

AGREEMENT FOR DELINQUENT DEBT COLLECTION SERVICES

Contract No. 3017

THIS AGREEMENT for Delinquent Debt Collection Services ("Agreement") is made by and between and the **CITY OF TALLAHASSEE**, Florida, a municipal corporation, in the State of Florida ("City") located at 300 South Adams Street, Tallahassee, Florida 32301 **PENN/CENTRAL CORPORATION d/b/a PENN CREDIT CORPORATION**, a Pennsylvania corporation, with a principal address of 916 South 14th Street, Harrisburg, PA 17104, authorized to do business in the State of Florida ("Agency").

WHEREAS, the City of Tallahassee issued a Request for Proposals (RFP No. 0026-12-ER-RC) seeking proposals from qualified and responsible firms to perform collection services on delinquent accounts (the "RFP"); and

WHEREAS, on or about March 1, 2012, Agency submitted its Proposal ("Proposal"); and

WHEREAS, on June 7, 2012, the City's evaluation committee determined Agency's Proposal was the highest ranked vendor; and

WHEREAS, the parties desire to enter into this Agreement for Agency to provide collection services for such delinquent accounts as defined herein in accordance with the terms and conditions incorporated and set forth 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 communications, collection of amounts due, legal action, and credit bureau reporting, for all Delinquent Accounts, as defined in Section 1.2 herein, and for the collection of delinquent amounts due (the "Services").

1.2 Delinquent Accounts means any account with past amounts due and owing to the City, including but not limited to: utility accounts, non-utility return items, parking citations, licenses/permits and miscellaneous invoices.

1.3 City retains Agency to collect amounts due and owing to the City on Delinquent Accounts, which the City in its sole discretion may assign to Agency for collection. Nothing contained in this Agreement shall be construed as requiring City 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 render payment to City 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 will assign to Agency and shall provide Delinquent Account information to Agency, as described herein. Agency will maintain debt in collections for a minimum of 7 years.

2.2 Withdrawal. City is entitled to withdraw any Delinquent Account, at its sole discretion, placed with Agency.

3. PERFORMANCE STANDARDS

3.1 Agency shall supervise and direct all collection work, utilizing best management practices standard in the collection industry, to perform the work competently and efficiently. Agency shall be solely responsible for the means, methods, techniques, sequences and procedures of the collection.

3.2 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.

3.3 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 Federal Trade Commission guidelines.

4. ELECTRONIC DATA

4.1 Outbound Data Extract. City will provide data files from internal and external systems in a format agreeable to both parties.

4.2 Inbound Data. Agency shall conform data transferred to City to the City's specifications. 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 sole cost.

4.3 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, but not limited to: 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 and the Agency will net this amount against what is owed the City by the Agency.

6. REPORTING

6.1 Reporting. The Agency shall provide the following reports:

- a. Real time account status, to be accessed remotely via web-based outlet, to the City of all new business turned over to the agency. This report shall include, but is not limited to:
 - Name and City of Tallahassee account number of claim turned over to the agency;
 - Turn over date;
 - Amount of claim; and,
 - Accounts returned to the City and the reason being returned, including but not limited to: bankruptcy, uncollectable, the City's request and duplicate submission.
- b. Monthly, the Agency shall provide status reports to the City of all claims that have been turned over to the Agency. This report shall include, but is not limited to:
 - Name and City of Tallahassee account number of claim turned over to the agency;
 - Turn over date;
 - Amount of claim;
 - Amount of claim collected by the agency and date payment was processed;
 - Total amount collected since last report period for all City claims; and,
 - Accounts returned to the City and the reason for being returned, including but not limited to: bankruptcy, uncollectable, the City's request and duplicate submission.
- c. Performance Measures of the Agency will be documented using the following Recovery Rate reports that will be provided to the City:
 - Recovery Rate Reports –
 - Overall recovery rate – this will be calculated for all accounts placed and all monies received. This report should be provided monthly.

- Recovery rate by age of accounts placed – the recovery rate will be based on the amount of time since the Agency has received the delinquent account (i.e. accounts less than 60 days since placed with agency, accounts 61-90 days and accounts greater than 90 days)
- Additional Reporting Information Requested –
 - Differentiate between residential & commercial accounts placed
 - Average dollar amount per account placed for both residential and commercial accounts

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

7. CREDIT BUREAU REPORTING

7.1 Agency will report City approved Delinquent Accounts to the credit bureaus (Equifax, Trans Union and Experian or other similar business entities) within thirty (30) days after the date received by the Agency, provided the initial placement balance is at least equal to the minimum balance of \$50 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 Agency shall report disputed accounts in accordance with the Fair Credit Reporting Act.

8. OBLIGATIONS OF CITY

8.1 When the City assigns Delinquent Accounts to Agency, City shall provide Agency with all the following information in the City's possession on each Delinquent Account (the "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 their agent, 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 when such information becomes known to City.

9. LEGAL ACTION

9.1 Agency must secure express written approval from the City Attorney on all accounts 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. Litigation costs may include but not limited to filing fees, service of process fees and other reasonable related costs to be approved by the City. Litigation costs do not include Agency's attorney's fees.

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 monthly 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:

Regular Collection	16.5%
Collection Requiring Legal Action (with City Approval)	28.0%

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 a company, or companies, lawfully authorized to do business in Florida, and maintain 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

Agency's subcontractor or agents 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 but not limited to, any reduction, non-renewal or cancellation of Agency'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 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 \$1,000,000.00 Combined Single Limit per each occurrence and \$2,000,000 aggregate, with bodily injury limits.
Professional Liability: \$1,000,000.00 per each occurrence

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, including but limited to violations of the Fair Debt Collection Practices Act and Federal Trade Commission regulations. 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 on October 1, 2013 and continue in effect for a period of three (3) years, subject to renewal or termination as provided in Section 14 herein. This Agreement may be renewed in writing upon the sole discretion of the City for three (3) additional periods of one (1) year each.

14. TERMINATION

14.1 Either party shall have the right to terminate this Agreement, in whole or in part, with or without cause, and for its convenience, upon sixty (60) days written notice to the appropriate party.

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 referred delinquent accounts and all documents and account information that City provided to Agency.

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

19.2 HIPPA. With respect to any health information that 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 that 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.

20. ETHICS; CONFLICTS OF INTEREST

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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.

21. INSPECTOR GENERAL

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 authorizes City to request 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 and Agency authorizes the insurance carrier to release said documents to the City.

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 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. COMPLIANCE WITH LAWS.

19.1 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
- Chapter 119, Florida Statutes

Agency is aware that the City Auditor 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 City Auditor when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

22. ENTIRE AGREEMENT; AMENDMENT; CONTROLLING PROVISIONS

22.1 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.

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

22.3 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.

23. MISCELLANEOUS

23.1 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.

23.2. 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 Manager, 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.

23.3 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 Agency 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 Leon County, Florida, or the Federal Northern District of Florida.

23.4. 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.

23.5 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.

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

24. PUBLIC RECORDS


The Agency acknowledges that this Agreement is subject to Chapter 119, Florida Statutes, and, as such, Agency agrees to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the services pursuant to this Agreement;
- (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Agency upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

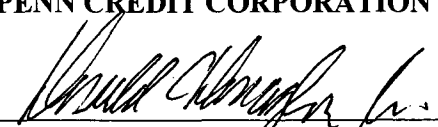
Failure of the Agency to comply with a public records request in accordance with Chapter 119, Florida Statutes, and other applicable law, will constitute a default under this Agreement and the City may terminate the Agreement.

[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.


Attest: 
Rhett Donaghy
8-2-13

PENN/ CENTRAL CORPORATION
d/b/a PENN CREDIT CORPORATION

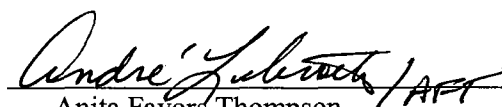
By: 
Donald C. Donaghy Jr., CEO

Dated: 8/2/13

ATTEST:

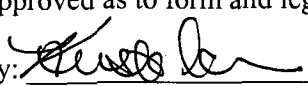
 8/16/13
James O. Cooke, IV
City Treasurer-Clerk

CITY OF TALLAHASSEE, FLORIDA

By:  / AFT
Anita Favors Thompson
City Manager

Dated: 8/9/13

CITY ATTORNEY'S OFFICE
Approved as to form and legality

By: 
Kristen L. Coons, Assistant City Attorney