

RESOLUTION NO. 03-156

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE PURCHASE OF LICENSES FOR CITYVIEW SOFTWARE AND SOFTWARE MAINTENANCE FROM MUNICIPAL SOFTWARE CORPORATION; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO EFFECTUATE THE PURCHASE; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the “Town”) currently utilizes CityView Software (“CityView”) and is in need of acquiring additional licenses in order to adequately serve the residents of the Town; and

WHEREAS, Municipal Software Corporation is the sole provider of CityView and is the only vendor that is able to provide CityView licenses and related services to the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Expenditure. The expenditure of \$25,160.00, for the purchase of four (4) CityView licenses, including one (1) year of maintenance from Municipal Software Corporation, is approved.

Section 3. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to effectuate this purchase.

Section 4. Authorization of Fund Expenditure. The Town Manager is

authorized to expend budgeted funds to effectuate the purchase.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 8th day of July, 2003.

Motion to adopt by Collins, second by Thomson.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>

Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:

Beatris M. Arguelles
Beatris M. Arguelles, CMC
TOWN CLERK

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:

W. Serota
Weiss, Serota, Helfman, Pastoriza, Guedes,
Cole & Boniske, P.A.
TOWN ATTORNEY

Resolution No. CB-154



TOWN OF MIAMI LAKES
 6853 Main Street
 Miami Lakes, FL 33014
 Phone: (305) 364-6100
 Fax: (305) 558-8511
 E-mail: salazarm@townofmiamilakes.com

Purchase Order #: 1240

Vendor: Municipal Software Contact: Scott Owen

Date: SE Region 19-Jun-03 **Based on original quote on June 10, 2003**

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Quantity:	Size/Color	Description:	Unit Price	Amount:
4		Citview Licenses		\$25,160.00
		Licenses include one year of maintenance cost		
		Sent it attn: Mariaelena Salazar		
		Assistant to the Town Manager		
TAX EXEMPT NO.: 23-08-521364-54C				
Pursuant to Town of Miami Lakes Ordinance 01-02, Section 1.01 of the Town Code, the Town of Miami Lakes shall have the right to audit vendor's records and those of any subcontractors employed or retained by the Vendor at any time during the term of this agreement and for three (3) years immediately following the completion of this agreement or final payment by the Town.				
Subtotal				\$25,160.00
Shipping				0
Misc				0
Discount				0
Balance				\$25,160.00

Invoice shall not exceed this amount

Approved by: _____
 Town Manager

_____ Town Council Resolution Number*
 *If over \$10,000 must get Town Council approval prior to issuing purchase order.

Mariaelena Salazar

From: Scott Owen [sowen@municipalsoftware.com]
Sent: Tuesday, June 10, 2003 6:46 PM
To: Mariaelena Salazar
Subject: CityView

Maria Elena,

Here are the prices we discussed:

The Training will cost \$1,100. That will provide you with 2 days of System Administrator and Designer training.

To purchase 4 CityView licenses will cost \$25,160.

To purchase 5 CityView licenses will cost \$31,450

Erika emailed the Annual Software Maintenance invoice to you. You will owe \$3,000 on June 27 for the 6 licenses transferred from Moyer.

Please call me if you have any questions.

Scott

Scott Owen
Business Development Manager - SE Region
Municipal Software Corporation
(866) 528-6980 (office)
(678) 523-1474 (mobile)
<http://www.MunicipalSoftware.com>



June 30, 2003

Town of Miami Lakes
6853 Main Street
Miami Lakes, FL USA
33014

Fax: (305) 558-8511

Attention: Maria Elena Salazar

Dear Maria

Municipal Software Corporation is the sole provider of CityView and therefore
Municipal Software Corporation is the only vendor that is able to provide CityView
licenses and related services.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Owen".

Scott Owen



Municipal SOFTWARE

SOFTWARE LICENSE AND SUPPORT AGREEMENT

1. LICENSE

Municipal Software Corporation (hereinafter called 'MUNICIPAL') hereby grants to the person or corporation who purchased this License (hereinafter called the 'Licensee') a non-transferable, non-exclusive license to:

- (a) Use the CityView application software (hereinafter called the 'PROGRAM'), containing the system modules described in Schedule "A" attached to this document. The PROGRAM is in "use" on a computer when it is loaded into temporary memory (i.e., RAM) of that computer;
- (b) Copy the PROGRAM into any machine readable or printed form for back-up, archival or modification purposes in support of the Licensee's use of the PROGRAM on the computer system PROVIDED THAT:
 - (i) the Licensee shall maintain a record of the number and location of copies made; and
 - (ii) the copies, together with the original, shall remain the property of MUNICIPAL;
- (c) Modify the PROGRAM or merge it with another program for the Licensee's use on any single machine PROVIDED THAT:
 - (i) any portion of the PROGRAM modified or merged into another program shall continue to be subject to the terms and conditions of the Agreement; and
 - (ii) upon termination of this Agreement, the PROGRAM or portion thereof shall be completely removed from the modified or merged program and destroyed or returned to MUNICIPAL at the request of MUNICIPAL.

2. SUPPORT

In consideration of payment of the annual support and maintenance fee, MUNICIPAL will provide:

- (a) Priority response on support requests regarding licensed programs (and PROGRAM updates),
- (b) Application support will be provided at no additional charge whenever MUNICIPAL delivers a set of custom built CityView applications to the Licensee. This support service is not to be confused with the standard Technical Support Services that are provided by MUNICIPAL. This support is not available once the Licensee makes any alterations, additions or deletions to the application and is to be limited to:
 - (i) Within the first two weeks of delivery, all support questions are directed to the developer(s) involved with the application development. These may include questions of functionality, operability, explanation of how business processes have been implemented, and any questions of warranty. These questions may be posed at any time between 8:30AM and 4:30PM Pacific Time, Monday through Friday;
 - (ii) After the first two weeks of delivery, but still within a month of delivery, it is requested that wherever possible questions are queued and consolidated so that an appointment with the application developer(s) may be booked. This will allow for the best possible use of time for everyone involved;
 - (iii) After the first month of delivery, all questions should be asked through the normal technical support process. If the support issue requires assistance from the application developer(s), the technical support analyst will draw upon those resources as is required;
- (c) Telephone support for licenses described in Schedule "A" between the hours of 8:30AM and 8:30PM Eastern Time, Monday through Friday;
- (d) Remote diagnosis of operational issues related to the PROGRAM and PROGRAM updates, provided that the Licensee has obtained, at its cost, the necessary software, hardware and instruction to allow MUNICIPAL to provide such assistance.
- (e) PROGRAM updates for licensed programs at no extra charge except for magnetic media and courier costs, these updates to include minor changes, enhancements, improvements, and problem resolutions (excludes all Xpress Licensees);

In consideration of the services set out above, the Licensee agrees to pay for each Licensed User installation, the software maintenance charge which shall be submitted by MUNICIPAL no later than one month prior to the date of expiration as specified in Schedule "A" (excludes all Xpress Licensees).

3. ACCESS TO PROGRAM SOURCE CODE (excludes all Xpress Licensees)

MUNICIPAL acknowledges that it has entered into an agreement (hereinafter called the "Escrow Agreement") with Jones Emery Hargreaves Swan, Barristers and Solicitors, having an office at Suite 1212 - 1175 Douglas Street in the City of Victoria, in the Province of British Columbia. A copy of the Escrow Agreement is attached hereto as Schedule "B". Said Escrow Agreement provides that a Licensee may gain access to program source code for purposes of maintaining and supporting their PROGRAM licenses all as provided in the Escrow Agreement.

MUNICIPAL agrees that for so long as this Software License and Support Agreement is in effect it will deposit and periodically update, at MUNICIPAL's sole cost, a copy of the current version of the PROGRAM source code for all programs for which the Licensee holds licenses as described in Schedule "A" attached hereto in Escrow.

MUNICIPAL further agrees that for so long as this Software License and Support Agreement is in effect it will take no steps or actions which would have the effect of modifying or eliminating the Escrow Agreement without first having received written permission from the Licensee to so do.

4. TERM

This Agreement is effective upon installation and/or payment of the license fee and shall remain in effect for the term set out in Schedule "A" attached hereto, and upon expiry of the initial term shall automatically renew for an identical term upon payment of the annual support and maintenance fee for the renewal term unless terminated by either party in accordance with the terms contained herein. The Licensee may terminate this Agreement upon the giving

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of not less than sixty (60) days written notice to MUNICIPAL prior to each anniversary date of this Agreement. The Licensee may also terminate this Agreement provided that MUNICIPAL is in breach of this Agreement and MUNICIPAL has not responded to the Licensee within thirty (30) days from the date of the written request of the Licensee, which response did not reasonably include an identification of the problem, the timetable for resolution, and the proposed scope of the work required to resolve the problem. MUNICIPAL can terminate this Agreement if the Licensee is in breach of this Agreement and fails to cure such breach within thirty (30) days after written notice from MUNICIPAL, including for non-payment within sixty (60) days of invoice date. In case of termination, the Licensee shall at the request of MUNICIPAL either:

- (a) Destroy the PROGRAM together with all copies, modifications and merged portions, or
- (b) Return the PROGRAM together with all copies, modifications, and merged portions to MUNICIPAL.

Upon termination the Licensee shall certify in writing that the original and all copies, modifications and merged portions in any form have either been returned to MUNICIPAL or have been destroyed. Sections 5, 6, 7 and 8 shall continue on and survive notwithstanding termination of this Agreement.

5. MUNICIPAL'S PROPRIETARY RIGHTS

The grant of the License herein contained permits the limited use of the PROGRAM by the Licensee. Title to and all property in the PROGRAM, its name, logo and computer stored data shall remain exclusively with MUNICIPAL.

The Licensee hereby acknowledges that the PROGRAM is the property of MUNICIPAL, constitutes a MUNICIPAL trade secret, and agrees to exercise due care and diligence in safeguarding the PROGRAM and MUNICIPAL's proprietary interest.

The Licensee also acknowledges that any negligence or deliberate violation of this Agreement on its part which results in failure to protect MUNICIPAL's proprietary interest in the PROGRAM shall actually and materially damage MUNICIPAL.

In order to ensure compliance with the terms of this Agreement, MUNICIPAL shall be entitled, upon reasonable notice to Licensee and subject to MUNICIPAL's compliance with Licensee's reasonable security measures, to enter upon the Licensee's premises during normal business hours and require the Licensee to produce such information, records and documents as may be required to ascertain compliance.

MUNICIPAL may revise or update the PROGRAM or its product from time to time but shall have no obligation to provide such revision or update to the Licensee, unless the Licensee has paid in full the Annual Software Maintenance fee.

6. LIMITED WARRANTY

MUNICIPAL warrants only that:

- (a) the PROGRAM furnished, and all subsequent PROGRAM updates, shall function as set forth in the user documentation accompanying the PROGRAM; and,
- (b) the CD or diskette or cassette or magnetic tape on which the PROGRAM (including PROGRAM updates) is provided, shall be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to the Licensee as evidenced by the Licensee's delivery receipt.

Except as specifically provided above, MUNICIPAL expressly disclaims all warranties in the PROGRAM, including, but not limited to the implied warranties of quality or fitness for a particular purpose. The Licensee assumes sole responsibility for the selection of the PROGRAM to achieve the Licensee's intended results, and for the installation, use and results obtained from the PROGRAM.

7. LIMITATIONS OF REMEDIES

MUNICIPAL's entire liability and the Licensee's exclusive remedy shall be:

- (a) The replacement of any CD or diskette or cassette not meeting MUNICIPAL's "limited warranty" and which is returned to MUNICIPAL with a copy of the Licensee's receipt, or
- (b) If MUNICIPAL is unable to deliver a replacement CD or diskette or cassette which is free of defects in materials or workmanship, the Licensee may terminate this Agreement by returning the PROGRAM to MUNICIPAL for a refund in full of licensing fees only as long as such refund is requested within three (3) months of the anniversary date of this Agreement.

In no event shall MUNICIPAL be liable to the Licensee for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use the PROGRAM even if MUNICIPAL has been advised of the possibility of such damages, or for any claim by any other party.

8. INJUNCTIVE RELIEF

The Licensee agrees that the breach of any term, provision or condition of this Agreement by the Licensee may cause irreparable damage to MUNICIPAL in which case an award of damages may not be adequate relief to MUNICIPAL. Therefore, the Licensee agrees that in addition to all the remedies available to MUNICIPAL in the event of any breach of this Agreement by the Licensee, MUNICIPAL shall have the right to obtain timely injunctive relief to protect its proprietary right.

9. GOVERNING LAW

The validity and interpretation of this Agreement and each clause and part thereof shall be governed by the law of the Province of British Columbia without reference to principles of conflict of laws.

10. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed on by the parties hereto with regard to the matters dealt with herein, and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out.

11. RIGHT TO ASSIGN

This Agreement and the rights and liabilities hereunder shall not be assigned by the Licensee unless consent in writing is obtained from MUNICIPAL.

12. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

13. DELIVERY AND PAYMENT

Acceptance of delivery of payment of the licenses or software maintenance constitutes acceptance of the terms of this Agreement.

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