

Village of Hines Creek Council Request for Decision (RFD)

Meeting:	Regular Council Meeting
Meeting Date:	November 14, 2018
Originated By:	Leanne Walmsley, Acting Chief Administrative Officer
Title:	New Business – Municipal Information Systems Inc. 2019 Software Support Agreement and Software License Agreement
File:	0115

BACKGROUND/PROPOSAL:

Changes to the 2019 Municipal Software License Agreement – None
 Changes to the 2019 Software Support Agreement - None

No changes to the 2019 Software Support Agreement
 No changes to the 2019 Software License Agreement

COSTS/SOURCE OF FUNDING (if applicable)

Cost of Software Support		
2018		2019
\$682.61/month		\$717.15/month
\$8,191.32/year		\$8,605.80/year

An increase of \$34.54/month and/or \$414.48/year.

*Note that the 2019 Software Support Agreement is based on licensed and installed within our organization.

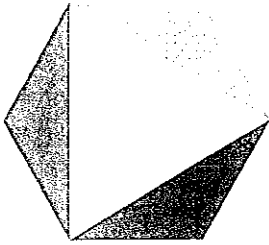
Support costs for additional modules that may be licensed and installed before January 1, 2019 have not been reflected in the enclosed 2019 Software Support Agreement. At our request, an updated 2019 Software Support Agreement that includes the new support costs for these additional modules will be provided to us.

Attached are two copies of our 2019 Software Support Agreement noting that there is a three percent (3%) increase to the Software Support Agreement for the 2019 year.

RECOMMENDED ACTION

That this Council enter into an Agreement with Municipal Information systems Inc. for 2019 Software License and Support in the yearly amount of \$8,605.80.

Initials show support- Reviewed by:	Manager:	C.A.O <i>fw</i>
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MUNIWARE

20 Years Serving Our Clients 1978-2018

Fueled by Clients... Driven by Passion

MUNICIPAL INFORMATION SYSTEMS INC.

SOFTWARE LICENSE AGREEMENT

This Agreement is made effective as of the _____ day of _____ 20____

BETWEEN:

VILLAGE OF HINES CREEK

Box 421

HINES CREEK, AB T0H 2A0

Canada

(Hereinafter referred to as "CUSTOMER")

AND

MUNICIPAL INFORMATION SYSTEMS INC.

Box 3021, 10013 – 100 Avenue

MORINVILLE, Alberta T8R 1R9

Canada

(Hereinafter referred to as "MUNIWARE")

WHEREAS MUNIWARE has developed SOFTWARE for use by its customers and;

WHEREAS CUSTOMER wishes to obtain a license to use the Software for these purposes; and

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. DEFINITIONS

- 1.1 "SOFTWARE" shall mean MUNIWARE'S computer software in either executable or source code format as provided herein and all such other documentation accompanying such software for the purposes contemplated hereunder. SOFTWARE also means the computer software regardless of the form in which CUSTOMER subsequently uses it.
- 1.2 "SOFTWARE SUPPORT AGREEMENT" shall mean the software support agreement to be executed by MUNIWARE and CUSTOMER on an annual basis with respect to the support of the SOFTWARE.

7. TERMINATION:

- 7.1. This agreement is effective until terminated.
- 7.2. MUNIWARE shall have the right to terminate this agreement in the event that:
- (a) CUSTOMER breaches any material term of this agreement and CUSTOMER fails to remedy such breach within 60 days following receipt of written notice of such breach by CUSTOMER from MUNIWARE; or
 - (b) CUSTOMER misuses or abuses the SOFTWARE and MUNIWARE gives to CUSTOMER written notice that such misuse or abuse is, at the sole discretion of MUNIWARE, incapable of remediation by CUSTOMER; or
 - (c) MUNIWARE terminates the SOFTWARE SUPPORT AGREEMENT in accordance with terms set out therein. Such termination shall be in addition to and not in lieu of any legal remedies available to MUNIWARE.
- 7.3 CUSTOMER shall have the right to terminate this agreement at any time and for any reason upon giving to MUNIWARE not less than 30 days prior written notice of CUSTOMER'S decision to terminate this agreement. When MUNIWARE receives the CUSTOMER'S written notice of termination, MUNIWARE will provide the CUSTOMER with a new License Key with an expiry date of 180 days from the date of termination notice. This new License Key must be entered by the CUSTOMER immediately after it has been provided by MUNIWARE.
- 7.4 CUSTOMER acknowledges and agrees that the license granted hereunder shall be automatically terminated without liability to MUNIWARE in the event of termination of any Annual Software Support Agreement between MUNIWARE and CUSTOMER.
- 7.5 Upon termination of this agreement, CUSTOMER shall, within 180 days following such termination,
- (a) Discontinue use of the SOFTWARE;
 - (b) Erase the SOFTWARE from CUSTOMER'S computer(s), server(s) and virtual storage device(s);
 - (c) Return the SOFTWARE and accompanying documentation including all back up and archived copies to MUNIWARE, and;
 - (d) Furnish to MUNIWARE a certificate signed by an authorized signing officer who certifies that, through its best effort and to the best of its knowledge, the original and all copies, in whole or in part and in any form, of the SOFTWARE have been destroyed.
- 7.6 The provisions of Sections 3, 5, 6, 7, and 8 hereof shall survive any termination of this agreement.

8. LIABILITY, WARRANTY DISCLAIMER, INDEMNIFICATION:

- 8.1. The SOFTWARE is furnished "AS-IS" and MUNIWARE shall not be liable for any monetary damages whatsoever with respect to CUSTOMER'S use of the SOFTWARE hereunder, nor shall MUNIWARE be liable for any special indirect, incidental or consequential damages arising out of the licensed rights granted in this agreement, even if MUNIWARE is advised of such damages. The entire risk as to the results and performance of the SOFTWARE is assumed by CUSTOMER.
- 8.2. The SOFTWARE is licensed to CUSTOMER without any warranties whatsoever whether express, implied or statutory, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE except as expressly stated herein. No representative of MUNIWARE has been authorized to make any representation, warranty, or promise not contained herein.
- 8.3. MUNIWARE warrants that the media on which the SOFTWARE is furnished will be free from defects in materials and workmanship under normal use for a period of 30 days from the date hereof. MUNIWARE'S liability and CUSTOMER'S exclusive remedy shall be the replacement of the SOFTWARE if the media on which the SOFTWARE is furnished proves to be defective. This warranty is void if the media defect has resulted from accident, abuse, or misapplication. Any replacement of the SOFTWARE will be warranted for the remainder of the original 30-day warranty period.
- 8.4. CUSTOMER agrees to indemnify, hold harmless and defend MUNIWARE, its directors, officers, employees, contractors, subcontractors and agents; against any and all claims arising out of the exercise of any rights under this agreement, including, without limiting the generality of the foregoing, against any damages, losses or liabilities whatsoever with respect to death or injury to person or damage to property arising from or out of the possession, use or operation of the SOFTWARE by CUSTOMER.

9.0 NOTICES

All notices in connection with this agreement shall be in writing and may be given by certified, registered, or first-class mail or personally delivered at the address set forth on the front page. For the purposes of this agreement, a notice shall be deemed effective upon personal delivery to the party or if by mail (barring postal service disruption) five days after proper deposit in a mail box.

10.0 MANDATORY TRAINING

- 10.1 In order to ensure the integrity and proper use of the SOFTWARE, CUSTOMER acknowledges and agrees that the license granted hereunder for the SOFTWARE shall include mandatory training for each module licensed as DETAILED by MUNIWARE in the accepted quotation, or for subsequent modules licensed in the future that form part of the SOFTWARE.
- 10.2 Notwithstanding the foregoing, at the request of the CUSTOMER, MUNIWARE may, at its sole and unfettered discretion, waive the requirement for mandatory training for new personnel, or subsequent licensed modules, on a case by case basis, and provided that such waiver must be expressly granted by MUNIWARE in writing.
- 10.3 In the event that the requirement for mandatory training is waived by MUNIWARE for new personnel, all forthcoming support tickets from that employee that are not related to a software issue and are further deemed to be of a training nature, will be regarded as billable incidents and billed to the nearest fifteen (15) minutes at MUNIWARE'S current support rates.
- 10.4 CUSTOMER acknowledges and agrees that all required training shall be performed by MUNIWARE except where MUNIWARE has expressly consented, in writing, to the training by and of third parties.

11.0 ENTIRE AGREEMENT

Other than as set out in the SOFTWARE SUPPORT AGREEMENT, this agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof.

12.0 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta, Canada. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Alberta, Canada.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

FOR THE CUSTOMER


Authorized Signature

Name

Title

Date

FOR MUNIWARE



Authorized Signature

Brandi Whiting

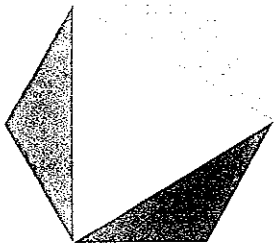
Name

CEO, Director of Operations

Title

October 26, 2018

Date



MUNNWARE

40 Years Serving Our Clients 1978-2018

Fueled by Clients... Driven by Passion

MUNICIPAL INFORMATION SYSTEMS INC.

2019 SOFTWARE SUPPORT AGREEMENT

This Agreement is made effective as of the _____ day of _____ 20_____

BETWEEN:

VILLAGE OF HINES CREEK

Box 421

HINES CREEK, AB T0H 2A0

Canada

(Hereinafter referred to as "CUSTOMER")

AND

MUNICIPAL INFORMATION SYSTEMS INC.

Box 3021, 10013 – 100 Avenue

MORINVILLE, Alberta T8R 1R9

Canada

(Hereinafter referred to as "MUNIWARE")

WHEREAS the parties have entered into a Software License Agreement.

NOW THEREFORE in consideration of the mutual terms, covenants and conditions contained herein, the parties agree as follows:

CURRENT TERM

This agreement will commence on the first day of each calendar year (January 1), and continue until the last day of each calendar year (December 31), unless otherwise terminated in accordance with the provisions of this agreement (the "Current Term").

SOFTWARE SUPPORT COSTS

Software Support costs will be calculated for the entire Current Term, (based on the Software licensed to the CUSTOMER) divided into twelve (12) equal payments, and billed monthly for the remainder of the Current Term.

Support costs for subsequent (additional) modules licensed during the Current Term will be calculated for the entire Current Term, divided into twelve (12) equal payments, and billed monthly for the remainder of the Current Term.

Monthly Support will commence 30 days after the completion of installation the initial core system, or in the case of subsequently licensed modules, 30 days after the installation of the subsequently licensed modules.

SOFTWARE SUPPORT SERVICES

MUNIWARE shall provide the following software support services to CUSTOMER during the Current Term for the Software licensed by the CUSTOMER.

1. Software maintenance and support between the hours of 7:30 A.M. and 5:30 P.M. Mountain Standard Time Monday through Friday except Statutory Holidays. Maintenance and support will be provided only for the Software licensed by the MUNICIPALITY and only for the current release versions supported by MUNIWARE.
2. Minor releases or minor updates to the Software including the provision of error corrections and/or updates from time to time at no additional charge provided such releases or updates occur during the Term. Minor releases and minor updates are reflected by a change in the second digit of the rev number (right of the decimal), in most cases. Notwithstanding the foregoing, the decision as to whether a software release or update is of a minor nature shall be made in the sole discretion of MUNIWARE.
3. Modem/Internet support for MUNIWARE Software.
4. Requests for custom enhancements will be considered and evaluated with the development of additional upgrades and/or additions to the Software for CUSTOMER'S specific use. MUNIWARE will respond to CUSTOMER'S reasonable requests for additional services pertaining to the software, including, data conversion, additional functionality, additional reports, and report-formatting assistance (such services referred to as the "additional services"). MUNIWARE reserves the right to charge additional fees for custom enhancements and the additional services. MUNIWARE will not undertake custom enhancements or any additional services without first providing CUSTOMER with a cost estimate of the work and receiving a work order for the custom enhancements or the additional services signed by CUSTOMER. CUSTOMER acknowledges and agrees that MUNIWARE retains exclusive ownership of all customizations and reserves the right to include customizations in future releases of the Software.
5. At MUNIWARE'S discretion (acting reasonably), and in consultation with, and with approval by CUSTOMER, MUNIWARE may provide maintenance and support services at the CUSTOMER'S office. MUNIWARE reserves the right to charge additional fees for this service and CUSTOMER agrees to reimburse MUNIWARE for all related traveling expenses including, without limitation, all costs for board and lodging provided that such additional fees and such related traveling expenses are firstly approved by CUSTOMER.

SUPPORT SERVICES NOT INCLUDED

This Agreement pertains only to software that was licensed by MUNIWARE to the CUSTOMER pursuant to the Software License Agreement referenced above. Items not covered under this Agreement include, but are not limited to the following billable services:

1. Accounting procedures including reconciliation and account balancing;
2. Database manipulations including the retrieval of lost or deleted database items except where such loss or deletion was caused by MUNIWARE's or its employees, subcontractors, agents or representatives;
3. Correcting errors resulting from improper use of the Software;
4. Training of new employees or re-training of existing employees outside of the mandatory training requirements detailed in the Software License Agreement;
5. Any work that requires MUNIWARE personnel to attend the CUSTOMER'S office(s);
6. Data file conversions;
7. Emergency Support (support initiated outside of normal MUNIWARE business hours);
8. Custom design / development work or process consultations;
9. Installation of the licensed Software on computers that do not meet MUNIWARE'S minimum requirements;
10. Improper installation by CUSTOMER or use of the licensed Software and related products that deviates from any operating procedures established by MUNIWARE in the applicable documentation or training processes;
11. Modification, alteration, addition or attempted modification, of the licensed Software undertaken by persons other than MUNIWARE or MUNIWARE'S authorized representatives;
12. Installation, configuration or integration of new hardware, software or consultations with third parties (i.e. computers, servers, printers, and other non-MUNIWARE software or technology. Further to this, work requiring more technical attention should be scheduled in a timely manner with MUNIWARE staff).

If any of the above work is requested by the CUSTOMER, MUNIWARE will issue a separate billing detailing work performed and billed in ¼ hour segments at the following rates:

Billable Services – remote (as listed above)	\$100.00 per hour plus GST
Billable Services – onsite (as listed above)	\$125.00 per hour plus GST
Travel Time	\$ 50.00 per hour plus GST
Mileage	\$ 0.58 per km plus GST
On / Off Site Training	\$100.00 per hour plus GST
Emergency Support (outside of normal MuniWare business hours)	\$150.00 per hour plus GST
Custom design work or process consultations	\$125.00 per hour plus GST
Shipping Charges (i.e. Purolator)	At Cost plus GST
Subsistence (lodging, meals, car rentals, etc.)	At Cost plus GST
User Group	\$450.00 per person plus GST (estimated cost)

ADDITIONAL COSTS NOT INCLUDED IN SUPPORT

Additional license limits for all modules (except payroll)	Minimum of 50 @ \$2.00 each plus GST
Payroll License Limits	Minimum of 10 @ \$5.00 each plus GST
EFT'S (Electronic Funds Transfer) Interface modules	As quoted plus GST
E-mail Interface modules	As quoted plus GST
E-Government virtual Town Hall – Suite	As quoted plus GST
Online payments for E-Government virtual Town Hall – Suite	As quoted plus GST
Water Sewer Remote Readers	As quoted plus GST
Software License Key Extensions	As quoted plus GST
New Module Licenses	As quoted plus GST
11" Paper (Blue, Yellow, Grey, Brown, Green)	\$79.99 per case/1000 sheets plus, shipping and GST
14" Paper (Yellow)	\$109.99 per case/1000 sheets plus shipping and GST
7" Paper (Blue & Yellow)	\$54.99 per case/1000 sheets plus, shipping and GST

RESPONSIBILITIES OF CUSTOMER

MUNIWARE'S provision of the SOFTWARE SUPPORT SERVICES set out above shall be subject to compliance with the following during the Current Term:

1. CUSTOMER will, during normal business hours, provide MUNIWARE with access to CUSTOMER's premises, personnel and equipment as reasonably required by MUNIWARE. This access must include the ability to dial-in to the equipment on which the software is operating and to obtain the level of access necessary to support the software.
2. CUSTOMER will provide supervision, control and management of the use of the software in accordance with the provisions of the SOFTWARE LICENSE AGREEMENT.
3. CUSTOMER will implement procedures for the protection of information and implement backup processes in the event of errors or malfunction of the software.
4. CUSTOMER will document and promptly report all errors or malfunctions of the software to MUNIWARE using MUNIWARE'S Helpdesk ticketing system. Failure to promptly report errors or malfunctions shall entitle MUNIWARE, in its discretion (acting reasonably), to charge additional fees for MUNIWARE services arising as a result of the delay in such reporting. MUNIWARE will carry out procedures for the rectification of errors or malfunctions within a reasonable time, as part of its release planning processes, after notification of such errors or malfunctions have been received from CUSTOMER. Any such fee's will be documented and discussed with the CUSTOMER prior to the remediation or charge for any such services.
5. CUSTOMER will maintain regular scheduled current backup copies of all programs and data. (i.e. at a minimum, databases should be backed up once a day).
6. CUSTOMER agrees not to use or transfer prior versions of the software and will destroy or archive in the manner directed by MUNIWARE, acting reasonably.
7. CUSTOMER will notify MUNIWARE of any personnel changes so that access to software or communication, and training can be properly maintained.
8. CUSTOMER ensures that its personnel are properly trained in the use of the software by MUNIWARE staff as set out in the 'Mandatory Training' section (10.0) of the Software License Agreement, noting that mandatory training from MUNIWARE shall be quoted and detailed for all new modules licensed or for new personnel employed by the CUSTOMER within the Current Term.
9. CUSTOMER acknowledges and agrees that the software is only for use by employees, contracted administrative staff, or contracted accounting staff of CUSTOMER, and CUSTOMER will not allow or permit anyone who is not an employee, contracted administrative staff, or contracted accounting staff of CUSTOMER to use the software without express written consent of MUNIWARE, such consent not to be unreasonably withheld or delayed.

10. CUSTOMER agrees to pay a support/maintenance fee in the amount of \$717.15 per month during the Current Term. The support/maintenance fee is due and payable in full within 30 days after the date of being invoiced. Any amounts not paid when due are subject to interest at a rate of 1.0% per month (12% per annum) until paid in full.

11. This agreement will apply to any additional software licensed to CUSTOMER by MUNIWARE during the Current Term subsequent to the signing of this agreement, and all costs and charges relating to the software support services provided by MUNIWARE hereunder in relation to such additional software shall be invoiced at the monthly rate set out above. Such payments are due and payable by CUSTOMER as set out above and subject to late payment interest at the rate set out above. CUSTOMER acknowledges and agrees that additional support services must be paid for all additional MUNIWARE software licensed to CUSTOMER.

TERMINATION

Unless terminated earlier as set out in the "Termination" section of the Software License Agreement, this agreement will remain in effect until the expiration of the Current Term.

Termination of this agreement shall be deemed to be a termination of all SOFTWARE LICENSE AGREEMENTS between CUSTOMER and MUNIWARE.

GENERAL

All notices in connection with this agreement shall be in writing and may be given by certified, registered, or first-class mail or personally delivered at the address set forth on the front page. For the purposes of this agreement, a notice shall be deemed effective upon personal delivery to the party or if by mail (barring postal service disruption) five days after proper deposit in a mail box.

This agreement shall be governed by and construed the laws of the Province of Alberta, Canada. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Alberta.

Each party acknowledges that they have read this agreement, understand it, and agree to be bound by its terms.

FOR THE CUSTOMER

Authorized Signature

Name

Title

Date

FOR MUNIWARE

Brandi Whiting

Authorized Signature

Brandi Whiting

Name

CEO, Director of Operations

Title

October 30, 2018

Date