

RESOLUTION NO. 16-099

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE COMMITTEE RANKING OF FIRMS SUBMITTING RESPONSES TO REQUEST FOR PROPOSALS (RFP) NO. 16-005: COLLECTION SERVICES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO NEGOTIATE A CONTRACT IN CONFORMANCE WITH THE RFP DOCUMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on January 20, 2016, the City Clerk opened four proposals in response to RFP No. 16-005, and on February 18, 2016, a committee comprised of City staff and members of the public, convened at a properly noticed meeting conducted consistent with the "Sunshine Law," and ranked the respondents to the RFP, based upon the ranking criteria.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the responses to RFP No. 16-005 for Collection Services are hereby ranked and the three highest-ranked responses are approved by the City Commission as follows:

- (1) Penn Credit
- (2) Creditech Collection Services
- (3) Valley Collection Service, LLC

Section 2: That the City Manager or designee is authorized to negotiate a contract in substantial conformance with documents contained in the RFP documents, starting with the top-ranked firm, Penn Credit, and each of the top three firms thereafter if necessary, until an acceptable agreement is reached. The City Manager is directed to not include the option of add-on fees on contract negotiations with proposals other than Penn Credit.

Section 3: That the City Manager is authorized to execute a contract, upon consent of the City Attorney.

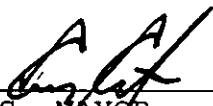
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held  
this 16th day of March, 2016.

Authenticated by the Presiding Officer and Clerk of the  
Commission on 15th day of November, 2018.

Filed with the Clerk on November 15, 2018.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

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## EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager  
**FROM:** Michael Turner, Collections Manager  
**CC:** Sarah Spurlock, Asst. City Manager – Administration  
**DATE:** February 29, 2016  
**RE:** Approval of Staff Ranking for Collection Services

### ACTION STATEMENT:

Purpose of this resolution is to request approval by the City Commission for the following:

- Authorizing the City Manager or designee to negotiate a contract with the highest ranked proposer for parking and emergency medical service collection services, Penn Credit. In the event the City Manager or designee is unsuccessful in negotiating a contract with the highest ranked proposer, authorizing the City Manager or designee to negotiate a contract with the second highest ranked proposer Creditech Collection Services. In the event the City Manager or designee is unsuccessful in negotiating a contract with the second highest ranked proposer, authorizing the City Manager or designee to negotiate a contract with Valley Collection Service, LLC.
- If the City Manager or designee is unsuccessful in negotiating an acceptable contract with any of the three (3) highest ranked proposers the City Manager or designee will cease discussions with all proposers and report back to the City Commission.
- Authorizing the City Manager to execute said proposed contract / agreement, subject to review and approval by the City Attorney.

### BACKGROUND:

The City has a need for collection services for parking and emergency medical services (EMS). After accounts are unpaid for a certain time, the City needs a

*Key to the Caribbean – Average yearly temperature 77° F.*

collection agency to take additional steps to collect the past due accounts

**PURPOSE AND JUSTIFICATION:**

City staff advertised a request for proposals that had a bid opening on January 20. Proposals were received pursuant to RFP 16-005 from the following firms:

- Creditech Collection Solutions
- Valley Collection Services, LLC
- Penn Credit
- Duncan Solutions

The ranking committee consisted of the following city staff: Sarah Spurlock, John Wilkins, Edward Perez, and an ambassador graduate, citizen volunteer, Fritz Zivic. The committee convened on February 18<sup>th</sup> in public advertised meeting at the City Clerk’s conference room. The final rankings are as follows:

**Company Rankings for RFP #16-005 Collection Services**

Ranking of Proposers

1) Penn Credit:	356
2) Creditech Collection Services	339
3) Valley Collection Service, LLC	323
4) Duncan Solutions	307

City staff ranked the agency’s proposals on a 100 point scale utilizing the following evaluation criteria: Specialized experience in the type of work to be performed, specifically including work in a city of similar size and geographic location (20); Compatibility of transferring account information (10); Collection rate of same/similar delinquent accounts (25); Technical expertise, including methods available for collection of accounts (25); Fee rate (10).

City staff is requesting City Commission approval of the evaluation ranking and authorization for the City Manager to negotiate and enter into a contract with the highest ranked agency.

The agency contract will be based on a percentage of the money collected by the agency.

**OPTIONS / ADVANTAGES / DISADVANTAGES:**

1. The City Commission can approve city staff ranking and authorize the City Manager to negotiate and execute a contract with the highest ranked agency, Penn Credit.
2. The City Commission could disapprove staff ranking for the collection services RFP. This would leave the City without a collection agency on contract. This would leave past due accounts with no collection agency to attempt to recover the outstanding funds.

**FINANCIAL IMPACT:**

The fees of each proposal are as follows:

**Creditech-** Parking Rate- Add On Fee: 25% or Contingency Fee: 20%

EMS Rate- Add On Fee: 16.29% or Contingency Fee: 14%

**Duncan Solutions-** Parking Rate- Contingency Fee: 21.5%

**Penn Credit-** EMS and Parking Rate- Contingency Fee: 19%

EMS and Parking Rate- Contingency Requiring Legal Action: 29%

**Valley Collection Service, LLC-** Contingency Fee: 17%

**RECOMMENDATION:**

Staff recommends the City Commission choose option 1, approving the evaluation team ranking from city staff and allowing the City Manager to negotiate and execute contracts for collection services with Penn Credit. This agency ranked far higher than the other firms responding to the RFP.

**AGREEMENT**

**Between**

**CITY OF KEY WEST**

**And**

**PENN CREDIT CORPORATION**

**For**

**COLLECTION SERVICES**

**May 16, 2016**

This is an Agreement between: City of Key West, its successors and assigns, hereinafter referred to as "CITY,"

AND

Penn Credit Corporation, a corporation organized under the laws of the State of Pennsylvania, its successors and assigns, hereinafter referred to as "AGENCY."

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and AGENCY agree as follows:

## ARTICLE 1

### DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1. **Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY'S RFP#16-005 COLLECTION SERVICES CITY OF KEY WEST, AGENCY's Response to RFP dated January 18, 2016, exhibits, task orders, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. **Commissioners:** Members of the city commission with all legislative powers of the city vested therein. The city commission shall consist of seven (7) commissioners, six (6) of whom shall be elected from single member districts numbered I, II, III, IV, V and VI. The mayor shall be elected by the people at large for a term of two (2) years. Commissioners from districts numbered I, II, III, IV, V and VI shall be elected for a term of four (4) years.
- 1.3. **AGENCY:** The collection agency selected to perform the services pursuant to this Agreement.
- 1.4. **Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. **CITY:** City of Key West

COLLECTION SERVICES  
CITY OF KEY WEST  
AGREEMENT



## ARTICLE 2

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and generally to express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1. The AGENCY is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted or authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per CITY Ordinance(s).
- 2.2. Negotiations pertaining to the services to be performed by AGENCY were undertaken between AGENCY and CITY staff, and this Agreement incorporates the results of such negotiations.

## ARTICLE 3

### SCOPE OF SERVICES

- 3.1 **Services.** The AGENCY's responsibilities include, but shall not be limited to, issuing collection letters, skip tracing, telephone collection, vehicle registration holds, and credit bureau reporting for virtually all delinquent accounts for services rendered by the CITY and for the collection of amounts due.
- 3.2 **Types of Accounts.** AGENCY shall provide collection services for some or all of the following: Parking Violations, Emergency Medical Services(EMS) Billing, Miscellaneous Accounts
- 3.3 CITY retains AGENCY to collect delinquent accounts which the CITY in its sole discretion may assign to the AGENCY for collection.
- 3.4 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.

## **ARTICLE 4**

### **ASSIGNMENT OF DELINQUENT ACCOUNTS**

- 4.1 **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. Parking will be sent to AGENCY after 30 days past due. CITY EMS collections will be sent to AGENCY after 120 past due with the CITY.
- 4.2 **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 1460 days from the date the account was placed with AGENCY shall be deemed uncollectible and withdrawn by CITY.

## **ARTICLE 5**

### **PERFORMANCE STANDARDS**

- 5.1 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.
- 5.2 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.
- 5.3 Notwithstanding the foregoing, the CITY shall review and approve all collection form letters prior to AGENCY's use of such form in collecting the CITY's delinquent accounts.
- 5.4 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.

## ARTICLE 6

### ELECTRONIC DATA

- 6.1 **Outbound Data Extract.** CITY will provide data files from internal and external systems in a format agreeable to both parties.
- 6.2 **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 cost.
- 6.3 **Property of the 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.

## ARTICLE 7

### REMITTANCES

- 7.1 **Remittances to the City.** AGENCY shall provide and remit payments to the CITY on a monthly basis (by the 15<sup>th</sup> of the subsequent month of payment), 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.
- 7.2 **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 statements minus payment and minus collection fee (credits).
- 7.3 **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.
- 7.4 **Trust Account.** Collections made by AGENCY on delinquent accounts will be deposited immediately into a trust account for the benefit of the CITY maintained in a national bank or state bank, FDIC insured. Such collections held in trust for AGENCY for the benefit of the CITY, shall be the property of the CITY and not available for any other use by AGENCY.

## ARTICLE 8

### REPORTING

8.1 **Reporting.** The AGENCY shall provide the following reports electronically in printable format:

- 8.1.1 *Acknowledgement Report* verifying all accounts that have been received by AGENCY for collection.
- 8.1.2 *Payment Analysis (Collection Analysis)* provides information relating to collection performance, broken down by month of placement. This report illustrates recovery performance.
- 8.1.3 *Spindown Analysis* provides a 12-month record of liquidation rates per month
- 8.1.4 *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.
- 8.1.5 *Cancellation Report* lists all accounts scheduled for return, along with the client account number, debtor name, balance, applicable dates, and reason for return.
- 8.1.6 *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.).

8.2 AGENCY will work with CITY to provide any additional reports requested.

## **ARTICLE 9**

### **CREDIT BUREAU REPORTING**

- 9.1 AGENCY will report delinquent accounts to the credit bureaus (Equifax, Trans Union, and Experian) at its discretion and in accordance with credit bureau policies.
- 9.2 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.
- 9.3 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.

## **ARTICLE 10**

### **OBLIGATIONS OF CITY**

- 10.1 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:
- 10.1.1 Notices of any proceedings under the bankruptcy or insolvency laws of the United States of America or any state relating to the Delinquent Account
  - 10.1.2 Notices of any actions or proceedings commenced by any Delinquent Account Consumer against the CITY relating to the Delinquent Accounts
  - 10.1.3 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
  - 10.1.4 Any credits or other forgiveness granted by CITY with respect to any Delinquent Account
- 10.2 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.

## **ARTICLE 11**

### **LEGAL ACTION**

- 11.1 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.
- 11.2 AGENCY shall be reimbursed any monies for litigation costs advanced by AGENCY from the first proceeds of litigation.
- 11.3 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.
- 11.4 Collection cost shall only be added to the principal balance due for the delinquent account if expressly authorized in writing by CITY.
- 11.5 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
- 11.6 AGENCY shall provide CITY with regular reports on the status of each litigation matter.

## **ARTICLE 12**

### **FEES**

- 12.1 CITY agrees to pay AGENCY, as its sole compensation, a percentage of 19% of the amount collected on a delinquent account, 29% if legal action is required, assigned to AGENCY
- 12.2 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.

## ARTICLE 13

### COMPLIANCE WITH LAWS

13.1 In 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
- State of Florida 316.1967; 320.03(8)

13.2 **HIPAA.** 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 HIPAA, in any manner that would constitute a violation of the HIPAA 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 HIPAA by AGENCY, its officers or employees, or by a third party to which AGENCY disclosed such Protected Health Information, report such a 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

## **ARTICLE 14**

### **TERM OF AGREEMENT**

14.1 The term of this Agreement shall be for a period of three (3) years which thereafter may be extended upon written consent of both parties for two (2) additional one (1) year terms. The Agreement will be in effect upon execution by both parties. The extensions may be renewed at the discretion of the City Manager.

## **ARTICLE 15**

### **MISCELLANEOUS**

#### **15.1. OWNERSHIP OF DOCUMENTS**

All finished or unfinished documents, data, data matrices, etc. generated, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by AGENCY in connection with this Agreement, whether in hard copy or electronic form, shall become the property of CITY.

#### **15.2. TERMINATION**

15.2.1. This Agreement may be terminated with or without cause by CITY at any time.

15.2.2. Notice of termination shall be provided in accordance with paragraph 15.12 NOTICES of this Agreement.

15.2.3. In the event this Agreement is terminated, AGENCY shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, AGENCY shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

#### **15.3. AUDIT RIGHT AND RETENTION OF RECORDS**

15.3.1. CITY shall have the right to audit the books, records, and accounts of AGENCY. AGENCY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries.

15.3.2. AGENCY shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical



records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to AGENCY's records, AGENCY shall comply with all requirements thereof; however, AGENCY shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

**15.4. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AMERICANS WITH DISABILITIES ACT, AND EQUAL BENEFITS FOR DOMESTIC PARTNERS**

15.4.1. AGENCY shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

15.4.2. AGENCY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot be lawfully or appropriately used as a basis for service delivery. AGENCY shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

15.4.3. AGENCY shall comply with City Ordinance Sec. 2-799 Requirements for City Contractors to Provide Equal Benefits for Domestic Partners

**15.5. PUBLIC ENTITY CRIMES ACT**

15.5.1. AGENCY represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, AGENCY or other provider and who has been placed on the convicted AGENCY list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY , may not be awarded or perform work as a contractor, supplier, subcontractor, or AGENCY under a contract with CITY , and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted AGENCY list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in being barred from CITY's competitive procurement activities.

15.5.2. In addition to the foregoing, AGENCY further represents that there has been no determination, based on an audit, that it or any sub AGENCY, has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether AGENCY has been placed on the convicted AGENCY list.

15.5.3. AGENCY shall promptly notify CITY if it or any subcontractor or sub AGENCY is formally charged with an act defined as a "public entity crime" or has been placed on the convicted AGENCY list.

**15.6. SUBAGENCYs**

AGENCY may use the subAGENCYs identified in the proposal that was a material part of the selection of AGENCY to provide the services under this Agreement. The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make determination as to the capability of the subcontractor to perform properly under this Contract. The CITY's acceptance of a subcontractor shall not be unreasonably withheld. AGENCY shall obtain written approval of Contract Administrator prior to changing or adding to the list of subAGENCYs. The list of subAGENCYs submitted and currently approved is as follows:

- a. Not Applicable

**15.7. ASSIGNMENT AND PERFORMANCE**

- 15.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and AGENCY shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.
- 15.7.2. AGENCY represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.
- 15.7.3. AGENCY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of AGENCY's performance and all interim and final product(s) provided to or on behalf of CITY shall be in accordance with the standard of care set forth in Paragraph 3.6.
- 15.7.4. AGENCY shall not change or replace overall project manager identified in the AGENCY's response to the RFP without the Contract Administrator's prior written approval.

**15.8. INDEMNIFICATION OF CITY**

To the fullest extent permitted by law, the AGENCY expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, caused in whole or in part by any act, omission, or default by AGENCY or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the AGENCY or its subcontractors, material men or agents of any tier or their respective employees.

**15.9. INSURANCE**

**AGENCY** is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for Workers' Compensation, Public Liability, and Property Damage Liability Insurance and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the **AGENCY** shall provide the minimum limits of liability insurance coverages as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Errors and Omissions	\$1,000,000	Occurrence
	\$1,000,000	Aggregate
Employee Dishonesty Coverage	\$ 500,000	Coverage Shall Include:
		<ul style="list-style-type: none"> <li>• Forgery or Alteration;</li> <li>• Computer Fraud;</li> <li>• Funds Transfer Fraud;</li> <li>• Third Party Coverage in favor of the City of Key West.</li> </ul>

**AGENCY** shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" on **PRIMARY** and **NON CONTRIBUTORY** basis utilizing an ISO standard endorsement at **least as broad as CG 2010 (11/85) or its Equivalent, (combination OF CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations is acceptable) INCLUDING A "Waiver of Subrogation" clause in favor of City of Key West on all policies.** **AGENCY** will maintain the Professional Liability, General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the "additional insured" endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

Notwithstanding any other provision of the Contract, the **AGENCY** shall maintain complete Workers' Compensation coverage for each and every employee, principal, officer, representative, or agent of the **AGENCY** who is performing any labor, services, or material under the Contract. Further, **AGENCY** shall additionally maintain the following minimum limits of coverage:

Bodily Injury Each Accident	\$1,000,000
-----------------------------	-------------

Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

If the work is being done on or near a navigable waterway, **AGENCY's** Workers' Compensation policy shall be endorsed to provide **USL&H Act (WC 00 01 06 A)** and **Jones Act (WC 00 02 01 A)** coverage if specified by the City of Key West. **AGENCY** shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workman's compensation coverage as set forth herein and shall provide as often as required by the City of Key West such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workman's compensation coverage under each policy.

**AGENCY's** insurance policies shall be endorsed to give 30 days' written notice to the City of Key West in the event of cancellation or material change, using form CG 02 24, or its equivalent.

Certificates of Insurance submitted to the City of Key West will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. **PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.**

**AGENCY** will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. **AGENCY** will notify City of Key West immediately by telephone at (305) 809-3811 of any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the **AGENCY.**

**15.10. ALL PRIOR AGREEMENTS SUPERSEDED**

15.10.1. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document and the exhibits attached. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

15.10.2. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

## **15.11. CONSULTING TEAM**

- 15.11.1. The CITY reserves the right to approve the members of the Consulting Team and the roles they will undertake in the assignment. The CITY's acceptance of a team member shall not be unreasonably withheld.
- 15.11.2. Each assignment issued under this Agreement by the CITY to the AGENCY, the AGENCY will at the CITY's request, disclose the role, qualifications and hourly rate of each individual working on the assignment.
- 15.11.3. The CITY reserves the right to require replacement of any of the members of the Consulting Team. Any proposed addition or change of members of the Consulting Team initiated by the AGENCY must obtain the CITY Representative's prior written approval.
- 15.11.4. In the event of the death, incapacity or termination of employment of any member of the Consulting Team before Completion of the Services, the AGENCY shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned.
- 15.11.5. The AGENCY shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as such replacement or substitute. The AGENCY shall without delay forward curriculum vitae of the proposed substitute or replacement to the CITY. The deployment of such substitute or replacement shall be subject to the CITY's consent.
- 15.11.6. The AGENCY shall solely be responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of members of the Consulting Team.

## **15.12. NOTICES**

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have 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 CITY OF KEY WEST:

Michael Turner, Collections Manager  
City of Key West  
3106 Flagler Ave  
Key West, FL 33040

FOR AGENCY:

Donald Donagher Jr, CEO  
Penn Credit Corporation  
916 South 14<sup>th</sup> Street  
Harrisburg, PA 17104

**15.13. TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by AGENCY shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price for any task order and any additions thereto shall be adjusted to exclude any significant sums by which CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

**15.14. INTERPRETATION**

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include 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 or paragraph where they appear, unless the context otherwise requires. Whenever reference is made to a Paragraph or Article of this Agreement, such reference is to the Paragraph or Article as a whole, including all of the subsections of such Paragraph, unless the reference is made to a particular subsection or subparagraph of such Paragraph or Article.

**15.15. AGENCY'S STAFF**

15.15.1. AGENCY shall provide the key staff identified in their proposal for Task Order as long as such key staffs are in AGENCY's employment.

15.15.2. AGENCY shall obtain prior written approval of Contract Administrator to change key staff. AGENCY shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.

15.15.3. If Contract Administrator desires to request removal of any of AGENCY's staff, Contract Administrator shall first meet with AGENCY and provide reasonable justification for said removal.

#### **15.16. INDEPENDENT CONTRACTOR**

AGENCY is an independent contractor under this Agreement. Services provided by AGENCY shall be subject to the supervision of AGENCY. In providing the services, AGENCY or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY, nor shall they accrue any of the rights or benefits of a CITY employee. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

#### **15.17. THIRD PARTY BENEFICIARIES**

Neither AGENCY nor CITY intend directly or substantially to benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. No subcontractor or subAGENCY, whether named or unnamed, shall be a third party beneficiary of this Agreement.

#### **15.18. CONFLICTS**

15.18.1. Neither AGENCY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with AGENCY's loyal and conscientious exercise of judgment related to its performance under this Agreement.

15.18.2. AGENCY agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.



15.18.3. In the event AGENCY is permitted to use subcontractors to perform any services required by this Agreement, AGENCY agrees to prohibit such subcontractors from having any conflicts as within the meaning of this section, and shall so notify them in writing.

#### **15.19. CONTINGENCY FEE**

AGENCY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for AGENCY, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for AGENCY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

#### **15.20. WAIVER OF BREACH AND MATERIALITY**

15.20.1. Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

15.20.2. CITY and AGENCY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

#### **15.21. COMPLIANCE WITH LAWS**

AGENCY shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement.

#### **SEVERABILITY**

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or AGENCY elects to terminate this Agreement.

**15.22. JOINT PREPARATION**

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

**15.23. 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 Articles 1 through 7 of this Agreement shall prevail and be given effect.

**15.24. APPLICABLE LAW AND VENUE**

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida.

**15.25. INCORPORATION BY REFERENCE**

The attached exhibits are incorporated into and made a part of this Agreement:

**15.26. COUNTERPARTS**

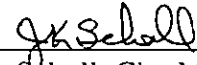
This Agreement may be executed in three (3) counterparts, each of which shall be deemed to be an original.

**REST OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

CITY

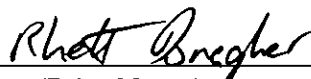
ATTEST TO EACH OF THE CITIES OF  
  
Cheryl Smith, City Clerk  
16<sup>th</sup> day of May, 2016

  
\_\_\_\_\_  
Jim Scholl, City Manager

16<sup>th</sup> day of MAY, 2016

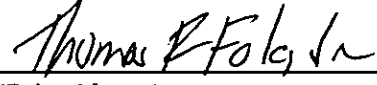
ATTEST for AGENCY:

By   
\_\_\_\_\_

  
\_\_\_\_\_  
(Print Name)

11 day of May, 2016

By   
\_\_\_\_\_

AGENCY  
  
\_\_\_\_\_  
(Print Name)

11 day of May, 2016