

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	April 7, 2020	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Housing and Economic Sustainability		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to Receive and File: A Purchase Agreement for State Tax Credits with RELX U.S. Holdings, Inc., for the sale of Voluntary Cleanup Tax Credits (VCTC).

Summary: The attached document has been executed on behalf of the Board of County Commissioners (BCC) by the Director of Housing and Economic Sustainability (HES) per signatory authority of April 30, 2018, in accordance with Agenda item 3I-3 and resolution R2015-1793 as approved by the BCC on December 15, 2015 and April 10, 2018, respectively. Under the Purchase Agreement for State Tax Credits, RELX U.S. Holdings, Inc. purchased a tax credit certificate worth \$8,339.50 under the VCTC Program. The purchase price of the certificates was \$7,755.74. After payment of the brokerage commission, the County will net \$7,255.37 that will replenish the County's Brownfields Revolving Loan Fund. In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. The VCTC Program does not require a local match. Countywide (DB)

Background and Justification: On January 15, 2020, the County entered into a Purchase Agreement for State Tax Credits with RELX U.S. Holdings, Inc. under the VCTC Program. The VCTC Program was established in 1998 by the Florida Legislature to incentivize the cleanup of certain Brownfield areas, which would return the sites to the tax rolls, create jobs and generate a positive economic impact once the sites are remediated. On December 15, 2015, the BCC authorized participation in VCTC Program to actively support the cleanup and redevelopment of designated Brownfield sites within the County.

Attachment(s):

1. Purchase Agreement for State Tax Credits with RELX U.S. Holdings, Inc.
2. Signatory Authority to Jonathan Brown for VCTC

Recommended By:	<u>Jonathan Brown</u> Department Director	<u>2/18/2020</u> Date
Approved By:	<u>Jonah M. Neuh</u> Assistant County Administrator	<u>3/4/2020</u> Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2019	2020	2021	2022
Capital Expenditures	\$500				
Operating Costs					
External Revenues					
Program Income	(\$7,756)				
In-Kind Match (County)					
NET FISCAL IMPACT	(\$7,256)				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes No X
 Does this Item include the use of Federal funds? Yes X No

Fund 1539 Dept. 143 Unit 2104 Object 3401
 Fund 1539 Dept. 143 Unit 2104 Rev 4138


B. Recommended Sources of Funds/Summary of Fiscal Impact:

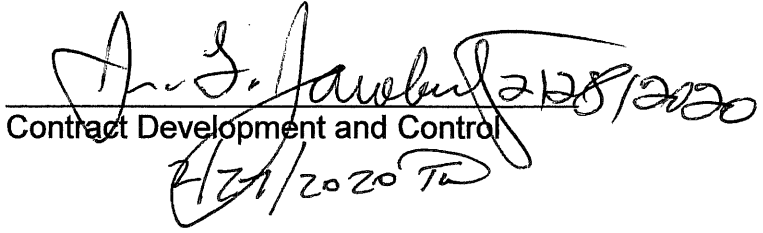
C. Departmental Fiscal Review:


 Beverley Reid, Division Manager


III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 2/24/2020
 OFMB 2/24/2020

 2/28/2020
 Contract Development and Control
 2/28/2020 TD

B. Legal Sufficiency:

 3/2/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

Purchase Agreement for State Tax Credits

This Purchase Agreement for State Tax Credits ("Agreement") made and entered into December __, 2019, by and between **Palm Beach County**, a political subdivision of the State of Florida ("County") and **RELX US Holdings Inc.**, a Delaware corporation, whose principal place of business is at 313 Washington Street, Suite 400, Newton, MA 02458, or an affiliate ("Investor").

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:

WITNESSETH:

WHEREAS, County, by and through its Department of Housing and Economic Sustainability, is authorized to participate in the State of Florida's Voluntary Cleanup Tax Credit ("VCTC") program as provided by a resolution dated December 15, 2015 ("R2015-1793"), incorporated herein by reference; and

WHEREAS, County is willing to sell certain tax credits as issued by the Florida Department of Environmental Protection, Division of Waste Management ("FDEP") through the VCTC program.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and various other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County agrees to sell and convey to Investor and Investor agrees to purchase from County, on the terms, covenants, and conditions hereinafter set forth, the Tax Credit Certificate (as hereinafter defined) and all right, title and interest therein, upon the following terms and conditions:

Article 1 – Description

VCTC Project:
(the "Project") 480 US Highway 27 North Brownfield Site – South Bay, Florida
Voluntary cleanup of a brownfield site which qualifies for Tax Credits as described below.

Tax Credits: One Florida Voluntary Cleanup Tax Credit Certificate in the amount of **\$8,339.50** ("Tax Credit Certificate") as described below:

<u>VCTC Appl. #</u>	<u>Certificate #</u>	<u>Tax Credit Amount</u>	<u>Issue Date</u>
880	895	\$8,339.50	July 26, 2018

Statutory Authority: Section 376.30781 of the Florida Statutes (the "Statute")

Seller: Palm Beach County, Florida

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

Article 2 – Purchase Price

County has expended costs integral to the rehabilitation of the Project site. Such costs, as certified by an independent CPA ("CPA Certification"), have qualified for Tax Credits under the Statute, and the FDEP has issued Florida Voluntary Cleanup Tax Credits as described above. County agrees to sell such Tax Credit Certificate, and Investor will purchase the Tax Credit Certificate, 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: **\$7,755.74** or \$0.93 for each dollar of tax credit shown on the Tax Credit Certificate. Such Purchase Price shall be adjusted to reflect \$0.93 for each dollar of tax credit shown on the New Certificate (as defined below).

Article 3 – Due Diligence

Investor is entitled to, and County agrees to provide, certain due diligence materials for the Tax Credit Certificate including but not limited to a copy of the Applicant's Affidavit certifying all information in the tax credit application, the CPA Certification, and the Technical Professional Certification from the Voluntary Cleanup Tax Credit application to the FDEP (collectively, the "Due Diligence Materials"). Such Due Diligence Materials shall be provided by County 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 either accept or reject the terms of this Agreement within ten (10) calendar days after Investor's receipt of all the Due Diligence Materials (the "Inspection Period").

Article 4 – Transaction Expenses

Each party will pay for its own legal and other expenses incurred in this transaction, if any.

Both parties acknowledge that Clocktower Tax Credits, LLC (the "Broker") acted as broker in bringing the parties together in this transaction. Broker was engaged by County and County shall pay Broker a fee for brokering this transaction pursuant to that certain Contract dated January 12, 2018 (contract #200392R/LL), incorporated herein by reference. Such fee shall be the sole responsibility of County, and shall be made payable to and delivered to Broker by County.

Article 5 – Transaction Process

If Investor agrees to proceed with the purchase after review of the Due Diligence Materials as described above, then Investor shall give notice of its acceptance in writing to County, with a copy to Broker.

County shall then authorize FDEP in writing ("Transfer Request") to issue a new Tax Credit Certificate ("New Certificate") in accordance with the provisions of the Statute or other applicable law as it may be amended from time to time. A copy of the Tax Credit Certificate shall also be included with the Transfer Request. Other information required for the Transfer Request is specified in the FL VCTC Certificate Transfer Information Summary ("Transfer Information Summary") attached hereto as Exhibit A, and made a part hereof.

County shall use email, certified mail or a courier service to submit the Transfer Request and the Tax Credit Certificate to the FDEP. County shall send a copy of the submitted Transfer Request to Broker.

The FDEP is expected to deliver the New Certificate to Investor within thirty (30) days of its receipt of the Transfer Request. Upon receipt of the New Certificate, Investor shall give notice to Broker that it was received in good order. Investor shall deliver the Purchase Price (expected to equal **\$7,755.74**, or \$0.93 for each dollar of tax credits transferred) by wire/ACH transfer to County within five (5) days. County shall promptly acknowledge receipt of funds, with copy to Broker.

Investor shall have the option to terminate this Agreement if County fails to submit the Transfer Request to FDEP within ten (10) days of Investor giving notice to County of its intent to proceed, or if FDEP fails to issue the New Certificate by April 30, 2020.

In the event that a New Certificate is issued incorrectly, Investor and Broker will work with FDEP to issue a corrected certificate ("Corrected Certificate") by April 30, 2020. If the FDEP is unable or unwilling to correct such errors or otherwise deliver a New Certificate or a Corrected Certificate to Buyer on or before April 30, 2020 has voided the proposed transfer, or otherwise has returned the original Tax Credit Certificate to Buyer, then all obligations under this Agreement relative to such original certificate only shall be null and void.

Upon receipt of their respective funds and the New Certificate 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 or termination of this Agreement.

County shall provide all such material as is necessary to file with the Florida Department of Revenue to claim the Tax Credits.

Article 6 – County Representations

County 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.

County will proceed diligently in effecting the transfer thereof, and will act in good faith and in accordance with the rules and regulations of FDEP.

County acknowledges that it currently controls the Tax Credits related to the Project, and expects to do so through the completion of the transaction contemplated herein. County 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. County has obtained all approvals necessary or required to enter into and accomplish the terms of this Agreement. In the event that the Florida Department of Revenue disallows any portion of the Tax Credits for reasons related to the credit generation and not the Investor, then the County shall repay Investor that portion of the Purchase Price relating to such disallowed Tax Credits. Notwithstanding the above, County shall not be responsible for repayment of an amount in excess of the Purchase Price.

Article 6 – 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. Investor acknowledges that the Statute prohibits any subsequent transfer of the New Certificate 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 County 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 Certificate 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.

Article 7 – Indemnification

Investor shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of Investor.

Article 8 – Successors and Assigns

County and Investor each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither County nor Investor shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

Article 9 – Remedies

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of County and/or Investor.

Article 10 – Disclosure and Ownership of Documents

Investor shall deliver to County's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for County under this Agreement.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by County or at its expense will be kept confidential by Investor and will not be disclosed to any other party, directly or indirectly, without County's prior written consent unless required by a lawful court order.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

Article 11 – Contingent Fees

Investor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Investor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Investor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Article 12 – Inspector General

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County Agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Investor, its officers, agents, employees, and lobbyists in order to ensure compliance with Agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Article 13 – Non-Discrimination

Investor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information.

Article 14 – Severability

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Article 15 – Notices

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. Notices shall be addressed to:

County: Carol Thompson
Palm Beach County
100 Australian Avenue, 5th Floor
West Palm Beach, FL 33406
Email: cthompson@pbcgov.org

With copy to: Palm Beach County Attorney's Office
301 North Olive Ave.
West Palm Beach, FL 33401

Investor: Daniel McGlinchey
RELX Group
313 Washington Street, Suite 400
Newton, MA 02458
Email: Daniel.McGlinchey@relx.com

Broker: Jeff Jacobson
Clocktower Tax Credits, LLC
2 Mill & Main Place, Suite 295
Maynard, MA 01754
Email: JJacobson@ClocktowerTC.com

Article 16 – Entirety of Agreement

County and Investor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Remainder of page intentionally left blank


IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of County and Investor has hereunto set its hand the day and year above written.

Signed, sealed and delivered in the presence of:

Witnesses:

Investor: RELX U.S. HOLDINGS INC.

Daniel McGlinchey
Witness Signature

By: 
Peter P. Dangoia
Vice President – US Tax

Daniel McGlinchey
Print Witness Name


(SEAL)


Witness Signature

Mary Ann Horgan
Print Witness Name

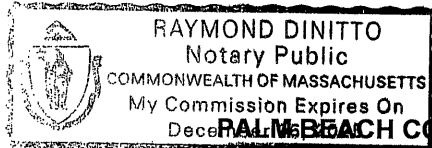
**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this 15 day of JANUARY, 2020 by _____, who is personally known to me, or who has produced _____ as identification and who did/did not take an oath.

Signature: 

Notary Name: RAYMOND DINITTO
Notary Public - State of Florida

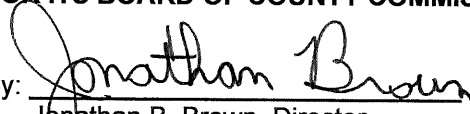
(NOTARY SEAL ABOVE)



Massachusetts

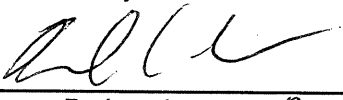
**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida**

FOR ITS BOARD OF COUNTY COMMISSIONERS

By: 
Jonathan B. Brown, Director
Palm Beach County Department of
Housing and Economic Sustainability

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: 
~~James Brako~~ David Behar
Assistant County Attorney

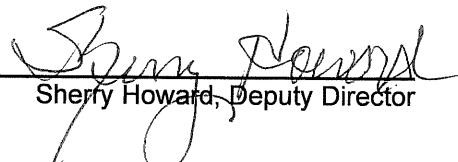
By: 
Sherry Howard, Deputy Director

EXHIBIT A

FL VCTC Certificate Transfer Information Summary

The following Information will be included in County's Letter of Instruction to the FDEP for the transfer of the VCTC Certificate:

Transfer 100% of the FL VCTC Certificate described below:

Certificate #:	895
Application #:	880
FDEP Facility ID:	BF501401001
Issue Date:	7/26/2018
Amount:	\$8,339.50

Transfer and delivery of the New Certificate to:

Name:	RELX U.S. Holdings Inc.
FEIN:	04-3006976
Contact Name:	Daniel McGlinchey
Contact Email:	Daniel.McGlinchey@relx.com
Contact Phone:	(617) 558-4916



Inter Office Memorandum

Date: April 18, 2018

To: Verdenia C. Baker
County Administrator

Thru: Faye W. Johnson
Assistant County Administrator

From: Jonathan B. Brown
Director, Department of Housing and Economic Sustainability

RE: Delegation of Signatory Authority

Department of Housing and
Economic Sustainability

Contract Development
& Quality Control

100 Australian Avenue – Suite #500

West Palm Beach, FL 33406

(561) 233-3600

www.pbcgov.com/des

■
Palm Beach County
Board of County
Commissioners

Melissa McKinlay, Mayor

Mack Bernard, Vice Mayor

Paulette Burdick

Hal R. Valeche

Dave Kerner

Steven L. Abrams

Mary Lou Berger

County Administrator

Verdenia C. Baker

"An Equal Opportunity
Affirmative Action Employer"

The purpose of this memorandum is to request delegation of signatory authority for a standard form Purchase Agreement for Tax Credits (Purchase Agreement) in connection with the State of Florida's Voluntary Cleanup Tax Credit (VCTC) Program.

The Board of County Commissioners authorized you, as County Administrator or your Designee, to execute a standard form Purchase Agreement for Tax Credits in connection with the State of Florida's Voluntary Cleanup Tax Credit (VCTC) program via Agenda Item 3I-1 attached, of the April 10, 2018 meeting of the Palm Beach County Board of County Commissioners.

Please indicate by your signature below if you are agreeable to this delegation of signature authority to Jonathan Brown, in his capacity as Director, Department of Housing and Economic Sustainability, to execute the aforementioned standard form Purchase Agreement for Tax Credits in connection with the State of Florida's Voluntary Cleanup Tax Credit (VCTC) Program.

Signed:

Verdenia C. Baker
County Administrator

4/30/18
Date

Enclosure:

1. A copy of Agenda Item #3I-1 of the April 10, 2018 meeting of the Palm Beach County Board of County Commissioners meeting
2. Standard form Purchase Agreement for Tax Credits

Copy:

James Brako, Assistant County Attorney
Faye W. Johnson, Assistant County Administrator
Sherry Howard, Deputy Director, Department of Housing and Economic Sustainability