

# CITY OF OAKLAND



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September 12, 2014

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Glenn R. Vodhanel  
Progressive Solutions, Inc.  
P.O. Box 783  
Brea, CA 92822

**Re: Progressive Solutions, Inc. "Notice of Default"**

Dear Mr. Vodhanel:

Your letter to Oakland Revenue Manager David McPherson dated September 8, 2014, has been referred to me. I am writing in response to your contention that the City of Oakland ("the City") has defaulted on obligations relating to the agreement with Progressive Solutions, Inc. ("PSI") dated May 5, 2007. You claim the Agreement was automatically renewed when the City failed to provide notice of termination to PSI 30-days prior to June 30, 2014.

At the outset, please note that any contract that a city or other government agency enters without legal authority is "'wholly void,' ultra vires, and unenforceable.'" (*G.L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1092) " '[O]ne who makes a contract with a municipal corporation is bound to take notice of limitations on its power to contract and also of the power of the particular officer or agency to make the contract.'" (Id. at 1094)

On July 18, 2006, the City Council authorized entry into a contract with PSI "for an automated local tax system and maintenance and support services for a period of three (3) years for an amount not to exceed six hundred seventeen thousand dollars (\$217,000)". (Resolution No. 80045) Pursuant to Council's authorization, the Agreement for License of Software, Purchase of Equipment, Information Technology Services and for Maintenance and Support Services between the City and PSI was executed March 7, 2007. The City Administrator sought the Council's authority to extend the service portion of the contract with PSI. On October 4, 2011, the City Council authorized entry into a new software maintenance and support services contract with PSI for a term of "three years commencing July 1, 2011 through June 30, 2014" with in an amount not to exceed \$100,000 per year "with two optional annual extensions". (Resolution No. 83574) Following Council's October 4, 2011 grant of authority to contract, the City and PSI did not execute a new written agreement.


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A grant of authority by the City Council to the City Administrator to enter into a contract is not a contract. There is and has been no contract for maintenance and support services between PSI and the City since the expiration of the authorized three-year term of the March 2007 contract. The City was under no obligation to provide notice of termination to PSI 30 days prior to June 30, 2014, because no contract existed. Accordingly, there has been no default.

On behalf of the City on September 4, 2014, David McPherson terminated months of negotiations with PSI for a new maintenance agreement following your rejection of the City's most recent contract proposals. Thank you again for doing business with the City.

Very truly yours,

Barbara Parker  
City Attorney

By:   
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