

10008

AGREEMENT
(UTILIZING WEST PALM BEACH, FLORIDA CONTRACT # 12-13-207)
BETWEEN
THE CITY OF JACKSONVILLE
AND
INTUITION SYSTEMS, INC.
FOR THE COLLECTION OF PAYMENTS
USING BILL2PAY RETAIL LOCKBOX SOLUTION

THIS AGREEMENT is made and entered into in duplicate this 21 day of March, 2014 (hereinafter the "Effective Date"), by and between the CITY OF JACKSONVILLE (hereinafter "Jacksonville"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and INTUITION SYSTEMS, INC. (hereinafter the "Contractor"), a Florida profit corporation with principal office at 9428 Baymeadows Road, Suite 600, Jacksonville, Florida 32256, for the collection of payments using the Bill2Pay Retail Lockbox Solution.

RECITALS:

WHEREAS, effective June 25, 2013, the City of West Palm Beach, Florida (hereinafter "WPB") entered into City Contract Number 12-13-207 (hereinafter the "WPB Contract"), attached hereto as **Exhibit A** and incorporated herein by this reference, with Contractor for the provision of retail lock box/remittance processing services (the "Services"); and

WHEREAS, said WPB Contract is in full force and effect until May 31, 2016, with a two (2) year renewal option, and has been competitively procured and awarded by WPB as contracting authority according to law; and

WHEREAS, the Jacksonville Procurement Code, more particularly Section 126.211, *Ordinance Code*, authorizes and allows Jacksonville to use *inter alia* contracts of other governmental entities, including those of municipalities in the State of Florida, which have been competitively procured and awarded; and

WHEREAS, the WPB Contract is broad enough to allow Jacksonville to purchase the Services and Contractor has agreed to allow Jacksonville to use the WPB Contract; and

WHEREAS, it is in the best interests of the parties to use the WPB Contract for purchase of the Services and to add those contractual provisions Jacksonville is required to use by ordinance or policy; now therefore

IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1: Incorporation of Recitals

The above-stated recitals are accurate, true, and correct and are made a part hereof and are incorporated herein by this reference.

ARTICLE 2: Engagement of Contractor

Jacksonville hereby engages Contractor and Contractor hereby accepts said engagement for the purpose of providing to Jacksonville the Services according to the provisions of the WPB contract and its exhibits, amendments, process descriptions, and quotations, and in accordance with all other provisions required by law, ordinance, or policy for Jacksonville contained in this Agreement. The payment schedule and fees are more specifically set forth in the Fees Schedule, attached to the WPB Contract as **Exhibit B** and incorporated herein by this reference. With respect to the Services, the provisions, terms, and conditions of the WPB Contract shall apply unless specifically preempted herein. Therefore, any conflict between the provisions of this Agreement and those in the WPB Contract shall be resolved in favor of this Agreement, but only to the extent of any conflict.

ARTICLE 3: Coordination and Services Provided by Jacksonville

Jacksonville shall designate for the use of the Services a Project Coordinator who will, on behalf of Jacksonville, coordinate with Contractor and administer this Agreement according to the terms and conditions contained herein and in the exhibits attached hereto and made a part hereof. It shall be the responsibility of Contractor to coordinate all use of the Services with the designated Project Coordinator. Jacksonville's Project Coordinator shall be Kevin Rock, Director of Administrative Services (Telephone: 904-630-7593; Fax: 904-630-2923; Email: KRock@coj.net).

ARTICLE 4: Duration of Agreement/Pricing Available to Other Entities

The term of this Agreement shall commence on March 21, 2014, and shall continue and remain in full force and effect as to all its terms, conditions, and provisions as set forth herein through May 31, 2016, or, should WPB exercise its two year renewal option with Contractor, through May 31, 2018. During said period of time, the Services pricing provided hereunder shall be available to all using agencies and other political subdivisions, boards, agencies, or authorities existing in Duval County that may desire to purchase the same at the contract price provided herein.

ARTICLE 5: Payments for Services of Contractor

5.1. Except as provided in Section 5.2 hereof, Jacksonville will compensate Contractor for the Services purchased hereunder in accordance with purchase orders issued and used by Jacksonville's Procurement Division; *provided however*, payment invoices shall be sent to the authorized Jacksonville representative as specified in said purchase order or other subsequent written instrument signed by the Project

Coordinator.

5.2. Notwithstanding any contrary provision in **Exhibit A**, the maximum indebtedness of Jacksonville for all fees, reimbursable items, or other costs for the Services provided by Contractor to Jacksonville pursuant to this Agreement shall not exceed the sum of ONE HUNDRED EIGHTY-SEVEN THOUSAND AND 00/100 USD (\$187,000.00). Contractor shall not be obligated to perform any Services after either its payment invoices or the Purchase Orders total the sum of \$187,000.00.

ARTICLE 6: Notice

Notice to Jacksonville under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

Kevin Rock
Director of Administrative Services
Michael Corrigan – Tax Collector
231 East Forsyth Street, Room 300a
Jacksonville, Florida 32202

Gregory Pease
Chief of Procurement
Ed Ball Building
214 North Hogan Street, 8th Floor
Jacksonville, Florida 32202

Notice to Contractor under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

Kathy Wilson
Director of Operations
Intuition Systems, Inc.
4700 140th Avenue North, Suite 106
Clearwater, Florida 33762-3846

ARTICLE 7: Laws, Ordinances, Rules, and Regulations

As required by Section 126.108(b), *Ordinance Code*, in providing the Services, Contractor must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances as the same exist and may be amended from time to time. Such laws, rules, regulations, and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes (the Florida Public Records Law) and Section 286.011, Florida Statutes (the Florida Sunshine Law) as they apply to the Services contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Article 7 shall be incorporated into and become a part of the subcontract.

ARTICLE 8: Conflict of Interest

The parties will follow the provisions of Section 126.112, *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with Jacksonville, to the extent the parties are aware of the same.

ARTICLE 9: Confidentiality

Subject to applicable Florida law, all confidential or proprietary information and documentation relating to either party (including without limitation any information or data stored within Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Agreement, provided the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with Florida law. The provisions of this article shall not apply to any information that (a) is lawfully in the public domain, (b) has been independently developed by the other party without violation of this Agreement, (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to disclose the information, or, (e) such party is required by law to disclose.

ARTICLE 10: Prompt Payment

As required by Chapter 126, Part 6, *Ordinance Code*; provided however, if Contractor does not use JSEB or MBE subcontractors, as identified below, this Article 10 shall not apply:

10.1 *Generally.* When Contractor receives payment from Jacksonville for labor, services, or materials furnished by subconsultants or subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subconsultants, subcontractors, and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from Jacksonville. Nothing herein shall prohibit Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subconsultants, subcontractors, and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after the Contractor has provided notice to Jacksonville and to the subconsultant, subcontractor, and supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to Jacksonville and said subconsultant, subcontractor, or supplier within ten (10) calendar days after Contractor's receipt of payment from Jacksonville. Contractor shall pay all undisputed amounts due within the time limits imposed by this article.

10.2. *Jacksonville Small Emerging Business Enterprise ("JSEB") and Minority Business Enterprise ("MBE") Participation.* Notwithstanding Chapter 126, Part 6, *Ordinance Code*, Contractor shall pay all contracts awarded with certified JSEB's and MBE's, as defined therein, their pro rata share of their earned portion of the progress payments made by Jacksonville under this Agreement within seven (7) business days after Contractor's receipt of payment from Jacksonville (less proper retainage). The pro rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB

or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to Jacksonville with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's or MBE's from all prior payments Contractor has received from Jacksonville. Contractor shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's or MBE's, which payment has been made by Jacksonville to Contractor, the Contractor shall return said payment to Jacksonville. Contractor shall provide notice to Jacksonville and to the certified JSEB's or MBE's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to Jacksonville and said JSEB's or MBE's within five (5) calendar days after Contractor's receipt of payment from Jacksonville. Contractor shall pay all undisputed amounts due within the time limits imposed in this Article 10. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of this Agreement, compensable by one per-cent (1%) of the outstanding invoice being withheld by Jacksonville, not as a penalty but as liquidated damages to compensate for the additional contract administration by Jacksonville.

10.3. *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between Jacksonville and any subconsultant, subcontractor, supplier, JSEB, MBE, or any third party or create any Jacksonville liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to Jacksonville. As a result of said breach, Jacksonville, without waiving any other available remedy it may have against Contractor, may (i) issue joint checks and (ii) charge Contractor a 0.2% daily late payment interest charge or the charges specified in said Chapter 126, *Ordinance Code*, for JSEB's or MBE's and in Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

ARTICLE 11: Limitations of Liability

Neither Jacksonville nor Contractor shall be liable for any speculative or unforeseeable damages under any theory of relief, including without limitation breach of warranty, breach of contract, tort (including negligence), strict liability, or otherwise arising out of or related to Jacksonville's or Contractor's acts or omissions. For all other damages arising out of or related to this Agreement, Contractor will not be liable for more than 200% of the amount equivalent to the fees paid and payable by Jacksonville to Contractor under this Agreement. The foregoing limitations of liability do not apply to (i) injury to third parties and third party property, (ii) claims arising under any of the indemnity or warranty provisions of this Agreement, or, (iii)

claims covered by any insurance policies or bonds required under this Agreement up to the amount of the required coverage. These limitations of liability are in no way to be construed as a waiver or limitation by Jacksonville of its sovereign immunity accorded by the Florida Constitution as codified in § 768.28, Florida Statutes.

ARTICLE 12: Nondiscrimination

As required by Section 126.404, *Ordinance Code*, the Contractor represents that it has adopted and will maintain a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, or handicap in all areas of employment relations throughout the term of this Agreement. The Contractor agrees that on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Agreement; *provided however*, that the Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Contractor agrees that if any of the Services to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Article 12 shall be incorporated into and become a part of the subcontract.

ARTICLE 13: Governing Law/Venue

This Agreement is governed by the laws of the State of Florida and the ordinances of the City of Jacksonville. Venue for any action arising under this Agreement shall lie exclusively in the appropriate state court in Duval County, Florida.

ARTICLE 14: Counterparts:

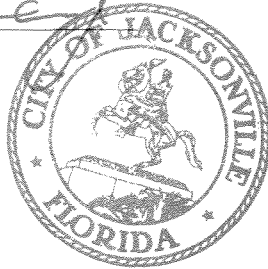
The parties agree that for the execution of this Agreement, time is of the essence. Therefore, this Agreement and all amendments thereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The parties further agree that facsimile (“fax”) transmission of all signatures with originals to follow shall constitute and be evidence of an executed Agreement.

[Remainder of page left blank intentionally. Signature page follows immediately.]

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

ATTEST:

By *James R. McCain, Jr.*
James R. McCain, Jr.
Corporation Secretary



JACKSONVILLE OF JACKSONVILLE:

By *Karen Bowling*
Alvin Brown, Mayor
Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

WITNESS:

By *Kathy Wilson*
Signature
KATHY WILSON
Type/Print Name
OPERATIONS DIRECTOR
Title

INTUITION SYSTEMS, INC.

By *Tris Kraft*
Signature
Tris Kraft
Type/Print Name
Executive Director
Title

Encumbrance and funding information for internal Jacksonville use:

Account TCSG017-03410

Total Amount. . . . \$187,000.00

This above-stated total amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the foregoing contract. It shall be encumbered by one (1) or more subsequently issued Purchase Order(s) that must reference the foregoing Contract. All financial examinations and fund control checking will be made at the time such Purchase Order(s) are issued.

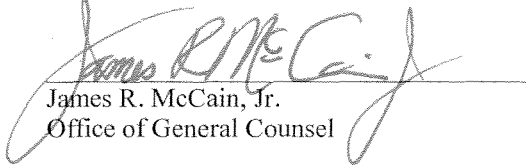
In accordance with Section 24.103(e), of the *Ordinance Code* of the Jacksonville of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance(s) shall be made by subsequent purchase order(s) as specified in said Contract.



Director of Finance
Jacksonville Contract # 10008



Approved as to form:



James R. McCain, Jr.
Office of General Counsel

Exhibit A
West Palm Beach Contract



LOCK BOX/REMITTANCE PROCESSING AGREEMENT

Matter No. 12950
RFP 12-13-207

THIS AGREEMENT is made by and between the **CITY OF WEST PALM BEACH, FLORIDA**, a Florida municipal corporation, with a physical address of 401 Clematis Street, West Palm Beach, Florida and a mailing address of P.O. Box 3366, West Palm Beach, FL 33402-3366 ("City") and **INTUITION SYSTEMS, INC.**, a Florida corporation with an address of 9428 Baymeadows Road, Suite 600, Jacksonville, FL 32256 and a main processing facility at 4700 140th Avenue N., Suite 106, Clearwater, FL 33762 ("Provider").

WHEREAS, the City issued Request for Proposals No. 12-13-207 (the "RFP") pursuant to state and local law to solicit proposals for retail lock box services (the "Services"); and

WHEREAS, Provider responded to the RFP by submitting its proposal dated May 21, 2013 (the "Proposal"), and

WHEREAS, the City desires to engage Provider to provide such services to the City according to the terms and subject to the conditions set forth in this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants and promises as hereinafter set forth and of the faithful performance of as such covenants and conditions, the City and Provider do hereby agree as follows:

1. **SERVICES:**

1.1 Provider shall provide the retail lock box / remittance processing services described in the document attached hereto as **Exhibit "A"** (which services are hereinafter referred to as the "Services") which exhibit is incorporated herein by this reference and made a part of this Agreement. Time shall be of the essence with respect to all matters set forth in this Agreement.

1.2 **Fee.** In consideration of the satisfactory performance of the Services by Provider, and the performance by Provider of all of its other duties and obligations as set forth in this Agreement, the City shall pay Provider the Fees based on the Services provided in accordance with the fee schedule attached hereto as **Exhibit "B"** and incorporated and made a part of this Agreement. The Fees shall be the sole compensation paid to Provider in connection with the rendition of the Services and the performance of any and all of its other obligations hereunder and shall include any out-of-pocket or other expenses, including travel expenses, incurred by Provider.

1.4 **Term.** The term of this Agreement shall commence on June 1, 2013 and shall continue for a period of thirty-six (36) months, through May 31, 2016, 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 years on the same terms and conditions, subject to City funding and upon execution of an amendment to this Agreement extending the term.

1.5 **Invoices.** Invoices must identify the PO number and shall be submitted monthly to: **West Palm Beach Finance Department, Attn: Accounts Payable, P.O. Box 3366, West Palm Beach, FL**

33402-3366. Invoices shall detail remittance volumes, prices and charges.

2. STANDARD OF CARE. Provider shall render the Services in a diligent, careful, thorough and professional manner consistent with good business practice and shall at all times provide City with the most sound and reasonable recommendations and advice. The standard of care for all Services performed or furnished by Provider under this Agreement will be the care and skill ordinarily used by members of Provider's profession practicing under similar circumstances or at the same time and in the same locality.

3. PAYMENT.

3.1. Payment of Fees will be made in accordance with the Local Government Prompt Payment Act, Section 218.70, et al., Florida Statutes, as amended, which provides for prompt payment, interest payments, and dispute resolution provided detailed invoices are submitted in compliance with the terms of this Agreement.

3.2. No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement by Provider, either wholly or in part, and no payment shall be construed to be an acceptance of or to relieve Provider of liability for the defective, faulty or incomplete rendition of the Services.

4. TAXES. Provider understands that in performing the Services for the City, Provider is not exempt from paying sales tax to Provider's suppliers for materials required for Provider to perform under this Agreement. Provider shall not be authorized to use the City's tax exemption number for purchasing supplies or materials.

5. AVAILABILITY OF FUNDS. This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the City. If funding for this Agreement is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Agreement become unavailable, the City may terminate this Agreement upon no less than twenty-four (24) hours notice to Provider. The City shall be the sole and final authority as to the availability of funds.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF PROVIDER

6.1 Authority. Provider hereby represents and warrants to the City that it has full power and authority to enter into and fully perform its obligations under this Agreement without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it.

6.2 Duly Licensed. Provider represents that it is duly licensed to perform the Services under this Agreement and that it will continue to maintain all licenses and approvals required to conduct its business.

6.3 No Contingency. Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Provider, 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 Provider, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by Provider, the City shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

7. COMPLIANCE WITH LAWS. In the conduct of the Services under this Agreement, Provider

shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and City ordinances and regulations.

8. INDEPENDENT CONTRACTOR. Provider acknowledges and agrees that Provider is an independent contractor of the City. Provider more specifically acknowledges that its employees will not be covered by the City's workers' compensation insurance; Provider will be solely and exclusively responsible for payment of all federal and state income taxes due in respect of all compensation and/or other consideration paid by the City to Provider under this Agreement. Provider shall be responsible for social security, unemployment and disability taxes and all other payroll taxes due with respect to Provider's employees who provide Services under this Agreement. Provider acknowledges that it shall have no authority to bind City to any contractual or other obligation whatsoever. Provider shall be entitled to seek and accept other engagements and/or employment during the term of this Agreement so long as such other employment or engagements do not interfere with the performance of Provider's duties under this Agreement. Provider shall be responsible to the City for all work or services performed by Provider or any person or firm engaged as a subcontractor to perform work in fulfillment of this Agreement.

9. RIGHT TO AUDIT. Provider shall maintain adequate records for the Services performed under this Agreement for five (5) years following completion of the Services, or conclusion of any litigation regarding this Agreement. The City shall have the right to audit Provider'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 Provider to permit such audit shall be grounds for termination of this Agreement by the City.

10. INSURANCE.

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

10.2 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 expiration or earlier termination of this Agreement. If any of the required insurance coverages are required to remain in force after expiration of the Agreement, an additional certificate evidencing continuation of such coverage shall be submitted to the City.

10.3 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 Provider's required insurance coverage, or any increase in Provider's self-insurance retention.

10.4 Certificates of Insurance. 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, 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.

10.5 Additional Insured. All required insurance (except Worker's Compensation) 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.

10.6 Required Coverage: Provider 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. May not be subject to a self-insured retention or deductible exceeding \$25,000.

Worker's Compensation: Worker's Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than \$500,000 "each accident," \$500,000 "disease policy limit," and \$500,000 "disease each employee."

Crime Insurance in an amount not less than Five Million Dollars (\$5,000,000) for the benefit of the City, covering each and every employee of Provider engaged in providing services under this Agreement for loss to City caused directly or indirectly by Provider.

11. INDEMNITY. Provider 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 by reason of any damage to property or personal injury, including death, and which damage, injury or death arises out of or is incidental to or in any way connected with Provider's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of Provider 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 Provider's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by Provider. This indemnification includes, but is not limited to, the performance of this Agreement by Provider or any act or omission of Provider, 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. Provider 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 Provider under this indemnification provision. To the extent considered necessary by the City, any sums due Provider 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 Provider 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.

12. TERMINATION.

12.1 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 Provider.

12.2 In the event of termination, the City shall compensate Provider for all authorized work satisfactorily performed through the termination date, under the payment terms contained in this Agreement. Provider shall immediately deliver all documents, written information, electronic data and other materials concerning City projects in its possession to the City and shall cooperate in transition of its duties to appropriate parties at the direction of the City.

12.3 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.

13. 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 Provider at the address on the first page of this Agreement, 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.

14. NON-DISCRIMINATION. In performing under this Agreement, Provider 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

15. FORCE MAJEURE. Any deadline provided for in this Agreement may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God, provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. When one of the foregoing conditions interferes with contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided that no such extension shall be made unless notice thereof is presented by Provider to City in writing within ten (10) business days after the start of the occurrence of such delay, and Provider shall use best efforts to perform its obligations during such period of delay, and notify City of its abatement or cessation; and further provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

16. NO CONFLICTS.

16.1 Provider 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.

16.2 Provider 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.

16.3 Provider 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.

16.4 Provider represents that it does not employ, directly or indirectly, any official of the City. Provider 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 Provider.

16.5 Provider 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 Provider or its business.

16.6 Provider represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance under this Agreement. Provider further represents that no person having any interest shall be employed or engaged by it for said Services.

16.7 Provider, its officers, personnel, subsidiaries and subcontractors shall not have or hold any continuing or frequently recurring employment, contractual relationship, business association or other circumstance which may influence or appear to influence Provider's exercise of judgment or quality of the Services being provided under this Agreement. Provider, its officers, personnel, subsidiaries and subcontractors shall not perform consulting work for any third party that would in any way be in conflict with the Services to be provided to the City under this Agreement.

16.8 Provider, its officers, personnel, subsidiaries and subcontractors shall not, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding unless compelled by court process. Further, Provider agrees that such persons shall not 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 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.

16.9 Provider shall promptly notify the City in writing by certified mail of all potential conflicts of interest or any event described in this Section. Said notification shall identify the prospective business interest or circumstance and the nature of work that Provider intends to undertake and shall request the opinion of the City as to whether such association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by Provider. The City agrees to notify Provider by certified mail of its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by Provider, the City shall so state in its opinion and Provider may, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by Provider under this Agreement.

16.10 In the event Provider is permitted to utilize subcontractors to perform any services required by this Agreement, Provider agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

17. LOBBYING CERTIFICATION. Provider certifies to the best of its knowledge and belief that no funds or other resources received from the State 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.

18. PUBLIC ENTITY CRIMES ACT. Provider represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that Provider and its subcontractors under this Agreement have 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.

19. UNAUTHORIZED ALIENS/PATRIOT'S ACT. The knowing employment by Provider or its subcontractors of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of this Agreement which results in unilateral termination.

In the event that Provider is notified or becomes aware of such default, Provider shall take steps as are necessary to terminate said employment with 24 hours of notification or actual knowledge that an alien is being employed. Provider's failure to take such steps as are necessary to terminate the employment of any said alien within 24 hours of notification or actual knowledge that an alien is being employed shall be grounds for immediate termination of this Agreement and unilateral termination. Provider shall take all commercially reasonable precautions to ensure that it and its sub-contractors do not employ persons who are not authorized to work by the immigration laws or the Attorney General of the United States. Provider further represents that it is not in violation of any laws relating to terrorism or money laundering, including the Executive Order No. 13224 on Terrorist Financing and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56., the "Patriot Act").

20. SMALL BUSINESS REQUIREMENTS. Provider 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. Provider shall comply with the small business commitment contained in Provider's Proposal, or as approved by the Small Business Division. Provider shall maintain all relevant records and information necessary to document compliance with the Small Business Ordinance and shall allow the City to inspect and audit such records.

21. PUBLIC RECORDS LAW. Provider shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Provider in conjunction with this Agreement. Provider shall seek confirmation of City if Provider believes any documents are exempt from public disclosure. Failure by Provider to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the City.

22. GOVERNING LAW. 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 Provider 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. Provider 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.

23. INSPECTOR GENERAL. Provider 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 Provider and its subcontractors and lower tier subcontractors. Provider understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Provider 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.

24. ASSIGNMENT. This Agreement requires the personal skills and experience of Provider and may not be assigned by Provider. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

25. 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.

26. 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.

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

28. 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.

29. COUNTERPARTS; DIGITAL SIGNATURES. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument. The parties to this Agreement may agree to execute this Agreement, and all subsequent amendment or modifications to it, by electronic means.

30. ENTIRE AGREEMENT; AMENDMENT. This Agreement, including the RFP, the Proposal, and 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. In the event of a conflict between the Proposal and this Agreement, the Agreement shall control. This Agreement may only be modified by written amendment executed by the City and Provider.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year indicated below.

ATTEST:

By: *Hazel H. Carr*
City Clerk

CITY OF WEST PALM BEACH

By: *Geraldine Muoio*
Geraldine Muoio, Mayor

Date: 6/25, 2013

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: *[Signature]*

INTUITION SYSTEMS, INC.

By: *[Signature]*

Print Name: Iris Kraft

Title: Director of Payment Processing

Exhibit A

Scope of Services

Provider agrees to provide remittance processing and other enumerated related lock box services for City's utility billing, occupational license fee, alarm permit payments in accordance with the procedures listed below and procedures documented in the Lockbox Information Sheet(s). Services may be expanded to include additional City payment types, at the City's discretion.

1. Post Office Box. Provider shall maintain the existing Post Office caller service box at the Tampa Regional Airport Post Office facility in Tampa, Florida. The actual post office box will remain in the name of and owned by City, and City will grant Provider exclusive use of the post office box for the term this Agreement is in effect. Mail addressed to the box will be picked up each Provider business day (Monday through Saturday), opened and the envelope contents reviewed and processed in accordance with the terms of the Agreement.

2. Deposits. Provider is hereby authorized to accept for deposit into City's demand deposit accounts at JP Morgan Chase all checks, drafts and other items made payable to or endorsed in favor of the City or a reasonable variation thereof. City has designated its demand deposit accounts to be used by Provider for lockbox deposits and adjustments hereunder. The payments remitted to the City will be deposited into the demand deposit account via image cash letter on the date that such checks and remittance coupons are processed by Provider, or the next business banking day when such items are processed on a Saturday, Sunday or holiday.

3. Payment Processing.

a) Provider will open all mail and prepare the remittance coupons and payment checks for processing. Provider shall not process those items documented in Section 5 below. Unless otherwise agreed upon, all processed checks will be endorsed as follows:

Deposit to the Account of
135812980
City West Palm Beach

b) All full, partial and multiple payments will be processed using image processing platform.

1) All remittance billheads will contain a billing data line capable of being optically read and correctly positioned according to specifications agreed upon in writing between Provider and City.

2) At the time the mail is opened, each of the following will be separately sorted, batched together and handled as follows:

- 1) Standard item payments and billheads will be processed.
- 2) Any payment not accompanied by a billhead but with a valid account number will be processed.

3) Any billhead accompanied by correspondence from the customer will be processed, and all documentation will be sent to the City. If available, the customer account number will be written on those items that do not otherwise identify the customer.

4) All billheads received with address changes indicated will be processed as regular payments but will be out-sorted and assigned a separate batch. The billheads will be bundled separately and sent to the City.

5) Cash payments will be handled under dual control and converted to check clearly marked "in lieu of cash".

6) Any payment not accompanied by a billhead or customer account number will be imaged into the electronic exception queue for decisioning by the designated City employee.

4. Daily Delivery. The same business as the payment mail is opened and/or processed, any unprocessed billheads will be delivered to City by courier or electronic exception image. This delivery will also include daily hard/soft copy reports, all billheads/remittances separated into batches with changes of address, correspondence, a copy of the deposit slip, and all payment summaries.

5. Do Not Process. Items not to be processed but to be forwarded to City as electronic exceptions where possible, otherwise through mail:

- a) Items payable to any other corporation, partnership, or trade style, other than City, or some reasonable variation thereof, whether endorsed to City's order or not.
- b) Any billhead received without a payment.
- c) Multiple checks with multiple billheads that cannot be readily matched or balanced.
- d) Any billhead that fails the check digit routine test.
- e) Any illegible payments.
- f) Credit card payments.

6. Record Retention. Provider will maintain an image record of all items, checks and remittance coupons which are processed by Provider for a period of two (2) years. Upon request, copies of such payment records will be sent to City within 5 days of the request.

7. Payment Amount Inconsistency. If the handwritten amount on a payment differs from the numeric amount, the amount which agrees to the invoice will be accepted.

8. Notice of Changes. City will notify Provider at least sixty (60) days in advance of any change in the form of its customer payments, invoices, and envelopes or in the regular monthly mailing schedule of such documents.

9. Deadlines. For the purposes of ensuring that the processing of payment data is timely, the Provider has established production deadlines for all standard payments received by 6:00 AM EST, Monday through Saturday, except during scheduled holidays. In the event the Provider suffers hardware failure of any other conditions beyond its control, the work will be cut off early to ensure a deposit is posted each day.

[End of Exhibit A]

EXHIBIT B
Fees Schedule

Exhibit B

FEES

<u>Service</u>	<u>Fee</u>
Exact Payments	.21 each
Non-Exact Payments	.21 each
Multiples	.21 each
Check Only	.21 each
3 rd Party Electronic (Checkfree, etc.)	.05 each
Cash Item	3.25 each
Online Image Access	150.00 monthly per lockbox
Client Bag Images	175.00 monthly per lockbox
P.O. Box	pass through charge
Overnight Charges	pass through charge

Note: Per item fees for exact payments, non-exact payments, checks only and multiples are per bill or account posted to.