



**City of Grass Valley  
City Council  
Agenda Action Sheet**

**Council Meeting Date:** May 14, 2013

**Date Prepared:** May 9, 2013

**Prepared by:** John Foster

**Title:** Ray Morgan Company Equipment Lease Agreement and Maintenance Agreement

**Agenda:** Consent

**Recommended Motion:** Authorize execution of Equipment Lease Agreement and Maintenance Agreement between Ray Morgan Company and the Grass Valley Police Department

**Background Information:** The existing copier at the Police Department no longer meets the demands of the agency and needs to be replaced. A new and upgraded copier can be obtained through Ray Morgan Company on a lease to own basis at a cost of \$102.50 plus \$8.33 sales and use tax per month (a total of \$110.83 per month) for 60 months. There is also a one time origin fee of \$85.97 to have the copier delivered and set up. There is a \$250 buy out at the end of the lease and then the copier will be owned by the Police Department. The maintenance contract on the copier will be based on a per image fee of \$.013 per black and white copy and \$.079 per image for color copies. An average of 75,000 copies per year based on the past 10 years would cost approximately \$1,000 per year. Therefore, it is estimated that the cost per year would be \$1,330 for the lease fees and approximately \$1,000 for the maintenance contract for an estimated total of \$2,330 per year. The Police Department is currently paying approximately \$2,520 per year for the maintenance contract on the old copier, thereby saving the City approximately \$190 per year.

**Funds Available:** \$500

**Account #:** 5065-3032

**Reviewed by:**


DA City Administrator

\_\_\_\_\_ City Attorney

\_\_\_\_\_ Finance

**CITY OF GRASS VALLEY**  
**Memorandum for**  
**CITY COUNCIL MEETING OF 05/14/13**  
**Prepared on 05/09/13**

**TO:** Grass Valley City Council  
via Dan Holler, City Administrator

**FROM:** John Foster, Chief of Police 

**SUBJECT:** Ray Morgan Company Equipment Lease Agreement and Maintenance Agreement

**RECOMMENDATION:** Authorize execution of Equipment Lease Agreement and Maintenance Agreement between Ray Morgan Company and the Grass Valley Police Department.

**STAFF REPORT:** The existing copier at the Police Department no longer meets the demands of the agency and needs to be replaced. A new and upgraded copier can be obtained through Ray Morgan Company on a lease to own basis at a cost of \$102.50 plus \$8.33 sales and use tax per month (a total of \$110.83 per month) for 60 months. There is also a one time origin fee of \$85.97 to have the copier delivered and set up. There is a \$250 buy out at the end of the lease and then the copier will be owned by the Police Department. The maintenance contract on the copier will be based on a per image fee of \$.013 per black and white copy and \$.079 per image for color copies. An average of 75,000 copies per year based on the past 10 years would cost approximately \$1,000 per year. Therefore, it is estimated that the cost per year would be \$1,330 for the lease fees and approximately \$1,000 for the maintenance contract for an estimated total of \$2,330 per year. The Police Department is currently paying approximately \$2,520 per year for the maintenance contract on the old copier, thereby saving the City approximately \$190 per year.

Therefore, Police staff are asking that the City Council review the attached Equipment Lease Agreement and Maintenance Agreement with Ray Morgan Company and, if in concurrence, approve at this time.

The equipment financing on the lease agreement will be financed through U.S. Bank Equipment Finance and payments will be made directly to them. Separate payments will be made to Ray Morgan Company for the Maintenance Agreement based on a per image fee.

**FISCAL IMPACT:** Minimal. It is anticipated the change will save the City approximately \$190 per year. For the remainder of FY12/13, it is estimated that payments to U.S. Bank Equipment Finance will be \$307.63 (two months at \$110.83 plus \$85.97 origin fee) and \$170 to Ray Morgan Company for the Maintenance Agreement.

This document is written in "Plain English". The words **you** and **your** refer to the customer. The words **Owner, we, us** and **our** refer to Ray Morgan Company. Every attempt has been made to eliminate confusing language and create a simple, easy-to-read document

**CUSTOMER INFORMATION**

FULL LEGAL NAME OF CUSTOMER City of Grass Valley dba Grass Valley Police Department		STREET ADDRESS 129 S. Auburn Street		
CITY Grass Valley	STATE Ca	ZIP 95945	PHONE 530 477 4600	FAX 530 274 4329
BILLING NAME (IF DIFFERENT FROM ABOVE)		BILLING STREET ADDRESS		
CITY	STATE	ZIP	FEDERAL TAX I.D. #	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

**MAKE / MODEL / ITEM DESCRIPTION**

**SERIAL NO.**

Canon IRC<sup>4030</sup> Color copier (scan/print/Copy)

**RENTAL TERMS**

**RENTAL PAYMENT AMOUNT**

**SECURITY DEPOSIT**

Term in Months 60 Payments of \$ 102.50  
(plus applicable taxes)  
60 (mos.) Rental Payment Period is Monthly \$ 0 Received  
Unless Otherwise Indicated (plus applicable taxes)

**THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT. THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.**

**TERMS AND CONDITIONS** (THIS AGREEMENT CONTAINS PROVISIONS SET FORTH ON THE REVERSE SIDE, ALL OF WHICH ARE MADE A PART OF THIS AGREEMENT.)

**OWNER ACCEPTANCE**

DATED: \_\_\_\_\_ OWNER: \_\_\_\_\_ SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

**CUSTOMER ACCEPTANCE**

By signing below, you certify that you have reviewed and do agree to all conditions and terms of this Agreement on this page and on page 2 attached hereto.

DATED: \_\_\_\_\_ CUSTOMER: \_\_\_\_\_ SIGNATURE [Signature] TITLE Captain  
PRINT NAME \_\_\_\_\_

DATED: \_\_\_\_\_ CUSTOMER: \_\_\_\_\_ SIGNATURE X TITLE \_\_\_\_\_  
PRINT NAME \_\_\_\_\_

**GUARANTY**

As additional inducement for us to enter into the Agreement, the undersigned ("you") unconditionally, jointly and severally, personally guarantees that the customer will make all payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we may make other arrangements including compromise or settlement with the customer and you waive all defenses and notice of those changes and will remain responsible for the payment and obligations of this Agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is necessary for us to proceed legally to enforce this guaranty, you expressly consent to the jurisdiction of the court set out in paragraph 15 and agree to pay all costs, including attorneys fees incurred in enforcement of this guaranty. It is not necessary for us to proceed first against the customer before enforcing this guaranty. By signing this guaranty, you authorize us to obtain credit bureau reports for credit and collection purposes.

PRINT NAME OF GUARANTOR: \_\_\_\_\_ SIGNATURE X Date \_\_\_\_\_

**ACCEPTANCE OF DELIVERY**

You certify that all the equipment listed above has been furnished, that delivery and installation has been fully completed and satisfactory. Further, all conditions and terms of this Agreement have been reviewed and acknowledged. Upon your signing below, your promises herein will be irrevocable and unconditional in all respects. You understand and agree that we have purchased the equipment from the supplier, and you may contact the above supplier for your warranty rights, which we transfer to you for the term of the Agreement. Your approval as indicated below of our purchase of the equipment from the supplier is a condition precedent to the effectiveness of this Agreement.

DATED: \_\_\_\_\_ CUSTOMER: \_\_\_\_\_ SIGNATURE X TITLE \_\_\_\_\_

1. **AGREEMENT:** You agree to rent from us the personal property described under "MAKE/MODEL/ITEM DESCRIPTION" and as modified by supplements to this Master Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supercedes any purchase order or outstanding invoice. This Agreement may be modified only by written agreement and not by course of performance. This Agreement becomes valid upon execution by us and will begin on the rent commencement date and will continue from the first day of the following month for the number of consecutive months shown. You also agree to pay to Owner interim rent for the use of the equipment prior to the due date of the first payment. The term will be extended automatically for successive 12 month terms unless you send us written notice you do not want it renewed at least ninety (90) days before the end of any term. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.
2. **RENT:** Rent will be payable in installments, each in the amount of the basic payment shown plus any applicable sales tax, use tax, plus 1/12th of the amount estimated by us to be personal property tax on the Equipment for each year of this Agreement. You will pay the security deposit on the date you sign this Agreement. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. In the event this Agreement is not fully completed, the security deposit will be retained by us to compensate us for our documentation, processing and other expenses. If for any reason, your check is returned for nonpayment, a \$20.00 bad check charge will be assessed.
3. **OWNERSHIP OF EQUIPMENT:** We are the owner of the equipment and have sole title to the equipment (excluding software). You agree to keep the equipment free and clear of all liens and claims.
4. **WARRANTY DISCLAIMER:** WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US OR ANY SUPPLIER. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND NOTHING THE SUPPLIER STATES CAN AFFECT YOUR OBLIGATION UNDER THE AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST SUPPLIER.
5. **LOCATION OF EQUIPMENT:** You will keep and use the equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, you will return the Equipment to a location we specify at your expense, in retail resalable condition, full working order, and in complete repair.
6. **LOSS OR DAMAGE:** You are responsible for the risk of loss or destruction of or damage to the equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will pay to us the present value of the total of all unpaid payments for the full term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at six percent (6%) per year. Any proceeds of insurance will be paid to us and applied, at our option, against any loss or damage.
7. **COLLATERAL PROTECTION AND INSURANCE:** You agree to keep the equipment fully insured against loss with us as loss payee in the amount of the original cost until this agreement is terminated. You also agree to obtain a general public liability insurance policy from someone who is acceptable to us and include us as additional insured on the policy. You shall provide us with certificates evidencing issuance of these policies. Each policy must include a clause requiring the insurer to give us written notice of any alteration or cancellation of the policy. We are under no duty to ascertain the existence of or examine any such policy or to advise you in the event any such policy does not comply with these requirements. If you fail to provide appropriate property damage coverage certificate, we may enroll you in our property coverage insurance program and bill you a monthly property damage surcharge up to .0035 of the equipment cost as a result of our increased administrative costs and credit risks. We may make a profit on this program. As long as you remain current, in the event of a loss (excluding losses resulting from intentional acts), the replacement value of the equipment will be applied against any loss or damage as per paragraph 6. You must be current to benefit from this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR LIABILITY COVERAGE ON THE EQUIPMENT.
8. **INDEMNITY:** We are not responsible for any loss or injuries caused by the installation or use of the equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment.
9. **TAXES AND FEES:** You agree to pay when invoiced all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. You agree to (a) reimburse us annually for all personal property taxes which we are required to pay as Owner of the Equipment or the remit to us each month our estimate of the monthly equivalent of the annual property taxes to be assessed. We will file all personal property, use or other tax return and you agree to pay us a process fee for making such filings. In addition you agree to pay us a UCC Filing fee of \$35.00 and reimburse us for all costs involved in documenting and servicing this Agreement. You further agree to pay us \$79.50 on the day the first payment is due as the origination fee. We reserve the right to charge a fee upon termination of this Agreement either by trade-up, buy-out or default. Any fee charged under this Agreement may include a profit.
10. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBRENT THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement. You agree that if we sell, assign, or transfer this Agreement, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set offs that you may have against us.
11. **DEFAULT AND REMEDIES:** If you do not pay any rental payment or other sum due to us or other party when due or if you break any of your promises in the Agreement or any other agreement with us, you will be in default. If any part of a payment is more than 5 days late, you agree to pay a late charge of 10% of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may retain your security deposit and at our option, we can terminate or cancel this Agreement and require that you pay (1) the unpaid balance of this Agreement (discounted at 6%); (2) the amount of any purchase option and if none is specified, 20% of the original equipment cost which represents our anticipated residual value in the equipment; (3) and require you to return the equipment to us to a location designated by us at your cost. We may recover interest on any unpaid balance at the rate of 8% per annum. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Owner or its Assignee or any other law. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorney's fees and actual court costs. If we have to take possession of the equipment, you agree to pay the cost of repossession. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. No remedy set out in this paragraph is intended to be exclusive; each shall be cumulative but only to the extent necessary for us to recover from you those monies for which you are liable. It is further agreed that your right and remedies are governed exclusively by this Agreement and you waive Customer's rights under Article 2A(508-522) of the UCC.
12. **UCC FILINGS:** You grant us a security interest in the equipment if this agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument in order to show our interest in the equipment.
13. **SECURITY DEPOSIT:** The security deposit is non interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions herein are fully complied with and provided you have not ever been in default of this Agreement per paragraph 12, the security deposit will be refunded to you after the return of the equipment in accordance with paragraph 8.
14. **CONSENT TO LAW, JURISDICTION, AND VENUE:** This Agreement shall be deemed fully executed and performed in the state of Owner or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Owner or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of the Owner or its Assignee's principal place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Owner. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Owner in relation to such matters. You waive trial by jury in any action between us.
15. **UPGRADE/DOWNGRADE PROVISION:** AFTER INCEPTION OF THE AGREEMENT AND UPON YOUR REQUEST, WE MAY REVIEW YOUR IMAGE VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING TO ACCOMMODATE YOUR NEEDS.
16. **TRANSITION BILLING:** In order to provide an orderly transaction and a uniform billing cycle, the "Effective Date" of this Agreement will be the twentieth (20th) day of the month following installation of the new products (as example, if the new equipment is installed June 5th (the "Installation Date"), the Effective Date of the agreement will be June 20th). Customer agrees to pay a prorated amount for the period between the Installation Date and the Effective Date. The payment for the transition period will be based on the minimum usage payment prorated on a 30 day calendar month and will be added to the customer's first invoice. In addition, should this agreement replace an existing Ray Morgan Company generated previous equipment lease, a CLOSING BILL on the agreement being replaced, up to the Installation Date, will be sent approximately a week to ten days after delivery of the new equipment. Customer agrees to pay for these CLOSING BILL charges as they represent product and services provided under the prior agreement, up to the Installation Date of the new product(s).
17. **FINANCE LEASE:** This is a "finance lease" as defined in the Uniform Commercial Code warranties ("UCC"). You waive rights under (UCC 2A-303). You may be entitled to the promises and warranties (if any) provided to us by the Supplier, and you may contact the Supplier for a statement thereof. We hereby transfer to you all automatically transferable warranties, if any, made to us by the Supplier. You shall give us access to the Equipment Location to inspect the Equipment, and you agree to pay our related costs.
18. **LESSEE GUARANTY:** You agree to submit the original master lease documents with the security deposit to the Lessor via overnight courier the same day of the facsimile transmission of the lease documents. Should we fail to receive these originals, you agree to be bound by the faxed or electronic copy of this Agreement with appropriate signatures on both sides of the document. Lessee waives the right to challenge in court the authenticity of a faxed copy of this Agreement and the faxed copy shall be considered the original and shall be the binding Agreement for the purposes of any enforcement action under paragraph #11.

## FOR MUNICIPALITIES ONLY

- 18-A. **CUSTOMER COVENANTS:** the Customer covenants and warrants that (1) it has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the payments scheduled to come due and to meet its other obligations under the Agreement and such funds have not been expended for other purposes; and
- (2) that there is no action, suit, proceeding or investigation pending, or threatened in any court or other tribunal or competent jurisdiction, state or federal or before any public board or body, which in any way would (a) restrain or enjoin the delivery of the Agreement or the ability of the Customer to make its Base Payments (as set out above); (b) contest or affect the authority for the execution or delivery of, or the validity of, the Agreement; or (c) contest the existence and powers of the Customer; nor is there any basis for any such action, suit, proceeding or investigation; and
- (3) That the equipment will be operated and controlled by the Customer and will be used for essential government purposes and will be essential for the term of the Agreement.
- (4) Customer has not previously terminated an agreement for non-appropriation, except as specifically described in a letter appended hereto.
- 18-B. **SIGNATURES:** Each signer warrants that he/she is fully conversant with the governing relevant legal and regulatory provisions and has full power and authorization to bind Customer. Signor(s) for Customer further warrant(s) its governing body has taken the necessary steps, including any legal bid requirements, under applicable law to arrange for acquisition of the Equipment; the approval and execution has been in accordance with all applicable open meeting laws; and that a resolution of the governing body of Customer authorizing execution of the Agreement has been duly adopted and remains in full force and effect.
- 18-C. **NON APPROPRIATION:** In the event Customer is in default under the Agreement because:
  1. Funds are not appropriated for a fiscal period subsequent to the one in which the Agreement was entered into which are sufficient to satisfy all of Customer's obligations under the Agreement during said fiscal period;
  2. Such non-appropriation did not result from any act or failure to act of customer;
  3. Customer has exhausted all funds legally available for all payment due under the Agreement; and
  4. There is no other legal procedure by which payment can be made to Owner. Then, provided that (a) Customer has given Owner written notice of the occurrence of paragraph 1 above thirty (30) days prior to such occurrence; (b) Owner has received a written opinion from Customer's counsel verifying the same within ten (10) days thereafter; and (c) the Customer does not directly or indirectly purchase, rent or in any way acquire any services or equipment supplied or provided for hereunder; upon receipt of the equipment delivered to a location designated by Owner, at Customer's expense, Owner's remedies for such default shall be to terminate the Agreement at the end of the fiscal period during which notice is given; retain the advance payments, if any; and/or sell, dispose of, hold, use or rent the equipment as Owner in its sole discretion may desire, without any duty to account to Customer.

14444 -- 12/08/2011

10-4



# Ray Morgan Company

Canon

3131 Esplanade, Chico, CA 95973

PH: (530) 343-6065

FAX: (530) 343-9470

## MAINTENANCE AGREEMENT

Date: 3/18/2013

Purchase Order#

Contract #:

RMC Account Rep: Jim Adams

### BILL TO:

Company Name:	Grass Valley Police Department		
Department:			
Address:	129 So. Auburn St.		
City:	Grass Valley	County:	Nevada
State:	Ca	Zip:	95945
Phone #:	530 477 4600	Fax:	530 274 4329
Contact:	Alex Gammelgard		
Email Address:	agammelgard@gvpd.net		

### SHIP TO:

Company Name:	Same		
Department:			
Address:			
City:		County:	
State:		Zip:	
Phone #:		Fax:	
Contact:			
Email Address:			

### Meter Contact Information:

Contact Name:	
Phone Number:	
Email Address:	

### AGREEMENT START DATE:

This maintenance plan is effective for 60 months from the agreement start date (install date if applicable). Base charges are payable in advance with overages billed in arrears.

COVERAGE TYPE: (Network support and related technical services are NOT covered by this agreement. Such services are offered with optional TSA agreement.)

- ☐ STANDARD (GF) (Includes all parts & labor; Excludes ALL consumables.) ☐ Excludes Drum (GP)
- ☒ BUNDLED - Including KIP Wide Format w/o paper (AI) (Includes all parts, labor and consumable toner. Consumables such as, but not limited to staples, ink stamps, paper or specialty media are excluded)
- ☐ Wide Format "Plus" (AIP) (Includes all parts, labor & supplies, including 20 lb standard bond paper)
- ☐ NON-STANDARD (TO) (Includes consumable toner cartridges only. Excludes all parts, labor, and consumables such as, but not limited to staples, ink stamps, paper or specialty media)

### COVERED EQUIPMENT

MODEL #	SERIAL #	START METER	ESTIMATED ANNUAL VOLUME	MANUFACTURER'S PUBLISHED YIELD PER CONTAINER	MINIMUM VOLUME PER MONTH	MINIMUM CHARGE PER MONTH	OVERAGE/PER COPY CHARGE
Canon IRC			black and white				0.013/image
Color			Color				\$.079/image
All costs will be billed at \$0.00 per scan							

Minimum Total Per  
MONTH  
(Plus Applicable Taxes)

\$0.00

### QUANTITY OF TONER INCLUDED IN AGREEMENT:

In the case of supply inclusive agreements, RMC will supply to the Customer toner free of charge according to the Manufacturer's Published Yield per Container. At RMC's discretion, RMC may perform a Toner Usage Reconciliation audit from time to time. If Customer's toner usage exceeds the manufacturer's published yields, RMC will bill the Customer for excess toner usage at its lowest published price.

RENEWAL: YES ☐ NO ☒

### BILLING CYCLE - Bases

- ☒ Monthly ☐ Annual
- ☐ Quarterly ☐ Semi-Annual

### BILLING CYCLE - Meters

- ☒ Monthly ☐ Annual
- ☐ Quarterly ☐ Semi-Annual

### SPECIAL INSTRUCTIONS

Bill on actual monthly volumes.

Customer agrees to purchase and RAY MORGAN COMPANY agrees to provide maintenance service for the equipment listed above, in accordance with the terms and conditions of this agreement. No terms or conditions, expressed or implied, are authorized unless they appear on the original of this agreement and are signed by the customer and an officer of RAY MORGAN COMPANY. The additional terms and conditions of this agreement listed on the reverse side are incorporated in and made part of this agreement. No change, alteration or amendment of these terms and conditions are authorized or effective unless agreed upon in writing by an officer of RAY MORGAN COMPANY. No course of dealing or other conduct or custom shall constitute an amendment to the terms hereof nor alter or vary the

CUSTOMER SIGNATURE

TITLE

DATE 03/18/2013

X

RMC APPROVAL

TITLE

DATE

10-5

## RMC MAINTENANCE AGREEMENT - TERMS & CONDITIONS

- 1 During the term of this agreement, and for each unit of equipment listed on the front of this document or any subsequent amendment or Schedule, the Ray Morgan Company (RMC) will provide, without additional charge, emergency repair service, preventative service, replacement parts (except under the conditions noted in this agreement) and in case of supply inclusive agreements (see front page for this agreement's specific coverage) all supplies (except, as applicable, paper, staples, and clear toner) under the usage limitation conditions listed in the front page of this document. The initial term of this agreement shall be for a period of 60 months and shall be automatically renewed for additional 12 month periods unless written notice is received by either party at least 90 days prior to the expiration of the initial term of the Agreement or any renewal thereof. This agreement shall NOT be assignable by customer without RMC's prior written consent. RMC shall have the right to cancel this agreement if any item is sold to a third party without such consent.
- 2 Maintenance charges provided herein are based upon the current costs of parts and labor and are subject to periodic increases and the effect of inflation. After the first year anniversary date of this agreement and any subsequent twelve month period, the minimum annual or monthly maintenance charges and charges for any overage copies/prints will increase a minimum of 5% over the charges of the previous year. In addition, the minimum billing charge, on any single billing period shall be \$35.00. In addition, RMC may assess an additional fuel and/or freight surcharge to offset higher than normal service costs as a result of adverse economic conditions.
- 3 It is understood that should customer wish to add additional, recently acquired but not "new", printers (HP, Kyocera and the like) to this agreement that RMC reserves the right to inspect and approve the addition of each. Such approval is contingent on age and overall condition of the printers in question. RMC might, after inspection, require that certain reconditioning or repairs be made before the equipment in question is covered under this maintenance agreement.
- 4 All routine preventative maintenance and emergency service necessary to keep the equipment in efficient operating order will be performed by RMC staff during its regular business hours (8:00 AM to 5:00 PM Monday through Friday except holidays) at no cost to Customer provided that such services shall not include the following:
  - a) repairs resulting from causes other than normal use; Customer's willful act, use of any paper stock that does not meet machine specifications, negligence or misuse including, without limitation, damage to any part or mechanisms and/or use or supplies or spare parts not manufactured and/or use or supplies or spare parts not manufactured by the original equipment manufacturer and which cause abnormally high service calls or service problems; accident, transportation, failure of electrical power, air conditioning or humidity control related problems, acts of nature (fire, flood etc), theft or
  - b) repairs made necessary by service performed by personnel other than an RMC representative, or
  - c) work which the customer requests to be performed outside regular business hours, or
  - d) reconditioning or modification to the equipment except those specified by RMC's Technical Service Department to assure greater performance of the equipment

All of the foregoing shall be invoiced in accordance with RMC's established per call rates and part charges then in effect. Additionally, RMC shall have the right, when reasonably in need for reasons of significant equipment failure, to substitute equivalent Equipment (age, model, accessories and meter) at any time during the term thereof. Any removed parts replaced by RMC shall become the property of RMC. RMC shall have full and free access to the Equipment in order to provide service thereon and customer shall from time to time advise RMC of the names of its employees who shall act as "key operators," with responsibility for performing basic operator maintenance as described by RMC personnel.
- 5 Certain "housekeeping" duties as outlined in the Owners Instruction Manual provided with the equipment (such as cleaning the glass, clearing misfeeds, if possible, etc) are the customer's responsibility. If a representative of RMC is called to do servicing of this nature the customer will be charged at the established rates for this service. Customer responsible for providing manufacturer recommended, adequate power supply.
- 6 Meter reading(s) must be provided by customer in accordance to the frequency stated on the reverse side of this Agreement. Customer agrees to provide correct meter readings to insure accurate and timely billing to the customer by RMC. If correct meter readings are not provided timely, RMC will calculate an estimated meter reading(s) and bill the Customer in accordance to the frequency contracted for. RMC will request meter readings via email. Upon receipt of email, it is the customer's responsibility to submit the meter reading(s) online at [www.raymorgan.com](http://www.raymorgan.com). RMC may assess an additional surcharge to offset administrative costs should calls need to be made to Customer in order to secure meter readings. If the customer is not able to receive emails or submit meter readings online, RMC will fax a request for meter reading(s) in which case the customer must fax back the information requested on the date specified in order to avoid an additional administrative surcharge.
- 7 Additional service such as cosmetic, modification, or relocation, etc requested and authorized by Customer and rendered by RMC will be charged at established rates for such service.
- 8 If customer's service and/or supply account becomes past due, RMC may (a) refuse service or delivery of supplies until account is made current or (b) provide service on a C.O.D. per call basis at the then current rate for time and materials. Additionally, Customer agrees to pay to RMC its cost and expense of collection including reasonable attorney's fees and all charges earned for service provided before the Customer went on a per call C.O.D. basis for non-payment per the terms of the agreement.
- 9 Liquidated damages: In the event that the customer defaults or chooses to cancel this Agreement before its original term or any extension thereof, Customer promises to pay to the Ray Morgan Company the following amounts as reasonable liquidated damages (and not as a penalty) for breach thereof:
  - a) Contracts with 24 or more months remaining: twelve times the monthly base (or as the case may be quarterly base divided by 3) plus six months average overages, if any. Overage average shall be determined as the average sum of overage billing the customer has been invoiced for during the current term or 6 months whichever is longer.
  - b) Contracts with 13 to 23 months remaining: nine times the monthly base plus six months average overages, if any. Overage average shall be determined as the average sum of overage billing the customer has been invoiced for the previous 6 months.
  - c) Contracts with 12 or less months remaining or any subsequent 12 month renewal: six times the monthly base plus six months average overages, if any. Overage average shall be determined as the average sum of overage billing the customer has been invoiced for during the previous 6 months.
- 10 Cancellation for Non-Performance: Customer may cancel the agreement for non-performance as follows: Customer must forward to RMC via registered mail, to the address listed on the front of this document, the specific problems with the system or other area(s) of non-performance and dissatisfaction. RMC shall have 30 days to correct the problem. If RMC has not corrected the problem within 30 days, Customer may notify RMC of their intent to cancel in 30 days, after which time the Customer is no longer bound by the Liquidated Damages portion of this agreement. Cancellation of the maintenance agreement for non-performance does not provide relief to the Customer from being obligated to make all remaining lease payments (if any) to the leasing company providing financing services for the equipment in question. This agreement may be cancelled by RMC for any reason.
- 11 Retained Title: Title to all supplies furnished hereunder, including consumable parts such as drums, remains with the Ray Morgan Company until said supplies are consumed to the extent they may not be further utilized in the copy/printing process. In the event this agreement is cancelled by either party, Customer agrees to return to the Ray Morgan Company all unused supplies provided under this agreement including toner and photoconductor.
- 12 RMC's obligation and warranties under this Agreement are in lieu of (a) all other warranties, expressed or implied, including implied warranties of merchantability and fitness for a particular purpose and (b) all other obligation or liabilities for damages including but not limited to personal injury or property damage, loss of profit or other consequential damages arising out of or in connection with this agreement of the maintenance service performed hereunder. Nor shall RMC be responsible for delays or inability to service caused directly or indirectly by strikes, accidents, climatic conditions or any other reason of similar nature beyond its control. This agreement shall be governed and construed according to the laws of the State of California.
- 13 Payment terms are upon receipt of invoice (URI) unless otherwise specified. Late charges will be assessed on the outstanding balance if payments are not received within 15 days of invoice date. The minimum late charge is \$9.50. Late charges will not exceed the maximum permitted by law. Customer agrees to pay to RMC a charge of \$25 for any returned checks per occurrence if any of seller's checks are returned to RMC unpaid. Upon default of any payment or any other aspect of this Agreement, RMC may at its option, declare the entire outstanding balance due and payable, including the Liquidated Damages stated in Section 9 of this Agreement.
- 14 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other.

This agreement constitutes the entire agreement between the parties with respect to the furnishing of maintenance service superseding all previous proposals oral or written. No representation or statement not contained herein shall be binding upon RMC as a warranty or otherwise, nor shall this Agreement be modified or amended unless signed by RMC's General Manager