I. INTRODUCTION

Progressive Solutions Inc., a California corporation herein after referred to as 'Licensor' and the **City of COSTA MESA**, a California municipal corporation, herein after referred to as 'Licensee' agree to the following terms and conditions.

'Device' refers to a hardware system or server *(whether physical or virtual)* with an internal storage device capable of running the Licensed software. A hardware partition or blade is considered to be a device.

'Software Maintenance' refers to **Exhibit A:** *(Software Maintenance Agreement)* which is incorporated by reference herein also referred to as 'Software Support'.

'Requirements' refers to those requirements identified in **Exhibit B:** *(Requirements and Project Implementation Matrix)* which is incorporated by reference herein.

'Specifications' refers to **Exhibit C:** *(Scope of Work)* which is attached and incorporated by reference herein.

'Confidential Information' as used in this *agreement* shall include: Licensor's licensed software, proprietary data, data structure, computer screen layouts, file formats, code and source documents, source schematics, trade secrets, manuals and handbooks. Also, such other information Licensor clearly identifies to Licensee as 'Confidential Information' including *Licensor tendered scope of work documents, services, procedures, formats and any accompanying documentation, and* information marked with copyright and/or an intellectual proprietary notice shall also be considered 'Confidential Information'.

'Trade Secrets' as used in this *agreement,* may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. *(Per California Government Code Section 6254.7d)* Hiring any current or former employee of Licensor where the hired employee subsequently uses Licensor 'Trade Secrets' is a violation of this agreement.

'Notice of Default' refers to Exhibit D: *(Notice of Default)*, a template that identifies the elements required to present valid notice of a Licensor Claim to Licensee per state and local Government Code requirements.

II. NATURE AND DURATION OF LICENSES

a. Licensor's software and data structures are licensed and not sold. Licensor hereby grants and Licensee accepts a non-exclusive and non-transferable license to either 1) install one instance of the Licensor's database structure and/or corresponding software on one server *(a Licensed device)* or 2) allow Licensee access/use to Licensor's hosted software and data structures *(when hosting has been purchased)*. Licensee agrees to grant use by no more than the maximum number of concurrent users designated for each of the product(s) listed in Section IX (Licenses). All Licensed database structures are designed for and require Microsoft® SQL Server®. Licenses for SQL software are not included in this agreement unless listed as 3rd party deliverables in Section IX. The Licensed data structures and software *(and any upgrades provided by Licensor)* shall be installed on the designated local or web server *(For local on-premises implementations, Licensee shall provide the designated local machine name and mac address prior to implementation)*. Prospective users of the Licensed software must have their workstations configured to operate the Licensed software. In order to obtain and use the Licensed software users shall be required to obtain the Licensed software exclusively from the designated local or web server. It is mutually understood that the Licensed software will only function when the Licensed software and data are obtained from the designated server. Only Licensee's employees and employees of authorized Sub-agencies as specified in Section IX are authorized to use the Licensed software, data structures & Licensor published documentation for the purpose of supporting Licensee's internal business practices. No other right or use is permitted under this Agreement.

b. Except as otherwise provided in Section X *(Default)* subsection a(2), the term of this License commences upon the date on which Licensor first delivers Licensed software to Licensee *(or makes the software available via an email link when the software is hosted by Licensor)*, and ends upon expiration of the attached Software Maintenance Agreement or subsequent renewals of the Software Maintenance Agreement which are incorporated by reference herein.

c. Licensor agrees that Licensee may install the Licensed software on and/or access the software from any number of computers. However, Licensee acknowledges that in order to use Licensed software products for day to day operations by more than the number of users specified in Section IX, Licensee must obtain additional user Licenses from Licensor. Query/Read Only, Approval and Notational User Access is provided at no additional charge. Licensee further acknowledges that technical assistance may be required for the Licensed software to function. *(I.e. Software may cease functioning as a*

result of Licensee hardware device changes including database transfer to a non-designated device; Data integrity may degrade due to lack of upgrades to recommended software versions, etc.)

d. This license does not create a "technology transfer" agreement, as defined by applicable law because (a) the technology *(including any software)* made available under this license is not an integrated part of a technology chain for production or management purposes and (b) the technology *(including any software)* will have its own technology license. Licensee will not hold itself out as our technology recipient and will not attempt to identify Licensor as a technology provider under this license.

e. Except for use of Licensed web modules designed for public access or use by designated sub-agency employees, any other use of Licensed Software *(modules/application programming interfaces-APIs)* by a third party who is not an employee of Licensee, shall require notification & written approval of Licensor. Upon Licensor approval, Licensee at its sole discretion may require such third party to execute appropriate non-disclosure and/or licensing agreements as Licensor deems necessary.

f. Subject to the terms and conditions of this Agreement, Licensee grants to Licensor and its Third Party Providers the non-exclusive, worldwide right to use, copy, transmit and display (a) Licensee Data solely to the extent necessary to provide approved Licensor Service(s) and Licensor Materials to Licensee, and (b) any trademarks that Licensee provides Licensor for the purpose of including them in Licensee's user interface of the Licensor Service(s) ("Licensee *Trademarks*"). Licensee shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Licensee Data and Information regarding Licensee and Licensee's Users.

III. OWNERSHIP AND TITLE

a. Title, including but not limited to all rights in Licensor's patents, copyrights, trademarks, proprietary information and 'Trade Secrets' shall remain vested in Licensor. **No title to or ownership of the object code, reference material, or any of its parts, is hereby transferred to Licensee.** Licensee's rights shall at all times be subject to the patents, copyrights, trademarks, proprietary information, 'Confidential Information', 'Trade Secrets' and use restrictions contained in this Agreement. Any additions, modifications or enhancements made by Licensee or by a third party on Licensee's behalf shall not create any rights to the Licensed software and shall not relieve Licensee of its obligation to protect the proprietary nature of the Licensed software. Nothing shall be construed to confer any license to any Third Party Provider's intellectual property rights, whether by estoppel, implication, or otherwise.

b. Licensee agrees that additions, modifications or enhancements to the Licensed software which may be developed for Licensee through the reimbursed or unreimbursed efforts of Licensor's employees or agents, whether or not in conjunction with Licensee's employees or agents, shall be the exclusive property of Licensor. **Licensee shall have no title, ownership, right to royalty or income or any other ownership rights in such additions, modifications and/or enhancements.**

c. Master Account Data *(Account number, Operation Name, addresses, and other related fields)*, Contacts *(people or entities associated with master accounts)*, Notes *(dated staff comments about accounts)*, Payments *(dated payment detail for each account)* Permits *(subsidiary taxes related to a master account)*, photos and scanned documents are the exclusive property of Licensee. Log files, configurations, indices, data values generated automatically by the Licensed software and all other data are the exclusive property of Licensor. When Licensee data is not hosted via Licensor owned devices and resides on a Licensee device, access to, management and control of access to Licensor's database/data structures *(and Licensee's data within)* shall be the responsibility of Licensee.

IV. LIMITED WARRANTY

a. Licensor warrants that it has developed, owns, and/or possesses all rights and interests in the Licensed software necessary to enter into this Agreement.

b. The go-live date is the date that any base Licensed windows software *(not internet components)* may be viably used in production. However, go-live does NOT imply that all reports or desired modifications will be completed by that date unless required as part of a guaranteed implementation. Non-critical written specifications are typically met during the warranty and maintenance periods. While Licensor generally works as fast as Licensee will allow and can provide an estimated go-live date, unless Licensee has purchased a Guaranteed Time Frame Implementation where all required specifications have been mutually agreed upon, Licensor cannot *guarantee* a go live date as part of this agreement. A guaranteed or estimated go-live date may only be provided once Licensee provides Licensor with the required items identified in Exhibit B: *(Project Implementation Matrix) (such as an executed agreement,*

initial payment, mutually agreed specifications, access to Licensee's network, etc.) for each Licensed product. Licensee shall provide Licensor with full and unfettered access to readable/useable migration data within 24 hours from receipt of any required initial payment. Delays (each full or partial day) beyond this 24 hour period and delays obtaining additional required answers, clarifications, data reviews, etc. (items out of Licensor's control) will be added to any original Licensor estimated/guaranteed go-live date. Any delays where the Licensee does not completely respond to Licensor's requests for assistance or data within 24 hours shall extend the Licensor guaranteed go-live date by a full day for each partial or full day of the Licensee caused delay. Should Licensee comply with all provisions required to start an implementation (guaranteed or non-guaranteed) where the implementation period includes the week prior to and the week of the annual PSI User Conference (typically mid-November), 14 days will be added to the go-live date as no implementation work will be performed during that time.

c. For 90 days from delivery of the software ("Warranty Period") and subsequently while Licensee maintains a current Software Maintenance Agreement, Licensor warrants 1) the Licensed software shall materially conform to the specifications described in the accompanying written materials pertaining to the released/installed software version and those items in Exhibit C: (Specifications), specifically authorized as part of this Implementation that are completed within the approved number of hours specified under 'Professional Services' and 2) Licensed software will execute under those Microsoft operating systems specified in the Exhibit B: (Requirements) document in effect at the time of the initial software installation and subsequent updates. Licensee agrees and understands that: 1) the Exhibit B: (Requirements) document will be revised periodically to accomodate changes in the marketplace. & 2) Subsequent software updates of the Licensed software may necessitate update of computer hardware and/or operating system software. Delivery of the software shall be deemed to have occurred upon email transmission by Licensor to Licensee of instructions to access the Licensed software and may be further evidenced by logs of Licensee's access to the Licensed software.

V. EXCLUSION OF WARRANTIES & LIMITATION OF LIABILITY

a. RESTRICTIONS ON WARRANTY: Licensee acknowledges that the Licensed software is of such complexity that it may have inherent defects and agrees that as Licensor's sole liability and as Licensee's sole remedy, Licensor will provide, while Licensee maintains Software Maintenance, all reasonable software support services to correct documented programming or documentation errors reported by Licensee which Licensor's diagnosis indicates are caused by a defect in an unaltered version of the delivered Licensed software. Licensee assumes any and all responsibility and liability for 1) any modification to the Licensed software and/or database structure not made by Licensor (i.e. changes to Crystal reports, additions or deletions of data base tables, fields etc.) and 2) any modification to the Licensee's data which is not made by Licensor or via the Licensed software. If, after providing corrective maintenance, Licensor determines that an error condition is not a Licensed software error or that the error condition results from either condition 1 or 2 above, Licensee agrees to pay Licensor for the reasonable services so provided at the rates in effect at the time of service plus reasonable expenses. However, Licensor shall have no obligation to repair or replace products (hardware or software) damaged by accident or other external cause or through the fault or negligence of any party other than Licensor.

b. FUTURE REQUIREMENTS & INTERRUPTION: Licensee does not warrant that any products or services provided hereunder will meet future requirements of Licensee or that the operation of products provided hereunder will be free from interruption or errors. Licensee agrees that Licensor shall not be responsible for any loss or damage to the extent such loss or damage exceeds any limits on liability contained herein to Licensee, its customers, or any third parties caused by failure of the products/functionality furnished hereunder to function.

c. EXCLUSION OF OTHER WARRANTIES: The express warranties set forth in this agreement are in lieu of all other warranties and there are no other warranties, representations, conditions or guarantees of any kind whatsoever applicable either express or implied by law (in contract or tort or otherwise) or custom, including, but not limited to those regarding merchantability, fitness for purpose, durability, correspondence to sample, title, design, condition or quality without limiting the above.

d. LINKS TO THIRD PARTY SITES: Licensee may link to third party sites through the use of the Licensed software. The third party sites are not under the control of Licensor, and Licensor is not responsible for the contents of any third party sites, any links contained in third party sites, or any changes or updates to third party sites. Licensor is not responsible for webcasting or any other form of transmission received from any third party sites. As a convenience, Licensor

may inform Licensee of potentially beneficial links to third party sites. The transmission to Licensee of such links and their inclusion of any link does not imply an endorsement by Licensor of the third party site.

e. NO INDIRECT DAMAGES: In no event shall Licensor be liable for any special, indirect, incidental or consequential damages to the full extent such may be disclaimed by law, arising out of or relating to this Agreement or the Licensed software, whether or not Licensor has knowledge of the circumstances surrounding such damages.

f. LIMITATION OF LIABILITY: If for any reason, Licensor becomes liable to Licensee or any other party for direct or any other damages for any cause whatsoever, and regardless of the form of action (in contract or tort or otherwise), then:

    i. Licensor's aggregate liability to Licensee and all other parties arising out of or relating to this Agreement or the Licensed software shall in no event exceed the amounts actually paid by Licensee during the two years preceding the last incident giving rise to the liability; and

    ii. In any case Licensee may not bring or initiate any action or proceeding against Licensor arising out of this agreement or relating to any products or services provided hereunder more than two years after the last incident giving rise to the liability (relevant cause of action).

g. SEPARATE ENFORCEABLITY: Sections V paragraphs a through f are construed as separate provisions and shall each be individually enforceable.

VI. INDEMNIFICATION

As Licensee acknowledges its duty to monitor ongoing operations, Licensee agrees to indemnify, defend and hold Licensor harmless against any and all loss or damage in any way arising out of or in connection with products furnished hereunder, or by any failure of the products to function, in whole or in part due to the negligence or willful misconduct of Licensee. Notwithstanding the foregoing, Licensee will not be required to defend or indemnify Licensor for or against any claims, losses, costs, or damages without an advance showing of Licensee's negligence or wrongdoing. Further, Licensee agrees to reimburse Licensor for any and all costs, loss or damage in any way arising out of or in connection with Licensee's unauthorized disclosure of 'Confidential Information' or 'Trade Secrets' described herein pertaining to products furnished hereunder, in whole or in part due to the sole negligence or willful misconduct of Licensee. Licensor assures the Licensee that, to the best of its knowledge, the information and services to be supplied by it pursuant to this Agreement do not infringe upon any patent, copyright, or trade secret. In the event any legal proceedings are brought against the Licensee arising out of or in connection with Licensor's performance of work hereunder or a claim that any information or services of Licensor constitute an infringement of a patent, copyright, or trade secret, Licensor agrees, to the fullest extent permitted by law to defend at its sole cost and expense including attorney fees, any such legal proceedings against Licensee and to indemnify and hold Licensee, its elected and appointed officials, officers, attorneys, agents, and employees and each of them, including, without limitation, cost and fees of litigation, to defend, indemnify and hold harmless Licensee, its elected and appointed officials, officers, attorneys, agents, and employees and each of them against any and all liability, loss, damage, expense, costs of every nature provided Licensee gives Licensor prompt written notice within thirty (30) days after Licensee receipt of actual notice of any such claim or of the institution of any such claims against it and further cooperates completely with Licensor in providing all necessary authority, information, and reasonable assistance to enable Licensor, at its option, to settle or defend such claims. Licensor has no other express or implied warranty of non-infringement or liability for infringement or any damages there from.

VII. LICENSEE'S RIGHTS, OBLIGATIONS & REPRESENTATIONS

a. All material comprising the Licensed software furnished to Licensee may carry notices of Licensor's proprietary, 'Trade Secrets', 'Confidential Information', copyrights or intellectual property printed on reports, letters, documents and reference material supplied. Licensee agrees not to obliterate, alter, remove or obscure such notices in any production or reproduction whether in physical or electronic form.

b. This license does not give Licensee any right to, and Licensee must not:
    I. use or virtualize features of the software separately without written Licensor permission;
    II. work around any technical restrictions or limitations in the software;
    III. reverse engineer, disassemble or decompile any Licensed Software or prepare derivative works thereof
    IV. make any effort to extract Licensor's proprietary 'Trade Secrets' and/or intellectual property from current or former Licensor employees.

c. To the extent permitted by any pertinent transparency legislation (such as a federal, state or local Public Records Act), Licensee will preserve the confidential nature of the Licensed software, 'Confidential Information', Licensor's 'Trade Secrets' and related media. Further, Licensee shall not

transfer or make copies, including partial copies or updated versions thereof, except for internal reference, archive or backup purposes. For Licensee hosted implementations, Licensee is solely responsible for backup of Licensor's database/data structures (*including Licensee's data within*) and agrees to conscientiously ensure the existence of functional daily backups for at least the last 10 business days and shall not remove or disable any SQL agent or backup plan initiated by Licensor without both notification to Licensor and at least monthly testing of any subsequently implemented alternate backup plan. If the backup plan is altered or disabled without notification to Licensor, and there is a resulting data loss, an additional charge may be incurred for requested data recovery services.

d. Because of the confidential nature of the goods and services supplied under this Agreement, it is agreed that the Licensee will not sell, give, or lease the software or related 'Confidential Information' (*to the extent permitted by a pertinent federal, state or local Public Records Act*) about any of the 'Confidential Information' or capabilities of the provided software to any other firm or person or group without the express written approval of Licensor or make any use thereof other than as expressly permitted under this Agreement. Licensee will further use its **best efforts** to maintain the security thereof. It is mutually understood that since 1979 Licensor has invested millions of dollars to produce the product(s) Licensee licenses via this agreement. Should Licensee provide or allow any third party unauthorized access to any Licensor's 'Confidential Information', Licensee shall be liable for damages. In addition Licensee agrees not to contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary and intellectual property rights, title or interest of Licensor in and to any of Licensor's software. It is agreed, however, that such information and capabilities which Licensee can show to be in its possession prior to receipt of any disclosure by Licensor shall not be subject to the provisions of this section.

e. Should Licensee anticipate termination of software maintenance (*and use of a Licensed application*), Licensee shall either extract all required Licensee data from Licensor's data structures as Excel, csv or flat files (*to prevent theft of code that resides within Licensor's database*) via any readily available tools **prior** to expiration of the relevant application's software maintenance or authorize specific data extraction services from Licensor for a nominal fee (*these services reduce the chances of confidentiality breaches*) **prior** to destruction of the licensed software and data structure. For hosted solutions, Licensee data structures are not typically kept more than 60 days post expiration and no recovery after that period should be expected. Once the data structure has been destroyed, no further access is possible. Licensee agrees that the software/components furnished by Licensor and all copies and versions thereof made by the Licensee are and shall remain the sole property of Licensor.

f. Customization of the Licensed software shall be limited to modifications and enhancements that will not limit Licensor's ability to support the product through standard releases. Licensee shall only access Licensor's database structure via the Licensed software, via an Applications Programming Interface (API) obtained from Licensor, via a file backup utility or using Open Database Connectivity (ODBC) standards via a Licensor created/managed reader user where rights have been set by Licensor. Licensed functionality shall include the ability to access/export Licensee owned data as defined in Section III. Subsection c. Licensor does not store scanned documents within the Licensed data structure; thus for local implementations all such documents are available to Licensee at any time. For hosted solutions, upon request and at additional charge, Licensor may produce a backup copy of all hosted scanned documents. As data integrity is essential, Licensee agrees that "write access" to Licensed data structures other than via a Licensed API shall not be permitted without Licensor's written approval.

g. Training for users, managers and other personnel prior to going live is essential for efficient operation of the Licensed software. Licensee will designate one employee as a primary contact for each Licensed software application. The designee must have been trained to use the Licensed software, must regularly use the system(s) and be primarily responsible for daily results/operation of the system(s). While post implementation designee may assign follow-up on a request for service to another staff member, designee must initiate contact with Licensor's support personnel and relate their questions or issues. Designee shall coordinate and/or test/verify all configurations including but not limited to: general ledger accounts, rates, rate types billing & charge groups. In addition, designee shall coordinate availability of necessary IT staff for software updates and installation (*when required by Licensee's local policy*).

h. Neither Licensee nor Licensor wish to incur additional time, effort &/or costs for Licensor to get staff back up to speed with Licensee's migration. Should Licensee purchase data migration services for any product, Licensee acknowledges that migrations are a cooperative effort that without committed

& conscientious cooperation, any migration will be needlessly delayed. Up to 30 hours of Licensor effort are included with each purchased/authorized migration. To date most previous migrations have been fully accommodated within those 30 hours. However, when Licensee staff or contractors delay migration and/or add requirements for customized data modification/cleanup ⁂ not part of the approved specifications, upon approval such additional services will be provided and billed either on a time and materials basis (*at the rate in effect at the time of service-Currently $195/hour*) or via a fixed price quote. Licensee accepts full responsibility to provide:

1) For each <u>Licensed</u> software product a designated contact who has been directed by management to devote time to this project as a high priority, is intimately familiar with the existing data/software/operations and has been empowered to make decisions regarding implementation, configuration and forms design.

2) Licensor with <u>one</u> balance calculation (*or one balance due amount*) for all accounts with non-zero balances that Licensee desires to migrate. (*Experience migrating other systems has taught us that many other systems have more than one way to calculate a "true" balance which may or may not correlate with historical financial transactions.*)

3) **Complete and consolidated** migration data to Licensor transmitted in their entirety **at one time** in a consistent computer readable format (*with understandable field labels which clearly identify the field contents*). Unless otherwise mutually agreed in writing, data will be transferred <u>as is</u> without manipulation or alteration.

4) Notification to Licensor that Licensee's migrated data is either available or has been transmitted to Licensor.

5) Functional remote desktop sharing as described in the *"Most Cost Effective Access"* below which may be initiated by Licensee's designated staff members at their workstation **at least until the go live date and for the duration of any approved customization projects.** This functionality is essential to facilitate efficient review of the data by Licensee and to provide instruction on the Licensed software by Licensor.

6) Review of the migrated data and notification to Licensor in writing of any data/configuration issues relating to each 1ˢᵗ data migration no later than either: 1) 30 days (*or less if specified otherwise in an attached Scope of ⁂ Work*) from the day Licensor has notified Licensee that the 1ˢᵗ migrated data became available for Licensee review or 2) Licensee prior to the go live date provides Licensor with a written acknowledgment that Licensee has completed their review and accepted the data as migrated by Licensor.

7) Prompt verification that requested corrections have been completed to Licensee's written specifications or automatic acceptance of any corrections absent written documentation to the contrary 7 days from the date Licensee was notified of the availability of any specific correction.

If after the 30 day review period (*or receipt of written acceptance by Licensor*) Licensee requests program or data changes that could have been requested during review of the 1ˢᵗ migrated data, upon mutual written agreement Licensor shall respond and correct such issues on a time and materials basis. Licensee agrees that addition of calculations (*especially balance*), form revisions, migration data (*such as additional records or tables not originally provided*) or changes to the format of the migration data may result in a delay of product implementation and shall result in additional time and materials charges. In the unlikely event any previously reported issues resurface, such reoccurrence(s) shall be corrected without additional charge.

i. Hosted Implementations shall receive software corrections automatically or per agreement with Licensor's support personnel upon written request. Software corrections are defined as: Licensor software updates as well as specified operating system patches. Licensee agrees to implement software corrections that have been identified as necessary by Licensor and to ensure that the requirements identified in Exhibit B:(*Requirements and Project Implementation Matrix*) are met by all devices intended to execute the Licensed software. Failure to implement those identified software corrections or to maintain the specified requirements shall relieve Licensor from any and all 'Software Maintenance' responsibilities relating to any Licensee reported issue(s) that the Licensor correction(s) was/were offered to address. In the event Licensee ⁂ fails to implement identified software corrections, any subsequent services relating to the Licensee reported issue(s) will only be provided on an emergency time and materials basis. <u>Unlike the business models of other providers where products become obsolete, Licensor continually improves the software and offers to schedule at least one complimentary software version upgrade each year as a component of annual software maintenance.</u> It is highly recommended that Licensee staff regularly attend PSI annual user training/conferences so staff may learn of, receive training on and take full advantage of accumulated new features and functionality. It is

vital that at least one Licensee staff member for each Licensed product attend a PSI user conference at least every 5 years.

j.   Licensee may use remote assistance technologies to share an active session without obtaining any additional licenses for the software. Remote assistance allows one user to connect directly to another user's computer, usually to correct problems. Other than for one initial remote access attempt, Licensee understands & acknowledges that Licensor in the interest of providing the most cost effective offering has **not** included costs in this agreement for further testing of any remote access method(s) to be provided to Licensor. For local implementations, Licensee agrees to provide Licensor with access to the Licensed software and data for the sole purpose of providing technical support & services in one of these ways:

A. *Most Cost Effective Access*: In the interest of security, Licensor strongly recommends providing Licensor with access via terminal services, virtual private network (VPN), remote desktop connection (RDC) and/or Licensee provided connectivity such as Citrix Remote Access. Licensee is expected to provide prompt & efficient distribution of security requirements, user-names, access rights and passwords. All access rights listed below shall be tested by Licensee's designee prior to distribution of any security configurations/requirements, usernames & passwords to Licensor and such access rights shall be maintained at least until the go live date and for the duration of any approved customization projects. After such initial implementation(s), any Licensee transmission of remote access information to Licensor shall also be tested by Licensee's designee as described above prior to distribution to Licensor. Licensor expects that under no circumstances should any Licensee site connectivity attempts require more than 15 minutes of Licensor's staff time. Licensor requires access rights solely for maintenance of software and data structures. **These access rights must be provided by Licensee:**

- Connection to Licensee designated Application/File Server via a mutually agreed Connection
- Connection to Licensee designated SQL Server
- Access to functional SQL tools (with Local administrative rights) for data flow, backing up, adding & deleting users, restoring & configuring of Licensor's data structures.
- IIS management rights for any web implementations
- Web implementations must allow SQL connectivity to source data
- Creation of subfolders within the PSI directory
- Saving of files in the PSI folder & all subdirectories
- Transferring and saving FTP files from www.progressivesolutions.com to Licensee Server(s)
- Transferring and saving files from: http://www.progressivesolutions.com/downloads to Licensee Server(s)

B. *Access Testing Required:* Licensee requires Licensor's assistance to effect the requirements listed in A. above. Licensee agrees that such requested assistance shall be billed to Licensee at the hourly rate in effect at the time of service (*with a 4 hour minimum*) per each testing incident.

C. *Least Cost Effective Access:* Obtaining access and/or assistance from Licensee's designee generally requires in excess of 15 minutes and Licensor support services are delayed until such time as Licensee's designee is both available and willing to assist with any required support. A 20% accessibility premium (*above normal software maintenance rate*) may be assessed upon Licensee's subsequent renewal of software maintenance.

k.   In order to be able to meet the above requirements, Licensee agrees a) to maintain a working connection to the internet, b) to permit Terminal Services, Virtual Private Network-VPN or similar access to Licensor's network through any router/firewall and c) to permit Licensor access to a technical support requestor's workstation via Licensor's "Share desktop facility", Microsoft®'s Remote Desktop, Microsoft®'s Netmeeting®, Gotomeeting.com or Citrix as specified in the Software Maintenance Agreement. In addition, Licensee agrees that all designated workstations shall meet at least the minimum requirements as specified in Exhibit B: (*Requirements and Project Implementation Matrix*) at the time of the initial implementation in order to accommodate the software version initially installed. Licensee further agrees to have completed installation of the Microsoft® SQL tools and other mutually agreed requirements such as: Microsoft®'s Terminal Services, VPN, Remote Desktop, Netmeeting® or other similar functionality. Upon request and once appropriate user privileges are available, Licensor shall install the licensed software.

The features described below are enabled by default to connect via the Internet to Licensor's computer systems automatically, without separate notice to Licensee. Licensee consents to the operation of these features, unless Licensee chooses to switch them off or not use them. To minimize Licensee

costs, to eliminate any requirement for manual update of validation and/or zip +4 codes, to allow for other on line validations (*such as contractor's license, sales tax permit, pet microchip owner information retrieval etc.*) and to maximize uptime of zip +4 & Licensed software validations, devices intended to execute the Licensed software should optimally be configured for internet access to the Licensor designated internet (IP) address. Consequently users of the Licensed software who are current with their Software Maintenance shall receive the latest zip +4 validations from Licensor's web service. Licensee Furthermore absent internet access, the automated validations provided at the time of installation shall cease and all such validations will need to be performed manually.

l.   Licensee understands and acknowledges that network performance is solely the responsibility of Licensee. Should any questions arise as to whether a performance issue is software or network related, Licensee agrees to direct staff, a Licensee retained consultant or Licensor (*at Licensee's cost*) to evaluate network/software performance. Such network evaluation shall utilize "Network Sniffer" or equivalent tools to facilitate generation of quantitative results. Licensee agrees to request & incorporate Licensor's recommendations in the network evaluation work plan. Licensee further agrees to transmit the results of such work to Licensor for review and to withhold publication of such results until after implementation of all Licensor recommendations. Requests of Licensor for performance troubleshooting (*such as speed and network connection issues*) in which Licensor receives prior written authorization to collect factual data and subsequently presents a determination that performance issue(s) is/are network related will be billed at the rates in effect at the time of service.

m.   Licensee has no obligation to give Licensor any suggestions, comments or other feedback ("*Feedback*") relating to the Licensed software. However, any Feedback Licensee voluntarily provides may be used in Licensor Products, marketing, related specifications and/or other documentation (*collectively*, "Licensor *Offerings*") which in turn may be relied upon by other third parties to develop their own products, services or technology ("*Third Party Products*"). Accordingly, if Licensee gives Licensor Feedback on any version of Materials or Licensor Offerings to which they apply, Licensee agrees: (a) Licensor may freely use, reproduce, license, distribute, and otherwise commercialize Licensee's Feedback in any Licensor Offering; (b) Licensee also grant third parties, without charge, only those patent rights necessary to enable Third Party Products to use, implement or interface with any specific parts of a Licensor Product that incorporate Licensee's Feedback; and (c) Licensee will not give Licensor any Feedback (i) that Licensee has reason to believe is subject to any patent, copyright or other intellectual property claim or right of any third party; or (ii) subject to license terms which seek to require any Licensor Offering incorporating or derived from such Feedback, or other Licensor intellectual property, to be licensed to or otherwise shared with any third party.

n.   While Licensor's software payment processing solutions are designed to CISP (*Cardholder Information Security Program*) & PCI (*Payment Card Industry Data Security Standard*) guidelines, Licensee understands that Licensor's PCI/PADSS compliance and certification does not automatically result in Licensee compliance. Licensee acknowledges that to maintain CISP/PCI compliance, Licensee must provide staff with PCI security training and ensure that staff actions maintain compliance. Licensee understands that local PCI compliance is not possible without Licensee's internal staff effort to achieve such compliance. Licensee accepts their critical role in maintaining compliance as required by Visa, MasterCard, etc. Licensor accepts responsibility for facilitating such compliance by neither encouraging the storage of non-secured credit card data nor configuring the system for the express purpose of retaining non-secured private information. It is Licensee's responsibility to assure that all other 3rd party partners/vendors as well as their own internal operations staff facilitates compliance in their specific areas of process control.

o.   **Call Monitoring:** Licensor may monitor and record any calls between Licensee (including designated Sub-Agencies) and Licensor.

p.   **Software License Removal**: Upon expiration of the software license pursuant to Section II of this agreement, Licensee shall discontinue use of Licensor's database/structure, software & related electronic forms as described in Section X-Default.

VIII.   **LICENSOR'S RIGHTS, OBLIGATIONS & REPRESENTATIONS**

a.   Licensor reserves all rights (*such as rights under intellectual property laws*) not expressly granted in this agreement. Any technical specifications or workflow (*written or screen shots*) developed by Licensor for work relating to the Licensed software shall remain Licensor's intellectual property and shall not be shared with anyone not employed by Licensee without Licensor permission.

b. While Licensee maintains 'Software Support', Licensor shall make available to Licensee any updates and minor enhancements to Licensed software, data or data structures which may become available from Licensor as provided for in the corresponding Support Maintenance Agreement. In the course of Licensor providing Licensee with 'Software Support', Licensor may be required to install updates and minor enhancements to Licensed software, data or data structures in order to resolve a support issue. Licensor reserves all rights (*such as rights under intellectual property laws*) not expressly granted in this agreement.

c. While Licensee maintains 'Software Support', Licensor shall provide the Licensee with voice, facsimile, email, text and mail communications as provided for in the corresponding Support Maintenance Agreement. For web hosting clients, Licensor shall make weekly data backups available to client via FTP in a format suitable to recovering data for resumption of software operation. Licensor reserves all rights (*such as rights under intellectual property laws*) not expressly granted in this agreement.

d. Nothing contained in this Agreement shall be construed to obligate Licensor to provide any services whatsoever to any Licensee who fails to maintain 'Software Support' or who does not allow Licensor the ability to promptly install updates to fulfil 'Software Support' duties. Licensor reserves all rights (such as rights under intellectual property laws) not expressly granted in this agreement.

e. **U.S. GOVERNMENT RESTRICTED RIGHTS:** The licensed software and documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer is the Licensor of the software.

f. Insurance. It is understood that Licensor is expected to complete most if not all on-site technical support within 2 months (or more if completion is otherwise specified in an attached Scope of Work) after the signing of this Agreement. No less than 90 days after the "go live" date (following completion of on-site training), Licensor may remove the Licensee as an additional insured from its insurance policies. Thereafter, Licensor agrees to maintain the agreed upon insurance coverage and to furnish Licensee with certificates of insurance evidencing the required coverage upon request.

    1. Workers' Compensation. By executing this Agreement, the Licensor hereby certifies that he/she is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Agreement. Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Licensor shall be provided with limits not less than one million dollars (*$1,000,000*). In the alternative, Licensor may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code.

    2. Commercial General and Automobile Liability. Licensor, at Licensor's own expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars (*$1,000,000*) per occurrence, combined

single limit coverage for risks associated with the work contemplated by this Agreement.

3. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy: Licensee, its officers, elected officials, employees, agents, and volunteers are to be covered as additional insured(s) as respects each of the following: liability arising out of activities performed by or on behalf of Licensor, including the insured's general supervision of Licensor; products and completed operations of Licensor; premises owned, occupied or used by Licensor; or automobiles owned, leased, hired, or borrowed by Licensor. The coverage shall contain no special limitations on the scope of protection afforded to Licensee, its officers, employees, agents or volunteers.

4. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis. For any claims related to implementation of the Licensed software, the Licensor's insurance coverage shall be primary insurance as respects the Licensee, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Licensee, its officers, officials, employees, agents or volunteers shall be excess of the Licensor's insurance and shall not contribute with it.

5. Any failure of Licensor to comply with reporting provisions of the policy shall not affect coverage provided to Licensee and its officers, employees, agents, and volunteers.

6. Insurance is to be placed with California-admitted insurers with AMBest's rating of no less than A: VII, unless otherwise acceptable to Licensee.

7. Notice of cancellation or non-renewal must be received by Licensee at least thirty (30) days prior to such change.

8. Deductibles and Self-Insured Retentions. Licensor shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon written notice to the Licensee Attorney, Licensor may increase such deductibles or self-insured retentions with respect to Licensee, its officers, employees, agents, and volunteers.

9. Notice of Reduction in Coverage. In the event that any coverage required under this section of the Agreement is reduced, limited, or materially affected in any other manner, Licensor shall provide written notice to Licensee at Licensor's earliest possible opportunity and in no case later than five (5) days after Licensor is notified of the Change in coverage.

10. If Licensor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Licensee may, at its sole option after notification of Licensor:

    (i) Order Licensor to stop work under this Agreement, withhold any payment which becomes due to Licensor hereunder, or both stop work and withhold payment, until Licensor demonstrates compliance with the requirements thereof;

    (ii) Terminate this Agreement.

Exercise of either remedy listed above is the sole and exclusive remedy for Licensor's failure to maintain insurance or to secure appropriate endorsements.

IX. LICENSE FEES AND PAYMENTS

Software* (Utilizes/Requires Microsoft SQL licenses)		Designated Caller(s)	Concurrent Licenses	License Fee
PetTrack™ - 2 User License		Heather Hamilton	2 edit user license	$13,000
Web Renewals/Look-ups/Payments Module			(unlimited read only	$8,500
Web Applications/Payments Module			users)	$7,500
Credit Card Connector (Site License)				$995
Discount				(9,000)
Read only Users			Unlimited	Included
Professional Services*			**Units**	**Extended Cost**
PetTrack™	Migration of all records			$1,500
	Offsite/onsite, configuration, set-up, training and form setup($1,200/day)			$2,400
Requested Modifications				
PetTrack™	None			None
Forms & Letters to be Customized*				

PetTrack™	Up to 25-Standard License, Renewal, Delinquent & Underpayment Custom Renewal Form	Included
Total Professional Services		**$3,900**
Project Grand Total		**$24,895**

* Initial Software Maintenance will be billed at least 30 days prior to warranty expiration.

** Whenever form or letter customization is quoted, unless otherwise specified, Licensee may expect Licensor to modify Licensor's *standard forms/formats* to accommodate Licensee's names, addresses, phone numbers, text, emblems, logos, and bank account numbers, etc. (List price $900) Deviations from Licensor's standard formats (*such as creation of one or more entirely new forms and/or specifications requiring complex calculations*) require additional effort and will be billed at Licensor's standard hourly rates.

*** Onsite service schedules, costs and estimated travel expenses shall be pre-approved in writing by Licensee. Expenses will be billed at our actual cost and limited to customary reasonable travel, ground transportation or auto rental fees, lodging and meal per diem expenses plus staff transportation time per Section IX (a).

PSI's understanding of written specifications for potential data export to a mail outsourcing service is that generation of Acrobat™ portable document format (PDF) files is the most standard, replicable, consistent, preferred and elected data export format. This format typically reduces or eliminates duplicate effort(s) and cost(s) for form replication.

3rd Party Deliverables: Any required or desired hardware, software, and communications products not specifically included in the following table are Licensee's responsibility. This configuration represents Licensor's recommended products, and the cost is an estimate only, as the prices of the third-party vendors are subject to change without Licensor's approval. Also, Licensee understands that Licensor may decide to change this recommendation if Licensor believes a new solution is better suited for the proposed installation. Should this recommendation change, Licensor will notify Licensee as soon as practical. Licensor makes no warranty, whether expressed or implied, regarding the components listed below and shall not be responsible for servicing such components unless a Hardware Service Agreement is purchased. The components shall be subject only to manufacturers' warranties, if any. Progressive Solutions' software products may be configured to utilize barcode components licensed from IDAutomation Inc. These barcode components may only be used on the number of workstations authorized as part of and in connection with Progressive's Software & Services. Licensor currently partners with Authorize.net to provide payment gateway services and requires those who wish to accept secure payment transactions to sign up with Licensor for such gateway services. Signing up for such payment services with Licensee entitles Licensee to gateway configuration at no additional charge as well as the ability to receive periodic software and configuration updates to facilitate ongoing PCI compliance. Licensee's Authorize.net accounts not provided by Licensor are not eligible for these no additional cost benefits.

3rd Party Products (Prices do not include sales tax)	*Cost*
CrystalReports(run-time)	$0

Sub-Agencies:

Application(s) authorized for use by specified sub-agency	*Sub-Agency*
PetTrack™	None

a. All Licensor service is billed portal to portal and subject to such minimum response charges as may then be in effect.

b. At times, Licensor may elect to begin work toward agreed specifications prior to receiving an executed agreement to meet or exceed Licensee expectations. Licensee agrees that in the event Licensor does elect to perform work in advance toward mutually subsequently approved scope of work, Licensor's hours worked toward the approved scope of work before approval shall be added to hours worked subsequent to approval of this agreement. Charges for additional remotely provided support services will be invoiced to Licensee in one hour increments at the hourly rate in effect at the time of service. Support services resulting from mutually approved parallel operations that exceed 2 calendar months shall be invoiced on an hourly basis until completion of the approved parallel project. Charges for additional on-site support services will be invoiced to Licensee portal to portal (*on-site minimum is four hours plus expenses if any*) at the hourly rate in effect at the time of service. Invoices shall be payable thirty (30) working days after receipt of invoice. Licensor will submit invoices which reflect the date of service, staff-hours expended, expenses and a description of the services rendered.

c. Licensee understands and agrees that timely completion of a Project is contingent upon timely performance by Licensee of all of Licensee's obligations described in this Agreement and further described in the provided sample confidential *Project Implementation Matrix*. In the event progress on a Project is slowed or halted due to delay by Licensee, all deadlines and milestone dates will be moved forward in time by the number of days Licensee delays in meeting its obligation(s). Licensor will have no liability to Licensee for delay or damage caused directly or indirectly by Licensee nor will Licensor be held liable for failure to perform the Project in accordance with the *Project Implementation Matrix* if the delay was caused directly or indirectly by Licensee. Such delay by Licensee shall not constitute a breach of this Agreement by Licensor. Additionally, should Licensee delay the project for twelve (12) months or more, Licensor may elect to remove Licensee's project from Licensor's development/installation schedule. In such event, when Licensee anticipates it will be able to complete their obligations per the *Project Implementation Matrix* and will be ready to continue, Licensee may contact Licensor so Licensee's project may be rescheduled for development/installation on Licensor's Master Calendar. In the event Licensee materially *changes the scope* of this project, Licensor shall also be entitled to send Licensee a quotation reflecting Licensee's requested changes to the scope.

Licensee shall have five (5) days following deemed receipt of a quotation for changes to accept or reject, in writing, a quotation. Failure by Licensee to notify Licensor of its acceptance or rejection of a quotation within this period shall be deemed final and unconditional acceptance of a tendered quotation. Upon Licensee's acceptance of a quotation generated pursuant to this section, such quotation shall become incorporated herein by reference without further action on the part of the parties hereto. Upon Licensee's rejection of a quotation generated pursuant to this section, this Agreement shall automatically terminate without further liability on the part of Licensor, and in the event of such termination, except pursuant to the surviving provisions of this Agreement, Licensee's entire financial obligation to Licensor shall be for then accrued payments due, plus payment for any items being worked on up to the date of termination. Payment for partially completed items shall be a pro-rated portion of the next payment specified in a quotation. In exchange for such payment, Licensor shall provide Licensee with any project work and materials in its possession as of the termination date.

d. In the event that subsequent to the execution of this Agreement additional software is desired, the notice referencing this Agreement from Licensee to Licensor will serve as an addendum to this Agreement and all provisions of this Agreement will apply for the requested products or services. To avoid conflicting terms arising out of the integration of this Agreement, resulting purchase orders, letters and confirmation, the parties agree that the terms agreed to herein shall not be subject to change by either party unless both parties consent to the proposed change in writing. Should any conflict arise with any other unilateral writings of either party, this Agreement shall govern.

All documentation, programming and/or modifications shall be delivered via remote telecommunications from Licensor's place of business, to or through the Licensee's computer. Licensor shall not provide Licensee with possession of any tangible personal property such as storage media. Licensor shall obtain any necessary City business license prior to commencement of any work authorized by this Agreement and shall maintain such license through the term of the Software Maintenance Agreement.

e. Material Issues are defined as errors or omissions that significantly impact day to day operations (*i.e. financial reporting, cash receipts processing or the issuance of receipts, permits, licenses or invoices*). Licensed software shall be deemed accepted by Licensee upon a) receipt of Licensed software and b) delivery of a signed acceptance statement to Licensor or thirty (30) consecutive days of continuous availability of the Licensed software or operation of the system/modules/customization (*Acceptance Testing*) without written report to Licensor of one or more confirmed Material Issues(s) or c) for separate projects (*or a specific line item*), 30 consecutive days from acceptance of the first payment within an application/module or the date of delivery where a reasonable person in the exercise of their judgment could determine that the agreed written specifications have been met. Acceptance Testing shall be suspended for any period of time required by Licensor to correct material issues reported by Licensee as of the day/time a specific material issue was reported to Licensor. The Acceptance Testing period shall

resume immediately upon any of these situations: receipt by Licensee of written notification that a reported issue has been corrected, the correction is either made available or has been provided to Licensee or 24 hours after Licensor has requested a response from Licensee regarding an alleged material issue and has not received the requested response. If corrections to all reported material issues have been made available to Licensee and Licensee does not provide Licensor with written notice of additional material issues within the acceptance period, the Licensed software shall be considered accepted by Licensee and subject to final payment. Upon conclusion of the acceptance period, the Licensed software and/or requested customizations will be deemed to have transitioned from acceptance testing to standard software maintenance/support. Any hardware purchased as part of this project is not returnable for any reason other than for warranty fulfillment and/or a written return merchandise authorization (RMA) provided by Licensor (*which Licensor shall elect to provide or not provide at its sole discretion*). For example, if Licensee elects to change specific device requirements (*i.e. from USB to other communication options*) after receipt of authorized hardware even prior to the go live date, Licensee agrees to pay in full for the hardware that was originally specified and delivered. In the event Licensor provides a return merchandise authorization (RMA) it is with the understanding that all accepted returns are subject to a 20% restocking fee.

f.   Invoice & Payment Milestones:

➤   Invoices shall be due 30 days after the invoice date. Requested stylistic and/or non-functional modifications shall not delay issuance of any invoice nor shall it entitle any delay in payment.

➤   The full amount of all software licenses or 50% of the Software & Service components of this Agreement whichever is lesser will be invoiced upon execution of this Agreement and shall be due on a 15-day net basis after date of invoice unless otherwise stated. Scheduling of implementation or other services will occur subsequent to receipt of payment.

➤   Hardware components are not kept in stock and are ordered from our suppliers upon execution of this agreement and/or upon subsequent Licensee orders. Such hardware will be invoiced in the quantities and prices specified herein upon shipment. Payment will be due on a 15-day net basis after date of invoice or delivery whichever is later.

➤   For agreements requiring customizations with milestone progress completion payments, invoices may be generated upon completion of each milestone.

➤   An invoice for all *remaining balances* for that application or custom development shall be generated upon the earlier of the following:
   a.   Go live of each Licensed application/module
   b.   Immediately after acceptance (*per paragraph e above*)
   c.   11 months after execution of a Software License Agreement.
   d.   5 months after Custom Development Acknowledgement execution

➤   To retain the acquisition costs mutually agreed to in this agreement for the specified standard base products, any remaining balances for Licensed software and/or modules listed for purchase in this agreement that have not been installed (*despite requests by Licensor to install/configure said software*) prior to eleven months following execution of this agreement, may be invoiced on the day following the 11 months or thereafter for any remaining balance(s) due. Licensee agrees to tender payment no later than 30 days upon receipt of invoice. Payment in full shall lock in the original implementation price and at such time as Licensee is ready, the most recent version of the software may be installed. To ensure that Licensee remains eligible for all subsequent software improvements, each application/module shall be added to Software Maintenance and billed accordingly. Once Licensee has tendered payment in full, Licensee may inform Licensor as to when they will be ready to allocate time to complete implementation within an agreed upon 90 day period. Licensor will then schedule one such implementation at no additional charge and allocate appropriate resources. Should this scheduled implementation or any subsequent scheduled implementation not be completed within the allocated 90 days through no fault of Licensor, an additional charge may result for each scheduled implementation which occurs as a result of this paragraph. Licensee delays that result in an incomplete custom development project five months after execution of a corresponding custom development acknowledgement may be billed for any remaining balance due. Licensee agrees to tender payment no later than 30 days upon receipt of invoice. Subsequent Licensor resources shall be billed on a time and materials basis until the project is complete. Any verified Licensor caused delay evidenced in writing within 7 days of the verified delay shall serve to extend the above eleven (or five in the case of custom development) month completion deadlines by the number of

days delay caused by Licensor.

g.   Should Licensee elect an escrow of source code and related materials, the setup fee (including the first year of escrow) is $2,000. The annual cost for maintaining the source code is $1,200 which shall be billed and must be paid for in advance for such escrow to continue.

X.   DEFAULT

a.   In the event Licensor or Licensee fails to exercise due care (*defaults*) with regard to its obligations under this Agreement, and has not remedied such default within 30 days after the date of written 'Notice of Default' by the non-defaulting party, then the non-defaulting party shall be entitled to exercise any one or more of these remedies:

1)   The non-defaulting party may terminate this Agreement, accelerate all amounts due and unpaid hereunder such that all amounts will become immediately due and payable; if Licensee is the defaulting party, Licensee shall immediately discontinue use of database/structure, software and related electronic forms. In addition, for local implementations, Licensee shall provide Licensor with written confirmation that previously licensed components have been erased and copies are no longer on Licensee's computer or backup tapes per Section X(b).

2)   **Suspension of Obligations**: The non-defaulting party may suspend performance & observance of any or all its obligations under this Agreement, without liability, until the other party's default is remedied. However, Licensee may only suspend its obligation to make payments for Software Maintenance and other Services provided a written 'Notice of Default' has been transmitted to Licensor prior to the most recent automatic renewal date. At such time as the noticed default has been remedied, such suspended payment shall be immediately released to Licensor.

3)   If Licensee is the defaulting party, Licensor may allow the Licensed software to expire without demand or notice, without court order or other process of law, and without liability to Licensee for any damages occasioned by such expiration of the Licensed software.

4)   The non-defaulting party may pursue any other remedy available at law or in equity, including injunctive relief. While an attempt at mediation per Section XI (f) is required in order for either party to collect litigation costs, it is mutually agreed that any 'Notice of Default' transmitted to Licensee that includes the required elements identified in 'Exhibit D' shall be deemed adequate notification of a Licensor claim per California Government Code Section 905 (*or similar code sections from any state where the software has been installed/licensed*).

5)   Further if Licensee is the defaulting party, any payments not received by Licensor within 30 days of the original contractually specified due date or by any Licensor extended due date a shall be subject to a finance charge of .05% per day from the original invoice due date up to and including the date payment is received.

b.   **Removal of Licensed Software**: Upon 30 days from demand by Licensor made pursuant to this Section X-Default, Licensee shall discontinue use of Licensor's database/structure, software & related electronic forms. It is mutually agreed that the amount due for failure to provide timely notice of software renewal shall be the full amount of the last tendered annual support invoice.   In addition, for local implementations Licensee shall provide Licensor with written confirmation that: I) all previously licensed components have been erased and copies no longer reside on any computer system maintained or operated by: Licensee, Licensee's staff members, or Licensee authorized 3rd party vendors II) all backup tapes which contain a copy of Licensor's proprietary property shall be securely maintained with the same care as other confidential data and *overwritten* as part of the normal backup plan after execution and transmission of   Licensor's 'Confirmation of Proprietary Rights and Destruction' III) *no attempt* shall be made to restore Licensor's proprietary property from backup tapes and IV) no breach of confidentiality relating to Licensor's intellectual property has occurred. Licensee agrees to complete and transmit Licensor's 'Confirmation of Proprietary Rights and Destruction' to Licensor within 30 days from expiration of the licensed software unless an alternative mutually agreed written agreement has been executed. Failure to transmit such statement prior to the 30 day due date shall result in a $1,000 charge for each subsequent 7 day period until such statement has been provided. Should any representation provided via a transmitted 'Confirmation of Proprietary Rights and Destruction' subsequently be found not to be true, the weekly penalty provision shall apply as if the statement had not been provided until the date subsequent proof has been tendered ·which verifies that any misrepresentation (*intentional or unintentional*) has been rectified.

XI.   GENERAL PROVISIONS

a. This Agreement and any written modifications, amendments or addendum executed pursuant to this Agreement, constitute the entire agreement between the parties and supersede all negotiations and other proposals, oral or written, and all previous and current negotiations and other communications between the parties pertaining to the subject matter herein. The obligations set forth under Sections III, V, VII:a-d, X & XI shall survive termination/expiration of this Agreement. Any payment related obligations that occur one year after execution of this agreement shall be construed in accordance with and governed by Federal law or the laws of the state of California. All other obligations set forth in this Agreement shall be construed in accordance with and governed by Federal law or the laws of the state in which the software is situated, except when software licenses are granted for use in the state of Louisiana or in countries such as Canada or Mexico where the laws of California will apply. When California law applies, the Court of Orange County, California shall have jurisdiction over all disputes relating to this Agreement. This Agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. This Agreement may be signed in several counterparts, each of which shall be deemed an original.

b. Waiver of strict performance of any provision of this Agreement shall not be deemed a waiver nor shall it prejudice the waiving party's right to require strict performance of the same provision or any other provision in the future unless such waiver has rendered future performance commercially impossible.

c. Except in the event of a merger or substantial sale of assets, neither this Agreement, nor any rights or obligations hereunder, may be assigned to any third party without the prior written consent of the other party. Such consent shall not be unreasonably withheld.

d. All of the respective duties and obligations of the parties hereunder shall be binding on their respective successors and assigns, and any corporate or other entities with which they may merge or consolidate. Should 'Software Support' cease to be offered, the term of this software license shall become perpetual.

e. Unless otherwise specifically provided, all notices, including notice of termination provided for hereunder, shall be in writing and delivered to the designated contact at the respective party's address indicated on the following page. All notices and other communications required or permitted to be given or made pursuant to this Agreement shall deemed delivered one (1) day after being sent from the U.S. by a nationally (or internationally) recognized overnight courier service or three (3) days after being sent after being sent by an internationally recognized priority courier service or via certified U.S. mail, return receipt requested, postage prepaid.

f. Mediation: Should any dispute arise out of this Agreement, the parties shall attempt to meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first attempting to meet in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement. If a party refuses or fails to participate in mediation in good faith prior to filing a lawsuit, then that party shall be barred from recovery of attorney's fees and costs of suit.

g. Any specific right or remedy provided for in this Agreement shall not be exclusive but will be cumulative of all other rights and remedies.

h. Any controversy or claim arising out of or relating to this Agreement or the breach thereof **may be** settled by arbitration, if agreeable to both parties, in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

i. Any change or revision to the terms and conditions hereof shall be made by written amendment and shall be executed by persons authorized to do so by the respective parties. No changes in specifications, requested or suggested by either party, shall be made except by written agreement of both parties unless otherwise provided for herein.

j. In the event that any one or more of the provisions contained in this Agreement should be found to be invalid, illegal, or unenforceable in any aspect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

k. The parties acknowledge that should either party violate any of the covenants contained in this Agreement, it will be difficult to determine the resulting damages to the non-breaching party and, in addition to any other remedies the non-breaching party may have, the non-breaching party shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages, or posting bond.

l. Non-Solicitation: Each party agrees that, during the period that Licensor is providing services hereunder ("Services Period") and for a period of twelve (12) months following the termination of such work ("Post Services Period"), neither party will, except with the other party's prior written approval, directly or indirectly through a third party, solicit, hire or contract with any employee, agent or staff member of such other party ("the Retained Party") directly or indirectly for any position where the loyal and complete fulfillment of its duties would likely require "the Retained Party" to reveal, make judgment on, or otherwise use, any confidential business information or 'Trade Secrets' of Licensor to which "the Retained Party" had access (*especially internal unpublished software support concepts*).

Each party agrees that in the event of a breach of the above non-interference/non-solicitation restriction, the non-breaching party will suffer substantial economic injury that would be difficult and time-consuming to calculate with precision, and therefore the parties agree that the non-breaching party will be entitled to recover an amount equal to the product of the affected employee's last standard employer billing rate times 750 hours, as liquidated damages and not as a penalty. Upon discovery of a non-solicitation, the non-breaching party shall promptly transmit an invoice for liquidated damages to the breaching party. Said invoice shall be due and payable within 90 days from the invoice transmission date. If Licensee has breached the above restriction by retaining (*hiring or contracting with*) an individual in a position in or under the direction of any department where one or more staff members utilize Licensor's software, Licensee shall at Licensor's sole option shall forfeit the above identified license for use of Licensor's software upon Licensor's providing written notification of said license termination to Licensee. Under no circumstances shall any retained individual divulge Licensor 'Trade Secrets'. Any damages paid under this clause shall only be for breach of this non-solicitation clause. Such damages paid shall not waive any other remedies that may exist under any other statute for misappropriation of Licensor's 'Trade Secrets'.

XII. **EXECUTION**

Effective this ___27th___ day of ___June___ , 2017

Licensor:
PROGRESSIVE SOLUTIONS INC.
P O BOX 783
BREA CA 92822-0783

By: _____
Authorized Representative
(714) 671-1597

Licensee:
CITY OF COSTA MESA
77 FAIR DRIVE
COSTA MESA CA 92626

_____
Authorized Representative
STEVEN ELY, I.T. Director, 714-754-4891
Printed/Typed Name, Title and Phone Number

PROGRESSIVE SOLUTIONS INC.

I. INTRODUCTION.

Progressive Solutions Inc., a California corporation herein after referred to as "Licensor" and **City of COSTA MESA**, a California municipal corporation, herein after referred to as "Licensee" agree to the following terms and conditions.

II. NATURE AND DURATION OF SUPPORT.

Licensor is in the business of providing software maintenance services (*herein after referred to as "Software Maintenance"*). Software Maintenance is intended to facilitate smooth & efficient ongoing operations of the Licensed software. Licensee desires to obtain Software Maintenance for the Licensed software specified in Section V. This Agreement provides for remote services to be performed in Orange County, California, only during normal business hours (*6:30am PST to 5pm PST*) shall begin on the preprinted effective date (Section VIII Execution) and shall expire at 5:00 PM Pacific Standard Time on **June 30, 2018** unless renewed (*WHETHER AUTOMATIC OR MANUAL*) as set forth below. Support outside of normal business hours is available for purchase. Requests for service for which the intended result is of negligible operational benefit are not available free of additional charge under this Software Maintenance Agreement. (i.e. Changing the name of a non-Licensor hosted server (*absent a hardware upgrade*) which consequently results in the need to reinstall/verify the SQL data base software, the operating system, the Licensed software and to update every Licensee machine that runs the Licensed software.) Licensees that purchase after hours support will be provided with the appropriate contact information. Licensor reserves the right to prorate the software maintenance fee and provide more or less than one year of coverage so that subsequent Software Maintenance Agreements expire on June 30th. **UNLESS WRITTEN NOTICE OF TERMINATION HAS BEEN PROVIDED BY LICENSEE TO LICENSOR NO LATER THAN 60 DAYS PRIOR TO EXPIRATION OF THIS SOFTWARE MAINTENANCE AGREEMENT, THIS AGREEMENT SHALL AUTOMATICALLY RENEW THEREAFTER FOR A PERIOD OF TIME EQUAL TO THE DURATION OF THIS AGREEMENT AT THE SPECIFIED MAINTENANCE RATES IN EFFECT AT THAT TIME FOR THE RENEWAL PERIOD. NO OTHER TERMINATION OF THE AUTOMATIC RENEWAL PROVISION IS AVAILABLE.**

III. LICENSEE'S RIGHTS, OBLIGATIONS & REPRESENTATIONS

a) Training for users, managers and other personnel is essential for efficient operation of the Licensed software. Licensee shall designate one employee as a primary contact for each Licensed software application. The designee must have been trained to use the Licensed software, must regularly use the system(s) and be primarily responsible for daily results/operation of the system(s). While designee may assign follow-up on a request for service to another staff member, designee must initiate contact with Licensor's support personnel and relate their questions or issues. Designee shall coordinate and/or test/verify all configurations including but not limited to: general ledger accounts, rates, rate types billing & charge groups. In addition, designee shall coordinate availability of necessary IT staff for software updates and installation (*when required by your local policy*). Licensee understands that staff turnover is inevitable. Should a change to the designee be required, a proposed designee shall meet at least one of these requirements 1) be well trained by the previous trained designee (*passage of a test on software functionality may be required*) 2) have scheduled/received onsite or remote training from Licensor at current rates or 3) agreed to regularly attend Licensor's annual user conference (*only if conference is scheduled to occur within 3 months of the proposed designee change as training is crucial to smooth operations*). Once at least one of the above conditions has been met, please contact Licensor to obtain the designee change form for subsequent submittal to Licensor. Such training is neither available nor appropriate via customer support lines. Licensee acknowledges that updates/version releases/patches made available to Licensee from time to time are an integral part of the overall performance and value of the Licensed commercial configured software. For local implementations, Licensee shall make a good faith effort to 1) install all software updates/version releases/ operating system patches in a test environment for thorough evaluation and testing prior to deployment in a production environment. And 2) install the tested upgrades/version releases/ operating system patches promptly after completion of testing occurring no later than nine (9) months from the date such updates are made available by Licensor. If the corrective nature of software upgrades are not promptly reviewed and/or the software upgrade installed shortly after notification of availability from Licensor, Licensor staff shall **NOT** provide further support (*i.e. workarounds*) relating to **any** issues where Licensor has offered Licensee a recommended resolution that requires implementation of a software update. Further as software versions older than one year are more expensive to support, when appropriate an obsolescence surcharge may be added to the next support invoice.

b) Software corrections are defined as: Licensor software updates as well as specified operating system patches. Licensee agrees to implement software corrections that have been identified as necessary by Licensor and to ensure that the requirements identified in Exhibit B: (Requirements) are met by all machines intended to execute the Licensed software. Licensee understands that software corrections are typically implemented via new software releases. Failure to implement those identified software corrections or to maintain the specified requirements shall relieve Licensor from any and all Software Maintenance responsibilities relating to any Licensee reported issue(s) that the Licensor correction(s) was/were offered to address for local non-hosted

implementations. In the event Licensee fails to implement identified software corrections, any subsequent services relating to the Licensee reported issue(s) will only be provided on an emergency time and materials basis. Unlike the business models of other providers where products become obsolete, Licensor continually improves the software and offers to schedule at least one complimentary software version upgrade each year as a component of annual software maintenance. It is highly recommended that Licensee staff regularly attend PSI annual user training/conferences so staff may learn of, receive training on and take full advantage of accumulated new features and functionality. It is vital that at least one Licensee staff member for each Licensed product attend a PSI user conference at least every 5 years. Licensee representatives who insist on obtaining training via telephone support may result in Licensor passing on such training costs along via an additional increase in the Software Maintenance Agreement.

c) To the extent permitted by any pertinent transparency legislation (*such as a federal, state or local Public Records Act*), Licensee will preserve the confidential nature of the Licensed software and related media and will not make copies, including partial copies or updated versions thereof, except for internal reference, archive or backup purposes. For local implementations, Licensee is solely responsible for the backup of its data and agrees to conscientiously ensure the existence of functional daily backups for at least the last 10 business days and shall not remove or disable any SQL agent or backup plan initiated by Licensor without both notification to Licensor and at least monthly testing of any subsequently implemented alternate backup plan. If the backup plan is altered or disabled without notification to Licensor, and there is a resulting data loss, an additional charge may be incurred for requested data recovery services.

d) Licensee agrees to provide Licensor with access to the licensed software and data for the sole purpose of providing technical support. As a result, Licensee agrees to (1) maintain a working connection to the internet, (2) permit access through any router/firewall or permit a Virtual Private Network-VPN connection to Licensee's network and (3) allow access to a technical support requestor's workstation via Licensor's workstation via Licensor's licensed TeamViewer™ plugin or provide an equivalent alternative at Licensee's expense. In addition, Licensee agrees that all designated workstations shall meet at least the minimum requirements as specified in Exhibit B: (Requirements and Project Implementation Matrix) at the time of the initial implementation in order to accommodate the software version initially installed. Licensee for local implementations further agrees to have completed installation of the licensed software, the Microsoft® SQL tools and other mutually agreed requirements such as: Microsoft® Terminal Services, Citrix or other similar functionality. In the event Licensor deems such remote access necessary, Licensor shall request confirmation that required access (one of the options listed above) is available. Upon receipt of such confirmation, Licensor shall attempt remote access. If remote access is not functional despite Licensee's confirmation of functional remote access, Licensor shall provide remote access verification services free of charge for one time during each annual agreement. Should Licensee require remote access verification services in excess of the one free service, Licensor will request approval to invoice for such services at the rate in effect at the time of service prior to providing such remote access verification. In the event remote access is not and will not be available in the course of Licensor's attempt(s) to provide Software Maintenance, Licensee understands that Licensor's ability to provide support will be severely limited and an additional service surcharge may be applied to the Software Maintenance Agreement to account for the additional costs incurred to provide such additional support. Should Licensee desire emergency support, on-site support services are available at Licensor's current support rate plus expenses for each partial or full day required to provide Software Maintenance.

e) To minimize Licensee costs, to eliminate any requirement for manual update of validation and/or zip plus four (4) codes, to allow for other on line validations (such as contractor's license, sales tax permit, pet microchip owner information retrieval, etc.) and to maximize uptime of zip plus four (4) & Licensed software validations, the Licensed software should optimally be configured for secure internet access to the Licensor designated internet address. Consequently users of the Licensed software that is locally implemented may periodically obtain the latest zip plus four (4) data and validation codes. Absent this configuration, to obtain automated zip plus four (4) functionality, for local implementations, Licensee must purchase a zip plus four (4) data subscription from Licensor and designate staff to install such zip plus four (4) updates every two (2) months. Failure to promptly update zip plus four (4) data for local implementations will cause disruption of the zip plus four (4) functionality. Furthermore absent internet access or maintenance of a current data subscription from licensor, the automated validations provided at the time of installation shall cease and all such validations will need to be performed manually.

f) **Network Performance:** Licensee understands and acknowledges that network performance is solely the responsibility of Licensee. Should any questions arise as to whether a performance issue is software or network related, Licensee agrees to direct staff, a Licensee retained consultant or Licensor (at Licensee's cost) to evaluate network/software performance. Such network evaluation shall utilize "Network Sniffer" or equivalent tools to facilitate generation of quantitative results. Licensee agrees to request & incorporate Licensor's recommendations in the network evaluation work plan. Licensee further agrees to transmit the results of such work to Licensor for review and to

withhold publication of such results until after implementation of all Licensor recommendations. Requests of Licensor for performance troubleshooting (such as speed and network connection issues) in which Licensor receives prior written authorization to collect factual data and subsequently presents a determination that performance issue(s) is/are network related will be billed at the rates in effect at the time of service.

g) Licensee assumes any and all responsibility and liability for 1) any modification to the Licensed software and/or database structure not made by Licensor (i.e. changes to Crystal reports, additions or deletions of data base tables, fields, etc.) and 2) any modification to the Licensee's data which is not made by Licensor or the Licensed software. If, after providing corrective maintenance, Licensor determines that an error condition is not a Licensed software error or that the error condition results from either condition 1 or 2 above, Licensee agrees to pay Licensor for the reasonable services so provided at the rates in effect at the time of service plus reasonable expenses.

h) **Call Monitoring:** Licensee may monitor and record any calls between Licensee (including designated Sub-Agencies) and Licensor.

i) **PCI Compliance:** While Licensor's payment processing solutions are designed to CISP (Cardholder Information Security Program) & PCI (Payment Card Industry Data Security Standard) guidelines, Licensee understands that Licensor's PCI/PADSS compliance and certification does not automatically result in Licensee compliance. Licensee acknowledges that to maintain CISP/PCI compliance, Licensee must provide staff with PCI security training and ensure that staff actions maintain compliance. Licensee understands that local PCI compliance is not possible without Licensee's internal staff effort to achieve such compliance. Licensee accepts their critical role in maintaining compliance as required by Visa, MasterCard, etc. Licensor accepts responsibility for facilitating such compliance by neither encouraging the storage of credit card data via non-secured methods nor configuring the system for the express purpose of retaining such information. It is Licensee's responsibility to assure that all other 3rd party partners/vendors as well as their own internal operations staff facilitate compliance in their specific areas of process control.

j) **Software License Expiration:** Upon expiration of the software license pursuant to Section II of this agreement, Licensee shall discontinue use of Licensor's database/structure, software & related electronic forms as described in Section VI-Default.

IV. LICENSOR'S RIGHTS, OBLIGATIONS & REPRESENTATIONS

a) **Support Services:** During the term of this Agreement, Licensor shall make available to Licensee without additional charge any updates and/or minor enhancements to Licensed software, data or data structures, which Licensor releases. In addition, Licensor shall provide Licensee with unlimited support services (via telephone, facsimile, remote internet connection, email and/or mail communications) for ongoing problem resolution to assist the person(s) designated by Licensee (or an alternate in the absence of the designated caller). It may include but is not limited to requests for service regarding operation (including requests for assistance with workstation accessory hardware purchased from Licensor), installation, updates, administration & general technical assistance requested by Licensee's designee(s). The designee(s) shall know the Licensed software, use the Licensed software and be responsible for the results of their efforts. In no event shall the number of designated callers requesting assistance at any given time exceed the number of callers specified in Section V of this Agreement. Such support also includes "Limited Assistance" with the items listed below, provided such assistance may be provided in fifteen (15) minutes or less:

1. Training (especially of untrained personnel), assistance with report customization and searching of data within the Licensed software, and

2. Assistance to isolate the source of problems and/or to troubleshoot difficulties **resulting from sources other than Licensor's provided products or services,** such as:
   - Virtualization and/or Remote Access configuration & setup
   - Personal Computer setup, configuration & optimization
   - Basic Microsoft Windows™ functionality
   - Personal Computer & hardware troubleshooting
   - General network support (i.e. network access, printing, backup & restores)
   - Network operating system configuration & functionality
   - Data corruption due to lack of disk space or backup failure; and
   - Loss of supervisor or other password

But expressly excludes any services or assistance relating to database or 3rd party mail services issues, unless purchased via an addendum to this agreement. "Limited Assistance" in excess of fifteen (15) minutes per call will be billed at the rate in effect at the time of service. Prior to and as a condition of Licensor's right to bill for such "Limited Assistance", Licensor shall inform Licensee that the free support is over and that any additional support will be billable. Licensor reserves the rights to: A) limit the number and the duration of these communications and B) periodically transmit surveys to Licensee for evaluation of the software, support and other services.

b) **Maintenance Services:** Upon receipt of notification from Licensee's designated support representative(s) of an apparent error in any supported release of the Licensed software, Licensor will use commercially reasonable efforts to promptly investigate the issue and determine whether or not there is in fact an error and advise Licensee that either an error does not exist or confirm that one does exist and what if any work-around exists. Errors will be deemed to be any design or programming error in the Licensed software which prevents the Licensed software from substantially complying with the functionality as set out in the user documentation (on-line or hard-copy) delivered with the Licensed Software and which materially affects the use, function or performance of the Licensed Software. When errors are confirmed, Licensor will use commercially reasonable efforts to correct such errors and provide Licensee with a correction or service pack for the Licensed Software as soon as it is practical in Licensor's sole discretion.

c) **Assignment of Priorities for Support Issues:** New support incidents are assigned one of the following four priority levels, each with its respective standard completion target:

Call Priority	Description	Standard Completion
A - System Down	Fatal issues that result in Licensee's inability to fulfill critical business functions (i.e. those pertaining to core functionality such as billing and receipting) & that have no reasonable work-around.	Within 12 hours
B - Urgent	Serious issues significantly impacting use of Licensed software but do not prevent core functions (defined above) from being fulfilled.	Within 24 hours
C - Normal	All other issues, except those classified as D (low)	Within 36 hours
D – Low	*Issues with minimal impact on operations requiring incommensurate support effort. (Work will be performed on a best efforts basis when requests with higher priorities do not take precedence.) Issues such as proposed elective configuration changes that are by nature not time-sensitive and may be undertaken as planned Licensee service initiatives outside the scope of this agreement*	None

Licensee may request a ranking of the call priority when initially reporting the incident. Should there be any disagreement over the priority assigned to a particular incident, or any other aspect of its handling by Licensor's support staff, Licensee's designated representative is encouraged to speak directly to the support representative dealing with the issue in order to arrive at an acceptable solution. In cases where escalation is desired or necessary, please contact the Support Services Supervisor with any concerns you may have.

d) **Excluded Services:** Without limitation, the following services are excluded from Software Support:

1. Those required to remedy problems that stem from *changes to or defects in* the initially installed/approved system configuration or in subsequent modified/approved Licensor system configurations;

2. Those required to remedy problems which do not stem from any defect in the Licensed Software

3. Those required to remedy issues resulting from untrained or inadequately trained Licensee staff.

4. Those required remedying problems caused by:
   a. improper use of the software
   b. unauthorized modifications to Licensor's data structure/configuration
   c. modifications to Licensee's data without use of Licensor approved methods (*i.e. application programming interfaces-API*).

5. Report rewrites requiring more than 15 minutes after approval of initial report customization(s).

6. Any & all hardware support, maintenance or troubleshooting issues, except as described in Section IV(a) regardless of the source of such hardware.

(e) **Limited Warranty of Service:** Licensor warrants that all maintenance services provided hereunder will be performed in full conformity with this Software Maintenance Agreement, with the skill & care which would be exercised by those who perform similar services at the time the services are performed, and in accordance with accepted industry practice. The following actions shall void all maintenance and support obligations of this Software Maintenance Agreement:

- Use of any non-authorized application or support tool that modifies data in the database, whether created by Licensee or another party. (*Licensor regularly engages in custom projects to accomplish such objectives and is pleased to do so.*)
- Use or creation of any application that competes with or replaces a module available from Progressive Solutions Inc. to work with either the licensed application or the licensed application's database

In the event of a breach of the express warranties contained herein and/or in the event of non-performance and/or failure of Licensor to perform the services in accordance with the Agreement, Licensor will, at no cost to Licensee, re-perform or perform the services so that the services conform to the warranties.

(f)   Nothing contained in this Agreement shall be construed to obligate Licensor to provide any services whatsoever subsequent to the expiration of this Agreement or any subsequent renewals of this Agreement. Upon expiration of this Agreement, Licensee may offer and Licensee may purchase continued Software Maintenance on a periodic basis. The price(s) specified in Section V is (are) the current price(s) for Software Maintenance.

V.   SUPPORT FEES AND PAYMENTS

Payment for 'Software Maintenance' services is due in advance. 'Software Maintenance' services will not be provided until such advance payment has been received. Licensor agrees to provide at least 90 days prior written notification prior to implementation of any annual fee change. Any annual fee change shall not become effective until the first day of any annual extension. *Maintenance for Revenue Enhancement functionality is excluded from any and all caps.*

Should Licensee terminate this agreement at any time <u>after</u> the most recent automatic renewal and promptly cease all use of the Licensed software no later than 60 days post expiration of the Licensed software, both parties agree that any fully paid annual software maintenance invoice shall be fully earned or any billed and/or unpaid annual maintenance invoice amount submitted to Licensee prior to the automatic renewal shall be immediately due and promptly payable. If payment is not received by Licensor within 30 days from invoice date or 60 days post expiration of Licensee's right to use the licensed software (*whichever is earlier*), a late fee of 10% of the invoiced amount shall also be due and payable. If Licensee continues use of the Licensed software for more than 60 days post Licensee's right to use the software without payment and absent alternate written arrangements, Licensee shall remove the licensed software per the provisions of the Default Section (VI) of this agreement.

To encourage Licensees to receive the benefits of the latest Software Maintenance Agreement, Licensor offers a 30 day Software Maintenance payment extension to Licensees that sign and return the Licensor provided Software Maintenance Agreement renewal without alternations to Licensor prior to expiration of each Software Maintenance term. Unless Licensor has received a newly signed Software Maintenance Agreement (*to extend the payment due date*) prior to the software expiration date, a late fee equal to 10% of the delinquent maintenance balance shall be due for failure to tender payment either by the original expiration date or by the Licensor extended due date obtained by signing the new Maintenance Agreement. Further any payments not received by Licensor within 30 days from the invoice date, original contractually specified expiration or by any Licensor extended due date shall in addition to the 10% late fee be subject to a finance charge of .05% per day from the support expiration date up to and including the date payment is received.

Licensed Software	Designated Caller(s)	Support Fee	Prorated Fee
PetTrack™ Software Package - 2 edit user license	Heather Hamilton	$5,995	

VI.   DEFAULT

(a)   In the event Licensor <u>or</u> Licensee fails to exercise due care (*defaults*) with regard to its obligations under this Agreement, and has not remedied such default within 30 days after the date of written notice by the non-defaulting party, then the non-defaulting party shall be entitled to exercise any one or more of these remedies:

1.   The non-defaulting party may terminate this Agreement, accelerate all amounts due and unpaid hereunder such that all amounts will become immediately due and payable.
2.   **Suspension of Obligations:** The non-defaulting party may suspend performance & observance of any or all its obligations under this Agreement, without liability, until the other party's default is remedied. However, Licensee may only suspend its obligation to make payments for Software Maintenance and other Services provided a written 'Notice of Default' has been transmitted to Licensor prior to the most recent automatic renewal date. At such time as the noticed default has been remedied, such suspended payment shall be immediately released to Licensor.
3.   If Licensee is the defaulting party, Licensor may allow the Licensed software to expire without demand or notice, without court order or other process of law, and without liability to Licensee for any damages occasioned by such expiration of the Licensed software.
4.   The non-defaulting party may pursue any other remedy available at law or in equity, including injunctive relief. While an attempt at mediation per Section XI (f) of the 'Software and Services Agreement' is required in order for either party to collect litigation costs, it is mutually agreed that any 'Notice of Default' transmitted to Licensee shall be deemed adequate notification of a Licensor claim to protect its private intellectual property per California Government Code Section 905.1 (*or similar code sections from any state where the software has been installed*).

(b)   **Removal of Licensed Software:** For local implementations, upon 30 days from demand by Licensor made pursuant to the default provisions (Section (VI)) of this agreement and/or the corresponding Software License Agreement pertaining to local licensed software implementations, Licensee shall discontinue use of Licensor's database/structure, software & related electronic forms. In addition, Licensee shall provide Licensor with written confirmation that: I) all previously licensed components have been erased and copies no longer reside on any computer system maintained or operated by: Licensee, Licensee's staff members, or Licensee authorized 3rd party vendors II) all backup tapes which contain a copy of Licensor's proprietary property shall be securely maintained with the same care as other confidential data and *overwritten* as part of the normal backup plan after execution of the transmitted PSI "Confirmation of Proprietary Rights and Destruction" III) *no attempt* shall be made to restore Licensor's proprietary property from backup tapes and IV) no breach of confidentiality relating to Licensor's intellectual property has occurred. Licensee agrees to complete and transmit Licensor's 'Confirmation of Proprietary Rights and Destruction' to Licensor within 30 days from expiration of the licensed software unless an alternative written agreement has been executed.   Failure to transmit such statement prior to the 30 day due date shall result in a $1,000 charge for each subsequent 7 day period until such statement has been provided. Should any representation provided via a transmitted 'Confirmation of Proprietary Rights and Destruction' subsequently be found not to be true, the weekly penalty provision shall apply as if the statement had not been provided until the date subsequent proof has been tendered which verifies that any misrepresentation (*intentional or unintentional*) has been rectified. ~~Failure to remove Licensor's database/structure, software & related electronic forms after above demand by Licensor shall result in Licensee's obligation to pay Licensor at least the minimum award specified in the Federal 2016 Defend Trade Secrets Act.~~

VII.   GENERAL PROVISIONS

(a)   The Licensed software is subject to design and operational changes to allow for the use of new technologies and to correct known bugs as they are brought to the attention of the Licensor, either by the Licensor's own quality-control mechanisms or by the Licensee.

(b)   Licensee acknowledges that the Licensed software is of such complexity that it may have inherent defects and agrees that as Licensor's sole liability for such inherent defects and as Licensee's sole remedy for such inherent defects, Licensor will provide, during the term of this Agreement, all reasonable software maintenance services *arising from a hosted and/or unaltered locally implemented version* of the delivered Licensed software *to correct 1) documented programming or documentation errors reported by* Licensee *and 2) failure of the Licensed software to meet the specifications identified in the electronic documentation provided with each release of the software.*

(c)   Software maintenance is offered by Licensor to ensure that Licensee receives the quality support necessary to remain a highly satisfied customer. Support is offered for Licensed software and minor modifications to forms designed and/or created by Licensor to operate with the released software. Licensor utilizes Seagate's Crystal Report Writer™ to create most reports and forms. To ensure maximum flexibility, customers have the option to independently design, create and maintain additional forms, mailings, and/or reports. Licensor's annual software maintenance does <u>not</u> include technical support for <u>user written</u> Crystal Reports™or for minor individual modifications to <u>accepted/completed</u> forms that require more than 15 minutes technical support. However, Licensor is pleased to offer such support on a time expended or fixed fee basis (*should complete written specifications be available*).

(d)   All documentation, programming and/or modifications shall be delivered via remote telecommunications from Licensor's place of business, to or through the Licensee's computer. Licensor shall <u>not</u> provide Licensee with possession of any tangible personal property such as storage media. ~~Licensee shall reimburse Licensor for any state and or local requirements, which Licensor must meet or obtain to provide services under this Agreement (e.g. business licenses, additional insured statements, sales tax, etc.).~~

(e)   No action regarding services or deliverables, regardless of form, may be brought more than one (1) year after the first to occur of either 1) the conclusion of services and/or delivery of any deliverables arising from this or the Software License Agreement, or 2) such party's knowledge of the event giving rise to such cause of

action. This limitation does not apply to confidentiality obligations or to software license rights.

(f)   Notices: All notices and other communications required or permitted to be given or made pursuant to this Agreement shall be in writing and deemed delivered one (1) day after being sent by a nationally recognized overnight courier service or three (3) days after being sent certified U.S. mail, return receipt requested, postage prepaid. All notices will be given to the designated contact at the address indicated in this Agreement.

(g)   This Agreement and any written modifications, amendments or addenda, executed pursuant to this Agreement constitute the entire agreement between the parties and supersede all negotiations and other proposals, oral or written, and all previous and current negotiations and other communications between the parties pertaining to the subject matter herein. Any payment related obligations that occur one year after execution of this agreement shall be construed in accordance with and governed by Federal or state law where any resulting action is filed. All other obligations set forth in this Agreement shall be construed in accordance with and governed by Federal law or the laws of the state in which the software is situated, except when software licenses are granted for use in the state of Louisiana or in countries such as Canada or Mexico where the laws of California will apply. When

California law applies, the Court of Orange County, California shall have non-exclusive jurisdiction over all disputes relating to this Agreement. This Agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. This Agreement may be signed in several counterparts, each of which shall be deemed an original.

Any controversy or claim arising out of or relating to this Agreement or the breach thereof, **may be** settled by arbitration, if agreeable to both parties at in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(h)   Any change or revision to the terms and conditions hereof shall be made by written amendment and shall be executed by persons authorized to do so by the respective parties. No changes in specifications, requested or suggested by either party, shall be made except by written agreement of both parties.

Congress enacted the Electronic Signatures in Global and National Commerce Act (*E-Sign Act*) on June 30, 2000, to validate the legality of electronic contracts. Should either party receive a document signed with a valid electronic signature, such documents shall be accepted as if they were signed with a pen.

VIII.   EXECUTION

Effective this _____1st_____ day of _____July_____ , 2017
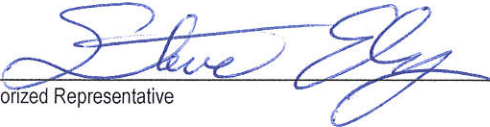
Licensor:

PROGRESSIVE SOLUTIONS INC.

P O BOX 783

BREA CA 92822-0783

By: _____
Authorized Representative

GLENN R. VODHANEL
Printed/Typed Name and Title

(714) 671-1597
Phone Number (Type or Print)

Licensee:

CITY OF COSTA MESA

77 FAIR DRIVE

COSTA MESA CA 92626

_____
Authorized Representative

STEVEN ELY, I.T. Director
Printed/Typed Name and Title

(   ) 714-754-4891
Phone Number (Type or Print)

Exhibit B1: *Progressive Solutions'®* Requirements & Project Implementation Matrix
(Server & Workstation)

	Recommended	Minimum
Network Server Operating System	Microsoft® Windows® 2008 Server or 2012 Server Core	Microsoft® Windows® 2008 Server Web Server Applications require: Windows® 2008 Server
Network Server Equipment	• Dual or Quad Core (3 Ghz or faster) • 24 GB or more available RAM w 64bit OS • 30 GB SAS Hard-Drives • 1366 x 768 / 75 Hz 19-inch Widescreen LCD Monitor 850:1 Contrast & 5 ms Response Time • 1 gbit Ethernet Network Card • 1 gbit Ethernet Switch • BluRay/DVD/CD-RW Drive	• Dual or Quad Core (2 Ghz) • 16 GB of available RAM • 10 GB SCSI Hard-Disk Space • 1024x768 Monitor • 100 mbit Ethernet Network Card • 100 mbit Ethernet Hub • CD-ROM Drive
	All hardware must be Microsoft®/Novell® certified (request printed certification documents).	
Database Server Equipment	Use any recommended Network Server.	• Microsoft® Windows® 2008R2
Software	SQL Server 2012 or higher.	Microsoft® SQL Server 2008R2 Standard or Enterprise Edition w .NET 4.0 installed or higher. Web Server requires .NET 4.5 or higher.
Network Server & Database Server Power Protection	Same as required.	True On-Line UPS, 600 Volt amps minimum with UPS Monitoring card, cable, and software.
	Explanation: Using a surge protector will only address 1% of the potential power problems. On-Line protection will protect against an additional 80% of the potential power problems. When commercial power fails, the UPS monitoring card will close all open files and shutdown the file server safely. Some SPS (Switching Power Supply) vendors refer to their SPS products as UPS products. An SPS will NOT provide sufficient protection against sags, brownouts, etc.	
Workstation Computer	• Multi Core *(2 Ghz each or faster)* • 8 GB of available RAM • 1 TB Hard-Disk Space or more	• Pentium (2 Ghz) • 4 GB RAM for workstations with document imaging • 4 GB Hard-Disk Space (< 10MB required per application) • 1024x768 Monitor
Workstation Operating System	Microsoft® Windows® 7/8 with latest .NET framework.	Microsoft® Windows® XP Professional with latest .NET framework
Workstation Power Protection	Combination On-Line conditioner and surge protector.	Combination On-Line conditioner and surge protector.
Backup System	Network-quality system to backup SQL & fileserver hard drive(s) & perform **read after write verification.**	Network-quality system to backup SQL & fileserver hard drive(s) & perform **read after write verification.**
Receipt Printer	USB Connectivity	USB Connectivity
Report Printer	Laser Printer with HPCL or PostScript fonts	Laser Printer with HPCL or PostScript fonts
Internet Access	FIOS, CABLE, DSL, ISDN, or T1	FIOS, CABLE, DSL, ISDN, or T1
	Explanation: *Progressive Solutions®* applications require Internet access to obtain program updates.	
E-mail	Microsoft® Outlook®.	Microsoft® Outlook®.
Network Installer	Microsoft®	Microsoft®
Report Modification	Crystal Reports	Crystal Reports Version 8.5
Redundancy	RAID for data and web operations	No redundancy

Exhibit B2: *Progressive Solutions®* Project Implementation Matrix

Done	General Customer Implementation Tasks	Notes
	Payment for software licenses must be received by PSI prior to project start	
	An authorized representative of City staff must click through, accept and transmit the software license and maintenance agreements to PSI.	
	Designate the server that will host both SQL & application media. Have the SQL tools loaded. Create a share named 'PSI' on the designated server. Provide us with the server name, IP address and access credentials. (*Be sure to provide our technician with write/change access and your users with the appropriate security to access this area.*) We will use this share location to load & support our software. For SQL Server: We will need alter/trace permissions, backup and restore permissions and SQL Agent permissions. For Web Server we need IIS 7 or higher, .net 4.5, and ability to create ODBC connection from web server to SQL server. Ability to relay e-mails to City's e-mail server. Need ip and connection port to smtp server. Ability to install Software on Web Server and SQL server. (local admin)	
	Have IS contact us to demonstrate functional access to your designated server(s) via the internet (*See A7: Access Verification*).	
	Identify the designated contact(s) tasked with being available to PSI, who understand(s) the current system, can answer questions and make system implementation decisions throughout the conversion process.	
	Send us a digitized image(s) of your city logo(s)	
	Send us copies of your current renewal notice and license forms.	
	Credit Cards: 1) Email PSI with the name of your bank and the name/phone of the customer account representative. PSI will transmit a gateway application appropriate to your bank. Client to transmit completed gateway application to PSI so payment functionality may be configured & tested. (*Card Present & Card Not Present*)	
Done	**PetTrack Tasks**	**Notes**
	Send us current city forms so that our staff may begin to recreate your forms on the new system.	
	Review proposed forms and provide comments for implementation.	
	Send us a copy of your Municipal Code relating to pet licenses for our review.	
	Print out a rate table(s) from the existing system.	
	Identify all financial accounts to be posted to and fax to us.	
	Print out a register of all renewal messages or Develop renewal messages by business type.	
	Acknowledge that all data will be migrated from existing system	
	Consider when which weekend would be best to perform migration/installation and inform us of your requested dates.	
	Inform us that you are ready to schedule your kick off meeting.	
Done	**Web PetTrack™ Tasks**	**Notes**
	Identify the designated contact(s) tasked with being available to PSI, who understand(s) the current system, can answer questions and make system implementation decisions.	
	Have IS contact us to verify access (remote desktop, access to PSI SQL database & DTS from the IIS server (identify required ports if necessary), IIS administration rights, & ability to transfer files to/from our servers) to your designated IIS server via the internet. Allow access by city staff to approve submitted transactions.	
	Promptly provide us with any existing approved secure URL or authorize us to obtain & implement the approved secure URL by obtaining the appropriate SSL certificates on your behalf.	
	Remote Configuration, Training & Internal Testing until approved	
	Promote new functionality to appropriate utility customers via renewal, newsletters etc.	

Progressive Solutions®   **EXHIBIT C**

Budgetary Quotation for *PetTrack*™ – Pet Licensing Software
With Citizen Online Renewals and Online Applications for
The City of Costa Mesa

PetTrack™ Components	Cost
PetTrack™ software (*2 Concurrent Users*) read-only & approval users are unlimited	$13,000
Migration of all migratable animal license records from provided data	$1,500
Web Renewals/Look-ups/Payments Module, including setup, configuration, training, forms & consultation	$8,500
Web Applications/Payments Module, including setup, configuration, training, forms & consultation	$7,500
Credit Card Connector (Site License) including Setup & Configuration	$995
Two (2) days offsite/onsite, configuration, set-up, & training (includes unlimited training until go-live)	$2,400
Total Installed *PetTrack*™ Package Cost	$33,895
*Prompt Decision Discount	-$9,000
Total Installed *PetTrack*™ Package Cost with discount	$24,895
Total annual software maintenance**	$5,995
Options: (Additional software/hardware maintenance fee of 20% of the price for each selected option will apply)	
Interface to other 3rd party software (final price to be determined upon review of specifications) [a]	$5,000
GL Interface (PeopleSoft)	$5,000
Basic Cashiering Interface (Quadrant) Starts at: (*PetTrack*™ does have a standard cash receipting module)	$5,000
Document Imaging Up to 40 ipm, LTR & LGL (*plus* interface software & installation)	$499
Document Imaging setup & implementation (One Scanner)	$350
Hand-Held Bar Code Scanner	$395
Kiosk, setup, configuration	$8,500
ERSI Map Objects or GIS engine interface (for mapping functions regarding Pet License Accounts)	$8,500
GIS interface (to accomplish address validation, as a backstop to included, real-time, updated zip+4 validation)	$5,000
SSL certificate - good for 2 years including installation	$500

Complete standard agreement and terms to be provided with formal proposal.

*Prompt Decision Discount – Requires agreement signing by July 31, 2017, and requires acceptance of our standard agreements with few, if any modifications. Discounts are applied to initial *software license* purchase (not to services).

**Annual maintenance included with software to June 30th, 2018. For purchases after this date, 90 days maintenance included. Our maintenance includes all phone support, reports, letters and regular software upgrades – your software never becomes obsolete!

[a] Interfaces require complete specifications in order to determine fixed pricing (starts at $5,000).

The cost of on Site Training requires reimbursement of: travel to/from, and per diem (expected to be minimal as City Hall is less than 30 minutes from PSI). Requested on-site training travel related costs will be billed at actual cost when applicable. **ALL TRAVEL/VISITS MUST BE PRE-APPROVED IN WRITING BY LICENSEE.**

Any additional concurrent user licenses needed within six years of implementation will be available at $3,000 per license. **Many other standard features & options are included that no other animal license software provider offers!**

This proposal is valid for 90 days from date submitted or until further specifications which could affect price are received. Most implementations can be completed within 30 to 60 days from receipt of an executed agreement. We work "as fast as you will allow". Delay in granting access to our partition of your server during our remote migration/installation/setup is typically the greatest impact to a quick go-live. Your prompt review of customized forms and data migration review/approval also promotes prompt go-live.

We propose the above initial one-time fee to establish the various charges, finance codes and configuration of PSI's *PetTrack*™ licensing system. Also included in this price is customization of PSI standard forms. Customer to supply Microsoft's™ SQL Server Client-Server Database license per the stated requirements. SQL Server software and licenses from Microsoft™ are **NOT** included as City may already have purchased such licensing. If SQL Server has been acquired by City, it is expected that no additional hardware will be required unless the City decides to utilize a receipt printer/cash drawer or other cashiering hardware in conjunction with the animal licensing system.

Client	*Contact Person:*	*Telephone Number:*
County of Snohomish 3000 Rockefeller Ave Everett, WA 98201	Vicki Lubrin Pop: 745,913 Installed: May 2013	(425)388-3505 vicki.lubrin@snoco.org **Pet Licensing with Code Enforcement and Citizen Animal Complaints**
City of Monterey 735 Pacific Avenue, Suite A Monterey, CA 93950	Felicia Ming Pop: 29,701 Installed: Feb 2004 in 2 months	(831)646-3903 ming@ci.monterey.ca.us **Business Licensing, Cashiering & Pet Licensing, Parking & Web Renewals**
City of Fresno 2600 Fresno Street Fresno, CA 93721	Connie Alfaro Pop: 510,365 Installed: Oct 2008 in 3 months	(559)621-6878 Connie.alfaro@fresno.gov **Business Licensing, Cash Receipting, Pet Licensing, Web Renewals and Web Applications**
City of Hawthorne 4455 W 126th Street Hawthorne, Ca 90250	Lisa Carlson Pop: 86,199 Installed: Sept 2001	(310)349-2933 lcarlson@cityofhawthorne.org **Business & Pet Licensing, Cashiering, Alarm Permitting, Web Renewals**
City of Pleasanton 200 Old Bernal Avenue Pleasanton, CA 94566	Wendy Anderson Pop: 71,215 Installed: Jul 2012 in 1 month	(925)931-5442 wanderson@cityofpleasantonca.gov **Business Licensing, Web Renewals and Web Applications, Interface to Active cashiering, replaced failed 'new solution'**
City of Orange 300 East Chapman Ave Orange, CA 92856	Leonie Crouch Pop: 139,969 Installed: Jun 2009 in 1½ month	(714)744-2239 lcrouch@cityoforange.org **Business Licensing, Cash Receipting, Revenue Recovery, Web Renewals**
City of Irvine One Civic Center Plaza Irvine, CA 92623	Robert Warren Pop: 229,985 Installed: Dec 2013 in 1 month	(949)724-6594 rwarren@ci.irvine.ca.us **Business Licensing, Web Renewals and Applications, Code Enforcement, Massage Permits, etc.**
City of Santa Barbara 735 Anacapa Street Santa Barbara, CA 93101	Brenda Craig Pop: 92,325 Installed: Aug 2007 in 2 months	(805)564-5339 bcraig@SantaBarbaraCa.gov **Business Licensing, Permits Extensive use of PSI's "Tax Forms"**
City of Santa Maria 110 East Cook Street Santa Maria, CA 93454	Angie Hernandez Pop: 84,712 Installed: Jul 2006 in 1 month	(805)925-0951 X422 ahernandez@ci.santa-maria.ca.us **Business Licensing**

Primary Objectives

✓ Efficient Pet Owner Self-Service via the Web

✓ Efficient data entry, maintenance and validation.

✓ Efficient generation of Licenses, renewals, delinquents and custom letters.

✓ Ease of obtaining ad hoc management and operational information.

The number of days required for delivery and installation of the software after execution of the contract and receipt of payment are determined upon our receipt of your purchase order.

Implementation of our packaged software can be completed in as few as 30 days after contract execution. A finely detailed implementation schedule detailing the steps and responsibilities of each party can be provided upon execution of the contract. Data migration assumes that the City provides their data to *PSI* in personal computer readable format, and that the format will not change between the initial migrated test data versus the final live migrated data. Access to the system and data must be made available via internet using VPN, Terminal Services, Symantec's PC Anywhere or other similar application at the time of the live implementation.

Sample Project Timeline/Schedule

Mar 6, 2017: Receive Signed Agreements and 50% down payment, Scheduled start date

Mar 7, 2017: Discuss how the City is now doing business and what improvements can be made. Current City forms will be reviewed and suggestions made for improvements based upon examples from our current inventory of forms.

Mar 13, 2017: Review City ordinance and implement tables and rate structures in *PetTrack*™. This will involve setting up rate structures where applicable for each type of charge that is utilized in the system.

Mar 20, 2017: Have the City provide us with the current data files so that we can develop a migration matrix to specify where and how data will be migrated. The data files will be provided in a machine readable format and will include a description of the data fields. A test migration and evaluation will be conducted at this time. We will also discuss the fields to be utilized and how they will be configured in the system to best suit the City's needs.

Mar 27, 2017: Install software at the City with initial migrated data for evaluation, testing and review (Citrix).

Mar 28, 2017: Have City review Custom Renewal, Delinquent, License, Underpayment and other forms developed by *Progressive Solutions*® based upon the City's specifications.

Apr 3, 2017: Schedule a go live date.

Apr 7, 2017: Upon receipt of City's final data, migrate data to *PetTrack*™.

Apr 10, 2017: Provide migrated data and operational training to City staff.

Apr 11, 2017: Go live. (Or go live on parallel testing environment). Final 50% payment is due 30 days from go live date. Provide additional data tuning.

Apr 12, 2017: Schedule/Install advanced elected options.

Ongoing: Software maintenance and customer support.

EXHIBIT C

City of Costa Mesa requested benefits:

- A Web Module – where Animal Owners can apply/renew/pay/lookup online but also does not look like a 3rd party site and is customer friendly. We design the look and feel of the web link and web pages on your existing website to look as you desire. (Sample live links can be emailed to you).
- Time Saving – our current process is rather cumbersome and takes quite a bit of time. *PetTrack™* has been designed and enhanced over the years to "do the job with the fewest keystrokes possible"
- Non-Domesticated <u>Renewals only</u> online - $15 Permit Fee. **PSI will modify to allow ignoring vaccine expiration for Non-Domesticated Renewals.**
- Optional Permits Automation. **Additional 'Permit Tab' License(s) effectively makes** *PetTrack™* **into a multiple tax system.** If you desire a permit to be automated within the <u>same account</u> as the main animal license, and the expiration or due date is at a **frequency *other*** than the animal license, the 'Permit Tab' automates the process. Another 'no additional cost' option to have two separate linked accounts for Permits and Licenses, for example.
- Ability for Online applicants and/or renewals to upload require documents (I.E. Rabies Vaccination document, proof of age for seniors, Spayed or Neutered) *Progressive Solutions' PetTrack™* allows for this – standard. When the Citizen checks certain boxes, the webpage will prompt them to upload the pertinent document, and calculate fees accordingly.
- PCI Compliance. *Progressive Solutions®* provides all the required compliance. You do not store sensitive data on your server. PSI is the only software vendor who has regularly provided 'Data Security Seminars' at events such as the CMRTA and NBRRO.
- Automatically assess late fees when renewing online *Progressive Solutions' PetTrack™* allows for this - standard.
- Automatically calculate correct fees based on pet license type (Senior, Exempt, Service Dogs) *Progressive Solutions' PetTrack™* allows for this - standard.
- Provide additional (Web) Demo to specific to creating accounts, payments, renewals, batches, and just maneuvering around the software for everyday use. *Progressive Solutions®* would be please to provide follow-up web demos to cover user specific functionality – please provide your desired demo date & outline.
- The cost of 2 concurrent users. We are pleased to provide our minimum 2 User license (with special 'Prompt Decision Discount'). This allows 2 Concurrent Edit Users. Please remember Query-Only, Note, and Approval Users are already unlimited. The names of these Concurrent Edit users are not limited.

Additional Benefits using Web Renewals and Web Applications with PetTrack™: **Cities find it very easy to justify the purchase of these software modules with their Council. Some of the additional benefits include:**

- Improved Citizen Service
- Reduced Traffic Congestion
- Reduced Auto Emissions
- Aid the Disabled Pet Owner Community
- Reduce Counter Traffic and Staff Work Load
- Less use of Paper - Go "Green" by going paperless
- Increased Revenue for The City
- Increased staff productivity through cutting-edge automation (provided years before the competition)
- Your software never become obsolete, remaining technologically superior (does not require an expensive 'version' upgrade)
- Use of the very best peer-rated software and support (please see recent independent software satisfaction survey)
- And many more!

PROGRESSIVE SOLUTIONS, INC.

PO BOX 783
Brea, California 92822
(714) 671-1597 voice
(714) 255-9775 facsimile

OFFICEOF THE CITY CLERK   **Month Day, Year**
City of Costa Mesa
~~760 E Road~~ 77 FAIR DRIVE
Costa Mesa, CA 92626
VIA CERTIFIED MAIL: XXXXXX and email to ~~manager@costamesa.gov~~   steve.ely@costamesaca.gov

Subject: **Notice of Default**

RE: Software License Agreement and Maintenance Support Services dated X/X/XXXX or as amended on X/X/XXXX.

Dear City Clerk:

This is Progressive Solutions, Inc.'s formal, written NOTICE OF DEFAULT. Per the above agreement between the City of Costa Mesa ("CITY") and Progressive Solutions, Inc. ("PSI"), this NOTICE, plus its accompanying attachments, if any, constitutes a complete claim in accordance with California Government Code section 905, et seq., and also meets the claim requirements of Costa Mesa Municipal C. sec. X.06, et seq., and will deemed to have been received five days after the date of its mailing. No other claim form or documentation or notice is required nor should be expected. Time is of the essence. Please pay from this NOTICE and/or process in accordance with the City's procedures for handling pre-litigation claims and do not wait for any other correspondence.

The specifics of this claim are as follows:

A. The name and post office of the claimant:
    Progressive Solutions, Inc. P.O. Box 783, Brea, CA 92822

B. The post office address to which the person presenting the claim desires notices to be sent;
    Progressive Solutions, Inc. P.O. Box 783, Brea, CA 92822

C. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
    PSI claims that City of Pismo Beach is in default of the above referenced agreement due to the following alleged breach(es) the following specific paragraph(s) of that agreement which occurred at the below indicated place(s) and on the below indicated dates:

    _____

    Other circumstances of the occurrence or transaction which gave rise to the claim asserted, if any (*additional sheets are/are not attached*):

    _____

D. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;

    _____

E. The name or names of the public employee or employees causing the injury, damage, or loss, if known;

    _____

F. The amount claimed if it totals less than ten thousand dollars as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. (*If the amount claimed exceeds ten thousand dollars, no dollar amount shall be included in the claim.*)

    _____

G. Jurisdiction of this claim (*does/does not*) rests in superior court.

I declare, under penalty of perjury under the laws of the state of California that the forgoing is true and correct.

Date signed: _____

On behalf of Progressive Solutions, Inc.

By:
Name, Title