



INFORMATIONAL MEMORANDUM

TO: Finance and Governance Committee
FROM: Joel Bush, Chief Technology Officer
BY: Mike Marcum, Technology Operations Supervisor
CC: Mayor Ekberg
DATE: 08/12/2022
SUBJECT: Copier Refinance

ISSUE

Refinance of City copiers and buyout of currently leased printers.

BACKGROUND

Technology and Innovation Services is seeking Council approval to refinance City copiers coming to term (or have come to term) in 2022 and 2023, for an additional three years. The contract is with Electronic Business Machines, whom the City has partnered with for printer services since 2017.

ANALYSIS

Over the last two years we have seen a sizeable reduction in printing needs as a result of new financial software, digital processing, and hybrid work environment.

Technology and Innovation Services has identified a way to reduce the monetary impacts to the City by reducing the amount of active device leases, while renewing leases for the existing equipment that still has life remaining.

FINANCIAL IMPACT

The contract is to refinance sixteen copiers over a three-year term for a total cost \$107,047.08. Refinancing the fleet of copiers will save the City \$25,692.48 over the three-year term.

- The current lease payments (excluding FD) are \$3,687.21/mo.
- The new equipment lease payment (excluding FD) would be \$2,973.53/mo.

RECOMMENDATION

TIS is seeking approval for a new 36-month equipment lease with Electronic Business Machines. The Finance & Governance Committee is being asked to consider the equipment lease at the August 22, 2022 meeting and forward to the City Council Special Meeting Consent Agenda on September 12, 2022 for Council approval.

ATTACHMENTS

Electronic Business Machines Lease Supplement
Schedule A_Equipment List
Master Lease Reference



Lease Supplement

APPLICATION NO.

LEASE AGREEMENT NO. 107152

SUPPLEMENT NO.

CUSTOMER INFORMATION

Form with fields for FULL LEGAL NAME, STREET ADDRESS, CITY, STATE, ZIP, PHONE, FAX, BILLING NAME, and BILLING STREET ADDRESS.

EQUIPMENT ADDED

Table with columns MAKE/MODEL/ACCESSORIES and SERIAL NO. containing item 1: Please see attached schedule A.

EQUIPMENT DELETED

Table with columns MAKE/MODEL/ACCESSORIES and SERIAL NO. for equipment deletion.

TERM

Text block for term selection with options for termination date coincidence.

PAYMENT SCHEDULE

Text block showing Monthly Payment* \$ 2,973.53 plus applicable taxes.

TERMS AND CONDITIONS

Paragraph of terms and conditions text.

ACCEPTANCE OF DELIVERY

Text block for equipment delivery acceptance.

Signature and date lines for Customer (as referenced above).

CUSTOMER ACCEPTANCE

Text block for customer agreement to terms.

Signature and date lines for Customer (as referenced above).

LESSOR ACCEPTANCE

Signature and date lines for Lessor: Electronic Business Machines Company.

ADDITIONAL TERMS AND CONDITIONS

- 1. AGREEMENT.** You want us to now provide you the equipment and/or software referenced herein, together with all replacements, parts, repairs, additions and accessions incorporated therein or attached thereto, ("Equipment") and you unconditionally agree to pay us the amounts payable under the terms of this agreement ("Agreement") each period by the due date. This Agreement will begin on the date the Equipment is delivered to you or any later date we designate. If any amount payable to us is past due, you will pay a late charge equal to: 1) the greater of ten (10) cents for each dollar overdue or twenty-six dollars (\$26.00); or 2) the highest lawful charge, if less. Any security deposit will be returned upon full performance. We may charge you a fee of up to \$50.00 for filing, searching and/or titling costs required under the Uniform Commercial Code (UCC) or other laws. 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.
- 2. NET AGREEMENT. THIS AGREEMENT IS NON-CANCELABLE FOR THE ENTIRE AGREEMENT TERM. YOU AGREE THAT YOU ARE UNCONDITIONALLY OBLIGATED TO PAY ALL AMOUNTS DUE UNDER THIS AGREEMENT FOR THE ENTIRE TERM. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST AMOUNTS DUE UNDER THIS AGREEMENT FOR ANY REASON.**
- 3. EQUIPMENT USE.** You will keep the Equipment in good working order, free and clear of all liens and claims, use it for business purposes only and not modify or move it from its initial location without our consent. You agree that you will not take the Equipment out of service and have a third party pay (or provide funds to pay) the amounts due hereunder. You will comply with all laws, ordinances, regulations, requirements and rules relating to the use and operation of the Equipment. We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair.
- 4. SERVICES/SUPPLIES.** If we have entered into a separate arrangement with you for maintenance, service, supplies, etc. with respect to the Equipment, payments under this Agreement may include amounts owed under that arrangement, which amounts may be invoiced as one payment for your convenience. You agree that you will look solely to us for performance under any such arrangement and for the delivery of any applicable supplies.
- 5. POSTAGE DEVICES.** Postage measurement devices referenced herein which are subject to a rental agreement between you and an authorized manufacturer ("Postage Manufacturer"), are not part of the Equipment and your use and the ownership of such devices will be governed exclusively by your rental agreement with the Postage Manufacturer. You will need to reference your rental agreement with the Postage Manufacturer for the term of, and your rights and obligations under, the rental agreement. For your convenience, payments under this Agreement may include the rental amounts you owe the Postage Manufacturer under the rental agreement.
- 6. SOFTWARE/DATA.** Except as provided in this paragraph, references to "Equipment" include any software referenced above or installed on the Equipment. We do not own the software and cannot transfer any interest in it to you. We are not responsible for the software or the obligations of you or the licensor under any license agreement. You are solely responsible for protecting and removing any confidential data/images stored on the Equipment prior to its return for any reason.
- 7. LIMITATION OF WARRANTIES. EXCEPT TO THE EXTENT THAT WE HAVE PROVIDED YOU A WARRANTY IN WRITING, WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU CHOSE ANY/ALL THIRD-PARTY SERVICE PROVIDERS BASED ON YOUR JUDGMENT. YOU MAY CONTACT US OR THE MANUFACTURER FOR A STATEMENT OF THE WARRANTIES, IF ANY, THAT THE MANUFACTURER IS PROVIDING. WE ASSIGN TO YOU ANY WARRANTIES GIVEN TO US.**
- 8. ASSIGNMENT.** You may not sell, assign, or sublease the Equipment or this Agreement without our written consent. We may sell or assign this Agreement and our rights in the Equipment, in whole or in part, to a third party without notice to you. You agree that if we do so, our assignee will have our assigned rights under this Agreement but none of our obligations and will not be subject to any claim, defense, or set-off that may be assertable against us or anyone else.
- 9. LOSS OR DAMAGE.** You are responsible for any damage to or loss of the Equipment. No such loss or damage will relieve you from your payment obligations hereunder. Any insurance proceeds received relating to insurance you obtain will be applied, at our option, to repair or replace the Equipment, or to pay us the remaining payments due or to become due under this Agreement, plus our booked residual, both discounted at 2% per annum. Except for claims, losses, or damages caused by our gross negligence or willful misconduct, you agree to indemnify us and our assignee, if applicable, against any claims, losses, or damages, including attorney fees, in any way relating to the Equipment or data stored on it. In no event will we be liable for any consequential or indirect damages.
- 10. INSURANCE.** You agree to maintain commercial general liability insurance acceptable to us and to include us as an additional insured on the policy. You also agree to: 1) keep the Equipment fully insured against loss at its replacement cost, with us named as lender's loss payee; and 2) provide proof of insurance satisfactory to us no later than 30 days following the commencement of this Agreement, and thereafter upon our written request. If you fail to maintain property loss insurance satisfactory to us and/or you fail to timely provide proof of such insurance, we have the option, but not the obligation, to do so as provided in either (A) or (B) as follows, as determined in our discretion:

(A) We may secure property loss insurance on the Equipment from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we secure insurance on the Equipment, we will not name you as an insured party, your interests may not be fully protected, and you will reimburse us the premium which may be higher than the premium you would pay if you obtained insurance, and which may result in a profit to us through an investment in reinsurance. If you are current in all of your obligations under the Agreement at the time of loss, any insurance proceeds received relating to insurance we obtain pursuant to this subsection (A) will be applied, at our option, to repair or replace the Equipment, or to pay us the remaining payments due or to become due under this Agreement, plus our booked residual, both discounted at 2% per annum.

(B) We may charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk administrative costs or other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS SECTION WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. 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.
- 11. TAXES.** We own the Equipment. You will pay when due, either directly or by reimbursing us, all taxes and fees relating to the Equipment and this Agreement, including estimated final-year personal property tax. If we pay any taxes 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. Sales or use tax due upfront will be payable over the term with a finance charge. If this Agreement is deemed to be a secured transaction, you hereby grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, to be released at the end of the term provided you have performed all of your obligations under this Agreement.
- 12. END OF TERM.** At the end of the term of this Agreement (or any renewal term) (the "End Date"), this Agreement will renew month to month unless a) we receive written notice from you, at least 60 days prior to the End Date, of your intent to return the Equipment, and b) you timely return the Equipment to the location designated by us, at your expense. If a Purchase Option is indicated above and you are not in default on the End Date, you may purchase the Equipment from us "AS IS" for the Purchase Option price. If the returned Equipment is not immediately available for use by another without need of repair, you will reimburse us for all repair costs. You cannot pay off this Agreement or return the Equipment prior to the End Date without our consent. If we consent, we may charge you, in addition to other amounts owed, an early termination fee equal to 5% of the price of the Equipment.
- 13. DEFAULT/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 fail to perform in accordance with the covenants, terms and conditions of this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other entity, (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 you are ever in default, at our option, we can terminate this Agreement and we may require that you return the Equipment to us at your expense and pay us: 1) all past due amounts and 2) all remaining payments for the unexpired term, plus our booked residual, both discounted at 2% per annum; and we may disable or repossess the Equipment, require you to stop using any software, and use all other legal remedies available to us. You agree to pay all costs and expenses (including reasonable attorney fees and repossession costs) we incur in any dispute with you related to this Agreement. You agree to pay us 1.5% interest per month on all past due amounts. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. If interest is charged or collected in excess of the maximum lawful rate, we will refund such excess to you, which will be your sole remedy.
- 14. UCC.** If we assign rights in this Agreement for financing purposes, you agree that this Agreement, in the hands of our assignee, is, or shall be treated as, a "Finance Lease" as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). You agree to forgo the rights and remedies provided under sections 507-522 of Article 2A of the UCC.
- 15. LIMITATION ON CHARGES.** This section controls over every other part of this Agreement and over all documents now or later pertaining to the Agreement. We both intend to comply with all applicable laws. In no event will we charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that could, but for this section, be read under any circumstance to allow for a charge higher than that allowable under applicable legal limit, is limited and modified by this section to limit the amounts chargeable under the Agreement to the maximum amount allowed under the legal limit. If in any circumstance, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by us in excess of that legally allowed will be applied by us to the payment of amounts legally owed under the Agreement, or refunded to you.
- 16. MISCELLANEOUS.** This Agreement is the entire agreement between you and us relating to our providing and your use of the Equipment and supersedes any prior representations or agreements, including any purchase orders. Amounts payable under this Agreement, including any estimated tax payments, may include a profit to us. The parties agree that this Agreement and any related documents hereto may be authenticated by electronic means. The parties agree that the original hereof for enforcement and perfection purposes, and the sole "record" constituting "chattel paper" under the UCC, is the paper copy hereof bearing (i) the original or a copy of either your manual signature or an electronically applied indication of your intent to enter into this Agreement, and (ii) our original manual signature. You agree not to raise as a defense to the enforcement of this Agreement or any related documents that you executed or authenticated such documents by electronic or digital means or that you used facsimile or other electronic means to transmit your signature on such documents. Notwithstanding anything to the contrary herein, we reserve the right to require you to sign this Agreement or any related documents hereto manually. If a court finds any provision of this Agreement unenforceable, the remaining terms of this Agreement shall remain in effect. You authorize us to either insert or correct the Agreement number, serial numbers, model numbers, beginning date, and signature date. All other modifications to the Agreement must be in writing signed by each party. 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.

ADDITIONAL TERMS ADDENDUM TO LEASE AGREEMENT

Lessor:
 Electronic Business Machines
 802 134 Street SW Ste 170
 Everett, WA 98204

Lessee: City of Tukwila

Agreement Number: 107152

This Additional Terms Addendum is a part of the above-referenced Lease Agreement between Lessee and Lessor. The terms of this Addendum govern the rest of this Agreement to the extent of any inconsistencies.

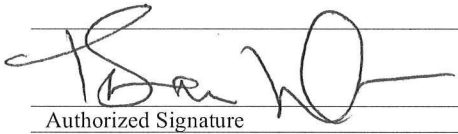
Additional Terms


1. The Section of the Agreement labeled as "Contract" is amended as follows:

THIS AGREEMENT IS NON-CANCELABLE AND IRREVOCABLE. IT CANNOT BE TERMINATED. PLEASE READ CAREFULLY BEFORE SIGNING. YOU AGREE THAT THIS AGREEMENT AND ANY CLAIM RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY THE STATE OF WASHINGTON AND ANY DISPUTE CONCERNING THIS AGREEMENT WILL BE ADJUDICATED IN A FEDERAL OR STATE COURT IN SUCH STATE. YOU HEREBY CONSENT TO PERSONAL JURISDICTION AND VENUE IN SUCH COURTS AND WAIVE TRANSFER OF VENUE. EACH PARTY WAIVES ANY RIGHT TO JURY TRIAL.

Lessor has reviewed this page and the rest of this Agreement.

Lessee has reviewed this page and the rest of this Agreement.

 8/31/21
 Authorized Signature Date

City of Tukwila
 8/31/21
 Authorized Signature Date


 Authorized Signatory Name Title

Mike Marcum Technical Operations Supervisor
 Authorized Signatory Name Title

NON APPROPRIATION RIDER

This Non-Appropriation Rider to the Lease Agreement Number 107152 dated as of 8-31, 2021 (the "Lease"), is by and between Electronic Business Machines as lessor and City of Tukwila, as lessee. Capitalized terms used herein without definition shall be defined as provided in the Lease.

Notwithstanding anything contained in the Lease to the contrary,

1. Lessee presently intends to continue the Lease for its entire term and to pay all rentals relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the rentals and all other payments owing thereunder may be made. To the extent permitted by law, the person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year during the term of the Lease the rentals to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due therein. The parties acknowledge that appropriation for rentals is a governmental function which Lessee cannot contractually commit itself in advance to perform and the Lease does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all rentals can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the term of the Lease.

2. If Lessee's governing body fails to appropriate sufficient moneys in any fiscal year for rentals or other payments due under the Lease and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Lessee shall give Lessor immediate notice of such Non-Appropriation and provide written evidence of such failure by Lessee's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the rentals due under the Lease (the "Return Date"), Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the Lease, at Lessee's sole expense, in accordance with the terms hereof; and (iii) the Lease shall terminate on the Return Date without penalty or expense to Lessee and Lessee shall not be obligated to pay the rentals beyond such fiscal year, provided, that Lessee shall pay all rentals and other payments due under the Lease for which moneys shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the Lease for each month or part thereof that Lessee fails to return the Equipment as required herein.

3. The Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by the Lessee beyond the amount of such monies. The Lease is not a general obligation of the Lessee. Neither the full faith and credit nor the taxing power of the Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.

4. Lessee's obligation with respect to rent that becomes due upon exercise of Lessor's remedies with respect to an Event of Default shall be limited to such amount permitted under applicable law.

5. The Lease and this Rider shall be governed by the laws of the state in which Lessee is located. Any provisions of the Lease or this Rider found to be prohibited by law shall be ineffective to the extent of

such prohibition without invalidating the remainder of the Lease or this Rider.

6. This Rider may be executed in several counterparts and all of which shall constitute but one and the same instrument.

7. This Rider shall be binding upon and inure to the benefit of the Lessee and Lessor and their respective successors and assigns.

8. Except as modified herein the Lease remains in full force and effect.

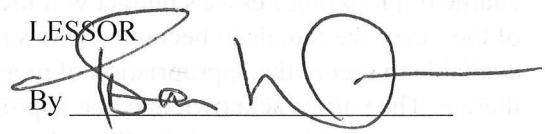
IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the 31st day of August, 2021

LESSEE

By Mike Marcum

Title Technical Operations Supervisor

LESSOR

By 

Title President

CORPORATE OFFICE
802 134th Street SW
Suite 170
Everett, WA 98204

Local 425.347.2244
Toll-Free 866.707.9111
Fax 425.743.3117

www.ebmco.com



August 26th 2021

To whom it may concern:

In regards to our previous contracts with KCDA and AEPA, EMB agreed to pick up and deliver expiring equipment back to the lease company at no cost to the City of Tukwila.

Once the City of Tukwila has submitted a Letter of Intent and sent it to the lease company.

The leasing company will send you the return instructions.

Once these instructions are received and forwarded to EBM, we will coordinate the pick up and delivery of these assets at no additional charge to the City of Tukwila.

This process will be the same as it pertains to any future equipment leases with the City of Tukwila.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Landgren", with a long horizontal line extending to the right.

Brian Landgren
President