

**CONTRACT BETWEEN  
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND  
DAVIDSON COUNTY**

**AND**

**Tower Capital Management, LLC and Tower DBW LLC**

**FOR**

**PURCHASE, SALE, AND ASSIGNMENT OF 2010 DELINQUENT REAL  
PROPERTY TAX RECEIVABLES OF  
THE METROPOLITAN GOVERNMENT**

This contract is entered into on this \_\_\_\_\_ day of June, 2011, by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**, a public corporation of the State of Tennessee ("Metro") and **Tower Capital Management, LLC ("TCM")**, and **Tower DBW LLC ("Tower DBW")** (TCM and TBW are, each and together, "Contractor"). This contract consists of the following documents:

- *This document*
- *Exhibit 1. Schedule of Receivables*
- *Exhibit 2. Representations, Warranties, and Acknowledgements of Contractor*
- *Exhibit 3. Authorization for Electronic Transfer of Payments and Collections*
- *Exhibit 4. Bid of Assignee*
- *Exhibit 5. Acknowledgement of Good Faith Deposit*
- *Exhibit 6. Acknowledgement of Adjusted Purchase Price*
- *RFP 11.151*
- *Contractor's Proposal and Offer to Purchase*

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- *any properly executed amendment or change order to this contract (most recent with first priority),*
- *this contract,*
- *RFP 11.151,*
- *Contractor's Proposal*

The parties acknowledge and agree that references in that certain March 4, 2011 response to RFP # 11.151 to "Tower DBL LLC" included a clerical error and were intended to be references to "Tower DBW LLC."

#### **PART 1: GENERAL TERMS AND CONDITIONS**

1. **Duties and Responsibilities of Contractor.** Tower DBW agrees to purchase the delinquent real property tax receivables ("Tax Receivables") as listed in the Schedule of Receivables, Exhibit 1, attached to and incorporated in the contract, in conformance with the Contractor's Bid and all the terms of this contract including Part 2: Purchase, Sale, and Assignment. Each Contractor agrees to comply with all the representations, warranties and acknowledgements provided by Contractor during the Qualifications Phase of this RFP No. 11.151 such representations, warranties, and acknowledgements being attached to this contract as Collective Exhibit 2, "Representations, Warranties and Acknowledgements."
2. **Term.**
  - a.** The term of this contract will begin on the date this contract is signed by all required parties and filed in the office of the Metropolitan Clerk. Metro contemplates that the contract term will begin on or about June 17, 2011 (beginning date). The initial contract term will end on April 20, 2013 (ending date). Tower DBW will be entitled to all redemptions of accounts sold under this contract even if those transactions occur subsequent to the contract ending date.
  - b.** This contract may be extended for three (3) additional term(s) of one (1) year each. The option to extend shall be exercised by and in the discretion of the Purchasing Agent. To be effective, any extension must be approved by Metro's Department of Law and Department of Finance. In no event shall the term of this contract, including extensions, exceed five (5) years.

3. **Collection Process.** There will be no change in the current collection process for delinquent real property taxes of the Metropolitan Government as a result of the sale of the Tax Receivables and no impact in the way the delinquent taxpayer deals with the Metropolitan Government on matters related to delinquent real property taxes. Metro will retain total management of the collection process including the sale of the property for back taxes. Metro will continue to enforce the collection of Tax Receivables that have been sold in the same manner as if such Tax Receivables had not been sold. Collections resulting from the collection process will be forwarded to Tower DBW.
4. **Electronic Payment.** Contractor must continuously provide a method for electronic transfer of Collections to the Contractor. The Authorization for Electronic Transfer of Collections, prepared by the Metro and completed by Contractor, authorizing the electronic transfer of funds collected by Metro, has been signed by the Contractor is attached as Exhibit 3 to this contract. In the event it shall become necessary, Contractor will notify Metro immediately of any changes necessary to complete electronic transfers such that there is no lapse in the ability of the Metropolitan Government to transfer Collections to Contractor. All Collections shall be transferred electronically to Tower DBW (provided, however, that as more particularly described in Section 41 below, at no time shall Metro be obligated to remit collections to more than one entity) in the time described in Section 43 below, or on such other date(s) as the parties shall mutually agree.
5. **"Collections" Defined,** "Collections" for purposes of this contract shall mean the amount of the delinquent real property taxes collected as payment of (1) delinquent taxes and (2) penalties and interest.
6. **Taxes.** Metro shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Metro.
7. **Copyright, Trademark, Service Mark, or Patent Infringement.**
  - a) Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against Metro to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor shall further indemnify and hold harmless Metro against any award of damages and costs made against Metro by a final judgment of a court of last resort in any such suit. Metro shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of

Contractor without its written consent. Metro reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon Metro unless approved by the Metro Department of Law Settlement Committee and, where required, the Metro Council.

b) If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

i) Procure for Metro the right to continue using the products or services.

ii) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to Metro, so that they become non-infringing.

iii) Remove the products or discontinue the services and cancel any future charges pertaining thereto.

iv) Provided, however, that Contractor will not exercise option b.iii. until Contractor and Metro have determined that options b.i. and b.ii. are impractical.

c) Contractor shall have no liability to Metro, however, if any such infringement or claim thereof is based upon or arises out of:

i) The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.

ii) The use of the products or services in a manner for which the products or services were neither designated nor contemplated.

iii) The claimed infringement in which Metro has any direct or indirect interest by license or otherwise, separate from that granted herein.

**8. Termination--Breach.**

a) Should Contractor fail to fulfill in a timely and proper manner its obligations under this contract, including its obligations as provided in Part 2: Purchase, Sale, and Assignment, or if it should violate any of the terms of this contract, Metro shall have the right to immediately terminate the contract. Such termination shall not relieve Contractor of any liability to Metro for damages sustained by virtue of any breach by Contractor. If

Tower DBW fails to close on the purchase of the Assigned Tax Receivables, Contractor forfeits its Good Faith Deposit. See Exhibit 5.

- b) It shall be cause for the immediate termination of this Agreement if, after its execution, Metro determines that:
- i) the Contractor or any of their respective principals, partners, corporate officers, or assignees, or if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
  - ii) the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without Metro's consent or approval; or
  - iii) the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets
- c) In the event Metro elects to terminate this Agreement pursuant to any of the clauses in this Section 8 (other than as a result of Tower DBW's failure to close on the purchase of the Assigned Tax Receivables as described in clause (a) above), Metro's obligations hereunder to forward Collections in respect of the Assigned Tax Receivable, and Contractor's rights thereto, shall survive such termination.

**9. Termination--Notice.** Metro may terminate this contract at any time upon thirty (30) days written notice to Contractor.

**10. Compliance with Laws.** Each Contractor agrees for itself to comply with all applicable federal, state and local laws and regulations.

**11. Notices and Designation of Agent for Service of Process.**

- a) Notice of assignment of any rights to money due to Contractor under this contract must be mailed or hand delivered to the attention of Metro's Chief Accountant, Financial Operations, Department of Finance, 700 2<sup>nd</sup> Ave South, Suite 310, PO Box 196300, Nashville, Tennessee 37219-6300, with a copy to the

recipient for Metro notices listed below. All other notices to Metro shall be mailed or hand delivered to:

**Department:** Finance Department Financial Operations  
**Attention:** Kim McDoniel  
**Address:** 700 2<sup>nd</sup> Ave South, Suite 310, PO Box 196300,  
Nashville, TN 37219-6300

b) Notices to Contractor shall be mailed or hand delivered to:

**Contractor:** Tower Capital Management, LLC  
**Attention:** Kurt Shadle  
**Address:** 10 North Park Place, Suite 300, Morristown, NJ 07960

With copies to:

**Contractor:** Tower DBW LLC  
**Attention:** James K. Noble, III  
**Address:** 1345 Avenue of the Americas, 46<sup>th</sup> Floor, NY, NY 10105

c) Contractor designates the following as the Contractor's agent for service of process and will waive any objection to service of process if process is served upon this agent:

**Designated Agent:** CT Corporation System  
**Address:** 800 S Gay Street, Suite 2021, Knoxville, TN 37929

- 12. Maintenance of Records.** Contractor shall maintain documentation for all transactions with Metro. TCM shall have primary responsibility for maintaining all such books, records, and documents insofar as they relate to this contract, and TCM shall maintain the same for a period of six (6) full years from the date of final payment. All such books, records, and documents will be subject to audit, at any reasonable time and upon reasonable notice by Metro or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
- 13. Monitoring.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by Metro, the Department of Finance/Division of Internal Audit, or their duly appointed representatives.

14. **Metro Property.** Any Metro property, including but not limited to books, records and equipment that is in Contractor's possession shall be maintained by Contractor in good condition and repair and shall be returned to Metro by Contractor upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be Metro property.
15. **Modification of Contract.** This contract may be modified only by written amendment executed by all parties and their signatories hereto. Any Amendment required shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.
16. **Partnership/Joint Venture.** Except to the extent necessary for Metro to comply with T.C.A. § 67-5-2012 in the collection of the Tax Receivables, nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
17. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
18. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
19. **Non-Discrimination.** It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Metro's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Metro or in the employment practices of Metro's Contractors.

Accordingly, all Proposers entering into contracts with Metro shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

20. **ADA**. The successful Proposer shall assure to Metro that all services provided through this contract, if an award is made, shall be completed in full compliance with section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), as has been adopted by Metro and required under Federal Law.
21. **Contingent Fees**. Contractor hereby represents that Contractor has not been retained or retained any person(s) to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.
22. **Gratuities and Kickbacks**. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.
23. **Indemnification and Hold Harmless**. Contractor shall defend, indemnify and hold harmless Metro, its officers, agents and employees from:
  - a) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or

independent contractors, in connection with the performance of the contract, and,

b) Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including it sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

c) The Metropolitan Government reserves the right to participate in the defense of any claim or action that is brought against the Metropolitan Government.

d) Pursuant to Tennessee Attorney General Opinion 93-01, Metro will not indemnify, defend or hold harmless in any fashion either Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that such Contractor may provide.

e) Contractor shall pay Metro any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.

**24. Attorney Fees.** Contractor agrees that in the event either party deems it necessary to take legal action to enforce any provision of the contract and in the event Metro prevails, Contractor shall pay all expenses of such action including Metro's attorney fees and costs at all stages of the litigation.

25. **Default.** If any party fails to comply with any of its duties and obligations hereunder, or is otherwise not in compliance with this contract or the Assignment, that party shall be in default hereunder, and the other party shall have the right to exercise any rights that it may have at law or in equity with respect to such breach or noncompliance by the defaulting party.
26. **Remedies.** The remedies provided for in this contract shall be cumulative, and shall not preclude assertion by any party of any other rights or the seeking of any other remedies against any other party and shall not limit the right of any party hereto to take any other action available at law or in equity.
27. **Benefit of Contract.** This contract and all of the rights and obligations hereunder, shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.
28. **Counterparts.** This contract may be executed and delivered in any number of counterparts, and such counterparts taken individually shall be sufficient to constitute the whole of this contract and taken together shall constitute one and the same instrument.
29. **Miscellaneous.** The Section headings of this contract are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret, or construe the intentions of the parties. Delivery of an executed signature page to this contract, or any other Assignment Documents, by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this contract or such other Assignment Document.
30. **Assignment--Consent Required.** The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this contract (as more specifically address in Section 41(a) below), neither this contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of Metro. Any such assignment or transfer shall not release Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF METRO'S CHIEF ACCOUNTANT, FINANCIAL OPERATIONS, DEPARTMENT OF FINANCE, 700 2<sup>ND</sup> AVE SOUTH, SUITE 310, PO BOX 196300, NASHVILLE, TENNESSEE 37219-6300.

31. **Entire Contract.** This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
32. **Force Majeure.** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
33. **Governing Law.** The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.
34. **Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.
35. **Validity.** If any provision of this Agreement is finally determined by a court or by agreement of the parties to be invalid, unlawful or unenforceable, such provision will be replaced with a valid, lawful and enforceable provision that in its commercial and legal effect, so closely approximates the invalid, unlawful or unenforceable provision that it may be reasonably assumed that the parties would have entered into this Agreement with such replacement provision. If after a good faith effort, the parties cannot agree on such a replacement provision and the invalid, unlawful or unenforceable provision can therefore not be replaced, the invalid, unlawful or unenforceable provision will be deemed to be severed from this Agreement and every other provision of this Agreement will remain in full force and effect, unless the invalid, unlawful or unenforceable provision is of such material importance to this Agreement that it can reasonably be assumed that at least one of the parties would not have entered into this Agreement without being able to enforce the invalid, unlawful or unenforceable provision. In the event it is determined that one of the parties would not have entered this agreement due to such invalidity, unlawfulness or unenforceability, to the extent reasonably possible, the parties shall be placed in the position the parties would have occupied had the agreement not been attempted.

## PART 2: PURCHASE, SALE, AND ASSIGNMENT

36. **Definitions for Part 2: Assignment.**
  - a) All Capitalized terms are defined herein.

b) The following words and terms as used in Part 2, shall have the following meanings, unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

1. **“Act”** means T.C.A. § 67-5-2012 (2006 Pub.Acts, c. 881).
2. **“Acknowledgement of Adjusted Purchase Price”** means the document executed by the Metropolitan Trustee, the Finance Director of the Metropolitan Government, and the Assignee, and attached to and incorporated in the contract as Exhibit 6 that acknowledges the agreement of the Metropolitan Government and the Assignee of the amount of the Purchase Price paid on the Closing.
3. **“Administration of Accounts”** means, with respect to all Assigned Tax Receivables, the enforcement, collection, receipt and allocation of Receivable payments, as well as the maintenance of records, files and accounts with respect thereto, including notices to taxpayers, sale by court decree, and allocation of payments. Such duties are retained by the Metropolitan Government, as an agent of the Assignee, in accordance with the terms of this contract and the Act.
4. **“Adjustments”** shall have the meaning given in the definition of **“Purchase Price.”**
5. **“Aggregate Tax”** means, with respect to any Tax Receivable or Assigned Tax Receivable, the full amount of *ad valorem* tax due, including the full amount of principal plus interest accrued plus any additional interest, fees, charges or penalties allowed by the State Law and for which assignment is authorized under the Act.
6. **“Assignee”** means Contractor.
7. **“Assigned Tax Receivables”** means those Tax Receivables appearing on the Schedule of Receivable, Exhibit 1, of the contract, and sold to the Assignee pursuant to the terms of this contract.
8. **“Authorizing Resolution”** means that Resolution of the Metropolitan Government captioned “A Resolution Electing to Sell the Tax Receivables of the Metropolitan Government of Nashville and Davidson County, Tennessee,” adopted June 27, 2006 (Resolution No. RS2006-1331).
9. **“Bid”** means the amount offered by the Assignee for all Tax Receivables listed on the Report upon which the Assignee elected to make an offer of purchase. This dollar amount is also expressed as a

percentage of the Aggregate Tax due and owing on all such Tax Receivables as of the Report Date. The Bid is attached to and incorporated in the contract as Exhibit 4 of this contract.

10. **“Closing Date”** means June \_\_, 2011, or such earlier or later date as may be agreed to by the Metropolitan Government and the Assignee, at which time the Metropolitan Government shall sell the Assigned Tax Receivables to the Assignee and the Assignee shall pay and deliver the Purchase Price to the Metropolitan Government.

11. **“Good Faith Deposit”** means the deposit of five percent (5%) of the Assignee’s bid for the Tax Receivables rounded up to the nearest \$1,000 submitted with the bid along with the signed Acknowledgment of Good Faith Deposit, Exhibit 5, as required by Section 7 C of the RFP.

12. **“Metropolitan Government”** shall mean the Metropolitan Government of Nashville and Davidson County, Tennessee, a public corporation and consolidated government created pursuant to Title 7, Chapters 1 through 3 of the Tennessee Code.

13. **“Payment Instructions”** are those instructions attached to this contract in substantially the form of Exhibit 3, Authorization for Electronic Transfer of Payments and Collections.

14. **“Person”** means any person, corporation, association, partnership, limited liability company, joint venture, organization, business, individual, government or any agency or political subdivision thereof or any other legal entity.

15. **“Purchase Price”** means an amount reasonably determined by the Metropolitan Government and the Assignee to be equivalent to Assignee’s Bid for those Tax Receivables listed on the Report for which the Assignee has made an offer to purchase; less payments received by the Metropolitan Government on such Tax Receivables on or prior to the Closing Date, plus penalties and interest accrued on such Tax Receivables from the Report Date to the Closing Date, as such amounts may be adjusted to reconcile such Bid, payments, penalties, and interest (collectively, the **“Adjustments”**) and to ensure that the Purchase Price is equivalent to the Aggregate Tax on all Assigned Tax Receivables as of the Closing Date. The amount of the Purchase Price paid on the Closing Date shall be documented by separate Acknowledgment of Adjusted Purchase Price.

16. **“Redemptive Value”** means, with respect to any Tax Receivable, the amount required to redeem such Tax Receivable in full.

17. **“Related Property”** means such real property within the area of the Metropolitan Government listed on the Schedule of Receivables for which real property taxes have become delinquent, a lien for the collection of those delinquent tax payments exists pursuant to T.C.A. § 67-5-2101, and the receivable resulting from the delinquency is being sold in accordance with the provisions of T.C.A. § 67-5-2012.

18. **“Report”** means the list prepared by the Metropolitan Trustee compiling all Tax Receivables that the Metropolitan Government has made available to be considered for sale and assignment, such Report including the Aggregate Tax through the date of the Report, and constituting a basis for computation of the Assignee’s Bid.

19. **“Report Date”** means that date through which the Aggregate Tax on Tax Receivables listed on the Report is calculated for purposes of establishing the Bid.

20. **“Schedule of Receivables”** means the list of all Tax Receivables to be assigned to Assignee as of the Closing Date, and the corresponding Aggregate Tax for each, constituting the basis for computation of the Purchase Price. The Schedule of Receivables shall be attached to and incorporated in the contract as Exhibit 1.

21. **“State”** means the State of Tennessee.

22. **“State Laws”** means the Constitution of the State of Tennessee and the Tennessee Code Annotated (“T.C.A.”), as amended.

23. **“Tax Receivables”** means those delinquent real property taxes of the Metropolitan Government on Related Properties that are authorized to be sold in accordance with T.C.A. § 67-5-2012 for tax year 2010 as are shown on the Report.

**37. Sale and Assignment by Metropolitan Government.**

As authorized by the Act and Authorizing Resolution and to the extent consistent with other State Laws and with the Act and subject to the terms and conditions of this contract and the laws of Tennessee, the Metropolitan Government agrees to sell and assign to the Assignee, and the Assignee agrees to purchase and accept all right, title and interest of the Metropolitan Government in and to the Assigned Tax Receivables, as listed and attached to this contract as the Schedule of Receivables. The Metropolitan Government agrees to retain and exercise all collection rights, duties and remedies available to the Metropolitan Government on behalf of the Assignee to the extent allowed by the Act or other applicable law, including the right to seek a decree for sale of the real property for any Assigned Tax

Receivable. The assignment and purchase of the Assigned Tax Receivables shall take place on the Closing Date at the offices of the Director of Finance of the Metropolitan Government at 12 noon prevailing Nashville time, or at such other time and place as the parties mutually agree, and in accordance with procedures set forth in this contract. The parties agree that closing may or may not be concluded by the exchange of documents through mail or electronic transmission.

**38. Confirmation of Schedule of Receivables and Purchase Price.**

Prior to the Closing Date, the Metropolitan Government and the Assignee agree to cooperate in good faith to make all Adjustments reasonably necessary for the purpose of finalizing the Schedule of Receivables and the Purchase Price as of the Closing Date. Only those Adjustments made to the Report reflecting events between the Report Date and the Closing Date shall affect the compilation of Schedule of Receivables for the purpose of computing the Purchase Price. The Schedule of Receivables shall be calculated to include the Aggregate Tax on all Assigned Tax Receivables as of the Closing Date, subject to the Adjustments. The Schedule of Receivables shall be confirmed and ratified by the Metropolitan Government and the Assignee and attached as Exhibit 1 of this contract on the Closing Date. Adjustments to the Schedule of Receivables and the Purchase Price necessary to assure that the Purchase Price is equivalent to (plus any premium or less any discount) the Aggregate Tax on all Assigned Tax Receivables on the Schedule of Receivables shall be rectified by a refund to the Assignee of excess Purchase Price, or payment to the Metropolitan Government of deficient Purchase Price, as applicable and pursuant to written instructions from the Assignee and the Metropolitan Government. Any such refund or payment shall be made in immediately available funds within 30 days following the Closing Date. The Purchase Price shall be paid substantially in accordance with the Payment Instructions. The Metropolitan Government will credit the Good Faith Deposit paid by the Assignee under Section 7 C of the RFP and interest earned on such Deposit to the Purchase Price at the Closing.

**39. Payment of Purchase Price and Filing of Contract.**

- a) In consideration for the sale and assignment of the Assigned Tax Receivables by the Metropolitan Government on the Closing Date, the Assignee shall pay the Purchase Price to the Metropolitan Government. The Purchase Price shall be payable on the Closing Date and shall be paid by the Assignee in immediately available funds either by wire transfer or by immediately negotiable check drawn upon a bank reasonably satisfactory to the Metropolitan Government and in accordance with the Payment Instructions.
- b) The Metropolitan Government shall be entitled to retain all payments received

by the Metropolitan Government with respect to Assigned Tax Receivables on or before the Closing Date to the extent such amounts are applied to reduce the Purchase Price. When the Metropolitan Government receives a payment on any Assigned Tax Receivable to which the Assignee is entitled hereunder, the Metropolitan Government shall hold such payment in trust for the benefit of the Assignee segregated from the funds of the Metropolitan Government and immediately remit such payments to the persons or accounts designated by the Assignee in accordance with instructions prescribed by the Assignee.

- c) Within ten (10) business days after the Closing Date, the Metropolitan Government shall file with the Metropolitan Clerk the executed contract and its Exhibits including the Schedule of Receivables listing the properties for which the Tax Receivables have been sold.

**40. Additional Undertakings of the Parties to Assist in the Assignment.**

Each of the parties hereto will cooperate with the other and execute and deliver to the other parties hereto such other instruments and documents and take such other actions as may be reasonably requested from time to time by any other party hereto as necessary to carry out, evidence, and confirm the intended purposes of this contract.

**41. Further Assignment of Assignee's Interest; Assignment of the Metropolitan Government's Interest.**

- a) The Assignee may assign Contractor's rights to receive payments from the Metropolitan Government under this contract with respect to Assigned Tax Receivables upon delivery to the Metropolitan Government of prior written notice thereof and the prior written approval of the Metropolitan Government, which approval shall not be unreasonably withheld, specifying the Assignee's assignee.

The Assignee may specifically, with prior notification to the Metropolitan Government, grant a security interest in, or otherwise pledge as collateral, any or all of the Assigned Tax Receivables to a lending institution. Any assignment, sale or conveyance by Assignee of any Assigned Tax Receivable, or any interest therein, shall not modify, relieve, terminate or discharge any of Assignee's obligations under this contract as to Assigned Tax Receivables retained by Assignee and shall serve to obligate the party receiving the interest to abide by the terms of this contract and procedures or processes in place unless Metro provides written authorization otherwise. If Contractor assigns, pledges, sells

or transfers all or any portion of this contract or the Assigned Tax Receivables, Metro shall have no obligation whatsoever to modify any procedures or processes in place. No assignment, pledge, sale or transfer will obligate Metro to remit or report on delinquent property taxes collected by Metro to more than one entity.

- b) The Metropolitan Government may not assign any or all of its interest, rights and obligations under this contract without the prior written consent of the Assignee which approval shall not be unreasonably withheld.

**42. No Third-Party Rights.** The provisions of this contract are for the exclusive benefit of the parties hereof and do not create rights for any third-parties.

**43. Administration of Accounts.**

Except as set forth in this contract, all duties and obligations with respect to the Administration of Accounts shall be irrevocably retained by the Metropolitan Government as provided by T.C.A. § 67-5-2012(g). The Metropolitan Government shall remit the proceeds from its collection of tax receivables to the account designated by the Assignee within two (2) calendar weeks of the receipt of the payment for each delinquency and the crediting of the delinquent account. The Metropolitan Government shall provide in electronic format to TCM an itemized list of the individual receivables remitted to the Assignee at the same time it remits the payment. The Metropolitan Government shall also provide quarterly to the TCM an itemized electronic list of all unpaid receivables purchased by the Assignee from the Metropolitan Government under this Contract. TCM and Tower DBW shall together be solely responsible for the reconciliation of the quarterly report with its records and must notify the Metropolitan Government within thirty (30) calendar days of receipt of the quarterly report of any discrepancies between the quarterly report and its records. Failure to provide such notice shall constitute a waiver of any discrepancy. The Metropolitan Government, TCM, and Tower DBW shall undertake a good faith effort to reconcile and resolve any discrepancy within thirty (30) calendar days of the Metropolitan Government's receipt of a notice of discrepancy from TCM and/or Tower DBW.

**44. Conditions of Closing.**

The obligations of the parties hereto to consummate the transaction contemplated hereby shall be subject to the satisfaction of the following conditions precedent:

- A. Execution and delivery of this Assignment contract by duly authorized parties;

B. Execution and delivery by the Metropolitan Government of the Assignment;

Payment by the Assignee to the Metropolitan Government of the Purchase Price as of the Closing Date in accordance with Payment Instructions provided by the Metropolitan Government;

45. Effective Date.

- a) Part 1 of this contract, General Terms and Conditions, shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the Metropolitan Government and has been filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this contract shall be effective as of the date first written above.
- b) Part 2 of this contract, shall not be binding upon the parties until the Closing Date.

THE METROPOLITAN  
GOVERNMENT OF  
NASHVILLE AND  
DAVIDSON COUNTY:  
Purchasing Agent:

*[Signature]*  
RECOMMENDED  
Department Head

Department: Finance

APPROVED AS TO  
AVAILABILITY OF  
FUNDS:

*[Signature]*

Director of Finance

APPROVED AS TO FORM  
AND LEGALITY:

*[Signature]* 6/21/2011  
Metropolitan Attorney

FILED IN THE OFFICE  
OF THE  
METROPOLITAN CLERK:

*[Signature]*

Date: JUN 21 2011

CONTRACTOR

Tower Capital Management,  
LLC  
BY:

See ATTACHED

Title:

Sworn to and subscribed to  
before me, a Notary Public,  
this \_\_\_\_\_ day of  
\_\_\_\_\_, 2011,

by

, the

of Contractor and duly  
authorized to execute this  
instrument on Contractor's  
behalf.

Notary Public  
My Commission Expires

CONTRACTOR

Tower DBW LLC

BY:

*[Signature]*  
CONSTANTINE M. DAKOLIAS  
PRESIDENT

Sworn to and subscribed to before  
me, a Notary Public, this  
20<sup>th</sup> day of  
June, 2011,

by

Constantine M. Dakolias

, the

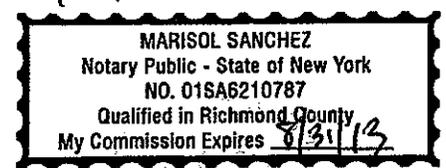
President of

Contractor and duly authorized to  
execute this instrument on  
Contractor's behalf

*[Signature]*  
Notary Public

My Commission Expires

8/31/13



45. Effective Date.

- a) Part 1 of this contract, General Terms and Conditions, shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the Metropolitan Government and has been filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this contract shall be effective as of the date first written above.
- b) Part 2 of this contract, shall not be binding upon the parties until the Closing Date.

THE METROPOLITAN  
GOVERNMENT OF  
NASHVILLE AND  
DAVIDSON COUNTY:  
Purchasing Agent:

RECOMMENDED:  
Department Head

Department: Finance

APPROVED AS TO  
AVAILABILITY OF  
FUNDS:

Donna Mae Erwein  
Director of Finance

APPROVED AS TO FORM  
AND LEGALITY:

Metropolitan Attorney

FILED IN THE OFFICE  
OF THE  
METROPOLITAN CLERK:

Date:

CONTRACTOR

Tower Capital Management,  
LLC

BY: John Garzone  
[Signature]

Title:  
Managing Director/Principal

Sworn to and subscribed to  
before me, a Notary Public,  
this 20<sup>th</sup> day of  
June, 2011,

by  
John Garzone

, the  
Managing Director/Principal

of Contractor and duly  
authorized to execute this  
instrument on Contractor's  
behalf.

[Signature]

Notary Public  
My Commission Expires



CONTRACTOR

Tower DBW LLC

BY: \_\_\_\_\_

Title:  
\_\_\_\_\_

Sworn to and subscribed to before  
me, a Notary Public, this  
\_\_\_\_\_ day of  
\_\_\_\_\_, 2011,  
by  
\_\_\_\_\_

, the  
\_\_\_\_\_ of

Contractor and duly authorized to  
execute this instrument on  
Contractor's behalf.

Notary Public

My Commission Expires  
\_\_\_\_\_

**EXHIBIT 1**

**SCHEDULE OF RECEIVABLES.**

## EXHIBIT 2

### REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS OF CONTRACTOR.

Each Contractor hereby represents, warrants and acknowledges for itself and to the Metropolitan Government, that all representations, warranties and acknowledgements made to the Metropolitan Government are true, complete and correct as of the date hereof and as of the Closing Date, as follows:

- A. Contractor is a corporation, partnership, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or creation. Contractor is duly qualified to do business as it is now being conducted and is in good standing as a foreign organization in each other jurisdiction where the property owned, leased or used by it or the conduct of its business makes such qualification necessary.
- B. Contractor has full power and authority to enter into and perform this contract and all action necessary to authorize the execution and delivery of this contract and the performance by Contractor of its obligations hereunder has been duly taken. This contract has been duly executed by Contractor and constitutes the legal, valid, binding and enforceable obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws relating to or affecting the rights of creditors generally, or by general principles of equity.
- C. No authorization, consent or approval of, notice to, or filing with, any public body or governmental authority other than the Metropolitan Government or any other Person is necessary in connection with the execution and delivery by Assignee of this contract or the performance by Contractor of its obligations hereunder, except for notices expressly provided in this contract.
- D. The execution and delivery of this contract and the performance of its obligations hereunder by Contractor will not, to the best of its knowledge, conflict with any provision of any law or regulation to which Contractor is subject, or conflict with, result in a breach of, constitute a default under any of the terms, conditions or provisions of this contract, or any other agreement or instrument to which Contractor is a party or by which it is bound, including without limitation promissory notes, mortgages, security agreements, loan instruments, leases, covenants, conditions, easements, rights-of-way, franchises, permits, licenses, contracts and agreements, or any order or decree applicable

to Contractor, or result in the creation or imposition of any lien on any of Contractor's assets or property.

- E. There is no action, suit, claim or proceeding pending or, to the knowledge of Contractor, threatened against the Contractor, whether at law or in equity, before any court or by or before any other governmental commission, board, bureau, agency or instrumentality that, if determined adversely to the interests of the Contractor, would materially adversely affect the ability of the Contractor to perform its duties or obligations incurred pursuant to this contract.
- F. The Assignee agrees that in the event Contractor does choose to resell, transfer, assign or convey any interest in the Assigned Tax Receivables, any such further resale, transfer, assignment or conveyance shall be in compliance with applicable securities laws.
- G. The Assignee's source of funds for purchasing the Tax Receivables is lawful and exempt from the application of any civil forfeiture provision of any state or federal law with respect to funds derived from a criminal enterprise.
- H. No proceedings by or, to the knowledge of the Contractor, against the Contractor have been threatened or commenced in bankruptcy or for reorganization, liquidation or for readjustment of debts under the Bankruptcy Code or any other law, whether state or federal, nor has the Contractor made an assignment for the benefit of the creditors, admitted in writing the inability to pay debts generally as they become due, or filed or had filed against it any action seeking an order appointing a trustee or receiver of all or a substantial part of the property of the Contractor.
- I. The agent for service of process in the State, for the Contractor, is CT Corporation System (the "Agent"). The Contractor further agrees to notify the Metropolitan Government within 15 calendar days of any change with respect to its agent for service of process. The Contractor represents that the Agent is duly organized and qualified to do business in the State.
- J. The Contractor has complied with all applicable laws in connection with the purchase of the Tax Receivables.
- K. For a period of six years subsequent to the Closing Date, if Contractor has actual knowledge of a breach of any of the representations, warranties and acknowledgements made by the Contractor contained herein, the Contractor shall give prompt written notice of same to the Metropolitan Government.

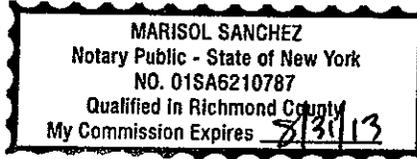
- L. The Contractor acknowledges that the Metropolitan Government does not warrant the validity of any State Law, the validity of any tax exemption available to the Contractor under the Act, the position or priority of any tax lien imposed on the property by another taxing authority, including the smaller cities within the area of the Metropolitan Government, and does not warrant that the priority normally afforded a delinquent real property tax receivable in a Bankruptcy proceeding will be applicable to Tax Receivables assigned.

[Signatures comments on the next page]

Each Contractor acknowledges and agrees that the breach of any of the foregoing representations and warranties by one Contractor shall constitute a default of both Contractors pursuant to Section 25 above, and give Metro the right to terminate this Agreement with respect to both Contractors.

Tower DBW LLC, for itself

By: \_\_\_\_\_  
Name: CONSTANTINE M. DAKOLIAS  
Title: PRESIDENT



Sworn to and subscribed before me on this 20th day of June, 2011.

Marisol Sanchez  
My commission expires: 8/31/13

Tower Capital Management, LLC, for itself

By: SEE ATTACHED  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires: \_\_\_\_\_

Each Contractor acknowledges and agrees that the breach of any of the foregoing representations and warranties by one Contractor shall constitute a default of both Contractors pursuant to Section 25 above, and give Metro the right to terminate this Agreement with respect to both Contractors.

Tower DBW LLC, for itself

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires: \_\_\_\_\_

Tower Capital Management, LLC, for itself

By: [Signature]  
Name: John Garzone  
Title: Managing Director / Principal

Sworn to and subscribed before me on this 20<sup>th</sup> day of June, 2011.

My commission expires:



**EXHIBIT 3**

**AUTHORIZATION FOR ELECTRONIC TRANSFER OF PAYMENTS AND COLLECTIONS**

**EXHIBIT 4**

**BID OF ASSIGNEE**

EXHIBIT 5

ACKNOWLEDGMENT OF GOOD FAITH DEPOSIT

I \_\_\_\_\_ on behalf of Tower DBW LLC, and I, \_\_\_\_\_ on behalf of Tower Capital Management, LLC, as duly authorized by law, hereby acknowledge the following with respect to the Good Faith Deposit as stated in Section 7 C of RFP NO 11.151:

- A. That Contractor is aware of and understands the requirement of the Good Faith Deposit
B. Each prospective vendor must submit a Good Faith Deposit in the form of a certified or cashier's check payable to the Metropolitan Government of Nashville and Davidson County, Tennessee equal to Five Percent (5%) of its bid for Tax Receivables.
C. THE METROPOLITAN GOVERNMENT WILL REJECT AS NON RESPONSIVE ANY BID THAT DOES NOT INCLUDE A GOOD FAITH DEPOSIT.
D. A Good Faith Deposit will earn interest at a rate equal to the rate of interest earned on the Metropolitan Government's pooled cash invested overnight, net of expenses.
E. The Metropolitan Government will credit the Good Faith Deposit plus interest earned toward the Purchase Price at closing as required by Section 36 of the attached contract for any vendor(s) that it awards a bid for Tax Receivables.
F. THE METROPOLITAN GOVERNMENT WILL RETAIN THE GOOD FAITH DEPOSIT PLUS INTEREST EARNED SUBMITTED BY ANY VENDOR THAT FAILS TO CLOSE ON THE SALE AFTER RECEIVING AN AWARD OF ITS BID FOR TAX RECEIVABLES.
G. The Metropolitan Government will return the Good Faith Deposit plus interest earned to each prospective vendor to which it does not award a bid for Tax Receivables as soon as practicable but in no event later than the first closing date of any sale.

Tower DBW LLC

Tower Capital Management, LLC

By: \_\_\_\_\_ CONSTANTINE M. DAKOLIAS

By: SEE ATTACHED

Title: PRESIDENT

Title: \_\_\_\_\_

Sworn to and subscribed before me on this 20 day of June, 2011

Sworn to and subscribed before me on this \_\_\_ day of \_\_, 2011

Handwritten signature of Marisol Sanchez

My commission expires 8/31/13 Notary Public

My commission expires \_\_\_\_\_ Notary Public

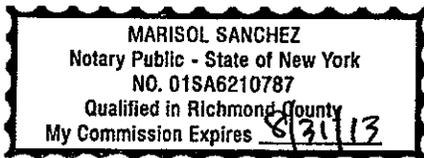


EXHIBIT 5

ACKNOWLEDGMENT OF GOOD FAITH DEPOSIT

I \_\_\_\_\_ on behalf of Tower DBW LLC, and I, John Garzone on behalf of Tower Capital Management, LLC, as duly authorized by law, hereby acknowledge the following with respect to the Good Faith Deposit as stated in Section 7 C of RFP NO 11.151:

- A. That Contractor is aware of and understands the requirement of the Good Faith Deposit
B. Each prospective vendor must submit a Good Faith Deposit in the form of a certified or cashier's check payable to the Metropolitan Government of Nashville and Davidson County, Tennessee equal to Five Percent (5%) of its bid for Tax Receivables.
C. THE METROPOLITAN GOVERNMENT WILL REJECT AS NON RESPONSIVE ANY BID THAT DOES NOT INCLUDE A GOOD FAITH DEPOSIT.
D. A Good Faith Deposit will earn interest at a rate equal to the rate of interest earned on the Metropolitan Government's pooled cash invested overnight, net of expenses.
E. The Metropolitan Government will credit the Good Faith Deposit plus interest earned toward the Purchase Price at closing as required by Section 36 of the attached contract for any vendor(s) that it awards a bid for Tax Receivables.
F. THE METROPOLITAN GOVERNMENT WILL RETAIN THE GOOD FAITH DEPOSIT PLUS INTEREST EARNED SUBMITTED BY ANY VENDOR THAT FAILS TO CLOSE ON THE SALE AFTER RECEIVING AN AWARD OF ITS BID FOR TAX RECEIVABLES.
G. The Metropolitan Government will return the Good Faith Deposit plus interest earned to each prospective vendor to which it does not award a bid for Tax Receivables as soon as practicable but in no event later than the first closing date of any sale.

Tower DBW LLC

Tower Capital Management, LLC

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

By: John Garzone

Title: \_\_\_\_\_

Title: Managing Director / Principal

Sworn to and subscribed before me on this \_\_\_ day of \_\_\_\_\_, 2011

Sworn to and subscribed before me on this 20<sup>th</sup> day of Jan, 2011

My commission expires \_\_\_\_\_ Notary Public

My commission expires \_\_\_\_\_ Notary Public



**EXHIBIT 6**

**ACKNOWLEDGEMENT OF ADJUSTED PURCHASE PRICE**

EXHIBIT 6

ACKNOWLEDGEMENT OF ADJUSTED PURCHASE PRICE

I, John Gurzone, on behalf of Tower, as duly authorized by law, hereby acknowledge the following:

- A. The adjusted **Purchase Price** as defined in Section 36 (b) 15 of this contract is \$29,168,845.02.
- B. The adjusted purchase price is representative of the agreement of the parties hereto as the correct purchase price as of the **Report Date** of June 6, 2011, as defined in Section 36 (b) 18 of this contract.
- C. That all procedures specified in Section 38 of this contract for calculating the adjusted purchase price have been observed.
- D. The Good Faith Deposit of \$2,390,000.00 plus interest of \$275.00 earned through June 17, 2011, will be credited to the purchase price, and a total of \$26,778,570.02 will be remitted to The Metropolitan Government at closing as defined in Sections 38 and 39 of this contract.

Dated this 20<sup>th</sup> day of June, 2011.

By: John Gurzone

Title: Managing Director / Principal

Sworn to and subscribed before me on this 20<sup>th</sup> day of June, 2011.

My commission expires  
Notary Public



Acknowledged:

Charles Cardwell  
Charles Cardwell, Metropolitan Trustee

Richard Riebeling  
Richard Riebeling, Director of Finance

OFFEROR'S AFFIDAVITS

State of New York  
County of New York

As used herein, "Offeror" will include bidders and proposers.

**Compliance with Laws:** After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the \_\_\_\_\_ (Title) of Tower DBW LLC (Offeror), and that Offeror is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes.

**Contingent Fees:** In accordance with the Metropolitan Government's 1992 Procurement Code, it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the foregoing.

**Non-Discrimination:** After first being duly sworn according to law, the undersigned (Affiant) states that by its employment policy, standards, and practices the Offeror does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal, or laying off of any individual due to his/her race, creed, color, national origin, age, or sex, and that the Offeror is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of its contract with the Metropolitan Government, Offeror certifies and warrants it will comply with this policy.

And Further Affiant sayeth not:

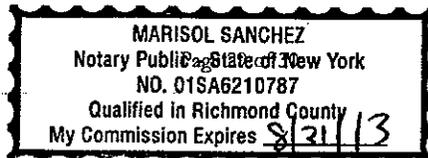
Tower DBW LLC

By: \_\_\_\_\_  
Title: CONSTANTINE M. DAKOLIAS  
PRESIDENT

Sworn to and subscribed before me on this 20<sup>th</sup> day of June, 2011.

Marisol Sanchez  
Notary Public

My commission expires: 8/31/13



Tower DBW LLC  
1345 Avenue of the Americas  
46<sup>th</sup> Floor  
New York, New York 10105

June 20, 2011

Kim McDoniel, Finance, Division of Accounts  
Metropolitan Government of Nashville and Davidson County  
Procurement Division  
PO Box 196300  
Nashville, TN 37219-6300

**RE: RFP 11.151: PURCHASE AND ASSIGNMENT OF DELINQUENT REAL  
PROPERTY TAX RECEIVABLES**

Dear Ms. McDoniel,

Reference is hereby made to that certain Purchase, Sale and Assignment of Delinquent Real Property Tax Receivables of the Metropolitan Government (the "Agreement") between the Metropolitan Government of Nashville and Davidson County, Tower Capital Management, LLC, and Tower DBW LLC. Capitalized terms used and not defined herein shall have the meaning(s) ascribed thereto in the Agreement.

Pursuant to the terms and conditions of Sections 30 and 41(a) of the Agreement, Tower DBW LLC hereby provides Metro notice of its intent to assign, sell, transfer and set-over its right, title and interest in and to (i) the Receivables, and (ii) all money due to Contractor under this the Agreement in respect of the Receivables to "Tower DBW Trust 2011-2", all pursuant to the terms and conditions of a Purchase, Sale, Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 1. Tower DBW LLC and Tower Capital Management, LLC each hereby confirms that such assignment, sale, transfer and set-over shall not release Contractors from their respective obligations under the Agreement.

The Receivables should be registered as set forth on Schedule 1. Remittances in respect of the Receivables should be delivered as specified on Schedule 1.

OFFEROR'S AFFIDAVITS

State of \_\_\_\_\_ County of \_\_\_\_\_

As used herein, "Offeror" will include bidders and proposers.

**Compliance with Laws:** After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the Managing Director (Title) of Tower Capital Management, LLC (Offeror), and that Offeror is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes.

**Contingent Fees:** In accordance with the Metropolitan Government's 1992 Procurement Code, it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the foregoing.

**Non-Discrimination:** After first being duly sworn according to law, the undersigned (Affiant) states that by its employment policy, standards, and practices the Offeror does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal, or laying off of any individual due to his/her race, creed, color, national origin, age, or sex, and that the Offeror is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of its contract with the Metropolitan Government, Offeror certifies and warrants it will comply with this policy.

**And Further Affiant sayeth not:**

Tower Capital Management, LLC

By: [Signature] John Garzino  
Title: Managing Director / Principal

Sworn to and subscribed before me on this 20 day of June, 2011.

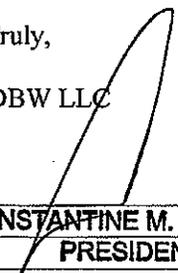
Notary Public  
My commission expires \_\_\_\_\_



If you have any questions regarding the foregoing, or related matters, please contact Randall Shy at (212) 478-4046.

Yours Truly,

Tower DBW LLC

By:   
Name: CONSTANTINE M. DAKOLIAS  
Title: PRESIDENT

Acknowledged and agreed:

Tower Capital Management, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and approved:

The Metropolitan Government of  
Nashville and Davidson County:

Purchasing Agent:



If you have any questions regarding the foregoing, or related matters, please contact Randall Shy at (212) 478-4046.

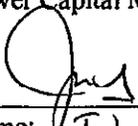
Yours Truly,

Tower DBW LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and agreed:

Tower Capital Management, LLC

By:  \_\_\_\_\_  
Name: John Garzone  
Title: Managing Director / Principal

Acknowledged and approved:

The Metropolitan Government of  
Nashville and Davidson County:

Purchasing Agent:

\_\_\_\_\_

Schedule 1

REGISTRATION AND REMITTANCE INSTRUCTIONS

The Receivables shall be registered on the City's books and records:

Either (x) "U.S. Bank, National Association as Custodian for Tower DBW Trust 2011-2"  
or (y) "U.S. Bank, Cust. for Tower DBW" (or such portion of the foregoing clause (x) or  
clause (y) as may fit in the space provided by the related municipality).

Remittance instructions for the Receivables are:

Physical Check Delivery Instructions – Lockbox:

Tower DBW Trust 2011-2  
c/o U.S. Bank  
PO Box 645040  
Cincinnati, OH 45264-5040

Wire Transfer Instructions - U.S. Bank Incoming Wire Instructions:

U.S. Bank  
ABA # 091-000-022  
BNF U.S. Bank Philadelphia - Tax Lien DDA 130 103 040 635  
777 E Wisconsin Ave  
Milwaukee WI 53202  
Account Detail: SEI #145944000 / Nick Caramanico

ACH Instructions:

U.S. Bank ACH Codes  
ABA # 075-000-022  
K338ZZZ145944000

Exhibit 1

[See agreement delivered herewith]

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