

**RESOLUTION NO. 19-1314**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A MASTER SERVICES AGREEMENT WITH CIVICPLUS FOR WEBSITE DESIGN AND INSTALLATION, CIVICCLERK INSTALLATION AND ONGOING SUPPORT FOR WEBSITE AND CIVICCLERK SOFTWARE**

**WHEREAS**, the City is in need of replacing it's existing webpage and adding agenda management software; and

**WHEREAS**, City staff solicited companies who provide these services and three proposals were received; and

**WHEREAS**, staff participated in demonstrations from all three companies and determined that CivicPlus products best met the needs of the City; and

**WHEREAS**, the City has reviewed the cost and requirements in the Master Services Agreement and CivicPlus is willing and able to provide these services;

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

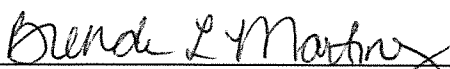
**Section 1.** The Mayor is hereby authorized to execute a Master Services Agreement with CivicPlus in the form attached hereto and incorporated herein.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH<sup>th</sup> DAY OF SEPTEMBER, 2019.**

CITY OF BLACK DIAMOND:

  
\_\_\_\_\_  
Carol Benson, Mayor

Attest:

  
\_\_\_\_\_  
Brenda L. Martinez, City Clerk



## CivicPlus

302 South 4th St. Suite 500  
Manhattan, KS 66502  
US

Master Services Agreement:  
City of Black Diamond

THIS Master Services Agreement (“Agreement”) is agreed to by and between CivicPlus, LLC., d/b/a CivicPlus (“CivicPlus”) and City of Black Diamond (“Client”) (referred to individually as “Party” and jointly as “Parties”) and shall be effective as of the later date of signing indicated at the end of this Agreement (“Effective Date”).

### RECITALS

**I. WHEREAS**, CivicPlus is engaged in the business of developing, marketing and selling custom community engagement and government management platforms and services that include but are not limited to web sites, web interfaces and portals and proprietary software systems and associated modules; in addition to project development, design, implementation, support and hosting services for same;

**II. WHEREAS**, Client wishes to engage in a relationship with CivicPlus for such services and/or license for the development and use of proprietary software developed and owned by CivicPlus;

**III. WHEREAS**, Client and CivicPlus have agreed to certain terms as set forth in this Agreement by this written instrument duly executed by the Parties;

**NOW, THEREFORE**, Client and CivicPlus agree as follows:

#### Term & Termination

1. This Agreement shall commence on the date set forth below and shall remain in full force and effect during the term of any associated or attached Statement of Work (“SOW”) between CivicPlus and Client. This Agreement and any associated or attached SOW will continue under the conditions set forth herein until terminated by either Party as specifically authorized herein.
2. Either Party may terminate this Agreement or any associated SOW at the end of the SOW term by providing the other Party with 60 days’ written notice prior to the SOW renewal date.
3. Upon termination of this Agreement or any associated or attached SOW, the licenses granted for such relevant SOW by Section 15, below, will terminate; Client shall cease all use of the CivicPlus Property (as defined herein) associated with the terminated SOW.
4. Notwithstanding the above, in the event this Agreement or any SOW is terminated, for any reason, prior to payment in full being made by Client for work completed by CivicPlus, any outstanding invoices or future planned billing for the development of Client’s chosen government management platform and/or services, as defined in the SOW (“Project Development”), shall immediately become due in full.

#### Statements of Work

5. CivicPlus agrees to perform services and/or produce deliverables in accordance with the SOW in consideration of the fees owed by Client in described in the same SOW. Multiple and successive SOW may be entered into and shall be attached hereto. Such SOWs are incorporated into this Agreement by reference and subject to the terms & conditions contained herein pursuant to Section 27.

### **Invoicing & Payment Terms**

6. Invoices shall be sent electronically to the individual/entity designated in the SOW's contact sheet, to be filled out and submitted by Client. Client shall provide accurate, current and complete information of Client's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change. Upon request CivicPlus will mail invoices, and the Client will be charged a \$5.00 convenience fee.

7. Payment is due 30 days from date of invoice. Unless otherwise limited by law, a finance charge of 1.5 percent (%) per month or \$5.00, whichever is greater, will be added to past due accounts. Payments received will be applied first to finance charges, then to the oldest outstanding invoice(s).

8. If the Client's account exceeds 60 days past due, support will be discontinued until the Client's account is made current. If the Client's account exceeds 90 days past due, Annual Services will be discontinued, and the Client website, modules, interfaces or portals will no longer be active until the Client's account is made current. Client will be given 30 days' notice prior to discontinuation of services for non-payment.

9. If the Client requests a change in the timeline set forth and agreed upon at the beginning of the services, and such change causes CivicPlus to incur additional expenses (i.e. airline change fees, consultant fees), Client agrees to reimburse CivicPlus for those fees. Not to exceed \$1,000 per CivicPlus resource per trip. CivicPlus shall notify Client prior to incurring such expenses and shall only incur those expenses which are approved by Client.

### **Ownership & Content Responsibility**

10. Upon full and complete payment of submitted invoices for any SOW Project Development Fees, Client will own the website graphic designs, webpage or software content, module content, importable/exportable data, and archived information as created by CivicPlus on behalf of Client pursuant to this Agreement ("Customer Content").

11. Upon completion of any SOW Project Development, Client will assume full responsibility for website, software or module content maintenance and administration. Client, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Content.

12. Client agrees that CivicPlus shall not migrate, convert, or port content or information that could reasonably be construed to be time-sensitive, such as calendar or blog content, in any Project Development.

13. Client will make a reasonable attempt to work with CivicPlus, if requested, to create a news item to be released in conjunction with their project Go-Live date. Client will provide CivicPlus with contact information for local and regional media outlets. CivicPlus may use the press release in any marketing materials as desired throughout the term of this Agreement.

### **Intellectual Property & Ownership**

14. Intellectual Property of any software or other original works created by CivicPlus prior to the execution of this Agreement ("CivicPlus Property") will remain the property of CivicPlus. Client shall not (i) license, sublicense, sell, resell, reproduce, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any CivicPlus Property in any way; (ii) modify or make derivative works based upon any CivicPlus Property; (iii) create Internet "links" to the CivicPlus Property software or "frame" or "mirror" any CivicPlus Property administrative access on any other server or wireless or Internet-based device; or (iv) reverse engineer or access any CivicPlus Property in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of any CivicPlus Property, or (c) copy any ideas, features, functions or graphics of

any CivicPlus Property. The CivicPlus name, the CivicPlus logo, and the product and module names associated with any CivicPlus Property are trademarks of CivicPlus, and no right or license is granted to use them.

15. Provided Client complies with the terms and conditions herein, the relevant SOW, and license restrictions set forth in Section 14, CivicPlus hereby grants Client a limited, nontransferable, nonexclusive, license to access and use the CivicPlus Property associated with any valid and effective SOW associated with this Agreement, for the term of the respective SOW.

### **Indemnification**

16. To the extent permitted by the law of Client's state, Client and CivicPlus shall defend, indemnify and hold the other Party, its partners, employees, and agents harmless from and against any and all lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, and expenses including attorney's fees of any kind, without limitation, arising out of the negligent actions and omissions, or intentionally malicious actions or omissions of the indemnifying Party or its partners, employees, and agents, directly associated with this Agreement and the operations and installation of software contemplated by this Agreement. This section shall not apply to the extent that any lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, and expenses is caused by the negligence or willful misconduct on the part of the other Party.

### **Client Responsibilities**

17. CivicPlus will not be liable for any act, omission of act, negligence or defect in the quality of service of any underlying carrier, licensor or other third-party service provider whose facilities or services are used in furnishing any portion of the service received by the Client.

18. CivicPlus will not be liable for any failure of performance that is caused by or the result of any act or omission by Client or any entity employed/contracted on the Client's behalf.

19. Client agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-users' personal data on any website or online service provided by CivicPlus. Client further agrees that CivicPlus has no responsibility for the use or storage of end-users' personal data in connection with the website or the consequences of the solicitation, collection, storage, or other use by Client or by any third party of personal data.

20. To the extent it may apply to any service or deliverable of any SOW, user logins are for designated individuals chosen by Client ("Users") and cannot be shared or used by more than one User. Client will be responsible for the confidentiality and use of User's passwords and User names. Client will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, Client data, and all other data of any kind contained within emails or otherwise entered electronically through any CivicPlus Property or under Client's account. CivicPlus will act as though Client will have sent any electronic communications it receives under Client's passwords, user name, and/or account number. Client shall use commercially reasonable efforts to prevent unauthorized access to or use of any CivicPlus Property and shall promptly notify CivicPlus of any unauthorized access or use of any CivicPlus Property and any loss or theft or unauthorized use of any User's password or name and/or user personal information.

21. Client shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use of any of the services or CivicPlus Property.

### **Limitation of Liability**

22. CivicPlus' liability arising out of or related to this Agreement, or any associated SOW, will not exceed the Annual Services Fee paid by Client in the year prior to such claim of liability.

23. In no event will CivicPlus be liable to Client for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this Agreement.

24. The liabilities limited by Section 22 and 23 apply: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if Client is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (d) even if Client's remedies fail of their essential purposes. If applicable law limits the application of the provisions of this Limitation of Liability section, CivicPlus' liability will be limited to the maximum extent permissible.

#### **Force Majeure**

25. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civic disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

#### **Taxes**

26. It is CivicPlus' policy to pass through sales tax in those jurisdictions where such tax is required. If the Client is tax-exempt, the Client must provide CivicPlus proof of their tax-exempt status, within fifteen (15) days of contract signing, and the fees owed by Client under this Agreement will not be taxed. If the Client's state taxation laws change, the Client will begin to be charged sales tax in accordance with their jurisdiction's tax requirements and CivicPlus has the right to collect payment from the Client for past due taxes.

#### **Other Documents**

27. The following, if applicable, are to be attached to and made part of this Agreement:

- a. Any Addendum and/or Amendments to this Agreement signed by both Parties;
- b. Exhibit A - Statement(s) of Work;
- b. Service Agreement Sales Forms;
- c. Service Agreements previously executed between the Parties; and
- d. Custom Development / Retainer Agreement

28. In the event of conflict with an attachment to this Agreement, this main body of this Agreement will govern. Notwithstanding the foregoing, no SOW or other attachment incorporated into this Agreement after execution of this main body of this Agreement will be construed to amend this main body unless it specifically states its intent to do so and cites the section or sections amended.

29. This Agreement and all attachments hereto sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter.

#### **Interlocal Purchasing Consent**

30. With the prior approval of CivicPlus, which may be withheld for any or no reason within CivicPlus' sole discretion, this Agreement and any attached SOWs may be extended to any public entity in Client's home-state to purchase at the SOW prices and specifications in accordance with the terms stated herein.

#### **Miscellaneous Provisions**

31. The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

32. No amendment, assignment or change to this Agreement or any included SOW shall be effective unless by a written instrument executed by each of the Parties.

33. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

34. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**Acceptance**

We, the undersigned, agreeing to the conditions specified in this document, understand and consent to the terms & conditions of this Agreement.

Client	CivicPlus
By: <u>Carol Benson</u>	By: _____
Name: <u>Carol Benson</u>	Name: _____
Title: <u>Mayor</u>	Title: _____
Date: <u>9/6/19</u>	Date: _____

Please sign and email to Jordan Cairns at [cairns@civicplus.com](mailto:cairns@civicplus.com) or fax to

Sign and E-mail the  
entire  
contract with exhibits to:  
<mailto:contracts@civicplus.com>

Signature pages sent without the entire contract attached will not be accepted. We will e-mail a counter-signed copy of the contract back to you once we begin your project.

CivicPlus does not require a physical copy of the contract, however, if you would like a physical copy of the contract, mail one (1) copy of the contract with original signature to:

CivicPlus Contract Manager

302 S. 4th Street, Suite 500  
Manhattan, KS 66502

Upon receipt of signed original, we will counter-sign and return the copy for your files.



Master Service Agreement and Statement of Work
Addendum

THIS Master Services Agreement and Statement of Work Addendum ("Addendum") hereby sets forth the (i) additional terms and conditions applicable to the Master Services Agreement and/or Statement of Work ("Agreements") and/or (ii) amendments to specific provisions of the terms and conditions which exist in the Agreements (collectively, the "Special Terms"), as described below.

ALL TERMS AND CONDITIONS OF THE AGREEMENTS NOT EXPRESSLEY MODIFIED HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

Capitalized terms used and not defined herein shall have the meanings assigned to them in the Agreements (to which this Addendum is attached and incorporated).

1. AMENDMENTS

The terms and conditions of the Agreement are hereby amended as follows:

Table with 2 columns: Document and Section, Amended Language. Rows include MSA #22, MSA #23, and MSA #24, all with the note 'This Section intentionally omitted.'

Acceptance

We, the undersigned, agreeing to the conditions specified in this document, understand and consent to the terms & conditions of this Addendum.

Client

CivicPlus

By: [Signature] Name: Carol Benson Title: Mayor Date: 9/6/19



**CivicPlus**

302 South 4th St. Suite 500  
Manhattan, KS 66502  
US

**Quote #:** Q-04553-1  
**Date:** 8/1/2019 10:37 AM  
**Expires On:** 10/30/2019  
**Product:** CivicClerk

**Ship To**

Rob Reed  
Black Diamond WA - CivicClerk

**Bill To**

Black Diamond WA - CivicEngage

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Jordan Cairns	x	cairns@civicplus.com		Net 30

**Exhibit A.1 - Statement of Work**

QTY	PRODUCT NAME	DESCRIPTION	TOTAL
1.00	CivicClerk Standard Package	Standard Package - Max Number of Boards: 7	\$0.00
1.00	CivicClerk- Standard Annual Fee	CivicClerk- Standard	\$2,500.00
1.00	CivicClerk Consulting (per hour)	CivicClerk Consulting (per hour)	\$100.00
1.00	CivicClerk Design	CivicClerk Design	\$300.00
1.00	CivicClerk Configuration	CivicClerk Configuration	\$300.00
1.00	Virtual Training (Half Day Block)	Training (Virtual) - half day, up to 4 hours	\$625.00
<b>TOTAL:</b>			<b>\$3,825.00</b>

Total Days of Quote:365

One Time Costs	\$1,325.00
Recurring Costs	\$2,500.00

\* Recurring Costs stated herein are based upon the number of days stated above.  
Upon renewal of this SOW, the Recurring Costs will reflect a 365 day calendar year.

1. Performance and payment under this Statement of Work ("SOW") shall be subject to the terms & conditions of the Agreement by and between Client and CivicPlus, to which this SOW is hereby attached as Exhibit A.1.
2. This SOW shall remain in effect for an initial term of one year (12 months) from signing. In the event that neither party gives 60 days' notice to terminate prior to the end of the initial or any subsequent renewal term, this Agreement will automatically renew for an additional 1-year Renewal Term.
3. The Total Fees Year 1 (the sum of the One Time Costs and Recurring Costs) will be invoiced at signing of this SOW.



4. Renewal Term Annual Services (Recurring Costs) shall be invoiced on the date of signature of relevant calendar years. Annual services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in Year 3 of service.
5. CivicPlus will use commercially reasonable efforts to perform the Services in a manner consistent with applicable industry standards including, maintaining Services availability 24 hours a day, 7 days a week and responding to Client's requests for support during the hours of 7:00 AM to 7:00PM CT, Monday through Friday and any critical support requests 24 hours per day, 7 days a week.
6. Client shall have sole control and responsibility over the determination of which data and information shall be included in the content that is to be transmitted to CivicPlus. Client shall not provide to CivicPlus or allow to be provided to CivicPlus any content that (a) infringes or violates any 3rd party's Intellectual Property rights, rights of publicity or rights of privacy, (b) contains any defamatory material, or (c) violates any federal, state, local, or foreign laws, regulations, or statutes.
7. The service(s) are provided on an "as is" basis, and Client's use of the service(s) is at its own risk. CivicPlus does not warrant that the service(s) will be uninterrupted or error-free or unaffected by force majeure events.
8. The Client will be invoiced electronically through email. Upon request CivicPlus will mail invoices and the Client will be charged a \$5.00 convenience fee.

**Acceptance**

We, the undersigned, agreeing to the conditions specified in this document, understand and authorize the provision of services outlined in this Agreement.

Client

CivicPlus

By:

By:

Carol Benson

\_\_\_\_\_

Name: Carol Benson

Name: \_\_\_\_\_

Title: Mayor

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

Date: 9/6/19

Date: \_\_\_\_\_



## CivicCMS Website Agreement Contract Information

### Client Contact Information

Organization City of Black Diamond

URL

Street Address 24301 Roberts Drive

Address 2

City Black Diamond

State WA

Postal Code 98010

Emergency Contact & Mobile Phone Rob Reed (253) 258-1844

Emergency Contact & Mobile Phone Brenda L. Martinez (253) 302-9401

Emergency Contact & Mobile Phone Carina Thornquist (360) 851-4502

Billing Contact Darla Clifton

E-Mail [accountspayable@blackdiamondwa.gov](mailto:accountspayable@blackdiamondwa.gov)

Phone (360) 851-4500

Ext.

Fax (360) 851-4501

Billing Address PO Box 599

Address 2

City Black Diamond

ST WA

Postal Code 98010

Tax ID # 91-6016204

Sales Tax Exempt #

Billing Terms Annual

Account Rep

Info Required on Invoice (PO or Job #)

Contract Contact Brenda L. Martinez

Email [bmartinez@blackdiamondwa.gov](mailto:bmartinez@blackdiamondwa.gov)

Phone (360) 851-4509

Ext.

Fax

Project Contact Rob Reed

Email [rreed@blackdiamondwa.gov](mailto:rreed@blackdiamondwa.gov)

Phone (360) 851-4508

Ext.

Fax

**Contact Information**

\*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

<b>Organization</b>	Same as SMA	<b>URL</b>
Street Address		
Address 2		
City	State	Postal Code
CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.		
<b>Emergency Contact &amp; Mobile Phone</b>		
<b>Emergency Contact &amp; Mobile Phone</b>		
<b>Emergency Contact &amp; Mobile Phone</b>		
<b>Billing Contact</b>		<b>E-Mail</b>
Phone	Ext.	Fax
Billing Address		
Address 2		
City	State	Postal Code
Tax ID #	Sales Tax Exempt #	
Billing Terms	Account Rep	
Info Required on Invoice (PO or Job #)		
<b>Contract Contact</b>		<b>Email</b>
Phone	Ext.	Fax
<b>Project Contact</b>		<b>Email</b>
Phone	Ext.	Fax

Addendum 1 to Exhibit A.1 - Project Development Division of Work

Phase 1 – Introduction and Initial Configuration

CLIENT RESPONSIBILITY	CIVICPLUS RESPONSIBILITY
<ul style="list-style-type: none"> <li>• Complete the implementation questionnaire</li> <li>• Provide Word versions of your agendas and item reports</li> </ul>	<ul style="list-style-type: none"> <li>• Create a production site request and assign a PL request in JIRA</li> <li>• Reach out to Client to explain the Implementation plan</li> <li>• Schedule and conduct a kick-off call with Client, if requested</li> <li>• Once supplied Word versions of the agendas and item reports, configure the templates in the system</li> <li>• Input questionnaire data</li> </ul>

Phase 2 – Initial Review

CLIENT RESPONSIBILITY	CIVICPLUS RESPONSIBILITY
<ul style="list-style-type: none"> <li>• Be prepared to schedule a call for system review</li> <li>• Provide feedback on any needed changes</li> </ul>	<ul style="list-style-type: none"> <li>• Schedule and conduct a first look call with Client.</li> <li>• Provide any template changes needed to CivicPlus.</li> </ul>

Phase 3 – Final Configuration and Review

CLIENT RESPONSIBILITY	CIVICPLUS RESPONSIBILITY
<ul style="list-style-type: none"> <li>• Provide a list of users</li> <li>• Provide any additional feedback and changes</li> </ul>	<ul style="list-style-type: none"> <li>• Enter user list with appropriate security settings</li> <li>• Make necessary changes to templates and configuration</li> </ul>

Phase 4 – Training

CLIENT RESPONSIBILITY	CIVICPLUS RESPONSIBILITY
<ul style="list-style-type: none"> <li>• Schedule a presentation for administrator training</li> <li>• Schedule a presentation for end user training</li> </ul>	<ul style="list-style-type: none"> <li>• Schedule and conduct administrator and end user trainings</li> </ul>

Phase 5 (As Needed) – Additional Services

CLIENT RESPONSIBILITY	CIVICPLUS RESPONSIBILITY
<ul style="list-style-type: none"> <li>• Provide Word versions of your most recent minutes</li> <li>• Provide a list of your Board/Council members</li> <li>• Schedule a 30 minute call for minutes training</li> <li>• Schedule a 30 minute call for BoardView training</li> </ul>	<ul style="list-style-type: none"> <li>• Once supplied Word versions of the minutes, configure the templates in the system</li> <li>• Schedule and conduct minutes training</li> <li>• Schedule and conduct BoardView training</li> </ul>



## License and Service Agreement

**Date: August 14, 2019**

**Client: City of Black Diamond**

**Client Address: 24301 Roberts Drive, Black Diamond WA 98010**

**Phone: (360) 851-4500**

This License and Service Agreement ("Agreement") sets forth the agreed upon terms and conditions under which CivicPlus, LLC ("CivicPlus") will provide the Services, as outlined and defined in the attached Exhibit A – Statement of Work ("SOW").

### Term and Termination

1. This agreement shall be for a one-year period, starting at signing, and shall automatically renew, year-to-year, unless terminated by either party.
2. Either party may terminate the Services by providing the other party with at least 60 days written notice prior to the renewal date.
3. Client may terminate this Agreement at any time if CivicPlus is found in default of any obligation defined within this Agreement which has not been cured within thirty days after receipt of written notice of such default.
4. Notwithstanding the above, in the event this Agreement and the Services are terminated, any outstanding invoices for Services performed shall become due in full and any outstanding fees for annual services shall be prorated from the beginning of the renewal term to the date of termination.

### Intellectual Property & Ownership

5. This Agreement is not a sale of CivicCMS Content Management System (the "CMS") and its associated applications and modules. CivicPlus provides a right of use to the Client during the period of this Agreement. Rights are non-transferable.
6. The Client will own the graphic designs and web content that are incorporated into the CMS; ownership assumes all invoices for development have been paid by the Client. Upon completion and delivery of the website to Client, Client will assume full responsibility of the content maintenance and administration. Client, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Content.
7. Regarding the CMS, Client may not: a) license, sublicense or in any way commercially exploit or make it available to any third party, b) make derivative works based upon it, c) reverse engineer or access it in order to build a similar product, copy features or functions, or share it with third parties, or d) copy any ideas, features, functions or graphics.
8. The CivicPlus name, the CivicPlus and CivicCMS logo, and the products and modules associated with these services provided are trademarks of CivicPlus, and no right or license is granted to use them.



### **Billing & Payment Terms**

9. The project charges include the one-time development costs (\$8,000) and the annual services (\$1,750) as detailed on Exhibit A. The client will be invoiced as follows:
  - a. 50% (\$4,875) will be invoiced within 30 days from the signed date of this agreement.
  - b. 50% (\$4,875) will be invoiced within 120 days from the signed date of this agreement.
10. Annual services shall be subject to a 5% annual increase beginning in Year 3 of service.
11. The Client shall only pay those expenses which are specifically defined in this Agreement or defined in writing and approved as an addendum to this Agreement.
12. If the Client's account exceeds 90 days past due, the web service may be temporarily removed from service until the Client's account is made current. Client will be given 30 days' notice prior to any removal of the website for non-payment.
13. The Client will be invoiced electronically through email. Upon request CivicPlus will mail invoices and the Client will be charged a \$5.00 convenience fee.

### **Taxes**

14. It is CivicPlus' policy to pass through sales tax in those jurisdictions where such tax is required. If the Client is tax-exempt, the Client must provide CivicPlus proof of their tax-exempt status, within fifteen (15) days of contract signing, and this Agreement will not be taxed. If the Client's state taxation laws change, the Client will begin to be charged sales tax in accordance with their jurisdiction's tax requirements and CivicPlus has the right to collect payment from the Client for past due taxes

### **Marketing**

15. Client allows CivicPlus to display a "Government Websites by CivicPlus" insignia, and web link at the bottom of their web pages.
16. Client agrees to allow CivicPlus to include a reference(s) to the Client's website on the CivicPlus corporate website. This may include a mention of the Client, a picture of the Client's home page, and/or a case study of the Client's project.

### **Liability**

17. CivicPlus will not be liable for any act, omission of act, negligence or defect in the quality of service of any underlying carrier or other service provider whose facilities or services are used in furnishing any portion of the service received by the Client.
18. CivicPlus will not be liable for any failure of performance that is caused by or the result of any act or omission by Client or any entity employed/contracted on the Client's behalf
19. Client agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-users' Personal Data on any website or online service provided by CivicPlus. Client further agrees that CivicPlus has no responsibility for the use or storage of end-users' Personal Data in connection with the website or the



consequences of the solicitation, collection, storage, or other use by Client or by any third party of Personal Data.

20. To the extent it may apply to any service or deliverable of any SOW, user logins are for designated individuals chosen by Client ("Users") and cannot be shared or used by more than one User. Client will be responsible for the confidentiality and use of User's passwords and user names. Client will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Client Data, and all other data of any kind contained within emails or otherwise entered electronically through any CivicPlus Property or under Client's account. CivicPlus will act as though Client will have sent any Electronic Communications it receives under Client's passwords, user name, and/or account number. Client shall use commercially reasonable efforts to prevent unauthorized access to or use of any CivicPlus Property and shall promptly notify CivicPlus of any unauthorized access or use of any CivicPlus Property and any loss or theft or unauthorized use of any User's password or name and/or user personal information.
21. Client shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use of any CivicPlus Property.

#### **Indemnification**

22. To the extent allowed by law, CivicPlus agrees to indemnify and hold Client harmless from any and all claims for bodily injury, death, personal injury and property damage and for any other expenses (including attorney's fees) which arise out of the negligent actions or omissions of CivicPlus during the performance of this Agreements.

#### **Force Majeure**

23. Neither party will be liable to the other for any failure or delay in rendering performance arising out of causes beyond its control and without its fault or negligence. Such causes may include, but not be limited to, acts of God or the public enemy, freight embargoes, power outages, and unusually severe weather; but the failure or delay must be beyond its control and without its fault or negligence and shall only be for the period causing the delay.

#### **Miscellaneous**

24. At all times and for all purposes hereunder, CivicPlus is an independent contractor and not an employee of the Client.
25. Any and all modifications of the services and/or terms of this agreement, shall be accomplished by an amendment, which must be approved in writing by both parties.
26. The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
27. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized





and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**Acceptance**

We, the undersigned, agreeing to the conditions specified in this document, understand and consent to the terms & conditions of this Agreement.

**Client**

**CivicPlus**

By: Carol Benson

By:

Name: Carol Benson

Name: Bill Letsky

Title: Mayor

Title: Sales Director

Date: 9/6/19

Date:



## Standard Website Services

Exhibit A

### City of Black Diamond

#### Initial Services

**Phase 1: Website Design**

- Create Custom Site Homepage Design & Layout
- Create Subpage Design & Layout
- Modify Design with Client Input until Approved

**Phase 2: Site Implementation**

- Identify Global Navigation, Cascading Navigation, Mega-Menus & Related Links
- Implement Design within CMS
- Develop Department Landing Pages

**Phase 3: Content Development**

- Create All Department & Board Landing Pages
  - Contact Information
  - Staff Table
  - Welcome Text
- Build out up to 500 Pages/Files of content identified by client

**Phase 4: User Training**

- One Day of Online User training sessions: Group & Individual, as needed

**Phase 5: Website Deployment**

- Final Site Review and Link Checking
- Install & Activate related modules
- DNS Activities

**Total Project Cost:**

**\$8,000**



## Annual Services

## Exhibit A

### Hosting

- Secure Hosting in domestic data center
- Shared Web/SQL Server
- Redundant ISP
- 24/7 Monitored facility
- Redundant Power supplies with back-up generator
- Daily backups off-site
- 99.9% Uptime
- Intrusion Detection & Prevention

### Support

- 24/7 Emergency Support
- Up to Two (2) Designated Support Users
- Unlimited Number of Content Editors
- Unlimited User Support, 9am to 5pm, Monday – Friday
- Personnel dedicated solely to User Support
- Same day response (24 Hour Window)
- Online Training Documentation
- Monthly User Tutorials

### CMA Application & Modules

- Annual CMS Usage License
- Periodic CMS Upgrades
- Core Drupal Upgrades, as Applicable
- Periodic Module Upgrades
- Install Service Patches, as Applicable

Total Annual Cost

\$1,750

Additional supported users may be added at an annual cost of \$250 per user.

Included in your website package:

- Apache Solr Search Appliance
- Google Analytics for Traffic Statistics
- E-Subscriber Mail Lists
- Online Web Forms
- Online Monthly User Webinars
- No Limit as to the Number of Pages You Can Add Over Time