



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Between:

**Town of Fort Frances  
320 Portage Avenue  
Fort Frances, ON P9A 3P9  
(hereinafter called "Client")**

and

**Diamond Software Inc.  
400 – 1632 Dickson Avenue  
Kelowna, BC V1Y 7T2  
(hereinafter called "Diamond")**

**WHEREAS** the Client is responsible for municipal financial management and municipal revenue management;

**AND WHEREAS** Diamond is a reseller of software used for municipal financial management;

**AND WHEREAS** the Client has requested that Diamond supply and install certain software for the Client's use, as more particularly set forth herein;

**AND WHEREAS** Diamond shall be the sole developer of the municipal revenue management software and the owner of all of the proprietary rights, title and interest in and to the software (excluding the Microsoft Dynamics GP components of the software to be supplied) and exclusively shall have the specialized knowledge essential to Diamond's obligations hereunder respecting installation, training, and maintenance of the software;

**AND WHEREAS** the Client shall also require the services of Diamond to provide after-sales services including training, data conversion and installation of the software for the Client, as more particularly set out in **Appendix "A"**;

**AND WHEREAS** Diamond has agreed to provide the products and after-sales services described herein;

**NOW THEREFORE THIS ASSIGNMENT WITNESSETH** as follows:

1. Diamond shall provide to the Client the services and products set out in **Appendix "A"** on the terms and conditions contained herein.

2. (a) Diamond shall provide for the purposes of this Agreement its services as outlined in Appendix "A" commencing upon the contract execution date established herein and ending upon final implementation of the software defined in **Appendix A**;
- (b) The services in **Appendix "A"** are being provided using the hardware (server and workstation), network configuration, database and operating system requirements recommended by Diamond.
3. (a) The Client shall pay to Diamond the fee(s) detailed in Appendix "A" plus travel expenses.
- (b) Any services which the Client wishes to be provided by Diamond to the Client which are not specifically addressed in **Appendix "A"** including but not limited to any and all forms of consulting, maintenance, support and training, are expressly not included in the compensation payable hereunder. Diamond shall charge for such additional services in accordance with the terms set out for Additional Services in **Appendix "A"**.
- (c) Payments to Diamond for the fee portion of this Agreement, including fees for services and reimbursement of travel expenses, shall be based upon invoices submitted to the Client showing the amount claimed. Invoice amounts will be based upon the monthly accounting set out in clause 4(c). Invoices may be submitted by Diamond at the end of each month containing a part of the term and shall be paid by the Client within 30 days after receipt thereof by the Client.
- (d) A **100%** payment of the software license fees outlined in **Appendix "A"** of this agreement, including **100%** of the annual software enhancement plan fees and **100%** of the pro-rated annual software support fees, is required upon acceptance of this agreement as demonstrated by the Client's authorized officer's signature(s) on this document. A detailed breakdown of these fees has been provided in **Appendix "A"**. Activation of annual enhancement and support plans will commence on the date that software registration keys are processed, by Diamond on behalf of the client, for installation at the client site. Subsequent software purchases made by Diamond on behalf of the Client will be submitted at the time of delivery and must be paid by the Client within 30 days of receipt of the invoice.
- (e) Where non-per diem related travel expenses are claimed, the Client may request that Diamond substantiate those claims with receipts. Reimbursements shall be based on the regulations for "Subsistence and Travel Allowances" which are specified in **Appendix "A"** of this Agreement.
- (f) The Client shall pay any taxes or other government charges, howsoever designated, arising from or based upon the charges detailed in **Appendix "A"**. If Diamond pays any tax or other government charge arising from or based upon the charges detailed in **Appendix "A"**, the Client must reimburse Diamond within 30 days of receipt of Diamond's invoice for such payment.

4.
  - (a) For the purposes of this Agreement, the Client will be represented by **Laurie Witherspoon, Treasurer or assigned designate (hereinafter called the "Administrator")** who will provide guidance and direction over Diamond's activities under this Agreement. The Client agrees, represents and warrants that the Administrator has the authority to make decisions required to be made on behalf of the Client under this Agreement.
  - (b) Diamond shall perform its obligations hereunder in accordance with the Administrator's instructions and Diamond is entitled to rely upon the Administrator's direction.
  - (c) Monthly, Diamond shall submit to the Administrator an accounting of hours spent, rounded off to the nearest hour.
  - (d) Diamond shall inform the Administrator with respect to Diamond's activities in the performance of this Agreement and shall, if requested to do so, allow a full inspection by the Administrator of work in progress.
5. The Client must adhere to all licensing agreements (the "Licensing Agreements") for all software products installed within the scope of this contract. This includes, but is not limited to, the following products:
  - (a) **Microsoft.** The Client must adhere to all licensing / support agreements set forth by Microsoft for use of any and all Dynamics GP software products. This license agreement is executed automatically upon initial installation of your Dynamics GP software in electronic format. Upon initial log in, the client will be asked to agree to all terms and conditions included in this agreement.
  - (b) **Diamond Municipal Solutions.** The Client must enter into and adhere to an "End User License Agreement" with Diamond Software Inc. for the use and licensing of the Diamond Municipal Solutions software applications purchased. The "End User License Agreement" must be signed in conjunction with the signing of this agreement and has been added as Appendix "B".
  - (c) **Diamond Software Support.** The Client must enter into and adhere to a "Software Support Agreement" with Diamond Software Inc. for annual technical product support. The Software Support Agreement must be signed in conjunction with the signing of this agreement and has been added as Appendix "C".

If the Client fails to adhere to any of the Licensing Agreements, the Client will be responsible for and does hereby indemnify and save harmless Diamond from any and all liabilities of every nature and kind with respect to any breach or non-observance by the Client, or any persons claiming through or under the Client of the Client's obligation to adhere to the Licensing Agreements. The indemnity provided in this section shall survive the termination of this Agreement.

6. The Client acknowledges and agrees that the services and products being provided by Diamond are as set out in **Appendix "A"** and will use the hardware (server and workstation), network configuration, database and operating system requirements supported by Diamond. The Client warrants and represents that the system on which the Client will use the products and services provided hereunder are technologically compatible with the hardware (server and workstation), network configuration, database and operating system

requirements provided by Diamond. The warranty and representation made in this section shall survive the termination of this Agreement.

7. (a) All data and other information of or concerning the Client including all data and information obtained by the Client from other sources, which is obtained by Diamond in the performance of this Agreement is confidential and shall not, without the Client's prior written consent, be disclosed by Diamond to anyone other than:
- (i) the representatives of the Client assigned to the Project or designated by the Client to receive such material,
  - (ii) such of Diamond's employees, servants or agents who require the information in order for Diamond to fulfill its obligations hereunder,
  - (iii) parties to whom disclosure is required by law,
  - (iv) parties to whom disclosure is required to protect or enforce Diamond's rights hereunder,

provided that this section shall not apply to information which becomes available to the public by means other than disclosure by Diamond.

- (b) All data and other information of or concerning Diamond which is obtained by the Client in Diamond's performance of its obligations under this Agreement is confidential and shall not, without Diamond's prior written consent, be disclosed by the Client to anyone other than:
- (i) the Administrator or other representatives or employees of the Client assigned to the Project or designated by the Client to receive such material and who require the information in order for the Client to utilize the software as contemplated herein and in the End-User License Agreement to be entered between the Client and Diamond,
  - (ii) parties to whom disclosure is required by law,
  - (iii) parties to whom disclosure is required to protect or enforce the Client's rights hereunder, provided that this section shall not apply to information which becomes available to the public by means other than disclosure by the Client.

8. (a) The Client may, in its sole discretion, and without prejudice to any other rights which the Client may have hereunder or at law terminate this Agreement immediately upon the occurrence of any of the following events:
- (i) if Diamond ceases to carry on business; or
  - (ii) if Diamond files an assignment in bankruptcy or is adjudged bankrupt; or
  - (iii) if Diamond agrees in writing to the termination of this Agreement.

- (iv) if Diamond transfers away all or substantially all of its assets
  - (b) In the event that this Agreement is terminated by the Client pursuant to either subsection (a) (i) or (iii) immediately preceding, and provided that the Client is, in every respect, current in its obligations to Diamond, the Client shall be provided with the product(s) specified in Appendix "A", provided that if it has not already done so, the Client must tender full payment for such product(s). Following termination, there shall be no further services by Diamond provided pursuant to this Agreement.
  - (c) In the event that this Agreement is terminated by the Client pursuant to subsection (a)(iii) preceding, the terms of any written termination agreement between the parties shall govern. In the absence of a written termination agreement, Diamond shall submit an invoice to the Client for services rendered up to the date of cessation of work but not previously invoiced. The Client shall pay such invoice forthwith. The release of products or related materials to the Client shall be subject to the written agreement of Diamond.
  - (d) Diamond may, in its sole discretion, and without prejudice to any other rights which Diamond may have hereunder or at law, terminate this Agreement immediately upon the occurrence of any of the following events:
    - (i) if the Client is a corporation, the Client dissolves, or is by order of a Court of competent jurisdiction directed to be dissolved or disincorporates, or is by order of a Court of competent jurisdiction directed to be disincorporated;
    - (ii) the Client becomes bankrupt or has a receiver or receiver-manager appointed over any or all of its assets;
    - (iii) the Client ceases carrying on business, unless as a result of amalgamation or reorganization;
    - (iv) the Client transfers away all or substantially all of its assets;
    - (v) the Client defaults under its payment obligations set forth in this Agreement and does not remedy the default within 30 days of formal written notice by Diamond;
9. Diamond shall be responsible for loss or damages it causes to the Client, including the property of the Client, only where such loss or damages is caused by the breach by Diamond of its obligations under this Agreement and/or the negligence or willful act of Diamond. Specifically, Diamond shall not be responsible for any loss or damages arising out of:
- (a) modifications made by the Client to the products provided pursuant to the terms of this Agreement;
  - (b) the impact of Diamond having been required to conform to all or part of a specific product design of the Client;
  - (c) the use by the Client of the products of the Agreement with programs supplied by other parties, unless Diamond has given the Client a written representation and/or

warranty that the products of the Agreement are compatible with and designed for use with such other programs, in the specific manner used by the Client;

- (d) use of the products provided pursuant to the terms of this Agreement by the Client in a manner contrary to Diamond's specifications and/or documentation produced by Diamond;
  - (e) use of the products provided pursuant to the terms of this Agreement by the Client on any hardware for which the software was not designed, and in any event
  - (f) to the extent that the loss or damages was contributed to by the breach by the Client of its obligations under this Agreement and/or the negligence or willful act of the Client.
  - (g) Diamond shall indemnify and save harmless the Client for from any and all liabilities or damages of every nature and kind which occur due to infringement of use or of any intellectual property rights including copyright or patent arising out of the reproduction or use in any manner of plans, information, notes or computer software furnished by Diamond in the performance of this agreement.
  - (h) Diamond shall provide and maintain during the term of the contract, Commercial General Liability insurance, place with an insurer licensed to do business in Ontario and subject to limits of not less than \$1,000,000.00 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. The commercial liability insurance shall include coverage for premises and operations liability, products or completed operations liability, blanket contractual liability, cross liability, severability of interest clause, contingent employer's liability, personal injury and liability with respect to non-owned vehicles. Diamond shall provide a certificate of insurance with respect to the stated coverage listing Diamond as the named insured, and naming the Client as an additional insured, and shall be endorsed to provide the Client with thirty (30) days notice of cancellation or revocation.
  - (i) Diamond shall provide and maintain during the term of the contract, liability insurance, placed with an insurer licensed to do business in Ontario, in respect to owned licensed motor vehicles that is subject to a limit of not less than \$1,000,000.00 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and shall provide to the Client, a certificate of automobile insurance with respect to the required coverage.
10. The Client acknowledges that Diamond's staff is employed under an employment contract that forbids staff from seeking employment with clients both during their employment with Diamond and for a period of one year thereafter. The Client agrees not to solicit for employment, or employ, any of Diamond's staff during such period.
11. Diamond represents that it is not aware of any claims or threats of claims of infringement of proprietary rights in relation to the software (excluding the Microsoft Dynamics GP components of the software) to be supplied.
12. Should the software fail to perform in accordance with the written design specifications, Diamond shall use commercially reasonable efforts to correct or attempt to correct any

defects in the software which cause it not to perform in accordance with the written design specifications.

13. Except as otherwise disclosed and excluding the Microsoft Dynamics GP software components to be supplied, Diamond is the sole owner of all of the proprietary rights, title and interest in and to the services and software provided hereunder, specifically including any modifications made to Diamond's software to customize the software for the Client's use. Diamond's proprietary rights include any copyright interest and any customizations shall not be considered as constituting, producing or resulting in a "work for hire" under any Copyright laws.
14. The persons providing services on behalf of Diamond hereunder shall not be deemed employees of the Client by virtue of their activities in relation to this Agreement.
15. Any notice or other communication which either party desires or is required to give to the other may be personally delivered, or by facsimile transmission or mailed by prepaid registered mail provided however, that notice by mail shall not be used thereunder while strikes prevail which affect mail delivery to either party,
  - (a) if to the Client, in care of  
Laurie Witherspoon  
Town of Fort Frances  
320 Portage Avenue  
Fort Frances, ON P9A 3P9
  - (b) if to Diamond, in care of  
Mike D'Arcy  
Diamond Software Inc.  
400 – 1632 Dickson Avenue  
Kelowna, BC V1Y 7T29

Any notice shall be deemed to have been given to and received by the party to which it is addressed:

- (i) if delivered, on the date of delivery;
- (ii) if mailed, on the fifth day after the mailing thereof; or
- (iii) if faxed, on the date of faxing, as confirmed by an original receipt confirmation.

Any Party may change its said address by notice to the other Parties given in the manner aforesaid.

16. (a) In the event of a dispute between Diamond and the Client relating to this Agreement:
  - (i) An employee designated by Diamond and the Administrator, or an employee designated by the Client, shall meet to attempt to resolve the dispute, and failing resolution the president of Diamond shall meet with the chief administrative officer of the Client to attempt to resolve the dispute.
  - (ii) Both parties shall continue to carry out their obligations pursuant to this Agreement, to the extent that they can, during this process, provided that

Diamond shall have no obligation to carry out its obligations pursuant to this Agreement unless the Client is current respecting payment of undisputed invoices, where “disputed” means that the Client has submitted a formal written notice to Diamond stating that an invoice submitted to Client from Diamond is not accurate.

17. EXCEPT AS OTHERWISE PROVIDED IN APPENDIX B AND APPENDIX C TO THIS AGREEMENT, THE WARRANTIES CONTAINED IN SECTIONS 12 AND 13 HEREIN ARE THE ONLY WARRANTIES OF ANY KIND THAT ARE MADE BY DIAMOND WITH RESPECT TO ANY AND ALL SERVICES OR PRODUCTS PROVIDED PURSUANT TO THIS AGREEMENT.
18. This Agreement, including all of the agreements with Diamond referred to in the Appendices to this Agreement, shall be interpreted and construed under and are governed by the laws of the Province of Ontario. Any court of competent jurisdiction in Ontario shall have exclusive jurisdiction over this Agreement and its enforcement.
19. This Agreement, together with any Schedules and Appendices attached hereto and any further and additional documents called for herein, sets forth the entire agreements and understandings of the parties hereto in respect of the subject matters hereof and supersedes all prior agreements, arrangements, discussions and understandings, verbal or written, related to the subject matters hereof as of the date of execution and delivery of this Agreement. No representation, promise, inducement or statement of intention, verbal or written, has been made by any party which is not embodied in this Agreement, and no party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth.
20. Every provision of this Agreement shall be construed as being severable and if any term or provision hereof in whole or in part, provided the same is not a fundamental term or provision going to the root of this Agreement, shall be determined to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision or part thereof were omitted.
21. This Agreement may not be modified or amended except in writing signed by both of the parties.
22. The Recitals to this Agreement and the Appendices mentioned in this Section 22 and attached to this Agreement are incorporated in and form a part of this Agreement:

Appendix “A”	Statement of Project Costs
Appendix “B”	Diamond Municipal Solutions - End User License Agreement
Appendix “C”	Diamond Municipal Solutions – Software Support Agreement



**IN WITNESS WHEREOF** the Parties have hereunto affixed their names by their proper signing officers duly authorized in that behalf, on the day and year first above written.

**DIAMOND SOFTWARE INC.**

Signature: \_\_\_\_\_

I/We have the authority to bind the corporation

Name:

Title:

**Town of Fort Frances**

Signature: \_\_\_\_\_

I/We have the authority to bind the corporation

Name:

\_\_\_\_\_

Title: \_\_\_\_\_

**Town of Fort Frances**

Signature: \_\_\_\_\_

I/We have the authority to bind the corporation

Name:

\_\_\_\_\_

Title: \_\_\_\_\_