

RESOLUTION NO. 18-1282

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AN
AGREEMENT WITH CALLTOWER FOR A NEW UNIFIED
PHONE SYSTEM**

WHEREAS, in accordance with RCW 39.04.207 the city posted and advertised in October a Request for Proposals (RFP) to furnish and install an onsite replacement unified phone system for the city across all site; and

WHEREAS, where as the City received ten responses to the RFP; and

WHEREAS, a selection committee consisting of the Mayor Benson, Chief Kiblinger, Finance Director Miller, IS Manager Reed, and City Clerk Martinez reviewed the proposals and determined that CallTower's proposal best met the needs of the City; and

WHEREAS, CallTower is willing and able to provide the work and service to the City;

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

Section 1. The City Council hereby authorizes Mayor Benson to execute an agreement with CallTower substantially in the form attached hereto as Exhibit A.

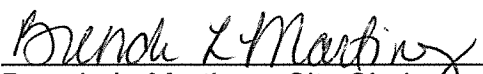
PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 3RD DAY OF DECEMBER 2018.

CITY OF BLACK DIAMOND:



Carol Benson, Mayor

Attest:



Brenda L. Martinez, City Clerk

Service Agreement


This Services Agreement (the "Agreement") between CallTower, Inc. ("CallTower"), a Delaware corporation with its principal place of business located at 10701 S River Front Pkwy, South Jordan, UT 84095, and City of Black Diamond a Municipal Corporation (Business Definition) with its principal place of business located at 24301 Roberts Drive, Black Diamond, WA, (the "Customer"), is entered into as of the 3rd day of December, 2018 (the "Effective Date").

WHEREAS: CallTower provides Unified Communications as a Service and is committed to support its customers with the best technology, people, and communications solutions available.

WHEREAS: Customer desires to subscribe to the services offered by CallTower:

NOW THEREFORE, the parties agree as follows:

1. The following definitions shall apply to this Agreement:
 - 1.1. Services: Services refer to the range of communications applications delivered by CallTower commonly referred to as Unified Communications.
 - 1.2. Service Order: Service Order is a collection of Services delivered to Customer's specific location or locations, or to specific users, and may be adjusted from time to time as the Customer's contracted Services increase or decrease. Service Orders are provided as attachments to this Agreement.
 - 1.3. Installation Date: Installation Date refers to the date that is targeted by CallTower and Customer for which Services are to be activated.
 - 1.4. Activation Date: Activation Date is the date on which Services in the Service Order are substantially ready for activation and is independent of number porting, unless otherwise agreed to by CallTower and Customer. Service Orders may have or specify varying Activation Dates.
2. CallTower agrees to provide to Customer the Services specified in the Service Order(s) attached hereto. Each Service Order will be executed by the Parties, and may be amended from time to time as Customer's needs change.
3. This Agreement shall apply to each Service Order and the Term specified in the Service Order shall commence on the Activation Date of the Services in such Service Order.
4. Billing for Services in each Service Order will commence on the Activation Date(s) for such Service Order(s).
5. All stated Installation Dates are approximate; CallTower will not be deemed to be in default, nor shall it be liable for any damages or loss resulting from delays in installation but will make a best effort to achieve the committed Installation Dates.
6. Customer will cooperate fully with CallTower, and Customer will designate CallTower or CallTower's agent to transfer service from Customer's current vendor of telecommunications services to CallTower, including Customer's current telephone numbers, and other network information required for CallTower to provide service to Customer. Customer will authorize CallTower as its agent for the limited purposes of submitting the Number Portability Authorization Form on Customer's behalf and signing Customer's name on forms of authority to Customer's current vendor of telecommunications services to transfer Customer's number into CallTower's name. Customer must comply with all current vendor financial and other requirements necessary for porting of numbers to CallTower, and is responsible for any charges imposed by Customer's current vendor or CallTower in relation to any port requests. CallTower will use all reasonable efforts to port Customer's number on or before the requested cut over date but will have no liability to Customer for any delays in porting.
7. Customer is responsible for providing the Desktop, Hosted Exchange and Site Readiness Requirements, included in this document and satisfying other technical requirements necessary for CallTower to deliver CallTower Services to Customer.
8. Customer will comply with CallTower's Terms of Use as posted on CallTower's web site.
9. Customer confirms the Customer representations and warranties set forth in the Terms of Use.
10. Customer acknowledges that the Terms of Use include, but are not limited to, provisions addressing Emergency Calling, Enhanced 911, Basic 911, and Customer's responsibility in connection with Emergency Calling. CallTower disclaims any and all liability or responsibility in the event Customer-provided registered location information is inaccurate or out of date. Customer shall indemnify and hold harmless CallTower from any claim or action arising out of misrouting of 911 calls, including but not limited to Customer's failure to follow correct procedures for notifying CallTower of the locations of phones for 911 calling or its providing incorrect information to CallTower.
11. The initial term of each Service Order will begin on the Activation Date and will continue for the period specified in the Service Order(s). Thereafter, each Service Order shall renew automatically for successive twelve (12) month periods if not terminated or extended by either party by written notice of nonrenewal or extension at least thirty (30) days prior to the end of the then current term. If Customer provides such written notice of nonrenewal or extension, CallTower will continue to provide the Services until terminated by Customer on a month to month basis at 110% of the current billing line item in effect at the end of the initial term.
12. All sales, services and use taxes which are imposed by any government entity on the fees for any of the Services (other than taxes relating to CallTower's net income) shall be the sole responsibility of Customer, whether set forth in an invoice or not and regardless of when imposed or assessed, and shall not be considered a part of, or an offset against, fees for the Services.
13. Either party may terminate this Agreement for cause or without cause at any time with a 30 day remediation period to resolve/remediate cause of action.

CallTower Signature:	Print Name:	Title:	Date:
	Carol Benson	Mayor	12/4/18
Authorized Signature:	Print Name:	Title:	Date:

14. If Customer terminates this Agreement or any Service Order without cause, Customer shall pay (i) CallTower's monthly charge for each month through the expiration date of the last to expire of any then current Service Order in effect (the "Termination Date"), and all Service Orders will terminate on such Termination Date and (ii) CallTower's expenses and fees associated with pre-mature termination.
15. Customer may terminate this Agreement for cause by providing CallTower written notice of termination in the event that CallTower fails to provide Service consistent with the Service Level Agreement ("SLA") posted on CallTower's web site; provided Customer first provides CallTower with written notice specifying the failure in Service and Service is not re-established to the levels specified in the Service Level Agreement within ten (10) business days of CallTower's receipt of the notice describing such failure. Notwithstanding any such termination by Customer, Customer shall pay for all Services under all Service Orders up to the date of termination, net of any applicable service credits as set forth in the SLA related to failure of CallTower to meet the Service levels specified in the SLA.
16. CallTower shall have the right to terminate this Agreement for material cause if all fees due CallTower are not paid in full within ten (10) days after CallTower provides Customer with written notice of non-payment. In the event of termination of Services for cause, (i) CallTower may cease providing any or all of the Services and (ii) Customer shall pay CallTower a lump sum, within fifteen (15) days of the effective date of termination, equal to the sum of (A) CallTower's monthly charge for each month through the expiration date of the last to expire of any then current Service Order in effect and (B) CallTower's expenses and fees associated with pre-mature termination.
17. Customer grants CallTower the authorization to process payments based on the selection made in this document. If Customer does not pay an invoice when due, CallTower may charge a late payment fee on the overdue amount equal to eighteen percent (18%) per annum or the maximum legal rate permitted by law, whichever is less.
18. Customer can reduce Services under any Service Order at any time; however total billing for Services can not be reduced by more than 10% in any rolling 12 month period.
19. CallTower will not be responsible for any real or reported losses incurred by Customer alleged to result from acts or omissions by CallTower or for any indirect, incidental, consequential, special or exemplary damages. CallTower's full liability is limited to a credit based upon the value of CallTower's Services delivered to Customer, as defined in CallTower's Service Level Agreement.
20. With the exception of CallTower's enforcement of its intellectual property rights, Customer and CallTower agree that any and all controversies, claims, or disputes arising out of, relating to, or resulting from this Agreement, shall be subject to binding arbitration in Salt Lake City, Utah administered by the American Arbitration Association.
21. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives, administrators and assignees of the parties hereto.
22. The unenforceability of any provision of this Agreement shall not impair the enforceability of any other part of this Agreement.
23. This Agreement hereto constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements or understandings, whether written or oral, between the parties.
24. This Agreement shall be governed by the laws of the State of Utah (irrespective of its choice of law principles). The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
25. Customer and CallTower agree that all details of this Agreement, included but not limited to pricing, product bundles, Customer information, and CallTower information shall be considered proprietary and confidential.
26. The relationship of CallTower and Customer is that of independent contractors. Neither party nor its employees, consultants, contractors or agents are agents, employees, partners or joint ventures of the other party, nor do they have any authority to bind the other party by contract or otherwise to any obligation except as specifically provided herein.
27. No delay or default in performance of any obligation by either party, excepting all obligations to make payments, shall constitute a breach of this Agreement to the extent caused by acts of God, war, government action, acts of terrorism, fire, flood, storm, explosion, earthquake or other causes that are not foreseeable and are beyond the reasonable control of the other party. The parties execute this Agreement effective as of the Effective Date.

Terms And Conditions Related To Network Services

1. CallTower will arrange for a private network connection from its data center to Customer's premise(s) as defined herein. The network services are delivered through Tier 1 partners. Service outages resulting from network interruptions are expressly excluded from CallTower's Service Level Agreement ("SLA").
2. CallTower will also deliver its Services over the Internet to small offices or individual users upon mutual agreement with Customer; Customer understands that CallTower Services cannot be guaranteed over the Internet and are thus expressly excluded from CallTower's SLA.
3. CallTower will not be liable for any damages or commercial loss associated with interruptions in network services.
4. Customer will be responsible for any residual network charges, and other disconnection fees incurred by CallTower if Customer terminates this Agreement for any reason prior to the end of the Term. To the extent the provider of network services permits CallTower to transfer the network services account to Customer, upon written request of Customer, CallTower will cooperate in such transfer following termination of this Agreement.
5. The billing for the circuit will commence on the agreed upon installation date, notwithstanding delays in the implementation of other services.
6. There will be a cancellation fee in the case of termination of the services prior to installation. The cancellation fee will be equal to one month's MRC plus forfeiture of the security deposit relating to the cancelled services. In addition, Customer may be responsible to pay an Early Termination Fee for Network Services if installed based on CallTower's commitment to the underlying provider.

CallTower Signature:	Print Name:	Title:	Date:
<i>Carol Benson</i>	Carol Benson	Mayor	12/4/18
Authorized Signature:	Print Name:	Title:	Date: