will work with FDEP to issue a corrected certificate ("Corrected Certificate"). In the event that the FDEP is unable or unwilling to correct such errors or otherwise deliver to Investor a New Certificate or a Corrected Certificate on or before July 31, 2015, then Investor shall pay to Owner the pro rata portion of the Purchase Price for only the tax credits successfully transferred.

Upon receipt of their respective funds and the New Certificates in correct form and amount, all parties will be satisfied and no further actions are required, subject to the provisions of this Agreement which survive the sale.

Owner  
Representations:

Owner represents that it is familiar with the rules and regulations relating to the issuance of the Tax Credits, and that it has engaged adequate legal representation with respect to the requirements under state and federal regulations, and the transfer of the Tax Credits to Investor.

Owner represents that it will proceed diligently in effecting the transfer thereof, and will act in good faith and in accordance with the regulations of FDEP.

Owner or such entity acceptable to Investor agrees to indemnify Investor for any damages incurred as a result of its bad faith, misrepresentation, or fraud, or in the event that FDEP or the Florida Department of Revenue disallows or recaptures any or all of the Tax Credits for any reason relating to their issuance, but in no event shall the amount of this indemnity exceed the Purchase Price plus any penalties and interest due the appropriate taxing authority as a result of any such disallowance or recapture.

Owner acknowledges that it currently controls the Project and will control the allocation of Tax Credits related to such Project, and expects to do so through the completion of the transaction contemplated herein. Owner acknowledges that no agreement exists, written or otherwise, which would adversely affect its ability to enter into this Agreement, and to timely complete the transaction contemplated herein.

Investor  
Representations:

Investor is purchasing the Tax Credits for its own account, for investment purposes only and not with a view to the resale or distribution thereof except to an entity affiliated with Investor. Investor acknowledges that the statute prohibits any subsequent transfer of the Tax Credit Certificates except through merger or acquisition.

Investor acknowledges that the Tax Credits have not been registered under the Securities Act of 1933, as amended (the "Act") or any state securities laws and are being offered and sold in reliance upon exemptions from such registration.

Investor has not relied upon any representations or other information (whether oral or written) other than as contained in any documents so furnished to it by Owner or contained herein.

Investor is an "accredited investor" as that term is defined in Rule 501 of Regulation D, promulgated by the Securities and Exchange Commission, under the Act.

Investor has the financial wherewithal readily available to purchase the Tax Credit Certificates as contemplated herein and represents that no agreement exists, written or otherwise, which would adversely affect its ability to enter into this Agreement, and to timely complete the transaction contemplated herein.

Investor agrees to indemnify and hold Owner harmless for any loss or damage incurred as a result of Investor's bad faith, misrepresentation, or fraud, but in no event shall the amount of this indemnity exceed the Purchase Price.

Submissions &  
Reporting:

Owner shall provide all such material as is necessary to file with the Florida Department of Revenue to claim the Tax Credits, including but not limited to the Tax Credit Certificates.

Prevailing Party:

In the event of any controversy or dispute arising out of this Agreement between the parties, the prevailing party in such dispute or controversy shall be entitled to recover from the other party its reasonable expenses including attorneys' fees, whether in court, out of court, on appeal or in bankruptcy or administrative proceedings.

Notices:

Any notice or demand to be given or that may be given hereunder shall

be in writing and shall be  
(i) delivered by hand delivery,  
(ii) delivered through the United States mail, postage prepaid,  
certified, return receipt requested,  
(iii) delivered through or by Federal Express, Express Mail or  
other expedited mail or package service, or  
(iv) via email, addressed to the parties as follows:

Owner: Suzette Sibble  
City of Pompano Beach  
100 West Atlantic Boulevard, Room 253  
Pompano Beach, FL 33060  
Phone: 954-786-4611  
Email: [suzette.sibble@copbfl.com](mailto:suzette.sibble@copbfl.com)

Investor: Matthew Sheers  
DISH DBS Corporation  
9601 S. Meridian Blvd.  
Englewood, CO 80112  
Phone: 303-723-3367  
Email: [matthew.sheers@dishnetwork.com](mailto:matthew.sheers@dishnetwork.com)

With copy to:  
Lukas Krause  
Backroads Capital Partners, LLC  
5050 Quorum Drive, Suite 330  
Dallas, TX 75254  
Phone: 800-655-1485 x107  
Email: [lkrause@backroadscapital.com](mailto:lkrause@backroadscapital.com)

Clocktower: Mr. Jeff Jacobson  
Clocktower Tax Credits, LLC  
2 Clock Tower Place; Suite 295  
Maynard, MA 01754  
Phone: 978-823-0200  
Email: [jjacobson@clocktowertc.com](mailto:jjacobson@clocktowertc.com)

Entire Agreement;  
Successors; Venue: This Agreement sets forth the entire agreement of the parties and may not be modified except in writing executed by the parties hereto or their authorized representatives. This Agreement shall inure to the benefit of and be legally binding upon the parties hereto and their respective legal representatives, successors and assigns. This Agreement shall be governed by Florida law.

Counterparts: This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument; and any party or signatory hereto may execute this Agreement by signing any such counterpart and delivering two original copies to the other party.

Miscellaneous: No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any right hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

In consideration of Investor's interest described herein, Owner grants to Investor the exclusive right to complete such transaction, and shall not engage in any discussion about the sale or transfer of the Project's Tax Credits, or its interest in them, until the earliest to occur of:

- (a) Investor completing the transaction contemplated herein,
- (b) Investor informing Owner in writing of its decision not to proceed with the transaction, or
- (c) July 31, 2015.

**INVESTOR:**

**DISH DBS Corporation**

FEIN: 84-1328967

By: \_\_\_\_\_

Name: Matthew Sheers  
Title: Vice President, Tax

Date: 3/17/2015

**OWNER:**

**CITY OF POMPANO BEACH**

FEIN: 59-6000411

By: \_\_\_\_\_

Name: Lamar Fisher  
Title: Mayor

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

**EXHIBIT A**

**FL VCTC Certificate Transfer Request  
Required Transferee Information**

The following information will be included in Owner's Letter of Instruction to the FDEP for the transfer of the Tax Credit Certificates:

Transferee Name: DISH DBS Corporation  
Transferee FEIN: 84-1328967  
Transferee Mailing Address: 9601 S. Meridian Blvd.  
Englewood, CO 80112  
Transferee Contact Name: Matthew Sheers  
Transferee Contact Phone Number: 303-723-3367  
Delivery Address for New Certificates: Matthew Sheers  
DISH DBS Corporation  
9601 S. Meridian Blvd.  
Englewood, CO 80112

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above.

**"OWNER"**

[City of Pompano Beach notarized signature page – format to be supplied.] See Page 9

**"INVESTOR"**

**DISH DBS Corporation**

Witnesses:

[Signature] 3-17-15

[Signature] 3/17/15

By: [Signature]

MATTHEW SHEERS  
Print

Name: Matthew Sheers

Title: Vice President, Tax

STATE OF

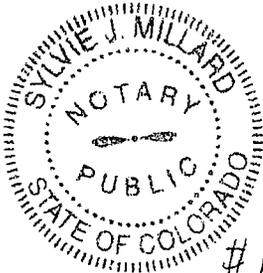
COUNTY OF

The foregoing instrument was acknowledged before me this 17 day of March, 2015,  
by Matthew Sheers as \_\_\_\_\_  
of \_\_\_\_\_, a \_\_\_\_\_ corporation on behalf of the corporation.

He/She is personally known to me or has produced

\_\_\_\_\_ (Type of Identification) as identification.

NOTARY SEAL



[Signature]

Notary Public, State of Colorado

\_\_\_\_\_  
Name of Acknowledger Typed, Printed or Stamped

20044013653  
\_\_\_\_\_  
Commission Number

**"OWNER":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

\_\_\_\_\_  
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number