

RESOLUTION NO. 14-999

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE AN
AGREEMENT WITH THE ACCELERANT GROUP FOR THE
CONTINUED SUPPORT AND MAINTENANCE OF THE
TIBURON TO SPILLMAN INTERFACE

WHEREAS, the City of Black Diamond entered into an inter-local agreement for the development of the Tiburon to Spillman Interface on December 6th, 2012, which agreement requires City of Black Diamond to enter into a separate contract with Data Pros for the installation and maintenance of the software by Data Pros; and

WHEREAS, Data Pros has since changed their name to Accelerant Group; and

WHEREAS, the City of Black Diamond would like to continue with the ongoing maintenance and support of the interface with the Accelerant Group;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute an Agreement between the City of Black Diamond and Accelerant Group for the continued support and maintenance of the Tiburon to Spillman Interface software.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 8TH DAY OF JANUARY, 2015.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

CUSTOM SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on 11/20/2014, between Accelerant Group, Incorporated ("Provider"), with its principal place of business located at 5296 South Commerce Drive, Suite 300, Salt Lake City, UT 84107 and City of Black Diamond ("Client") and shall be effective as of 11/20/2014 (the "Effective Date").

RECITALS

WHEREAS, Provider is engaged in the business of computer application development, including technical consulting services, custom software development and maintenance,

WHEREAS, Client will from time to time require maintenance and support regarding the use of the Software.

NOW THEREFORE, Provider and Client agree as follows:

1. Scope of Services

Provider agrees to perform, and Client agrees to accept the maintenance and support services referred to in Exhibit A (Statement of Work) with respect to the Software.

2. Price and Payment Terms

Client will pay Provider for Provider's Work on the terms and conditions set forth in Exhibit A (Statement of Work).

3. Term and Termination

Unless terminated as provided herein, this Agreement will extend for a period of 12 months and will automatically renew from year to year thereafter, unless earlier terminated as provided herein. Either party may terminate this Agreement without cause upon thirty (30) days written notice. In the event of termination without cause, Client agrees to pay Provider for all of Provider's Work performed up to the date of termination. Either party may terminate this agreement upon written notice for material breach, provided, however, that the terminating party has given the other party at least fourteen (14) days written notice of and the opportunity to cure the breach. Termination for breach will not alter or affect the terminating party's right to exercise any other remedies for breach.

4. Ownership of Intellectual Property

Provider will retain ownership of all proprietary rights in Provider's Work, including certain rights, if any, that Provider has pursuant to license from another party. Upon full payment of the fees set forth in this Agreement, Provider will grant to Client a non-exclusive license to use the Software, as modified or enhanced, in its own business. Client is not authorized to sell or license the Software or rights thereto to any other person or firm.

5. Confidential Information

A. All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Provider and will not be disclosed or used by Provider except to the extent that such disclosure or use is reasonably necessary to the performance of Provider's Work.

B. All information relating to Provider that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Client and will not be disclosed or used by Client except to the extent that such disclosure or use is reasonably necessary to the performance of Client's duties and obligations under this Agreement.

C. These obligations of confidentiality will extend for a period of 12 months after the termination of this agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

6. Obligations of Provider

A. Provider will promptly notify Client of any material defects or malfunctions in the Software or related documentation that it learns from any source.

B. Provider will, from time to time, supply Client with copies of the Software and relevant documentation revised to reflect significant updates and enhancements to the software made by Provider, if any, during the period of this Agreement. Such enhancements may include, without limitation, modifications to the Software that increase its speed, efficiency, and/or ease of operation. Provider will supply 1 copy of any of these updates and/or enhancements without additional charge. Provider will give reasonable assistance to Client in installing and operating any new release or enhancement, provided, however, that if such assistance is to be provided at Client's facility, such services will be charged at Provider's then current consulting rate.

C. Within a reasonable time after being given written notice thereof, Provider will correct inherent material errors in the Software that are not caused by Client's misuse, improper use, alteration or damage of the Software.

D. Provider will supply Client with reasonable means of accessing modifications and enhancements to the Software, including diskette, compact disk, or through network download. Provider is not obligated under this Agreement to perform on-site installation of modifications and enhancements.

7. Warranty and Disclaimer

Provider warrants the Work will be performed in a workmanlike manner, and in conformity with generally prevailing industry standards. Client must report any material deficiencies in Provider's Work to Provider in writing within ninety (90) days of Client's receipt of the Work. Client's exclusive remedy for the breach of the above warranty will be the re-

performance of Provider's Work within a commercially reasonable time. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

8. Limitation of Liability, Indemnification

Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the performance of Provider's Work, whether in contract, tort, or otherwise, even if the other has been advised of the possibility of such loss or damages. Client will indemnify and hold Provider harmless against any claims incurred by Provider arising out of or in conjunction with Client's breach of this Agreement, as well as all reasonable costs, expenses and attorneys' fees incurred therein. Provider's total liability under this Agreement with respect to the Work, regardless of cause or theory of recovery, will not exceed the total amount of fees paid by Client to Provider during the six (6) month period prior to the date the claim arises.

9. Relation of Parties

The performance by Provider of its duties and obligations under this Agreement will be that of an independent contractor, and nothing in this Agreement will create or imply an agency relationship between Provider and Client, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

10. Employee Solicitation/Hiring

During the period of this Agreement and for twelve (12) months thereafter, neither party will directly or indirectly solicit or offer employment to or hire any employee, former employee, subcontractor, or former subcontractor of the other. The terms "former employee" and "former subcontractor" will include only those employees or subcontractors of either party who were employed or utilized by that party within six (6) months immediately prior to the alleged violation.

11. Non-assignment

Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

12. Arbitration

Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its

relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Utah. The arbitration will be held in Utah. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.

13. Attorneys' Fees

If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

14. Severability

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

15. Force Majeure

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control.

16. No Waiver

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

17. Entire Agreement

This Agreement together with any attachments referred to herein constitute the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

Provider: ACCELERANT GROUP,
INCORPORATED

Client CITY OF BLACK DIAMOND

By: *Jeremy Sylvester*
Title: Chief Architect
Name: Jeremy Sylvester
Date: 11/21/2014

By: *Carol Benson*
Title: Mayor
Name: Carol Benson
Date: 1/9/2015

EXHIBIT A: STATEMENT OF WORK

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PREAMBLE

This Statement of Work accompanies an Agreement that has been executed by the parties. All statements of fact contained in this Statement of Work are subject to the terms and conditions set forth in such Agreement. The terms and conditions set forth in the Agreement control in the event of any inconsistency between such terms and conditions and the matters set forth in this Statement of Work.

1.0 Project Background

This support and maintenance applies to the Tiburon Interface that is currently installed on the City of Black Diamond's Spillman server.

2.0 Scope

Scope is limited to software maintenance and support of the Tiburon Interface.

3.0 Technical Support

3.1 Standard Support – Standard Support hours are 8 a.m. to 5 p.m. Mountain Standard Time, Monday through Friday. Technical Support Phone number: 801.938.4800 email: support@accelerantgroup.com.

3.2 After Hours Support – After hours support is billed additionally at \$150.00/hour. After hours includes any time beyond the designated Standard Support hours, including standard US Holidays.

4.0 Price and Payment

Standard Support will be billed annually at a price of:

Interface	Annual Maintenance Amount
Tiburon Interface	\$1200

5.0 Invoices

An invoice will be sent to Client 30 days prior to the annual support contract renewal date. Notification of support increases will be included in the invoice if applicable.

6.0 Payment

Payment is due thirty days (30) days after the invoice Date. Client may not withhold any amounts due hereunder and Provider reserves the right to cease work without prejudice if amounts are not paid when due. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one (1) percent per month or fraction thereof until paid.