

RESOLUTION NO. 14-1271

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE PURCHASE OF DELINQUENT ACCOUNT COLLECTION SERVICES; AUTHORIZING THE TOWN MANAGER TO UTILIZE THE CITY OF WEST PALM BEACH, FLORIDA CONTRACT WITH PENN CREDIT CORPORATION PURSUANT TO SECTION 7 OF ORDINANCE 12-142 (THE TOWN'S PROCUREMENT ORDINANCE); AUTHORIZING THE TOWN MANAGER TO EXECUTE AND IMPLEMENT TERMS AND CONDITIONS OF CONTRACT; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes, Florida ("the Town") desires to purchase collection services on delinquent accounts; and

WHEREAS, Section 7 of Town of Miami Lakes Ordinance 12-142 ("the Town's Procurement Ordinance") authorizes the purchase of goods and services from current contracts of other public, governmental, state/federal funded or non-profit entities, where the contracts have resulted from a formal competitive procurement process; and

WHEREAS, the Town intends to access a contract by the City of West Palm Beach, Florida with Penn Credit Corporation ("Penn") for purchasing delinquent account collection services; and

WHEREAS, the Town desires for Penn to utilize efforts to collect amounts due on delinquent accounts; and

WHEREAS, the collection services are to be self-funded as Penn is to receive a commission or percentage of the amount collected on a delinquent account; and

WHEREAS, the best source for the purchase of delinquent account collection services that meets the needs of the Town is from Penn, under contract with the City of West Palm Beach, Florida, which is being piggybacked for this purchase; and

WHEREAS, the Procurement Manager has conducted a market analysis to determine that the pricing from Penn under the contract with the City of West Palm Beach, Florida is the most advantageous procurement method available to the Town;

WHEREAS, the Town Manager recommends authorization to purchase delinquent account collection services from the current contract between the City of West Palm Beach, Florida and Penn.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Approval of Contract. The Town Council hereby approves and authorizes the Town Manager to purchase, using the current contract between the City of West Palm Beach, Florida and Penn Credit Corporation, delinquent account collection services from Penn Credit Corporation, in substantially the form attached hereto as Exhibit "A," subject to approval as to form and legality by the Town Attorney.

Section 3. Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the contract with Penn Credit Corporation for the purchase of delinquent account collection services.

Section 4. Authorization of Fund Expenditure. The Town Manager is authorized to implement the terms and conditions of the contract with Penn Credit Corporation with funding coming from collections against delinquent accounts.

Section 5. Execution of the Contract. The Town Manager is authorized to execute the contract in substantially the form attached hereto as Exhibit "A" with Penn Credit Corporation for the purchase of delinquent account collection services, subject to approval as to form and legality by the Town Attorney.

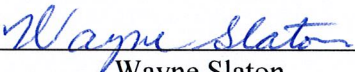
Section 6. Effective Date. This Resolution shall be effective immediately upon adoption.

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Passed and adopted this 9th day of December, 2014.

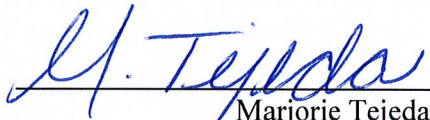
The foregoing resolution was offered by Councilman Rodriguez who moved its adoption. The motion was seconded by Councilman Lama and upon being put to a vote, the vote was as follows:

Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Manny Cid	<u>NO</u>
Councilmember Tim Daubert	<u>Yes</u>
Councilmember Tony Lama	<u>Yes</u>
Councilmember Ceasar Mestre	<u>Yes</u>
Councilmember Frank Mingo	<u>Yes</u>
Councilmember Nelson Rodriguez	<u>Yes</u>



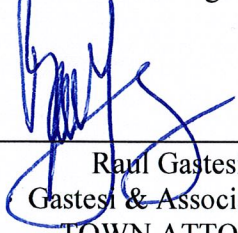
Wayne Slaton
MAYOR

Attest:



Marjorie Tejeda
TOWN CLERK

Approved as to form and legal sufficiency:



Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

EXHIBIT "A"

MEMO

RECEIVED

JUL 30 2012

City of West Palm Beach
Mayor's Office



OFFICE OF THE CITY ATTORNEY

To: Jeri Muoio, Mayor
From: Nancy D. Urcheck, Deputy City Attorney *ndu*
Date: July 30, 2012
Matter No: 12-11383.001
Dept. 180 Finance Dept.
Re: **Penn Credit Corp; Delinquent Account Collection Services**

Transmitted herewith are original documents which have been reviewed and approved for legal sufficiency. Kindly forward the documents, along with this memo, to the City Clerk's Office.

To: **Office of the City Clerk**

The Mayor is authorized to execute the document in accordance with:

Procurement Code. Procurement certification is attached.
 Commission Approval. Resolution No.
 City Charter

The document termination date is*: .

* Note: If this is a work authorization, the termination date of the master agreement may differ.

Please take the actions indicated below with respect to these documents:

Attest to the execution of the Agreement by the Mayor.
 Insert the date of execution beneath the Mayor's signature (if not already dated).

Please **retain one original** as a public record and forward the other original to:

Nancy D. Urcheck, Deputy City Attorney

ndu

AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

Contract No. 11383.001

THIS AGREEMENT for Collection of Delinquent Accounts (“Agreement”) is made by and between and the **CITY OF WEST PALM BEACH**, Florida, a municipal corporation in the State of Florida (City) and **PENN CREDIT CORPORATION**, a Pennsylvania corporation, with a principal address of 916 So. 14 Street, Harrisburg, PA 17107, authorized to do business in the State of Florida, with a local address of 777 So. Flagler Dr., West Palm Beach, FL 33401 (“Agency”);

WHEREAS, the City issued its Request for Proposals (RFP 11-12-210 seeking proposals from qualified and responsible firms to perform collection services on delinquent accounts (the “RFP”); and

WHEREAS, Agency submitted its Proposal dated May 4, 2012 (the “Proposal”) and

WHEREAS, City desires for Agency to utilize its efforts to collect amounts due for such delinquent accounts and Agency desires to provide such collection services in accordance with the terms and conditions set forth in this Agreement, the RFP and the Proposal, which are incorporated in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICES

1.1 Services. The Agency’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 City and for the collection of amounts due (the “Services”).

1.2 Types of Accounts. Agency shall provide collection Services for some or all of the following types of accounts:

a. *Utility Bills* – for Water, Wastewater, Sanitation and Stormwater services. Delinquent balances in excess of \$25.00 on closed tenant accounts, whether a residential or commercial property, will be referred to the Agency. The information supplied by City will include: customer name, social security number, account closing date, premise address, last known mailing address and telephone number, account number and amount due.

b. *Alarm System Response Fees* - The City bills for response by Police and Fire Departments to alarms for emergency responses. Delinquent accounts will be sent to the Agency at 90 days past due.

c. *Parking Violations* – The City issues Parking Citations for certain violations. If the citation is not paid 35 days after issued date, the account will be sent to collections. If a current address is unavailable, the account will be sent to collections immediately. City will supply the following information: name, vehicle tag, address, amount due, citation number, date and time issued.

d. *Emergency Medical Services (EMS) Billing* –EMS billing encompasses ambulance transport charges. Delinquent EMS bills will be sent to the Agency at more than 90 days past due. All returned mailings are turned over to the Agency immediately unless the City is awaiting an insurance benefit. All EMS patients for whom the City cannot find an address to send the bill to are turned over to collections immediately.

e. *Fire Inspections* – City charges fees for certain Fire Inspection Services. Accounts will be sent to the Agency at 90 days past due.

f. *Recreation Fees* – The City charges certain fees for recreational activities. Delinquent accounts will be sent to the Agency at 90 days past due.

g. *Miscellaneous Accounts* – Any City account, any City Agency account, any City Board account or any account authorized to be collected by the City.

1.3 City retains Agency to collect Delinquent Accounts which the City in its sole discretion may assign to Agency for collection. This is a non-exclusive contract and City may, in its sole discretion, provide accounts to other collection agencies for collection. Nothing contained in this Agreement shall be construed as requiring City to use Agency exclusively or to place any set number or type of accounts with Agency.

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

2. ASSIGNMENT OF DELINQUENT ACCOUNTS

2.1 Assignment. City shall notify Agency of delinquent accounts it wishes to assign to Agency and shall provide delinquent Account Information, as described in this Agreement.

2.2 Withdrawal. City is entitled to withdraw any delinquent account which it may have placed in error with Agency. Otherwise, delinquent accounts referred to Agency shall remain with Agency for collection until the account is determined to be uncollectible by Agency. Any delinquent account not collected in full within 1825 days from the date the account was placed with Agency shall be deemed uncollectable and withdrawn by the City.

3. PERFORMANCE STANDARDS

3.1 Agency 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 Agency.

3.2 Agency shall supervise and direct all collection work, devoting enough attention and applying the necessary skill and expertise to perform the work competently and efficiently. Agency shall be solely responsible for the means, methods, techniques, sequences and procedures of the collection.

3.3 Notwithstanding the foregoing, the City shall review and approve all collection letters prior to Agency's use of such form in collecting the City's delinquent accounts.

3.4 Agency 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.

4. ELECTRONIC DATA

4.1 Outbound Data Extract. City will provide an outbound data extract from the Oracle Utilities CC&B system, as well as data files from other internal and external systems in a format agreeable to both parties, including but not limited to the City's EMS billing service system utilized by ADPI.

4.2 Inbound Data. Agency shall conform data transferred to City to the specifications required by the City. Any cost of development of an extract program to transfer data to the City in accordance with the City's specifications shall be at the Agency's own cost.

4.1 Property of City. All data generated by the City and the Agency with respect to this Agreement shall remain the property of the City and shall be surrendered in a compatible electronic format within 10 days at the request of the City.

5 REMITTANCES.

5.1 Remittances to the City. Agency shall provide and remit payments to the City 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 Agency.

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

5.3 Paid Direct to City. For amounts paid directly to the City that have been submitted to the Agency for collection, the City will notify the Agency, on a monthly basis, and the Agency will net this amount against what is owed the City by the Agency.

5.4 Trust Account. Collections made by Agency on delinquent accounts will be deposited immediately into a trust account for the benefit of City maintained in a national bank or state bank, FDIC insured. Such collections held in trust by Agency for the benefit of City, shall be the property of City and not available for any other use by Agency.

6. REPORTING.

6.1 Reporting. The Agency shall provide the following reports electronically in printable format:

- a. *Acknowledgement Report* verifying all accounts that have been received by Agency for collection.
- b. *Payment Analysis (Collection Analysis)* provides information relating to collection performance, broken down by month of placement. This report illustrates recovery performance.

- c. *Spindown Analysis* provides a 12-month record of liquidation rates per month.
- d. *Statement of Collection* (Monthly Statement) details accounts to which payments have been applied during the statement period. This report indicates not only amounts paid by debtors, but also commissions due Agency for collection services rendered.
- e. *Cancellation Report* lists all accounts scheduled for return, along with the client account number, debtor name, balance, applicable dates, and reason for return.
- f. *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.).

6.2 Agency will work with City to provide any additional reports requested.

7. CREDIT BUREAU REPORTING

7.1 Agency will report delinquent accounts to the credit bureaus (Equifax, Trans Union and Experian) within thirty (30) days after the Acknowledgment Date, provided the initial placement balance is at least equal to the minimum balance reportable to said credit bureau.

7.2 Based on account information received from City and information Agency has in its possession, Agency shall keep Credit Bureau(s) informed of changes in the status of delinquent accounts.

7.3 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).

8. OBLIGATIONS OF CITY.

8.1 At the time City assigns delinquent accounts to Agency, City shall provide Agency with the following information with respect to each delinquent account (the "Account Information") provided City has knowledge of this Account Information:

- a. Notices of any proceedings under the bankruptcy or insolvency laws of the United States of America or any state relating to the Delinquent Accounts;
- b. Notices of any actions or proceedings commenced by any Delinquent Account Consumer against the City relating to the Delinquent Accounts;
- c. Any communications received by City 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
- d. Any credits or other forgiveness granted by City with respect to any Delinquent Account.

8.2 City shall have a continuing obligation to provide Agency with any new or additional Account Information with respect to the delinquent accounts as soon as such information becomes known to City.

9. LEGAL ACTION

9.1 Agency must secure express written approval from the City Attorney on each and every account prior to instituting any legal action to collect the account.

9.2 Agency shall be reimbursed any monies for litigation costs advanced by Agency from the first proceeds of litigation.

9.3 If any legal action is contested, or if a counter-claim is asserted, Agency will promptly advise the City and City may assume further responsibility including all costs.

9.4 Collection cost shall only be added to the principal balance due for the delinquent account if expressly authorized in writing by City.

9.5 Prior to initiating collection litigation, in addition to the express written authorization, City shall provide Agency with the following information:

- Complete documentation of the account
- Validation of the debt
- Statement of non-military service
- Signed affidavit of the account
- A witness, when necessary

9.6 Agency shall provide City with regular reports on the status of each collection litigation matter.

10. FEES

10.1 City agrees to pay Agency, as its sole compensation, a commission or percentage of the amount collected on a delinquent account assigned to Agency, in accordance with the following schedule:

Delinquent Accounts - 0 to 365 days old	15%
Delinquent Accounts 366 to 1825 days old	19.5%
Legal Action Authorized	28%

10.2 Agency agrees that it shall not be entitled to fees or commission on delinquent accounts which have been withdrawn from Agency, except to the extent that the payment directly resulted from the collection efforts of Agency.

11. INSURANCE REQUIREMENTS

11.1 Agency shall purchase from and maintain, in a company or companies lawfully authorized to do business in Florida, such insurance as will protect the City from claims set forth below which may arise out of or result from performance under this Agreement by Agency, or by a

subcontractor of Agency, or by anyone directly or indirectly employed by Agency, or by anyone for whose acts Agency may be liable.

11.2 Coverage shall be maintained without interruption from the effective date of this Agreement until date of final payment and termination of any coverage required to be maintained after final payment. Any liability coverage on claims made basis shall remain effective for five (5) years after final payment. If any of the required insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

11.3 The City shall be provided a minimum of thirty (30) days prior written notice of any adverse material change, including any reduction, non-renewal or cancellation of Contractor's required insurance coverage, or any increase in the Agency's self-insurance retention.

11.4 Evidence of insurance, being a current ACORD certificate of insurance or its equivalent, executed by the insurer, or its agent or broker, evidencing that a policy of insurance and any required endorsements have been issued by the agent/broker shall be delivered to City prior to execution of this Agreement. The Certificate of Insurance shall be dated and show the name of the insured Agency, the specific Project or Agreement by name and contract number, the name of the insurer, the number of the policy, its effective date, and its termination date.

11.5 All required insurance (except Worker's Compensation and Professional Liability) shall include an Additional Insured endorsement identifying the City as an Additional Insured. No costs shall be paid by the City for an additional insured endorsement.

11.6 Required Coverage: Agency shall maintain following liability coverage, in the limits specified:

Comprehensive General Liability: Not less than \$2,000,000.00 Combined Single Limit per each occurrence and \$3,000,000 aggregate, with bodily injury limits. May not be subject to a self-insured retention or deductible exceeding \$25,000.

12. INDEMNIFICATION

Agency agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from City, its officials, agents, or employees arising out of or incidental to or in any way connected with Agency's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of Agency in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death arises out of or is incidental to or in any way connected with Agency's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by Agency. This indemnification includes, but is not limited to, the performance of this Agreement by Agency or any act or omission of Agency, its agents, servants, contractors, patrons, guests or invitees and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. Agency agrees to pay all claims and losses and shall defend all suits, in the name of the City, its employees, and officers, including but not limited to appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Agency under this indemnification provision. To the extent considered necessary by

the City, any sums due Agency under this Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This paragraph shall not be construed to require Agency to indemnify the City for its own negligence, or intentional acts of the City, its agents or employees. Nothing in this Agreement shall be deemed to be a waiver of the City's sovereign immunity under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

13. TERM

This Agreement shall be effective as of the date executed by City and continue in effect for a period of three (3) years, subject to renewal or termination as provided in this Agreement. This Agreement may be renewed upon the sole discretion of the City for two (2) additional period of one (1) year each.

14. TERMINATION

14.1 The City shall have the right to terminate this Agreement, in whole or in part, with or without cause, and for its convenience, upon five (5) days written notice to Agency.

14.2 In the event of termination, Agency will receive its fee on any payments it receives on retained accounts after termination of this Agreement.

14.3 Upon termination, Agency shall immediately return to City all delinquent accounts which have been referred and all documents and account information which has been provided by City.

14.4 Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability hereunder, except that the provisions of this Section and the provisions regarding the right to audit, property rights, insurance, indemnification, governing law and litigation shall survive termination of this Agreement and remain in full force and effect.

15. RIGHT TO AUDIT.

Agency shall maintain adequate records for the Services performed under this Agreement for five (5) years following completion of the Services, expiration or termination of this Agreement, or conclusion of any litigation regarding this Agreement, whichever last occurs. The City shall have the right to audit Agency's books and records, at the City's expense, upon prior notice, with regard to the Services provided to the City under this Agreement. Failure by Agency to permit such audit shall be grounds for termination of this Agreement by the City. In addition to the foregoing, Agency consents to the City requesting from the insurance carriers confirmation of all fees paid to Agency arising out or related to the City's insurance coverages during the term of this Agreement.

16. NON-DISCRIMINATION.

In performing under this Agreement, Agency shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

17. PUBLIC ENTITY CRIMES ACT.

Agency represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that Agency has not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months from the date of submitting a proposal for this Agreement or entering into this Agreement. Violation of this section may result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

18. LOBBYING CERTIFICATION.

Agency certifies to the best of its knowledge and belief that no funds or other resources received from the City in connection with this Agreement will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

19. SMALL BUSINESS REQUIREMENTS.

Agency shall comply with the City's Small Business Ordinance set forth in Chapter 66 of the Code of Ordinances of the City of West Palm Beach, which is incorporated herein by this reference. Consultant shall comply with the small business commitment contained in Consultant's Proposal, or as approved by the Small Business Division.

20. COMPLIANCE WITH LAWS.

20.1 In the conduct of the Services under this Agreement, Agency shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and City ordinances and regulations, including, but not limited to the following:

- Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.)
- Gramm-Leach-Bliley Act (15 U.S.C., Subchapter 1, §6801-6809)
- Consumer Credit Protection Act (15 U.S.C. 1601 et seq.)
- Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.)
- The Privacy Act of 1974, as amended (5 U.S.C. § 552a)
- Health Insurance Portability & Accountability Act (HIPAA)
- Health Information Technology for Economic and Clinical Health (HITECH)
- Immigration Reform and Control Act of 1986 (IRCA)
- Fair Labor Standards Act and Federal minimum wage laws

20.2 HIPPA. With respect to any health information which may be obtained through collection of EMS Billing accounts, Agency shall not, and shall ensure that its officers, directors and employees shall not use or disclose any Protected Health Information, as that term is defined under HIPPA, in any manner that would constitute a violation of the HIPPA Privacy Rule. Agency agrees to use all appropriate safeguards to prevent the use or disclosure of Protected Health Information. Agency will work with City to take appropriate steps which mitigate, to the extent reasonably possible, deleterious effects of any unauthorized disclosure or use of Protected Health Information. Agency shall, within five (5) business days of becoming aware of any unauthorized disclosure or use of Protected Health Information in violation of HIPPA by Agency, its officers or employees, or by a third party to which Agency disclosed such Protected Health Information, report such disclosure or use to the City in writing. Each such report shall provide the following information: (i) identify the Protected Health Information used or disclosed; (ii) identify the nature of such use or disclosure; (iii) identify who made the

unauthorized use or disclosure; (iv) identify who received the Protected Health Information; (v) identify what corrective action Agency took to prevent future unauthorized use or disclosure of such Protected Health Information; (vi) identify what Agency did or will do to mitigate the deleterious effects of such unauthorized disclosure or use of Protected Health Information; (vii) provide any other information requested by City.

21. ETHICS; CONFLICTS OF INTEREST

21.1 Agency represents that it has not given or accepted a kickback in relation to this Agreement and has not solicited this Agreement by payment or acceptance of a gratuity or offer of employment.

21.2 Agency represents that it has not solicited this contract by payment of a gift or gratuity or offer of employment to any official, employee of the City or any City agency or selection committee.

21.3 Agency represents that it does not employ, directly or indirectly, the mayor, members of the city commission or any official, department director, head of any City agency, or member of any board, committee or agency of the City.

21.4 Agency represents that it does not employ, directly or indirectly, any official of the City. Agency represents that it does not employ, directly or indirectly, any employee or member of any board, committee or agency of the City who, alone or together with his household members, own at least five percent (5%) of the total assets and/or common stock of Agency.

21.5 Agency represents that it has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to the mayor, members of the city commission, any department director or head of any city agency, any employee of the city or any city agency, or any member of a board that provides regulation, oversight, management or policy-setting recommendations regarding the Agency or its business.

22. INSPECTOR GENERAL.

Agency is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from the Agency and its subcontractors and lower tier subcontractors. Agency understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Agency or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

23. ENTIRE AGREEMENT; AMENDMENT; CONTROLLING PROVISIONS

23.1 Entire Agreement. This Agreement, including the RFP, the Proposal, and any Exhibits which are incorporated into this Agreement in their entirety, embody the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter.

23.2 This Agreement may only be modified by written amendment executed by the City and Agency.

23.3 Controlling Provisions. Except as otherwise specifically provided herein, in the event

of any conflict between the specific provisions of this Agreement and the requirements or provisions of the RFP and/or Proposal, the provisions shall be given precedence in the following order: (1) this Agreement, (2) the RFP; and (3) the Proposal. Wherever possible, the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents.

24. MISCELLANEOUS

24.1 Assignment. This Agreement may not be assigned by Agency without the express written consent of City, which may be withheld in City's sole discretion. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Agency shall not transfer, assign, sell or convey any delinquent accounts to any other collection agency without the prior written consent of City.

24.2. Notice. All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to Agency at the address on the first page of this Agreement, or to the City, at the address on the first page of this Agreement, attention: City Administrator, with a copy to the City Attorney, or to such other address or person as shall be designated by a party in a written notice given in the manner required hereby.

24.3 Governing Law; Jurisdiction; Venue; Litigation. This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The City and Consultant submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or the Federal Southern District of Florida. Consultant agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

24.4. Severability. In the event that any term or provision of this Agreement shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, (or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable), shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.


24.5 Waiver. Any waiver by either party of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

24.6 Headings. The headings contained in this Agreement are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Agreement.

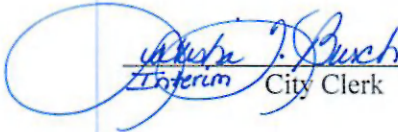
[Remainder of page left blank. Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement as of the date first set forth above.

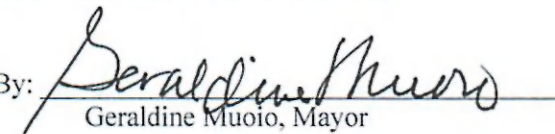
PENN CREDIT CORPORATION

By: 
Title: President 7-19-2012

ATTEST:


Interim City Clerk

CITY OF WEST PALM BEACH

By: 
Geraldine Muoio, Mayor

Dated: 7/30, 2012

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: 