SPRINGBROOK SOFTWARE

SPRINGBROOK SOFTWARE
SOFTWARE MAINTENANCE AGREEMENT

PARTIES:

SPRINGBROOK:
Springbrook Software, Inc., an Oregon corporation
111 SW Fifth Street
Portland, OR 97204
Ph. (503) 820-2200
Fax (503) 820-4500
Email: info@springbrooksoftware.com

CUSTOMER:
CITY OF JONESBORO
515 WEST WASHINGTON
PO BOX 1845
JONESBORO, AR 72403
870-932-0820

EFFECTIVE DATE: October 6, 2004

Springbrook has licensed its proprietary software products and programs ("Software") to the Customer, and Customer wishes to have Springbrook maintain and support the use of the Software. Springbrook and Customer therefore agree as follows:

1. **Definitions.**

    a. **"Software"** has that meaning assigned to it pursuant to the Software License Agreement executed by the parties in conjunction with this Agreement (the "License Agreement").

    b. **"Enhancement"** means any modification or addition that, when made or added to the Software, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Springbrook may designate Enhancements as minor or major, depending on its assessment of their value and of the function added to the Software.

    c. **"Error"** means any failure of the Software to conform in any material respect to its published specifications.

d. **"Error Correction"** means either a modification or addition that, when made or added to the Software, brings the Software into material conformity with its published specifications, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity.

e. **"Major Enhancement"** means either the total rewrite of an application and/or additional functionality benefiting only certain entities, not all customers as a whole, and requiring these enhancements to be packaged as a separate Module.

f. **"Releases"** means new versions of the Software, which may include Error Corrections and/or Enhancements.

g. **"Temporary Fix"** means an initial correction or "fix" to a problem in the software prior to the release of an error correction.

2. **Term; Automatic Renewal; Termination; Opportunity to Cure.** The initial term of this Agreement shall be from the Effective Date to twelve months following invoice due date for first year of maintenance, subject to renewal thereafter. During this Agreement's first term, Customer shall pay for maintenance for each module licensed pro rata as determined by the number of months from one month following start of first training session to the end of Customer's fiscal year, based on first full year pricing in Attachment A of this Agreement. Springbrook shall bill and Customer shall pay for maintenance provided under this Agreement on an annual basis, payment due as of the start of each maintenance term. This Agreement shall automatically renew after the initial term for subsequent terms of one (1) year each unless and until either party gives the other no less than thirty (30) days' written notice of termination in advance of the termination of the then-current term. A party shall be considered in default under this Agreement only if the party, thirty (30) days after receiving written notice from the other party identifying with reasonable specificity a material failure to comply with any term or condition contained herein (including without limitation Customer's failure to pay any fees or charges due under this Agreement or any related License Agreement or service agreement, and Springbrook's breach of the limited warranty provided in Section 11), has not cured such failure or breach. In the event that Customer is in default under this Agreement, Springbrook in its sole discretion may elect to terminate this Agreement or to place Customer's Agreement on hold until such default is cured.

3. **Scope of Maintenance.** During the term of this Agreement, Springbrook agrees to provide Basic Maintenance services in support of the Software. Basic maintenance services shall consist of:

a. **Error Correction.** Springbrook will use all reasonable diligence to correct verifiable and reproducible Errors within a reasonable time period after reported to Springbrook. The Error Correction, when completed, may be

provided in the form of a "temporary fix," consisting of sufficient programming and operating instructions to implement the Error Correction.

b. **Telephone/Modem Support.** Springbrook shall maintain a telephone and modem support line, or DSL Internet connection, or T1 connection to the Internet during normal business hours (5AM to 5 PM Pacific Time) Monday through Friday, excluding major national holidays, that permits Customer to report Errors in the Software and to receive assistance in cases of operator error. Customer agrees to provide and maintain a means for Springbrook Software to remotely access and maintain the Springbrook Software applications. The current list of supported means of this access is available from Springbrook Software, but will include either a modem and dedicated modem telephone line, or an Internet connection of 128Kb, or faster, with a dedicated, static IP address. Customer agrees to provide and maintain an Internet connection of 128Kb, or faster, for accessing Springbrook Software updates and information from the Springbrook Software web site. In order to serve Customer properly, Springbrook requires that the modem be located physically in the server, not in a workstation on Customer's network. Springbrook reserves the right to bill hourly (following Customer's approval) for maintenance in cases of repeated operator error, or where a single operator error results in extensive Springbrook time to resolve the problem.

c. **Changes in State and Federal Regulations.** Springbrook will provide updates needed to conform to state and federal regulations, including changes to tax tables and routine forms, as changes become effective. Maintenance services under this Agreement do not include updates to conform to any changes in local governmental regulations, including without limitation changes in utility billing rates, reports or methods.

d. **Routine Releases.** Springbrook may, from time to time, issue routine Releases of the Software, containing Error Corrections and minor Enhancements to customers who have maintenance agreements in effect. Installation of routine releases is provided at no charge to customer if completed over the modem. Installation of routine releases and updates by Springbrook at Customer's site will be billed to Customer at the then current hourly rate except in cases where Springbrook is solely responsible for the inability to provide modem support.

e. **Discounts on Major Enhancement Releases.** Springbrook may, from time to time, offer major Enhancements to Customer, generally for an additional charge. To the extent Springbrook offers such Enhancements, it shall permit Customer to obtain one copy of each major Enhancement for each copy of the Software being maintained under this Agreement at the discount then specified by Springbrook.

4. **Exceptions.** The following matters are not covered by Basic Maintenance, and are outside the scope of services provided pursuant to this Agreement:

   a. On-site support by employees or agents of Springbrook;

   b. Training users in the proper operation of the Software;

   c. Any problem resulting from Customer's misuse, improper use, alteration (including local reports written by the Customer), or damage of the Software, unless approved by Springbrook in writing;

   d. Support of operating systems; support of non-Springbrook software, including but not limited to spreadsheets, word processors, general office software, and report builders (including the Progress Report Builder);

   e. Installation, implementation, data conversion and implementation management services;

   f. Training, consulting, and implementation management services required on an individual Customer basis for upgrades;

   g. Set up, support for and maintenance of additional production databases.

5. **Cooperation of Customer.** Customer agrees to notify Springbrook promptly following the discovery of any Error. Further, upon discovery of an Error, Customer agrees, if requested by Springbrook, to submit to Springbrook a listing of output and any other data that Springbrook may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered. Springbrook shall treat any such data as confidential.

6. **Fees and Expenses.** The initial Maintenance Fee will be as invoiced to Customer as per conditions under Section 2 of this contract and as set forth on Attachment A. The first term (twelve (12) months) Maintenance Fees will be due 6 months after signing Software License Agreement. Maintenance fees are due and payable at the beginning of the initial term of this contract and each renewal term hereunder. Maintenance fees will apply to all licensed products and to any modifications made to those products if those modifications require support and/or additional programming services during upgrades to new releases. Maintenance fees are based on a percentage of the then current retail value of the licensed products. For the initial term of this contract, the rate is 20% for standard licensed products; 25% on all billable enhancements and database manager license fees..

   Maintenance Fees do not include travel (including travel time) and living expenses for installation and training beyond that for initial products and services licensed and/or purchased in initial License Agreement; on-site support, installation or training; file and data conversion costs; consulting services; shipping charges;

Implementation Management Services or the costs of any recommended hardware. Customer agrees to pay such fees and costs, when and as the services are rendered and the expenses incurred, as approved by Customer and invoiced by Springbrook. Springbrook shall provide supporting documentation for all expenses upon customer request. Springbrook reserves the right to require prepayment or advance deposit for such additional charges or expenses in some instances. Customer is also responsible for sales or use taxes and state or local property or excise taxes associated with licensing, possession, or use of the Software or any associated services. All fees paid hereunder are nonrefundable and will be forfeited in the event of termination or cancellation except as specifically provided in Sections 10 and 11.

If key personnel replacement occurs, Springbrook reserves the right to require that the new employee(s) acquire certified training. Springbrook offers free training at Springbrook's Portland Training Center to all new finance directors, utility supervisors, and/or other managers on Springbrook software applications previously implemented by the Customer.

At Springbrook's election, up to a twenty-five percent (25%) increase in maintenance fees will occur if a final training certificate is not received and maintained by all applicable users. The amount billed will only be less if the assigned software consultant and/or implementation manager certifies that the user(s) have obtained the required skills to run the applications in less than the minimum training quoted in this contract). If key personnel replacement occurs, Springbrook reserves the right to require that the new employee(s) acquire certified training. Springbrook offers free training at Springbrook's Portland Training Center to all new finance directors and utility supervisors on Springbrook software applications previously implemented by the Customer.

7. **Work Orders.** Customer may from time to time request from Springbrook services, such as software modifications or additional training. Springbrook shall make a reasonable and good faith effort to comply with such requests but shall retain the sole right to decide whether such services are executed. The Customer shall receive from Springbrook an estimate of the cost of requested services. Springbrook shall receive for all approved Customer requests a signed work order from the Customer and a deposit equal to fifty percent of the estimated cost of the service.

8. **Billing**. All invoices from Springbrook to the Customer for any product or service are due upon receipt. Invoices are past due 30 days after the date of invoice. Springbrook may, at its option, charge all invoices 30 days and older an interest at a rate of one and one-half percent (1½%) per month (eighteen percent (18%) per annum) or, if less, the highest rate allowed by applicable law from the date such fee or charge first became past due. Invoices are delinquent sixty (60) days after the date of invoice. A delinquent invoice may cause Springbrook, at its option, to put the Customer's account on hold, or, subject to the terms of Section 2, terminate this Agreement. Accounts on hold may receive no product, service, or support from Springbrook until all past due and delinquent invoices are paid in full.

9. **Use and Restrictions.** The Customer's rights and obligations concerning the use of any Error Corrections, Enhancements, or Releases (or any other programming provided by Springbrook, regardless of its form or purpose) shall be as provided in the License Agreement. Springbrook shall have sole and exclusive ownership of all right, title and interest in and to such works (including ownership of all copyrights and other intellectual property rights pertaining thereto), subject only to the license expressly granted to customer in the License Agreement.

10. **Limited Remedy and Liability; Exclusion of Consequential Damages.** The cumulative liability of Springbrook to Customer for all claims relating to any services rendered hereunder, in contract, tort, or otherwise, shall not exceed the total amount of the Maintenance Fee paid to Springbrook pursuant to this Agreement during the twelve (12) months prior to the claim. In no event shall Springbrook be liable to Customer for any consequential, indirect, special, or incidental damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss), even if Springbrook has been advised of the possibility of such potential loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies, and shall apply to all claims under the warranty described in Section 11. Springbrook's liability for breach of warranty exists only during the warranty period set forth in Section 11.

11. **Limited Warranty and Exclusions.** SPRINGBROOK WARRANTS THAT IT WILL RENDER ITS SERVICES HEREUNDER IN A GOOD AND WORKMANLIKE MANNER. DURING THE TERM OF THIS AGREEMENT AND FOR A PERIOD OF SIX (6) MONTHS THEREAFTER SPRINGBROOK, AT SPRINGBROOK'S SOLE COST, SHALL CORRECT ANY FAILURE TO RENDER ITS SERVICES HEREUNDER IN A GOOD AND WORKMANLIKE MANNER. ANY CLAIM BASED ON THE FOREGOING WARRANTY MUST BE SUBMITTED IN WRITING TO SPRINGBROOK. CUSTOMER AGREES THAT THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF SPRINGBROOK AND SPRINGBROOK DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE OR USE, QUALITY OR PRODUCTIVENESS, OR CAPACITY, OR THAT THE SERVICES RENDERED HEREUNDER WILL BE ERROR-FREE. NO ACTION AGAINST SPRINGBROOK FOR BREACH OF THIS LIMITED WARRANTY MAY BE COMMENCED MORE THAN 60 DAYS AFTER EXPIRATION OF THE WARRANTY PERIOD STATED IN THIS SECTION 11.

12. **Venue; Governing Law.** Exclusive venue for any dispute between the parties arising out of or relating to this Agreement shall be in the Federal District Court for the Eastern District in the State of Arkansas or, if Federal jurisdiction is not available, the superior court in the State of Arkansas, County of Craighead. This

Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Arkansas, as such laws apply to a contract made and performed in such state, without regard to conflicts of law provisions.

13. **Entire Agreement; Construction.** This Agreement is the complete and exclusive statement of the agreement between Springbrook and Customer and supercedes all prior and contemporaneous negotiations, discussions, proposals and understandings, oral, written or implied, including those involving any agent of either party, relating to the subject matter herein. No representations or statements made by either party or either party's agents not expressly set forth herein shall be binding on either party. Rights, obligations and warranties under this Agreement extend to Customer and Springbrook only, and no other person shall be considered a third party beneficiary of this Agreement or be otherwise entitled to any rights or remedies under this Agreement. No provision of this Agreement shall be construed in favor of or against any party because one party or its professional advisors participated in the preparation of this Agreement.

14. **Modification; No Waiver.** The terms of this Agreement may only be modified, expanded or added to by a written agreement executed by the parties. No oral communication between the parties or their agents before or after execution of this Agreement shall be binding upon either party unless the parties expressly agree in writing to the terms of such communication. No waiver by either party of any breach of any term or condition hereof shall be effective or enforceable unless made in writing signed by the party, and no waiver shall be interpreted as a continuing waiver or a waiver of any future obligation.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in duplicate by its duly authorized officer or representative.

LICENSOR: LICENSEE:

Name: Marily Rementeria_____ _____

Signature: _____
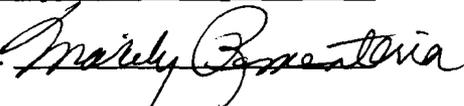
Title: Managing Partner Sales/Services

Date: September 30___, 2004

ATTACHMENT A: SCHEDULE OF FEES

Attachment A contains the price quote issued to Customer showing the applications and corresponding first year maintenance/support service fees, as well as a schedule of payment terms for these maintenance/support services. Please note that these fees are for one full year, but first year fees will be pro-rated as per terms below. By signing the Attachment A, Licensee is agreeing to this Schedule of Fees.

October 1, 2004

ProSoft Solutions

SPRINGBROOK
SOFTWARE

Annual Maintenance Costs for City of Jonesboro, AR

Application/Product	1st Year Maintenance **
Finance Suite	$10,000
Payroll	$7,000
Human Resources	$4,000
Project/Grant Management	$2,000
Fixed Assets	$2,000
Accounts Receivable	$2,000
Central Cash Management	$2,000
Licenses and Permits	$2,000
Building Permits	$2,000
BP Interface with Handhelds	$500
Code Enforcement	$2,000
Total Springbrook	$35,500
Progress Client for MS-SQL	$4,250
Total Other	$4,250
First Year Discount	-$39,750
Total 1st Year Maintenance Costs	$0

Total Concurrent Users = 20   **Prices valid for 90 days**

First year (12 months from contract signing) maintenance on above listed applications is at no charge. Vehicle Maintenance, when application is installed, will be charged at $2,000 per year for the 1st 4 years.

Subsequent years 2-5 will not exceed $20,000 for maintenance on the above listed applications.

If there is a failure of the software as a result of issues with Springbrook Software, that cannot be resolved off-site, Springbrook will come onsite to resolve such issues at no additional cost.

Springbrook software maintenance will be due three (3) months following date of signing Software License Agreement (1st year waived), except for database manager or other third party software maintenance which is due with signed contracts (1st year waived). Subsequent years' maintenance fees will be due each year thereafter and will be for each subsequent 12-month period. Additional maintenance will be charged on all custom modifications performed and supported by Springbrook.

By my signature below, I confirm that I have read, understand and agree to this Attachment A to the Software Maintenance Agreement, Schedule of Fees: