

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

BE IT KNOWN, that effective as of September __, 2018 (the "Effective Date"),

Fort Pierce Redevelopment Agency, a dependent special district of the City of Fort Pierce, Florida, a municipal corporation ("Seller");

and

Nimco US, Inc., a corporation validly existing under the laws of the State of Delaware and having Florida tax liability ("Purchaser");

Who, in their respective capacities, declare in this Agreement of Sale and Assignment of Florida Voluntary Cleanup Tax Credits ("Agreement") the following:

WHEREAS the Seller received Florida Voluntary Cleanup Tax Credit Certificate number 742 (the "Certificate") in the amount of Three Hundred Twenty Five Thousand Eight Hundred Fifty Two Dollars and Fifty Seven Cents (\$325,852.57) related to and incurred in connection with a Florida state-approved cleanup.

NOW, THEREFORE, the parties hereto agree as follows:

1. Seller hereby agrees to transfer, sell, assign and deliver to Purchaser all of its right, title and interest in and to the Florida Voluntary Cleanup Tax Credits in the amount of Three Hundred Twenty Five Thousand Eight Hundred Fifty Two Dollars and Fifty Seven Cents (\$325,852.57) (the "Tax Credits") granting full power to Purchaser to use the Tax Credits and to effect, in the name of Purchaser, all legal rights as Seller may have held with respect to the Tax Credits sold and assigned to Purchaser. Within ten (10) days after the Effective Date, Seller shall deliver the Certificate to the Florida Department of Environmental Protection with instructions to reissue the Certificate in the name of 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 the sum of Two Hundred Ninety Six Thousand Five Hundred Twenty Five Dollars and Eighty Four Cents (\$296,525.84), which is an amount equal to Ninety One Cents (\$0.91) per Dollar (\$1.00) of the Tax Credits ("Purchase Price"), on a date mutually acceptable to the Purchaser and Seller, but in no event later than five (5) business days after Seller and Purchaser receive notification from the State of Florida Department of Revenue of authorization for the transfer of the Tax Credits to Purchaser (the "Closing Date").
3. [Reserved.]

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 such 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 Voluntary Cleanup Tax Credit and any directive, procedure, release, ruling or other written guidance explaining or interpreting the Voluntary Cleanup Tax Credit.

- (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. Price adjustment. 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.

6. **Confidentiality and Non-Disclosure.** Confidential and proprietary information as provided under Florida law and clearly identified as such, 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 Confidential Information, received by or provided to it during the course of Agreement, except as required by law or necessary to fulfill its obligations hereunder.
7. **Termination.** The obligation and duties in Sections 1-3 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. The obligation and duties in Sections 1-3 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 November 1, 2018.

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 Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Florida. The Parties agree without reservation of any rights under federal or state law, that in any litigation arising under this Contract, that the Parties waive the right to a trial before a jury, and all such litigation shall be litigated only in a non-jury hearing in the State Courts of Florida, St. Lucie County.
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:

Fort Pierce Redevelopment Agency
Attn: Nick Mimms, Agency Director
100 N. US Highway 1, Fort Pierce, Florida 34950

If to Purchaser:

Nimco US, Inc.
Attn: Alan Pasetky, Tax Department
1812 N. Moore Street, Arlington, VA 22209

[SIGNATURE PAGE FOLLOWS]

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

SELLER:
Fort Pierce Redevelopment Agency

By: _____
Linda Hudson, Chairperson

:

PURCHASER:
Nimco US, Inc.

By: _____
Alan Pasetky, Vice President Taxes