

Professional Services Agreement for Delinquent Account Collection Services

2019-21



The Town of Miami Lakes Council:

**Mayor Manny Cid
Vice Mayor Nelson Rodriguez
Councilmember Carlos Alvarez
Councilmember Jeffrey Rodriguez
Councilmember Joshua Dieguez
Councilmember Luis Collazo
Councilmember Marilyn Ruano**

Edward Pidermann, Town Manager
The Town of Miami Lakes
6601 Main Street
Miami Lakes, FL 33014

TABLE OF CONTENTS

Recitals 5

SECTION A. General Terms and Conditions 5

1. Definitions 5

2. General Conditions 6

 a. Term 6

 b. Scope of Services 6

3. Performance 7

 a. Performance and Delegation 7

 b. Removal of Unsatisfactory Personnel 7

 c. Time for Performance 7

4. Standard of Care 7

5. Subcontractors 7

6. Default 7

 a. General 7

 b. Conditions of Default 8

 c. Time to Cure Default; Force Majeure 8

7. Termination of Agreement 8

 a. Town’s Right to Terminate 8

 b. Contractor’s Right to Terminate 8

 c. Termination Due to Undisclosed Lobbyist or Agent 8

8. Documents and Records 9

 a. Ownership of Documents 9

 b. Delivery upon Request or Cancellation 9

 c. Nondisclosure 9

 d. Maintenance of Records 9

9. Insurance 10

 a. Companies Providing Coverage 10

 b. Verification of Insurance Coverage 11

 c. Forms of Coverage 11

10. Miscellaneous 11

 a. Indemnification 11

b.	Entire Agreement	12
c.	Nonexclusive Agreement.....	12
d.	Successors and Assigns	12
e.	Applicable Law and Venue.....	12
f.	Notices	13
g.	Interpretation	13
h.	Joint Preparation	13
i.	Priority of Provisions.....	13
j.	Mediation – Waiver of Jury Trial	14
k.	Compliance with Laws	14
l.	No Partnership.....	14
m.	Discretion of Town Manager	14
n.	Resolution of Disputes.....	15
o.	Contingency Clause.....	15
p.	Third-Party Beneficiary	15
q.	No Estoppel.....	16
SECTION B.	Scope of Services	17
1.	Services	17
2.	Types of Accounts	17
3.	Assignment.....	17
4.	Withdrawal.....	17
5.	Performance Standard	17
6.	Electronic Data	18
a.	Outbound Data Extract	18
b.	Inbound Data	18
c.	Property of Town	18
7.	Remittances	18
a.	Remittances to the Town	18
b.	Return Checks	18
c.	Paid Direct to Town Representative	18
8.	Reporting.....	18
9.	Credit Bureau Reporting	19

10. Obligations of Town 19
11. Legal Action 20
12. Fees 20

This Agreement made this 10th day of April in the year **2019** ("Agreement") by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and Penn Credit Corporation, hereinafter called the "Contractor," having a principal office at 2800 Commerce Drive, Harrisburg, PA 17110.

RECITALS

WHEREAS, the Town requires a contractor to provide collection services for delinquent accounts with the Town ("Services"); and

WHEREAS, the Contractor has the necessary expertise to provide the requested Services and has agreed to provide said Services.

WHEREAS, Contractor has provided these Services to the Town since 2014 for collection on delinquent false alarm fees, which requires a high degree of cooperation with the Town's Fire Alarm Monitoring contractor;

WHEREAS, under Section 5(d) of Town Ordinance 17-203, the Town may waive the formal bidding requirements of Section 5 when the Town Manager has made a written recommendation that based on the specific circumstances that it is not practical to comply with the requirements of that Section; and

WHEREAS, the Town Manager has made such a recommendation based on the high degree of cooperation and staff resources that are required to implement these Services; and

WHEREAS, the Town Council having accepted the Town Manager's recommendation, passed Resolution 14-1271 waiving the formal bidding requirements and authorizing the award of this Agreement to Contractor.

WITNESSETH, that the Town and the Contractor, for the considerations herein set forth, agree as follows:

SECTION A. GENERAL TERMS AND CONDITIONS

1. Definitions

- a. *Additional Services*** means any Work defined as such in this Agreement, secured in compliance with Florida Statutes and Town Code.
- b. *Attachments*** means the Attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.
- c. *Base Fee*** means the amount of compensation mutually agreed upon for the completion of the Services under this Agreement.
- d. *Basic Services*** means those services designated as such in the Agreement.
- e. *Contractor*** means Penn Credit Corporation, which has entered into the Agreement to provide professional services to the Town.

- f. Errors** means Services or work product prepared by the Contractor that are not correct or are incomplete, which results in the need for revision or re-issuance of the Services performed or developed based on the Services provided for under this Agreement.
- g. Fee** means the amount of compensation mutually agreed upon for the completion of Basic Services as determined in accordance with Article A.2.c.i. Fee Amount.
- h. Project Manager** means the employee or contractor who will manage and monitor the Services to be performed under this Agreement on behalf of the Town.
- i. Professional Services** means those services within the scope of practice for delinquent account collection services.
- j. Scope of Service(s)** means the activities, tasks, objectives, deliverables, and completion of work provided for under this Agreement.
- k. Town Council** means the legislative body of the Town of Miami Lakes.
- l. Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or designee.
- m. Town Representative** means the person or entity designated to represent the Town for certain specified accounts.
- n. Town or Owner** means the Town of Miami Lakes, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, Town's performance is pursuant to Town's position as the owner of a Project. In the event the Town exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances will be deemed to have occurred pursuant to Town's authority as a governmental body and will not be attributable in any manner to Town, as the owner, as a party to this Agreement. For purposes of this Agreement, "Town" without modification means the Town Manager.
- o. Work Order** means a document approved and issued by the Town authorizing the performance of Additional Services to be provided by the Contractor.
- p. Work Order Proposal** means a document prepared by the Contractor, at the request of the Town for Services to be provided by the Contractor.

2. General Conditions

a. Term

The initial term of this Agreement shall commence upon its execution and shall continue for a period of three (3) years.

The Town, by action of the Town Manager, has the option to extend the term of the Agreement for two (2) additional one-year terms, subject to continued satisfactory performance as determined by the Town Manager and to the availability and appropriation of funds.

b. Scope of Services

Contractor agrees to provide the Services as specifically described and set forth in Section B.

3. Performance

a. Performance and Delegation

The Services to be performed hereunder must be performed by the Contractor or Contractor's own staff, unless otherwise provided in this Agreement, or approved, in writing by the Town Manager. Said approval will not be construed as constituting an agreement between the Town and said other person or firm and the Town assumes no liability or responsibility for any subcontractor.

b. Removal of Unsatisfactory Personnel

The Project Manager or Town Manager may make written request to Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor to provide and perform Services pursuant to the requirements of this Agreement. The Contractor must respond to the Town within seven (7) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. All decisions involving personnel will be made by the Town. Such request will solely relate to said employees working under this Agreement and not as employees of the Contractor or subcontractor.

c. Time for Performance

The Contractor agrees to start all Services hereunder upon execution of the Agreement and complete each, task within the time stipulated in the Agreement. Time is of the essence with respect to performance of this Agreement.

A reasonable extension of the time for completion of various tasks may be granted by the Town Manager should there be a delay on the part of the Town in fulfilling its obligations under this Agreement as stated herein. Such extension of time shall not be cause for any claim by the Contractor for extra compensation.

4. Standard of Care

Contractor is solely responsible for the technical accuracy and quality of its Services. Contractor must perform due diligence, in accordance with best industry practices, performing the Services under this Agreement. Contractor will be responsible for the professional quality, technical accuracy and coordination of all reports, and other documents furnished by the Contractor under this Agreement. Contractor must, without additional compensation, correct or revise any errors, omissions, or deficiencies in its reports, documents, or other Services.

5. Subcontractors

Unless this box is checked, the use of subcontractors is prohibited under this Agreement.

6. Default

a. General

If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor will be in default. Upon the occurrence of a default hereunder the Town, in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Agreement whereupon all payments, advances, or other compensation paid by the Town to Contractor while Contractor was in default must be immediately returned to the Village. Contractor understands and agrees that termination of this

Agreement under this section does not release Contractor from any obligation accruing prior to the effective date of termination. The Town, at its sole discretion, may allow the Contractor a specified time to correct a default.

b. Conditions of Default

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

- i. Contractor fails to obtain or maintain the required insurance.
- ii. Contractor fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement or in any agreement it has with the Town, beyond the specified period allowed to cure such default.
- iii. Contractor fails to commence the Services within the time provided or contemplated herein or fails to complete the Services in a timely manner as required by this Agreement.

c. Time to Cure Default; Force Majeure

Town through the Town Manager will provide written notice to Contractor as to a finding of default, and Contractor must take all necessary action to cure said default within time stipulated in said notice, after which time the Town may terminate the Agreement. The Town, at its sole discretion, may allow additional days to perform any required cure if Contractor provides written justification deemed reasonably sufficient.

Should any such failure on the part of Contractor be due to a condition of Force Majeure as the term is interpreted under Florida Law, then the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

7. Termination of Agreement

a. Town's Right to Terminate

The Town Manager has the right to terminate this Agreement for any reason or no reason, upon thirty (30) days' written notice. Upon termination of this Agreement, documents, analysis, materials, and/or reports, including all electronic copies related to Services authorized under this Agreement, whether finished or not, must be turned over to the Town. The Contractor will be paid for the Services performed and accepted, provided that said documentation is turned over to the Project Manager or Town Manager within ten (10) business days of termination.

b. Contractor's Right to Terminate

The Contractor shall have the right to terminate this Agreement, in writing, following breach by the Town, if the breach of the Agreement has not been corrected within thirty (30) days from the date of the Town's receipt of a written statement from Contractor specifying its breach of its duties under this Agreement.

c. Termination Due to Undisclosed Lobbyist or Agent

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission,

percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

For the breach or violation of this provision, the Town has the right to terminate this Agreement without liability and, at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

8. Documents and Records

a. Ownership of Documents

All documents, analysis, materials, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, including all electronic digital copies, will be considered works made for hire and are the property of the Town, without any restriction or limitation on their use. Upon expiration or termination of the Agreement the Contractor must turn over all records, documents and data, whether used or not used, including electronic data as required under Florida Statute 119.0701(d). Contractor is to keep copies of all such records, documents, or data for its records. However, Article A6.03 will continue in full force and effect after the expiration or termination of this Agreement.

b. Delivery upon Request or Cancellation

Failure of the Contractor to promptly deliver all such documents in the possession of the Contractor, both hard copy and digital, to the Town Manager within ten (10) days of cancellation, or within ten (10) days of request by the Town Manager, will be just cause for the Town Manager to withhold payment of any fees due Contractor until Contractor delivers all such documents. Contractor will have no recourse from these requirements.

c. Nondisclosure

To the extent allowed by law, Contractor agrees not to divulge, furnish, or make available to any third person, firm, or organization any information or documentation related to this Agreement, without Town Manager's prior written consent, or unless incident to the proper performance of the Contractor's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Contractor hereunder, and Contractor must require all of its employees, agents and Subcontractors comply with the provisions of this paragraph. Contractor will be entitled to limited use of the information and documents related to this Agreement, which will be used for the sole purpose of marketing to generate new business clients.

d. Maintenance of Records

Contractor will keep adequate records and supporting documentation, which concern or reflect its Services hereunder. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, must be kept in accordance with statute. Otherwise, the records and documentation will be retained by Contractor for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. Town, or any duly authorized agents or representatives of Town, has the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity will be conducted only during normal business hours. The Contractor agrees to furnish copies of any

records necessary, in the opinion of the Town Manager, to approve any requests for payment by the Contractor.

Contractor shall also comply with the following requirements of the Florida Public Records Law including:

- i. Contractor must keep and maintain all public records required by the Town in order to perform services under this Agreement.
- ii. Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested public records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- iii. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the contract if the Contractor does not transfer the records to the Town.
- iv. Upon completion of the contract, Contractor shall transfer, at no cost, to the Town all public records in the possession of the Contractor or keep and maintain public records required by the Town to perform the service under this contract. If the Contractor transfers all public records to the Town upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS VIA PHONE (305) 364-6100 x 1138; EMAIL CLERK@MIAMILAKES-FL.GOV; OR MAIL AT TOWN OF MIAMI LAKES, 6601 MAIN STREET, MIAMI LAKES, FL 33014.

9. Insurance

The Contractor must not start Services under this Agreement until the Contractor has obtained all insurance required hereunder and the Town Manager has approved such insurance. Should the Contractor not maintain the insurance coverage required in this Agreement, the Town may cancel this Agreement or, at its sole discretion, must purchase such coverage and charge the Contractor for such coverage purchased.

a. Companies Providing Coverage

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Town Manager. All companies must have a Florida resident agent and be rated at least A(X), as per A.M. Best Company's Key Rating Guide, latest edition.

b. Verification of Insurance Coverage

The Contractor must furnish certificates of insurance to the Town Manager for review and approval prior to the execution of this Agreement. The Certificates must clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of award to the Contractor. Contractor must maintain coverage with equal or better rating as identified herein for the term of this Agreement. Contractor must provide written notice to the Town Manager of any material change, cancellation or notice of non-renewal of the insurance within 30 days of the change. Contractor must furnish a copy of the insurance policy or policies upon request of the Town Manager within ten (10) days of written request.

c. Forms of Coverage

i. Commercial General Liability

Contractor must maintain commercial general liability coverage with limits of at least \$2,000,000 combined single limit per occurrence, and \$3,000,000 aggregate for bodily injury and property damage. The coverage must include Premises and Operations, Contingent and Contractual Liability, and Products and Completed Operations, with additional endorsements, as applicable. Coverage must be written on a primary, non-contributory basis with the Village listed as an additional insured as reflected by endorsement CG 2010 11/85 or its equivalence. Notice of cancellation is read (30) days/(10) days for nonpayment.

ii. Workers' Compensation Insurance

The Contractor must maintain Worker's Compensation Insurance in compliance with Florida Statutes, Chapter 440, as amended, and Employee's Liability with a minimum limit of \$500,000 each occurrence. Should the Contractor be exempt from Florida's Worker's Compensation insurance requirement the Contractor must provide documentation from the State of Florida evidencing such exemption.

iii. Modifications to Coverage

The Town Manager reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Contractor. Contractor must comply with such requests unless the insurance coverage is not then readily available in the national market and may request additional consideration from Town accompanied by justification.

10. Miscellaneous

a. Indemnification

The Contractor will hold harmless, indemnify the Town, its officials and employees from any and all claims, losses and causes of actions which may arise out of the performance of this Agreement as a result of any act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of the Contractor or the Subcontractors. The Contractor will pay all claims and losses of any nature whatsoever in connection therewith in the name of the Town when applicable, and will pay all costs, including without limitation reasonable attorney's and appellate attorney's fees, and judgments which may issue thereon. The Contractor's obligation under this paragraph will not be limited in any way by the agreed upon the Agreement value, or the Contractor's limit of,

or lack of, sufficient insurance protection and applies to the full extent that it is caused by the negligence, act, omission, recklessness or intentional wrongful conduct of the Contractors, its agents, servants, or representatives.

b. Entire Agreement

This Agreement, as it may be amended from time to time, represents the entire and integrated Agreement between the Town and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement will not be deemed to be a waiver of any other breach of any provision of this Agreement.

c. Nonexclusive Agreement

Contractor Services under this Agreement are to be provided on a nonexclusive basis and the Town, at its sole discretion and right, may engage other firms to perform the same or similar Service, provided, however, that the Town will first notify the Contractor that the Town has engaged such similar Service and that the duties performed or Service provided, to the extent they may conflict between the Contractor and those other firms engaged, are delineated by the Project Manager so that the Contractor and those similarly engaged are clear as to their responsibilities and obligations.

d. Successors and Assigns

The performance of this Agreement must not be transferred, pledged, sold, delegated, or assigned, in whole or in part, by the Contractor without the written consent of the Town Council or Town Manager, as applicable. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, or an assignment for the benefit of creditors will each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Town approval.

The Contractor's services are unique in nature and any transference without the prior written approval of the Town will be cause for the Town to terminate this Agreement. The Contractor will have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

The Contractor's services are unique in nature and any transference without the prior written approval of the Town will be cause for the Town to terminate this Agreement. The Contractor will have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

e. Applicable Law and Venue

This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party concerning this Agreement, or arising out of this Agreement, must be brought in Miami-Dade County, Florida. Each party will

bear its own attorney's fees except in actions arising out of Contractor's duties to indemnify the Town under Article A7 where Contractor must pay the Town's reasonable attorney's fees.

f. Notices

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by registered United States mail, return receipt requested, addressed to the party for whom it is intended and at the place last specified; and the place for giving of notice will remain such until it has been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

For Town of Miami Lakes:
Edward Pidermann
Town Manager
6601 Main Street
Miami Lakes, Florida 33014
pidermanne@miamilakes-fl.gov

For Contractor:
Rhett Donagher
Penn Credit Corporation
2800 Commerce Drive
Harrisburg, PA 17110
Rhett.donagher@penncredit.com

With a copy to:

Daniel Angel
Chief Procurement Officer
At the same address as above
angeld@miamilakes-fl.gov

g. Interpretation

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction will be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement includes the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

h. Joint Preparation

Preparation of this Agreement has been a joint effort of the Town and Contractor and the resulting document will not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

i. Priority of Provisions

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement will prevail over any document incorporated by reference and be given effect.

j. Mediation – Waiver of Jury Trial

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the Agreement, the parties to this Agreement agree all disputes between them will be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on a 50/50 basis. The Contractor agrees to include such similar contract provisions with all subcontractors and/or independent Contractors and/or Contractors retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation, the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

k. Compliance with Laws

Contractor must comply with all applicable laws, codes, ordinances, rules, regulations, and resolutions, and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement. This includes the Contractor maintaining in good standing all required licenses, certificates, and permits as required to perform the Services.

i. Non-Discrimination

Town warrants and represents that it does not and will not engage in discriminatory practices and that there must be no discrimination in connection with Contractor's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status, or national origin. Contractor further covenants that no otherwise qualified individual will, solely by reason of his/her race, color, sex, religion, age, handicap, marital status, or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

ii. ADA Compliance

Contractor must affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA") in the course of providing any work, labor, or services funded by the Town, including Titles I & II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines, and standards. Additionally, the Contractor must take affirmative steps to insure nondiscrimination in employment of disabled persons.

l. No Partnership

Contractor is an independent Contractor. This Agreement does not create a joint venture, partnership, or other business enterprise between the parties. The Contractor has no authority to bind the Town to any promise, debt, default, or undertaking of the Contractor.

m. Discretion of Town Manager

Any matter not expressly provided for herein dealing with the Town or decisions of the Town will be within the exercise of the reasonable professional discretion of the Town Manager.

n. Resolution of Disputes

Contractor understands and agrees that all disputes between it and the Town based upon an alleged violation of the terms of this Agreement by the Town will be submitted for resolution in the following manner.

The initial step will be for the Contractor to notify the Procurement Manager in writing of the dispute identified in Article A8.05, Notices. Contractor must, within five (5) calendar days of the initial notification, submit all supporting documentation to the Procurement Manager. Failure to submit such notification and documentation will constitute a waiver of protest by the Contractor. Upon receipt of said documentation the Procurement Manager will review the issues relative to the dispute and issue a written finding.

Should the Contractor and the Procurement Manager fail to resolve the dispute the Contractor may submit an appeal of the Procurement Manager's finding in writing within five (5) calendar days to the Town Manager. Failure to submit such an appeal of the written finding shall constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Town Manager will review the issues relative to the dispute and issue a written finding.

Appeal to the Town Manager for his/her resolution, is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the amount of compensation require approval or disapproval by the Town Council, Contractor will not be entitled to seek judicial relief unless:

- i. it has first received the Town Manager's written decision, approved by the Town Council if applicable, or
- ii. a period of sixty (60) calendar days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of ninety (90) calendar days has expired where the Town Manager's decision is subject to Town Council approval; or
- iii. Town has waived compliance with the procedure set forth in this section by written instrument(s) signed by the Town Manager.

o. Contingency Clause

Funding for this Agreement is contingent on the availability of funds and continued authorization for the services and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds, or change in regulations, upon thirty (30) days' notice. The Contractor shall be entitled to discontinue Services, which may include uncompleted hearings, without any recourse by the Town if the funding is not available to pay for Services not yet begun. In any event, the Town acknowledges that it will pay for Services performed that have been properly authorized by the Project Manager.

p. Third-Party Beneficiary

Contractor and the Town agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by any third-party under this Agreement.

q. *No Estoppel*

Neither the Town's review, approval, or acceptance of, or payment for Services performed under this Agreement will be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and the Contractor will be and remain liable to the Town in accordance with applicable laws for all damages to the Town caused by the Contractor's negligent performance of any of the Services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

END OF SECTION

SECTION B. SCOPE OF SERVICES

1. Services

The Contractor's responsibilities include, but shall not be limited to, issuing collection letters, skip tracing, telephone collection and credit bureau reporting for virtually all delinquent accounts for services rendered by the Town Representative and for the collection of amounts due (the "Services").

Contractor agrees to use its best efforts and work diligently to collect all monies due and to forward such money to Town, all in accordance with the terms and conditions of this Agreement.

2. Types of Accounts

Contractor shall provide collection Services for some or all of the following types of accounts:

- a. *Alarm System Response Fees* – The Town bills for response by Police and Fire Departments to alarms for emergency responses. Delinquent accounts will be sent to the Contractor at ninety (90) days past due.
- b. *Miscellaneous Accounts* – Any other Town account or accounts for which the Town is authorized to collect on may be added to this Agreement based on the needs of the Town.

3. Assignment

Town Representative shall notify Contractor of delinquent accounts it wishes to assign to Contractor and shall provide delinquent account information, as described in this Agreement.

4. Withdrawal

Town Representative is entitled to withdraw any delinquent account that it may have placed in error with Contractor. Otherwise, delinquent accounts referred to Contractor shall remain with Contractor for collection until the account is determined to be uncollectible by Contractor. Any delinquent account not collected in full within 1095 days from the date the account was placed with Contractor shall be deemed uncollectable and withdrawn by the Town Representative.

5. Performance Standard

- a. Contractor shall commence collection efforts upon receipt of any delinquent accounts and shall continue such efforts for the entire period such delinquent accounts are held by Contractor.
- b. Contractor shall supervise and direct all collection work, devoting enough attention and applying the necessary skill and expertise to perform the work competently and efficiently. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of the collection
- c. Notwithstanding the foregoing, the Town Representative shall review and approve all collection letters prior to Contractor's use of such form in collecting the Town's delinquent accounts.
- d. Contractor shall perform its collection efforts in accordance with all federal, state and local laws and regulations, including the Fair Debt Collection Practices Act and the guidelines established by the Federal Trade Commission.

6. Electronic Data

a. Outbound Data Extract

Town Representative will provide an outbound data extract from the Town Representative's alarm billing system, as well as data files from other internal and external systems in a format agreeable to both parties.

b. Inbound Data

Contractor shall conform data transferred to Town Representative to the specifications required by the Town. Any cost of development of an extract program to transfer data to the Town in accordance with the Town's specifications shall be at the Contractor's own cost.

c. Property of Town

All data generated by the Town Representative and the Contractor with respect to this Agreement shall remain the property of the Town and shall be surrendered in a compatible electronic format within ten (10) days at the request of the Town.

7. Remittances

a. Remittances to the Town

Contractor shall provide and remit payments to the Town Representative on a monthly basis (by the 15th of the subsequent month), accompanied by a Statement of Collection report. Such report shall detail the remittance information, including gross dollars collected for the month, account name, account number, account type, date of payment, and fee due to Contractor.

b. Return Checks

Collections by Contractor in which a check is returned unpaid by the bank, shall be reported as a minus payment and minus collection fee (credit). Town Representative will notify Contractor when a check is returned by the bank unpaid on a payment made directly to Town on which Town has paid Contractor the collection fee due. Contractor will list such returned check on the next statement as a minus payment and minus collection fee (credits).

c. Paid Direct to Town Representative

For amounts paid directly to the Town Representative that have been submitted to the Contractor for collection, the Town Representative will notify the Contractor, on a monthly basis, and the Contractor will net this amount against what is owed to the Town by the Contractor.

8. Reporting

a. Reporting. The Contractor shall provide the following reports electronically in printable format:

1. *Acknowledgement Report* verifying all accounts that have been received by Contractor for collection
2. *Payment Analysis* (Collection Analysis) provides information relation to collection performance, broken down by month of placement. This report illustrates recover performance.
3. *Spindown Analysis* provides a 12-month record of liquidation rates per month.

4. *State of Collection* (Monthly Statement) details accounts to which payments have been applied during the statement period. This report indicates not only amount paid by debtors, but also commissions due Contractor for collection services rendered.
 5. *Cancellation Report* lists all accounts schedule for return, along with the client account number, debtor name, balance, applicable dates, and reason for return.
 6. *Status Report* provides a complete overview of all account information (payments, debtor contacts, collector notes, etc.) and current account status (i.e. paid in full, debtor bankruptcy, debtor deceased, account disputed, etc.).
- b. Contractor will work with Town Representative to provide any additional reports as requested by the Town.

9. Credit Bureau Reporting

- a. Contractor will report delinquent accounts to the credit bureaus (Equifax, Trans Union and Experian) within thirty (30) days after the Acknowledgement Date, provided the initial placement balance is at least equal to the minimum balance reportable to said credit bureau.
- b. Based on account information received from Town Representative and information Contractor has in its possession, Contractor shall keep Credit Bureau(s) informed of changes in the status of delinquent accounts.
- c. Disputed accounts will be reported as disputed in accordance with the Fair Credit Reporting Act duty to provide notice: If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed as such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the customer).

10. Obligations of Town

- a. At the time Town Representative assigns delinquent accounts to Contractor, Town Representative shall provide Contractor with the following information with respect to each delinquent account (the "Account Information") provided Town Representative has knowledge of this Account Information:
 1. Notices of any proceedings under the bankruptcy or insolvency laws of the United States of America or any state relating to the Delinquent Accounts;
 2. Notices of any actions or proceedings commenced by any Delinquent Account Consumer against the Town Representative relation to the Delinquent Accounts;
 3. Any communications received by Town Representative from the Delinquent Account customer, or the legal representative of a Delinquent Account customer, relating to the Delinquent Account or the collection of the Delinquent Account; and
 4. Any credit or other forgiveness granted by Town Representative with respect to any Delinquent Account.
- b. Town Representative shall have a continuing obligation to provide Contractor with any new or additional Account Information with respect to the delinquent accounts as soon as such information becomes known to Town Representative.

11. Legal Action

- a. Contractor must secure express written approval from the Town Attorney on each and every account prior to instituting any legal action to collect the account.
- b. Contractor shall be reimbursed any monies for litigation costs advanced by Contractor from the first proceeds of litigation.
- c. If any legal action is contested, or if a counter-claim is asserted, Contractor will promptly advise the Town and Town may assume further responsibility including all costs.
- d. Collection cost shall only be added to the principal balance due for the delinquent account if expressly authorized in writing by Town Representative.
- e. Prior to initiating collection litigation, in addition to the express written authorization, Town Representative shall provide Contractor with the following information:
 - 1. Completed documentation of the account
 - 2. Validation of the debt
 - 3. Statement of non-military service
 - 4. Signed affidavit of the account
 - 5. A witness, when necessary
- f. Contractor shall provide Town Representative with regular reports on the status of each collection litigation matter.

12. Fees

- a. Town agrees to pay Contractor, as its sole compensation, a commission or percentage of the amount collected on a delinquent account assigned to Contractor, in accordance with the following schedule:

1. Delinquent Accounts 0 to 365 days old	15%
2. Delinquent Accounts 366-1825 days old	19.5%
3. Legal Action Authorized	28%
- b. Contractor agrees that it shall not be entitled to fees or commission on delinquent accounts which have been withdrawn from Contractor, except to the extent that the payment directly resulted from the collection efforts of Contractor

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST

Penn Credit Corporation



Signature



Signature

Rhett Donagher, Sales Manager

Print Name, Title

Kyle Donagher, Treasurer

Print Name, Title of Authorized Officer or Official

ATTEST: **Thomas Foley, Jr., Secretary**

(Corporate Seal)

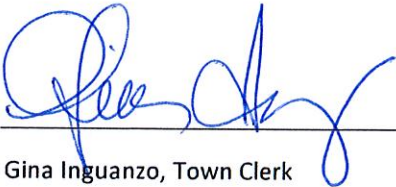


Firm's Secretary

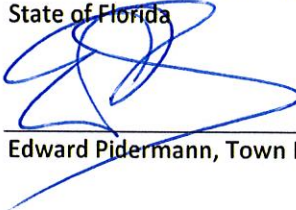
(Affirm Firm's Seal, if available)

ATTEST:

Town of Miami Lakes, a municipal corporation of the State of Florida



Gina Inguanzo, Town Clerk



Edward Pidermann, Town Manager

APPROVED AS TO LEGAL FORM AND CORRECTNESS:



Town Attorney

CERTIFICATE OF AUTHORITY

I HEREBY CERTIFY that at a meeting of the Board of Directors of Penn Credit Corporation, a corporation organized and existing under the laws of the State of Pennsylvania, held on the 12th day of March, 2019, a resolution was duly passed and adopted authorizing (Name) Kyle Donagher as (Title) Treasurer of the corporation to execute agreements on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation.
I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th, day of April, 2019.
Secretary: [Signature]
Print: Thomas Foley, Jr.

NOTARIZATION

STATE OF Pennsylvania)
) SS:
COUNTY OF Dauphin)

The foregoing instrument was acknowledged before me this 4th day of April, 2019, by Thomas Foley, Jr., who is personally known to me or who has produced _____ as identification and who (did / did not) take an oath.

Robin A. Founds
SIGNATURE OF NOTARY PUBLIC
STATE OF ~~FLORIDA~~ PA

Robin Founds
PRINTED, STAMPED OR TYPED
NAME OF NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Robin A. Founds, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires July 6, 2021
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES