

**RESOLUTION NO. 15-1010**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A 60 MONTH MAINTENANCE AND SUPPLIES AGREEMENT WITH THE WITT COMPANY AND THE ASSOCIATED 60 MONTH BILLING LEASE AGREEMENT THROUGH U. S. BANK FOR THE KYOCERA TA 7551 ci & TA 3551 ci COPIERS**

**WHEREAS**, the current copiers at City Hall and Community Development have entered into their eighth year and have become less reliable with longer downtime periods and need to be replaced; and

**WHEREAS**, the cost to enter into a five year lease agreement for service and some supplies is approximately the same as our current service agreement costs; and

**WHEREAS**, the Witt Company has agreed to a base charge of \$11,960 that covers the cost of the 60 month lease, maintenance, toner and staples for the two copiers for a total of 264,00 black and white copies and 72,000 color copies. Any copies over this amount will be billed quarterly at .007 per copy for black and white, and .055 for color.

**WHEREAS**, the Will Company will clean the current equipment hard drive and provide the City with documentation that all confidential information has been removed; and

**WHEREAS**, the new copiers have updated technology features and will allow departments to scan in color and print at a higher rate of speed; and

**WHEREAS**, City staff has reviewed other copiers and selected Witt Company's proposal for a 60 months of service and some supplies through the State allowed bid process and contract pricing from the State KCDA contract 11.213. The Witt lease is billed through their U. S. bank arrangement at no extra cost to the city at a fixed monthly rate for five years. The new copiers will meet the needs of the city over the next five years, while providing the service and value the City requires;

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

**Section 1.** The Mayor is hereby authorized to enter into a 60 month lease agreement with the WITT Company for services and some supplies and with the U. S. Bank for the 60 month billing of the lease for the Kyocera TA 7551 ci & TA 3551 ci Copiers.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF FEBRUARY, 2015.**

CITY OF BLACK DIAMOND:

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

Attest:

Brenda L. Martinez  
Brenda L. Martinez, City Clerk



Value Lease Agreement

EQUIPMENT FINANCE

APPLICATION NO.

AGREEMENT NO. 500-0425-714-000

Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092
Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448

The words Lessee, you and your refer to Customer. The words Lessor, we, us and our refer to U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance").

CUSTOMER INFORMATION

Form with fields: FULL LEGAL NAME (City of Black Diamond), STREET ADDRESS (24301 Roberts Drive), CITY (Black Diamond), STATE (WA), ZIP (98101), PHONE (360.886.5700), BILLING NAME, BILLING STREET ADDRESS, CITY, STATE, ZIP, E-MAIL, EQUIPMENT LOCATION.

SUPPLIER INFORMATION

Form with fields: NAME OF SUPPLIER (Witt Company), STREET ADDRESS (850 SW 7th Street, Suite 100), CITY (Renton), STATE (WA), ZIP (98057), PHONE (800 777-0852), FAX (425 974-1815).

EQUIPMENT DESCRIPTION

Form with fields: MAKE/MODEL/ACCESSORIES (Kyocera TA 7551 ci, Kyocera TA 3551 ci), SERIAL NO. (L7W4400179, L8H3500075), STARTING METER.

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.
See the attached Schedule A See the attached Billing Schedule

TERM AND PAYMENT SCHEDULE

Form with fields: Term in 60 Months, Payments\* of \$ 996.68, plus applicable taxes, Payment includes 22,000 B&W Pages per month, 6,000 Color Pages per month, Overage rates.

By initialing here, you agree that service and supplies are not included in this Agreement.

END OF LEASE OPTIONS

You may choose one of the following options within the area you check and initial at the end of the original term, provided that no event of default under the Agreement has occurred and is continuing.
1) Purchase all but not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3.

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

LESSOR ACCEPTANCE

Form with fields: U.S. Bank Equipment Finance, LESSOR, SIGNATURE (Gary Sarna), TITLE (Doc Analyst), DATED (2/13/15).

CUSTOMER ACCEPTANCE

Form with fields: City of Black Diamond, CUSTOMER (as referenced above), SIGNATURE (Carol Benson), TITLE (Mayor), DATED (2-6-2015), FEDERAL TAX I.D. # (91-6066204), PRINT NAME (CAROL BENSON).

ACCEPTANCE OF DELIVERY

Form with fields: You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. CUSTOMER (as referenced above), SIGNATURE (Maylene Miller), TITLE (Finance Director), DATE OF DELIVERY (2-12-2015).



EQUIPMENT FINANCE

STATE AND LOCAL GOVERNMENT ADDENDUM

AGREEMENT # 500-0425714-000

Addendum to Agreement # , dated 2-6-15, between , as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association, as Lessor. City of Black Diamond

The parties wish to amend the above-referenced Agreement by adding the following language:

REPRESENTATIONS AND WARRANTIES OF CUSTOMER: You hereby represent and warrant to us that: (a) you have been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (b) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (c) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (d) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (e) you have funds available to pay contracted Payments until the end of your current appropriation period, and you intend to request funds to make contracted Payments in each appropriation period, from now until the end of the term of this Agreement; and (f) your exact legal name is as set forth on page one of this Agreement.

NON-APPROPRIATION OR RENEWAL: If either sufficient funds are not appropriated to make contracted Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the contracted Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

TITLE TO THE EQUIPMENT: If the selected purchase option for this Agreement is \$1.00 or \$101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions of the Agreement and any supplement or schedule thereto and any related acceptance certificate constitutes the entire agreement regarding the financing or lease of the Equipment and supersedes any purchase order, invoice, request for proposal or other related document."

Any provision in the Agreement stating that the Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "This Agreement will renew for month-to-month terms unless you purchase or return the Equipment (according to the conditions herein) or send us written notice at least 30 days (before the end of any term) that you do not want it renewed."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a UCC-1 financing statement or be named on the vehicle title to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of the Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under the Agreement when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (ii) you make or have made any false statement or misrepresentation to us, (iii) you dissolve, terminate your existence or file bankruptcy, or (iv) there has been a material adverse change in your financial, business or operating condition."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

U.S. Bank Equipment Finance

Lessor

Signature

Title

*Dany Sam*

*Docs Analyst*

*2/13/15*

Date

*City of Black Diamond*

Customer

Signature

Title

*[X] Chris Carson*

*MAYOR*

*26 Feb 15*

Date

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

1. **AGREEMENT:** For business purposes only, you agree to lease from us the goods (the "Equipment") and/or to finance certain licensed software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name. This Agreement becomes valid upon execution by us. If service and supplies are not included, this Agreement will start on the date we pay the supplier and interim rent/due date adjustments will be in an amount equal to 1/30th of the Payment, multiplied by the number of days between the Agreement start date and the first Payment due date. This Agreement will renew for 12-month term(s) unless you purchase or return the Equipment (according to the conditions herein) or send us written notice between 90 and 150 days (before the end of any term) that you do not want it renewed. 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, TAXES AND FEES:** You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. 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. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.
3. **MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST:** At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, if you do not purchase the Equipment, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence.
4. **COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE:** You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(s) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, you agree to pay a monthly property damage surcharge ("PDS") of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, under the PDS program that is further described on a letter from us to you. We may make a profit on this program. Under this program, AS LONG AS YOU ARE NOT IN DEFAULT AT THE TIME OF A LOSS (excluding losses from intentional acts), the remaining balance owed on the subject Equipment will be forgiven. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and you do not have the PDS program you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnities will survive the expiration or termination of this Agreement.
5. **ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent.** Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, the new Lessor will have the same rights and benefits that you have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.
6. **DEFAULT AND REMEDIES:** You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you break any of your promises in this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition, or (e) any guarantor defaults under any guaranty for this Agreement. 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, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that your rights and remedies are governed exclusively by this Agreement. You waive all rights under Article 2A (508-522) of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.
7. **INSPECTIONS AND REPORTS:** We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.
8. **FAXED OR SCANNED DOCUMENTS, MISC.:** You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. Any faxed or scanned copy may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.
9. **WARRANTY DISCLAIMERS:** YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARDS TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.
10. **LAW, JURY WAIVER:** Agreements, promises and commitments made by Lessor concerning loans and other credit extensions must be in writing, express consideration and be signed by Lessor to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.
11. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and black toner and developer. Paper and staples must be separately purchased by you. Color toner is not included in this Agreement and will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you.
12. **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the "cost per page" charge that exceeds the number of pages originally designated in this Agreement ("Overages") by a maximum of 15% of the existing "cost per page" charge.
13. **UPGRADE AND DOWNGRADE PROVISION:** AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR PAGE VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.
14. **TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, prorated on a 30-day calendar month, and will be added to your first monthly Payment.



MAINTENANCE and SUPPLIES

PO Box 900  
 Renton, WA 98057  
 Phone: (206)241-5401 Fax: (425)974-1815

P.O. # 1112015 DATE: 11/12/15

CUSTOMER INFORMATION Ship To:			
COMPANY NAME The City of Black Diamond			
ADDRESS		SUITE	
24031 Roberts Drive			
CITY	STATE	ZIP CODE	
Black Diamon	WA	98010	
PHONE #	FAX #		
306.886.5700			
EMAIL ADDRESS:		CONTACT NAME	
		May Miller	

CUSTOMER INFORMATION Bill To:			
COMPANY NAME Same			
ADDRESS		SUITE	
CITY	STATE	ZIP CODE	
PHONE #	FAX #		
EMAIL ADDRESS:		CONTACT NAME	

The Buyer agrees to acquire, under the plan initiated below, and The Witt-Company, Agrees to sell, in accordance with the terms and conditions of this agreement, the equipment and/or goods listed below.

QTY	ITEM #	DESCRIPTION	ID #	UNIT PRICE	TOTAL AMOUNT
1	TA 7551ci	Color MFP			
1	TA 3551ci	Color MFP			
1	DF 790	Finisher			
2	Punch 7A	Punch			
1	MTZ30	Bins			
1	Bk 730	Fold			
1	DP 770	DSDP			
1	PF 730	LCT			
1	DF 770	Finisher			
2	Fax w				
Service and Supplies Inc. Toner, staples Black 264,000 black .007 72,000 @ year Color .055 WRAP contract Includes 5 year contract US Bank lease payment 60 Payments of 996.68 plus tax . Taxes are not included. City to provide proof of insurance. US Bank requires a non approp for the city All terms and conditions of the US Bank agreement Apply .					

Trade-In  
Buyout

NO TERMS OR CONDITIONS, EXPRESS OR IMPLIED, ARE AUTHORIZED UNLESS THEY APPEAR ON "ORIGINAL" OF THIS ORDER.

\* TERMS: THE EQUIPMENT INDICATED ABOVE IS PURCHASED UNDER THE WITT-COMPANY STANDARD TERMS AS FOLLOWS:

1. IN THE EVENT BUYER DEFAULTS IN PAYMENT THE BUYER WILL BE LIABLE FOR THE PAYMENT OF ANY LEGAL FEES OR COSTS INCURRED IN SUSTAINING OR PROTECTING THE SECURITY INTEREST OR IN ENFORCING THE TERMS OF THE SECURITY AGREEMENT & UPON DEMAND THE BUYER AGREES TO MAKE THE EQUIPMENT AVAILABLE TO THE SELLER AT A LOCATION TO BE DETERMINED BY THE SELLER.

2. ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE HEREOF ARE INCORPORATED HEREIN AND MADE PART OF THIS AGREEMENT

CASH TERMS	
SUBTOTAL	
INSTALL AND FREIGHT CHARGES	
SUBTOTAL	
STATE AND LOCAL TAXES	
LESS DEPOSIT	
<b>TOTAL THIS ORDER</b>	
<b>ADDITIONAL TERMS AND CONDITIONS</b>	
US Bank provides the lease and Witt Company	
Kyocera provides services for 5 years per term	
no increases to payment for term	

X	ACCEPTED BY WITT-COMPANY
	<i>[Signature]</i>
X	AUTHORIZED SIGNATURE REQUIRED
	<i>[Signature]</i>
	PRINTED NAME

ACCEPTED BY CUSTOMER	
X	<i>[Signature]</i>
	AUTHORIZED SIGNATURE REQUIRED
X	CAROL BENSON
	PRINTED NAME

Equipment Acquisition Agreement

**THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**

1. This order shall not be binding on Witt Company until approved at our office.
2. All shipments shall be F.O.B. our warehouse
3. Witt Company reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an installment shall not relieve Buyer of its obligation to accept remaining installments.
4. Witt Company reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient.
5. Witt Company shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond Witt Company's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreaks of hostilities, inability to obtain materials or shipping space, machinery breakdowns, delays of carrier or supplier, governmental acts and regulation, other causes beyond Witt Company's control and receipt of orders from all sources in excess of Witt Company's then scheduled production capacity.
3. Witt Company warrants that the goods covered by this agreement when delivered to buyer will be of merchantable quality and free from material defects in workmanship and material for a period of 90 days from the date of delivery by Witt Company under ordinary use and conditions. Witt Company will repair, or at Witt Company's option replace any item of the goods which does not conform to the foregoing warranty and the cause of the nonconformity does not arise from or relate to modification, misuse or abuse by the customer, if a warranty claim, stating in writing and with reasonable particularity the claimed nonconformity, is delivered to Witt Company within the 90 day period. All warranties and remedies other than those set fourth above, whether they be express or implied by law or arising from course of dealing or usage of trade, and specifically including but not limited to the warranties of merchantability and fitness for a particular purpose and the remedy of consequential damages, are excluded.
7. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to Witt Company within ten days after receipt of goods by Buyer.
3. Title to all goods and equipment shall remain with Witt Company until such time as the purchase price thereof shall have been paid in full.
3. Witt Company shall have a security interest in all goods and equipment delivered to Buyer until the purchase price for same shall have been paid in full. At the request of Witt Company, Buyer shall execute and deliver a security agreement and/or financing statements in the form or forms submitted to Buyer by Witt Company.
10. Customer agrees to provide suitable electric service for the operation of the equipment.
11. Customer agrees to make available an operator for training purposes in the use of the equipment. Customer also agrees to notify Witt Company of any change in operator assignment.
12. All paper, chemicals and toner used to operate the equipment installed hereunder, shall meet or exceed manufacturer's specifications. Customer acknowledges that it understands that it is not a condition of the Agreement that it use only manufacturer's paper, chemicals or toner.
13. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon and exclusive venue of any action arising out of this agreement shall be in Washington County, Oregon, unless this agreement has been entered into in the State of Washington, in which case, it shall be governed and construed in accordance with the laws of the State of Washington and exclusive venue of any action arising out of this agreement shall be in King County, Washington.
14. Customer agrees to provide proper access to the equipment, so that Witt Company service personnel can properly service the machine.
15. This contract is a complete, unambiguous and exclusive statement of the terms of the agreement between the parties and is intended to supersede and replace all prior or contemporaneous writings and oral agreements and understandings and to prevail over any course of dealing or usage of the trade inconsistent with any express term contained herein. Any and all representations, promises, warranties, or statements by Witt Company representative that differ in any way from the terms of this written agreement shall be given no force or effect. The terms of this agreement may be modified or terminated only by a writing signed by the buyer and an officer of Witt Company.
16. In the event either party commences legal action, including arbitration, under this agreement, or if either party is required to file a claim or take action under this agreement in a bankruptcy proceeding, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred, including expert witness fees, to be determined by the trial court, arbitrator, or bankruptcy court, as the case may be, and if any appeal is taken, such further sum as may be fixed by the appellate court as the prevailing party's reasonable attorney fees on appeal. If this agreement is placed in the hands of an attorney for collection, the buyer agrees to pay Witt Company actual attorney fees and other expenses incurred, whether or not legal action has been commenced.
17. The parties hereby waive and relinquish any and all claims to the effect that forbearance or indulgence by one party as to any failure or refusal of performance constitutes a waiver of the obligation or grounds for a claim of estoppel with respect there to.





PO Box 900  
 Renton, WA 98057  
 Phone: (206)241-5401 Fax: (425)974-1815

MAINTENANCE and SUPPLIES

P.O. # 11112015 DATE: 11/12/15

**CUSTOMER INFORMATION Ship To:**

COMPANY NAME  
 The City of Black Diamond

ADDRESS SUITE  
 24031 Roberts Drive

CITY STATE ZIP CODE  
 Black Diamond WA 98010

PHONE # FAX #  
 306.886.5700

EMAIL ADDRESS: CONTACT NAME  
 May Miller

**CUSTOMER INFORMATION Bill To:**

COMPANY NAME  
 Same

ADDRESS SUITE

CITY STATE ZIP CODE

PHONE # FAX #

EMAIL ADDRESS: CONTACT NAME

The Buyer agrees to acquire, under the plan initiated below, and The Witt-Company, Agrees to sell, in accordance with the terms and conditions of this agreement, the equipment and/or goods listed below.

QTY	ITEM #	DESCRIPTION	ID #	UNIT PRICE	TOTAL AMOUNT
1	TA 7551ci	Color MFP			
1	TA 3551ci	Color MFP			
1	DF 790	Finisher			
2	Punch 7A	Punch			
1	MT730	Bins			
1	Bk 730	Fold			
1	DP 770	DSDP			
1	PF 730	LCT			
1	DF 770	Finisher			
2	Fax W				
		Service and Supplies Inc. Toner, staples			
		Black 264,000 black .007			
		72,000 @ year Color .055			
		WRAP contract			
		Includes 5 year contract			
		US Bank lease payment 60 Payments of			
		996.68 plus tax .			
		Taxes are not included.			
		City to provide proof of insurance.			
		US Bank requires a non approp for the city			
		All terms and			
		conditions of the US Bank agreement			
		Apply .			
Trade-In					
Buyout					

<p>NO TERMS OR CONDITIONS, EXPRESS OR IMPLIED, ARE AUTHORIZED UNLESS THEY APPEAR ON "ORIGINAL" OF THIS ORDER.</p> <p>* TERMS: THE EQUIPMENT INDICATED ABOVE IS PURCHASED UNDER THE WITT-COMPANY STANDARD TERMS AS FOLLOWS:</p> <p>1. IN THE EVENT BUYER DEFAULTS IN PAYMENT THE BUYER WILL BE LIABLE FOR THE PAYMENT OF ANY LEGAL FEES OR COSTS INCURRED IN SUSTAINING OR PROTECTING THE SECURITY INTEREST OR IN ENFORCING THE TERMS OF THE SECURITY AGREEMENT &amp; UPON DEMAND THE BUYER AGREES TO MAKE THE EQUIPMENT AVAILABLE TO THE SELLER AT A LOCATION TO BE DETERMINED BY THE SELLER.</p> <p>2. ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE HEREOF ARE INCORPORATED HEREIN AND MADE PART OF THIS AGREEMENT</p>	<b>CASH TERMS</b>	
	SUBTOTAL	
	INSTALL AND FREIGHT CHARGES	
	SUBTOTAL	
	STATE AND LOCAL TAXES	
LESS DEPOSIT		
<b>TOTAL THIS ORDER</b>		
<b>ADDITIONAL TERMS AND CONDITIONS</b>		
US Bank provides the lease and Witt Company		
Kycocera provides services for 5 years per term		
no increases to payment for term		

<b>ACCEPTED BY WITT-COMPANY</b>	<b>ACCEPTED BY CUSTOMER</b>
X <i>Steve Witt</i> AUTHORIZED SIGNATURE REQUIRED	X <i>Carol Benson</i> AUTHORIZED SIGNATURE REQUIRED
X <i>WITT</i> PRINTED NAME	X <i>CAROL BENSON</i> PRINTED NAME

5

**Equipment Acquisition Agreement**

**THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**

1. This order shall not be binding on Witt Company until approved at our office.
2. All shipments shall be F.O.B. our warehouse
3. Witt Company reserves the right to make delivery in instalments. All such instalments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an instalment shall not relieve Buyer of its obligation to accept remaining instalments.
4. Witt Company reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient.
5. Witt Company shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond Witt Company's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreaks of hostilities, inability to obtain materials or shipping space, machinery breakdowns, delays of carrier or supplier, governmental acts and regulation, other causes beyond Witt Company's control and receipt of orders from all sources in excess of Witt Company's then scheduled production capacity.
3. **Witt Company warrants that the goods covered by this agreement when delivered to buyer will be of merchantable quality and free from material defects in workmanship and material for a period of 90 days from the date of delivery by Witt Company under ordinary use and conditions. Witt Company will repair, or at Witt Company's option replace any item of the goods which does not conform to the foregoing warranty and the cause of the nonconformity does not arise from or relate to modification, misuse or abuse by the customer, if a warranty claim, stating in writing and with reasonable particularity the claimed nonconformity, is delivered to Witt Company within the 90 day period. All warranties and remedies other than those set fourth above, whether they be express or implied by law or arising from course of dealing or usage of trade, and specifically including but not limited to the warranties of merchantability and fitness for a particular purpose and the remedy of consequential damages, are excluded.**
7. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to Witt Company within ten days after receipt of goods by Buyer.
3. Title to all goods and equipment shall remain with Witt Company until such time as the purchase price thereof shall have been paid in full.
3. Witt Company shall have a security interest in all goods and equipment delivered to Buyer until the purchase price for same shall have been paid in full. At the request of Witt Company, Buyer shall execute and deliver a security agreement and/or financing statements in the form or forms submitted to Buyer by Witt Company.
10. Customer agrees to provide suitable electric service for the operation of the equipment.
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13. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon and exclusive venue of any action arising out of this agreement shall be in Washington County, Oregon, unless this agreement has been entered into in the State of Washington, in which case, it shall be governed and construed in accordance with the laws of the State of Washington and exclusive venue of any action arising out of this agreement shall be in King County, Washington.
14. Customer agrees to provide proper access to the equipment, so that Witt Company service personnel can properly service the machine.
15. **This contract is a complete, unambiguous and exclusive statement of the terms of the agreement between the parties and is intended to supersede and replace all prior or contemporaneous writings and oral agreements and understandings and to prevail over any course of dealing or usage of the trade inconsistent with any express term contained herein. Any and all representations, promises, warranties, or statements by Witt Company representative that differ in any way from the terms of this written agreement shall be given no force or effect. The terms of this agreement may be modified or terminated only by a writing signed by the buyer and an officer of Witt Company.**
16. In the event either party commences legal action, including arbitration, under this agreement, or if either party is required to file a claim or take action under this agreement in a bankruptcy proceeding, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred, including expert witness fees, to be determined by the trial court, arbitrator, or bankruptcy court, as the case may be, and if any appeal is taken, such further sum as may be fixed by the appellate court as the prevailing party's reasonable attorney fees on appeal. If this agreement is placed in the hands of an attorney for collection, the buyer agrees to pay Witt Company actual attorney fees and other expenses incurred, whether or not legal action has been commenced.
17. The parties hereby waive and relinquish any and all claims to the effect that forbearance or indulgence by one party as to any failure or refusal of performance constitutes a waiver of the obligation or grounds for a claim of estoppel with respect there to.