

**RESOLUTION 16-35**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH,  
FLORIDA, APPROVING AN AGREEMENT WITH ACOM  
SOLUTIONS FOR THE UPDATE OF THE CITY'S EXISTING  
ACCOUNTING SOFTWARE.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized but not required to execute and deliver on behalf of the City that certain Agreement between the City and ACOM Solutions, relating to an update of the City's accounting software, in substantially the form attached and presented to the Council today, draft dated December 30, 2015, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 14<sup>th</sup> day of January, 2016.

**CITY OF PANAMA CITY BEACH**

By:   
Gayle F. Oberst, Mayor

**ATTEST:**

  
Diane Fowler, City Clerk



**PAYMENT OPTIMIZATION AGREEMENT**

Fed ID No.	33-0890309
DATE:	12/30/2015

<b>BILL TO:</b>		<b>SHIP TO:</b>	
Customer:	<u>City of Panama City Beach</u>	Customer:	<u>City of Panama City Beach</u>
Address 1:	<u>110 S. Arnold Road</u>	Address 1:	<u>110 S. Arnold Road</u>
Address 2:	<u></u>	Address 2:	<u></u>
City, State, Zip:	<u>Panama City Beach, FL 32413</u>	City, State, Zip:	<u>Panama City Beach, FL 32413</u>
County:	<u></u>	County:	<u></u>
Confirm to:	<u>Holly White</u>	Confirm to:	<u>Holly White</u>
Purchase Order:	<u></u>	Purchase Order:	<u></u>
Phone Number:	<u>(850) 233-5100</u>	Phone Number:	<u>(850) 233-5100</u>

**ACOM PRODUCTS AND SERVICES**

<b>Software</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extension</b>
EZPS VENDOR	EZPaySuite Server Payment Software	1		
EZPS EMAIL ACH	ACH ePayment Module with Email Remittance			
EZPS P PAY	Positive Pay Module			
EZPS SLA SECW	Advanced Security (2 <sup>nd</sup> Level & Secure Watch)			
EZPS SFTP	Secure FTP with PGP Encryption for Automatic Transfer of ACH and Positive Pay files			
EZPS MAN CKS	Manual Checks Module			
EZPS SORT	Sorting Module			
EZ SSP	Vendor Web Services Module. Automated Enrollment and Self Service Portal			
EZ ARCHIVE	Archive Module (Web Enabled if Purchased with the Vendor Self Service Module)			
<b>Subtotal</b>	EZPS Bundle		<b>\$ 17,084</b>	<b>\$17,084 (Waived)</b>
<b>Implementation Services</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extension</b>
DOC001	Document Design for Payroll Checks, Direct Deposit, AP Checks	3	\$3,495	\$10,485
	Training for Portal, End User, Admin	3	\$995	\$2,985
	Install Configuration for Client Server Portal	1	\$1,990	\$1,990
<b>Subtotal</b>				<b>\$15,460 (Rebate)</b>
<b>Software Maintenance</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extension</b>
	Bundle Maintenance = 20%	1	\$3,417	



**PAYMENT OPTIMIZATION AGREEMENT**

	<i>No charge for duration of the Payment Optimization program</i>				
<b>TOTALS</b>				Total First Year	Total Contract
<b>OTHER:</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extension</b>	
ACH	ACH Transaction Fee	TDB	\$.50 per transaction		

ACOM: \_\_\_\_\_  
Initial

Customer: \_\_\_\_\_  
Initial

5/15/08

**LICENSE:** Utilization of Software hereunder, however defined, constitutes the grant of a conditional, non-exclusive license to Customer to use the program(s) data media, user manuals and any related materials (collectively, the "Software") on a designated server or single computer station or in a specific configuration agreed to between the parties for the term hereunder. Customer agrees to protect the Software from access, use or display to unauthorized parties, reproduction, decompiling, reverse engineering or distribution except as expressly authorized herein and agrees to take all reasonable steps to protect the Software and information from dissemination to any third party, including, without limitation, any agents, parent or affiliated individual or organization of Customer. Any other access, use, application, display, reproduction or distribution and any transfer, sublicense or assignment is prohibited except with the prior express written consent of ACOM. Without limiting the generality of the foregoing provisions, the Software shall be used by Customer solely for its internal purposes and Customer shall not use the Software to perform functions, whether on a subcontract basis or otherwise, for other persons or entities. Customer further agrees that the Software, the supporting documentation, and all input and information related thereto is confidential and proprietary to ACOM and to use the Software as authorized herein.

**SOFTWARE MAINTENANCE:** Software Maintenance provided hereunder shall be for the term of this Agreement. Customer shall receive all enhancements and updates to the Software, telephone and email support (Help Desk) for the operation and use of the Software and Interchange integration and the documentation for the Software programs. Help Desk will be provided during ACOM's normal service hours of 8:00 AM to 8:00 PM Eastern time, Monday through Friday (Holidays excepted). Software Maintenance is provided for the current and two (2) previous Software versions.

**EXCEPTED SERVICES:** Software Maintenance services not covered hereunder are; recovery from total system failure; re-installation to a changed host or software platform; faults found not to be related to the covered software; and such other services beyond the scope of ordinary maintenance

**PRICES-TAXES:** All of the products are sold FOB warehouse, freight and insurance pre-paid for the account of the customer. Taxes of whatever nature except those taxes based on the income of ACOM, whether billed or unbilled, are for the account of the customer. All charges hereunder are due and payable within thirty (30) days of presentation of invoice. Past due amounts are subject to interest at the lesser of one and one-half percent (1 1/2%) per month or the maximum allowed by law.

**DELIVERY & ACCEPTANCE:** The implementation of the software provided hereunder may require Customer to make available reasonable access to certain Customer data, information, and assistance, electronic and/or physical. Customer's failure or refusal to timely provide the required access will not relieve Customer from its financial responsibility under this Agreement. Except by mutual consent in writing, Customer agrees to deliver such cooperation in a manner that enables ACOM to complete its implementation services by \_\_\_\_\_ or within six months of the date hereof if no implementation date is specified.

**COMDATA:** All Virtual Card payments (VC Payments) will be processed and settled through Comdata's MasterCard network (Interchange). Consequently, Customer will execute a separate agreement with Comdata for access and settlement of payments through their Interchange. ACOM has entered into an agreement with Comdata pursuant to which ACOM has integrated its Software to provide, on behalf of Customer, payment and account data for processing VC Payments through Comdata's Interchange and for ACOM to provide account management and support services. Customer hereby authorizes ACOM to provide Comdata with such information and data that is necessary to process and settle VC Payments. Customer acknowledges and agrees that ACOM shall have no liability for any actions of Comdata with respect to its Interchange or the settlement of VC payments and agrees the Customer's indemnification of ACOM be limited to \$200,000 from any damages, liabilities or costs (including reasonable attorney fees) arising out of or in connection with any action by Comdata with respect to its Interchange and or VC Payments. This indemnification shall not be interpreted as a waiver of the Panama Beach City's sovereign immunity.

**REBATE FEES:** VC Payments settled through Comdata's MasterCard network (Interchange) will earn Customer a rebate incentive (Rebate) based on the net spend volume (net of charge backs, credit losses, contract fees or discounted Interchange rates) settled through the Interchange in accordance with the Rebate Schedule in Exhibit A attached hereto. The Rebate is paid by ACOM quarterly in January, April, July and October of each calendar year, based on the Customer's net spend volume for the previous quarter. ACOM reserves the right to adjust the Rebate Multiplier to reflect any changes in the Interchange rate and or based on Customer's actual net spend settled through the Interchange in accordance with the Rebate Schedule in Exhibit A.

**ACOM FEES:** All fees for ACOM products and services will be deducted from Customer's Rebates. Customer has no obligation to pay ACOM's fees directly nor does ACOM have any recourse if Customer's Rebates do not fully cover such fees.

**VENDOR SERVICES:** ACOM and Comdata will assist Customer with its objective of converting vendor payments to electronic settlements in the form of Virtual Cards or ACH (E- Payments) by contacting vendors selected by Customer and promoting E-Payments on behalf of and in the name of Customer. Both Customer and ACOM agree that to promote a successful E-Payment program the parties must work together and co-ordinate their activities, efforts and respective responsibilities to achieve Customer's objective. Therefore the parties agree to the following in regards to a vendor E-Payment conversion program:

Customer agrees to:

- A) Work with ACOM to develop a vendor conversion plan
- B) Provide guidelines on the rules of engagement with Customer's vendors.

- C) Provide a vendor list that ACOM and Comdata is to contact for promoting E-Payments.
- D) Approve the messaging and promotion of E-payments to the vendors
- E) Provide guidelines on vendor incentives, if any, to convert to E-Payments
- F) Reimburse ACOM and or Comdata for any design, printing, fulfillment and mailing of letters or promotional material in connection with the vendor conversion program.

ACOM agrees to:

- A) Develop a vendor conversion plan with Customer
- B) Contact and promote E-Payments (directly and in conjunction with Comdata) to Customer's vendors in accordance with the guidelines and rules of engagement agreed to between the parties.
- C) Assist vendors with the enrollment process for Virtual Cards and trading agreements for ACH.
- D) Provide progress updates to Customer

**ACH SERVICES:** ACOM's EZPaySuite Software will generate ACH payment files to be forwarded to Customer's bank for processing and settlement. Additionally EZPaySuite Software will distribute ACH payment information, including a detailed remittance advice via email, fax, or EDI format directly to Customer's vendors.

**SUSPENSION OF SERVICES:** In addition to its other rights and remedies provided for herein and pursuant to applicable law, ACOM may suspend action on the Customer's account and suspend any or all of its obligations hereunder if Customer fails to perform its obligations as defined in this Contract.

**TERM:** This Agreement is for an initial term of three (3) years commencing on the date this Agreement is executed or for the term stipulated in Comdata. Thereafter, this Agreement shall automatically renew for consecutive, successive terms of one (1) year each, until one party provides notice of non-renewal to the other party not less than ninety (90) days prior to the end of the existing term or unless terminated earlier pursuant to the term hereof.

**TERMINATION FOR CAUSE:** In the event that either party defaults in the performance of any of its duties or obligations set forth in this Agreement, and such default is not substantially cured within fifteen (15) days after written notice is given to the defaulting party specifying the default, then the party not in default may, by giving written notice thereof to the defaulting party, terminate this Agreement as of the date specified in such notice of termination. If ACOM is the defaulting party, Customer shall be entitled to receive a refund for all monies paid by Customer directly to ACOM under this Agreement. A full refund is the sole and exclusive remedy of Customer for termination of this Agreement for cause by ACOM and Customer shall not be entitled to, and hereby waives, any and all claims for lost profits and all other damages and expenses. If Customer is the defaulting party, which includes but not limited to default in the payment for products or services delivered hereunder, or refusal to accept such products or services when delivered or attempted to be delivered in accordance with the terms of this Agreement, then there shall be due and payable to ACOM the full list price for such products and/or services set out above, in addition to such other remedies as may be afforded for breach of the terms herein set out.

**WARRANTY AND REPRESENTATION:** ACOM hereby represents and warrants to Customer that ACOM is the owner of the Software or otherwise has the right to grant to Customer the rights set forth in this Agreement and that the Services and any work product thereof do not and will not infringe upon, violate or misappropriate any patent, copyright, trade secret, trademark, contract, or any other publicity right, privacy right, or proprietary right of any third party. ACOM represents and warrants that ACOM has not granted and will not grant any rights or licenses to any intellectual property or technology that would conflict with ACOM's obligations under this Agreement. ACOM will not knowingly infringe upon any copyright, patent, trade secret or other property right of any third party in the performance of this Agreement. ACOM warrants that all products and services delivered hereunder shall be in good working condition. ACOM's liability pursuant to the foregoing warranty shall be limited to repairing or replacing, at its sole option, any defective product or service, without charge or to refund to Customer all monies paid by Customer directly to ACOM for such defective product or service. In no event shall ACOM be liable for any indirect incidental or consequential damages whatsoever arising out of the use or inability to use products or services sold hereunder.

**LIMITS OF LIABILITY:** : EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, ACOM EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR INFRINGEMENT. IN NO EVENT SHALL ACOM BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ACOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. ACOM'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENDED CONDUCT, OR OTHERWISE) SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO ACOM UNDER THIS CONTRACT. NO CLAIM MAY BE ASSERTED UNDER THIS ARTICLE AFTER ONE (1) YEAR FROM THE DATE THAT SUCH CLAIM ACCRUES.

**FORCE MAJEURE:** ACOM will be excused from performance under this contract as a result of any of the following: (a) acts of God including, but not limited to earthquakes, landslides, etc., (b) actions or omissions of Customer, (c) third party non-performance, (d) failure of or defects and errors in third party software or hardware, or (e) acts of government, acts of terrorism, civil unrest, or acts, omissions, events, causes or conditions not reasonably foreseeable and could not be avoided by exercise of due care

**CONTRACTOR RELATIONSHIP:** In performing the responsibilities described in this Agreement, ACOM or its authorized representatives is at all times acting and performing as an independent contractor in relation to Customer. Nothing in this agreement is intended to create an employer/employee relationship, joint venture, partnership or other such relationship between Customer and ACOM or between Customer and any employee, contractor, agent or partner providing services on behalf of ACOM.

**NON-SOLICITATION:** During the term of this Agreement and for a period of twelve (12) months after the expiration or termination of this Agreement, neither party shall, directly or indirectly, solicit for employment or engagement or employ or engage, whether as an employee, independent contractor or otherwise, any person then employed or engaged by the other party or at any time employed or engaged by the other party within the preceding 12-month period without the prior written consent of the other party.

**CONFIDENTIAL INFORMATION.** Both ACOM and Customer acknowledge and agree that in the course of the discharge of the duties hereunder, each of the Parties may have access to and become acquainted with Confidential Information of the other Party, including without limitation; personnel, trade secrets, patents, research and development, processes, formulas, products and services, business and marketing methods, business plans, budget, pricing information, customer and vendor information, rates of compensation paid to the parties' respective personnel, financial information, ideas, discoveries, concepts, know-how, techniques, software and other business information of a confidential information ("Confidential Information"). Both Parties specifically agree that they shall not misuse, misappropriate, or disclose any such Confidential Information, directly or indirectly, to any other person or use them in any way, either during the term of this Agreement or at any other time thereafter, except as is required in the course of their duties hereunder.

**GOVERNING LAW:** This Agreement shall be governed by the laws of the State of California. The parties hereby consent to the exercise of exclusive jurisdiction in the County of Los Angeles, State of California for any claim relating to the enforcement of, or any rights under this Agreement.

Accepted by: \_\_\_\_\_ Accepted by: \_\_\_\_\_  
**ACOM Solutions, Inc.** **Customer**  
 BY: \_\_\_\_\_ BY: \_\_\_\_\_  
 ITS: \_\_\_\_\_ DATE: \_\_\_\_\_ ITS: \_\_\_\_\_ DATE: \_\_\_\_\_

## EXHIBIT A REBATE SCHEDULE

REBATES will be paid quarterly in the months of January, April, July and November based on the net spend volume (net of charge backs, credit losses or discounted Interchange rates for qualified and non-qualified Large Ticket transactions settled through the Interchange for the previous quarter in accordance with the Rebate Schedule below.

Quarterly Net Spend	Rebate Multiplier Basis Points (bps)	*Estimated Rebate
\$250,000, to 1,249,999	60 bps	\$1,500 to 7,500
\$1,250,000 to \$1,999,999	65 bps	\$8,125 to \$13,000
\$2,000,000 to \$3,000,000	70 bps	\$14,000 to \$21,000

\*Estimated Rebate does not include discounts or lower Interchange rates for Large Ticket transactions as defined below and qualified by MasterCard. The term Large Ticket transaction shall mean certain transactions subject to select transaction requirements, qualified and determined by MasterCard, in its sole and absolute discretion. Such Large Ticket transaction requirements shall include, but not be limited to, custom payment service qualification with Level II and Level III data included with the transaction. ACOM will segregate Large Ticket transactions and such transactions will be paid at a lower Rebate Multiplier that is dependent on the actual Interchange rate established by MasterCard.