



Council Meeting: December 18, 2012

**SUBJECT: Award of Contract for the Lease of Multi-Function Copiers
(F13-03)**

BACKGROUND

Approval is requested for the award of a contract for the lease of multi-function copiers to Caltronics Business Solutions of Sunnyvale for a five-year period, and to authorize the City Manager to renew the contract for an additional one-year period if pricing and service remain acceptable to the City. Under the new contract, the City's Ricoh copiers will be replaced by the Konica-Minolta line.

DISCUSSION

On August 19, 2008, City Council approved the award of a contract to Ricoh for a Citywide Copier Lease Program (RTC 08-247). The contract was approved for a four-year period with the option to extend for two additional one-year periods. Even though there are extension options available under the current contract, staff determined that it would be most economical to request proposals for the replacement of the existing equipment.

On August 20, 2012 Request for Proposals No. F13-03 was released and posted on the Onvia Demandstar public procurement network. Eleven (11) firms requested proposal documents. Five sealed proposals were publicly received and opened on September 26, 2012:

1. Caltronics Business Systems, Sunnyvale, CA
2. Xerox Corporation, Pleasanton, CA
3. Toshiba Business Solutions, San Ramon, CA
4. MBS Business Systems, Santa Clara, CA
5. Ricoh, San Jose, CA

Proposals were evaluated for technical capabilities, support, maintenance plan, training, installation process, billing and management reports, equipment features, references and pricing. The evaluation also included a site visit to the top ranked proposer by representatives from the Departments of Information Technology, Community Development, Finance, Public Safety, and the Office of the City Manager. The evaluation team determined that the proposal submitted by Caltronics offers the best value to the City.

FISCAL IMPACT

Exact costs to the City for a five-year contract are difficult to predict due to fluctuations in copier usage. Last fiscal year's cost was approximately \$150,300. Based on the pricing for the new contract the same usage will be

approximately \$108,000. The current lease is structured so that the City is not able to add or change machines; the Caltronics proposal gives the City the ability to adjust both copier machines and monthly copy allowances to minimize overage costs, and to ensure the City's copy needs are met through this one lease. The Konica-Minolta line does not have a specialized duplicator machine that is used heavily by the Print Shop. A separate contract will be negotiated and issued, under the City Manager's contract award authority, with Ricoh USA for that machine at an estimated cost of \$4,000 per year. Funds are available in the Department of Information Technology's operating budget to cover this expense.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council:

1. Award a contract, in substantially the same form as the attached draft blanket purchase order, not to exceed budgeted amounts, to Caltronics Business Systems and;
2. Delegate authority to the City Manager to renew the contract for an additional one-year period, provided pricing and service remain acceptable to the City.

Reviewed by:

Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

David Jensen
Director of Information Technology

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Draft Blanket Purchase Order and Associated Terms and Conditions



City of Sunnyvale
California

Draft Blanket Purchase Order NO

BL004286

ORDERED FROM Caltronics Business Systems 1286 Kifer Road Suite 108 Sunnyvale, CA 94086	ORDER DATE 	BILL TO: City of Sunnyvale Finance Department Accounts Payable PO Box 3707 Sunnyvale, CA 94088-3707
	EFFECTIVE DATE 2/1/2013	
	EXPIRATION DATE 1/31/2018	
	CONTRACT AMOUNT NOT TO EXCEED BUDGETED AMOUNTS	
REQUISITIONING DEPARTMENT (4500) ITD/Administration	FOB DEST	FREIGHT CHARGES Destination, freight included in price
	PAYMENT TERMS N/30	BID NO

ITEM	DESCRIPTION	UNIT	UNIT COST
1	Blanket purchase order for the lease of Digital Photocopy Machines as required by City of Sunnyvale Information Technology Department for a five year period, in accordance with Request for Proposals F13-03 specifications, terms and conditions and contractors response, which are incorporated herein by this reference. Contract may be renewed for one additional one year period provided pricing and services are acceptable to the City. Monthly cost shall be \$8,992.81 excluding overage charges. Approved by City Council 12/18/2012, RTC	DLR	\$1.0000

AUTHORIZED DEPARTMENT(S)		
NO	DEPT NAME	RELEASE AMT
4500	ITD/Administration	

BUYER:

Howard, Dreama

PHONE (408) 730-7396

FAX (408) 730-7710

C-P-C TERMS AND CONDITIONS

The words YOU and YOUR mean the user of Equipment. The words WE, US, and OUR refer to the owner of the Equipment.

1. C-P-C PLAN ("AGREEMENT"): WE agree to rent to YOU and YOU agree to rent from US the equipment listed in the "Individual Meter Option" and "Consolidated Billing Option" sections of this Agreement and/or in any attached schedule ("Equipment"). YOU promise to pay US A MONTHLY MINIMUM PAYMENT WHICH IS AN AMOUNT EQUAL TO THE GUARANTEED MINIMUM MONTHLY COPIES MULTIPLIED BY THE COST-PER-COPY SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT ("C-P-C PAYMENT"), plus the Cost-Per-Copy Additional Copies ("Additional Copy Charge") on copies in excess of the Guaranteed Minimum Monthly Copies in accordance with the terms and conditions herein. The Additional Copy Charges will be invoiced at the end of each meter reading period set forth on the face of this Agreement. YOU authorize US to insert in this Agreement the serial numbers of the Equipment when WE so determine them.

2. TERM: This Agreement is effective on the date that it is accepted and signed by US, and the term of this Agreement begins on that date or any later date that WE designate (the "Commencement Date") and continues thereafter for the number of months designated as "Term in Months". C-P-C Payments are due as invoiced by US. As YOU will have possession of the Equipment from the date of its delivery, if WE accept and sign this Agreement YOU will pay US interim rent for the period from the date the Equipment is delivered to YOU until the Commencement Date as reasonably calculated by US based on the C-P-C Payment, the number of days in that period, and a month of 30 days. WE will apply the first C-P-C Payment to the first month of the term on the Commencement Date or any later date designated by US. The second C-P-C Payment is due on the date set forth in the invoice with subsequent payments due on the same day of each successive month thereafter until the balance of the C-P-C Payments and any additional C-P-C Payments or expenses chargeable to YOU under this Agreement have been paid in full.

YOU agree to provide accurate and timely meter readings on the forms or other alternative means specified by US. If meter readings are not received in a timely manner, charges may be estimated by US. YOUR obligation to pay the C-P-C Payments and other obligations hereunder shall be absolute and unconditional. This Agreement is NON-CANCELABLE.

WE have the right to increase the C-P-C Payment and the Additional Copy Charge on an annual basis, in an amount not to exceed ten percent (10%) of the C-P-C Payment or the Additional Copy Charge in effect at the end of the prior annual period.

3. LATE CHARGES/DOCUMENTATION FEES: Whenever any C-P-C Payment or Additional Copy Charge is not made when due, YOU agree to pay US, within one month, a late charge of five percent (5%) of each late payment, with a minimum of \$10.00, but only to the extent permitted by law. YOU agree to pay US a fee of \$75.00 plus 1/10th of one percent (1%) of the original Equipment cost in excess of \$50,000.00 to reimburse OUR expenses for preparing financing statements, other documentation costs and all ongoing administration costs during the term of this Agreement.

4. DELIVERY AND ACCEPTANCE: YOU are responsible, at YOUR own cost, to arrange for the delivery and installation of the Equipment (unless such costs are included in the cost of the Equipment to US). If requested, YOU will sign a separate Equipment delivery and acceptance certificate. WE may at OUR discretion confirm by telephone that YOU have accepted the Equipment, and this telephone verification of YOUR acceptance of the Equipment shall have the same effect as a signed delivery and acceptance certificate.

5. USE, MAINTENANCE, REPAIR, SUPPLIES AND WARRANTIES: YOU have selected the Equipment and the related maintenance program and supplies as described in a separate maintenance agreement with the Equipment dealer ("Dealer"). WE are not the manufacturer of the Equipment and WE are renting the Equipment to YOU "AS-IS". WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. WE transfer to YOU for the term of this Agreement all warranties, if any, made by manufacturer.

YOU ALSO ACKNOWLEDGE THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY TERM, PROVISION OR CONDITION OF THIS AGREEMENT AND EXCEPT FOR THE MANUFACTURER WARRANTIES, MAKE ANY REPRESENTATION OR WARRANTY ABOUT THIS AGREEMENT OR THE EQUIPMENT. WE SHALL NOT BE LIABLE FOR SPECIAL, RESULTING OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT OCCASIONED BY ANY BREACH OF WARRANTY OR REPRESENTATION OR RESULTING FROM THE USE OR PERFORMANCE OF ANY UNIT OF EQUIPMENT. YOUR OBLIGATION TO PAY IN FULL ANY AMOUNT DUE UNDER THIS AGREEMENT SHALL NOT BE AFFECTED BY ANY DISPUTE, CLAIM, COUNTERCLAIM, DEFENSE OR OTHER RIGHT WHICH YOU MAY HAVE OR ASSERT AGAINST THE DEALER OR THE EQUIPMENT MANUFACTURER.

6. TITLE, PERSONAL PROPERTY, LOCATION AND INSPECTION: Except for Agreements with a \$1.00 purchase option, WE will have title to the Equipment. If YOU have a \$1.00 purchase option and/or the Agreement is deemed to be a security agreement, YOU grant US a security interest in the Equipment and all proceeds thereof. YOU have the right to use the Equipment for the full term provided YOU comply with the terms and conditions of this Agreement. The Equipment is personal property even though the Equipment may become attached to any real estate. YOU agree not to permit a lien to be placed upon the Equipment or to remove the Equipment without OUR prior written consent. WE also have the right, at reasonable times, to inspect the Equipment.

7. ASSIGNMENT: YOU AGREE NOT TO TRANSFER, SELL, SUBRENT, ASSIGN, PLEDGE OR ENCUMBER EITHER THE EQUIPMENT OR ANY RIGHTS UNDER THIS AGREEMENT WITHOUT OUR PRIOR WRITTEN CONSENT. 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 right of the new owner will not be subject to any claims, defenses, or set-offs that YOU may have against US.

8. REDelivery AND RENEWAL: Upon written notice delivered to US at least ninety (90) days, but no more than one hundred fifty (150) days, prior to the expiration of the initial term of this Agreement, YOU shall advise US of YOUR intention to return the Equipment to US at the end of the initial term of this Agreement. Provided YOU have given such timely notice, YOU shall return the Equipment, freight and insurance prepaid, to US in good repair, condition and working order, ordinary wear and tear excepted, in a manner and to a location designated by US. If YOU fail to so notify US, or having notified US, YOU fail to return the Equipment as provided herein, this Agreement shall renew for additional terms of twelve (12) months each with C-P-C Payments and Additional Copy Charges equal to 100% of the C-P-C Payments and Additional Copy Charges at the expiration of the initial term of this agreement.

9. 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 any obligation under this Agreement.

10. INDEMNITY: WE are not responsible for any losses or injuries caused by the installation or use of the Equipment. YOU agree to reimburse US for and to defend US against any claim for losses or injuries caused by the Equipment. This indemnity will continue even after the termination of this Agreement.

11. TAXES: YOU agree to pay all license and registration fees, sale and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment as part of the C-P-C Payment or as billed by US. YOU agree that if WE pay any taxes or charges on YOUR behalf, YOU shall reimburse US for all such payments and shall pay US interest and a late charge (as calculated in Section 3) on such payments with the next C-P-C Payment, plus a fee for OUR collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities. YOU agree that WE have the right

each year to estimate the yearly personal property taxes that will be due for the Equipment and that YOU will pay US 1/12th of the estimated taxes on each C-P-C Payment. YOU will indemnify US on an after-tax basis against the loss of any tax benefits anticipated at the Commencement Date arising out of YOUR acts or omissions.

12. INSURANCE: During the term of this Agreement, YOU will keep the Equipment insured against all risks of loss or damage in an amount not less than the replacement cost of the Equipment, without deductible and without co-insurance. YOU shall also obtain and maintain for the term of this Agreement, comprehensive public liability insurance covering both personal injury and property damage of at least \$100,000 per person and \$300,000 per occurrence for bodily injury and \$50,000 for property damage. WE shall be the sole named loss payee on the property insurance and shall be named as an additional insured on the public liability insurance. YOU will pay all premiums for such insurance and shall deliver proof of insurance coverage satisfactory to US. If YOU do not provide such insurance, YOU agree that WE have the right, but not the obligation, to obtain such insurance, and add an insurance fee to the amount due from YOU, on which WE make a profit.

13. DEFAULT: YOU are in default of this Agreement if any of the following occurs: a) YOU fail to pay any C-P-C Payment or other sum when due; b) YOU breach any warranty or other obligation under this Agreement, or any other agreement with US; c) YOU, any partner or any guarantor dies, YOU become insolvent or unable to pay YOUR debts when due; YOU stop doing business as a going concern; YOU merge, consolidate, transfer all or substantially all of YOUR assets; YOU make an assignment for the benefit of creditors or YOU undergo a substantial deterioration in YOUR financial condition, or d) YOU, any guarantor or any partner, shall voluntarily file or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator shall be appointed of it or a substantial part of its assets.

14. REMEDIES: WE have the following remedies if a default should occur:
a) Upon written notice, declare the entire balance of the unpaid C-P-C Payments for the full term immediately due and payable, sue for and receive all C-P-C Payments and any other payments then accrued or accelerated under this Agreement or any other Agreement plus the estimated fair market value of the Equipment at the end of the originally scheduled term, with all accelerated C-P-C Payments and the estimated fair market value of the Equipment at the end of the originally scheduled term discounted at the lesser of (i) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department) that would have a repayment term equal to the remaining Agreement term, all as reasonably determined by US, or (ii) 3% per annum;

b) Charge YOU interest on all monies due US at the rate of eighteen percent (18%) per year from the date of default until paid, but in no event more than the maximum rate permitted by law;

c) Charge YOU a return-check or non-sufficient funds charge ("NSF Charge") OF \$25.00 for a check that is returned for any reason; and

d) Require that YOU return the Equipment to US and in the event YOU fail to return the Equipment, enter upon the premises peaceably with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment shall not constitute a termination of this Agreement unless WE expressly notify YOU in writing. In the event the Equipment is returned or repossessed by US and unless WE have terminated this Agreement, WE will sell or re-rent the Equipment to such persons and upon such terms as WE may determine, at one or more public or private sales and with or without notice to YOU and apply the net proceeds after deducting the costs and expenses of such sale or re-rent, to YOUR obligations with YOU remaining liable for any deficiency and with any excess being retained by YOU. The credit for any sums to be received by US from any such rental shall be discounted to the date of the rental agreement at six percent (6%) per year.

YOU are also required to pay (i) all expenses incurred by US in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment, and (ii) reasonable attorneys' fees.

15. SECURITY DEPOSIT: WE will retain any required security deposit as security for YOUR performance of YOUR obligations. Any security deposit is non-interest bearing. WE may apply any security deposit to cure any default by YOU, in which event YOU will promptly restore any amount so applied. If YOU are not in default, any security deposit will be returned to YOU at the termination of this Agreement.

16. WARRANTIES: YOU hereby warrant and represent that the Equipment will be used for business purposes, and not for personal, family or household purposes.

17. UCC FILINGS AND FINANCIAL STATEMENTS: YOU authorize US to file a Uniform Commercial Code ("UCC") financing statement with respect to the Equipment and grant US the right to sign such financing statement on YOUR behalf. If WE feel it is necessary, YOU agree to submit financial statements (audited if available) on a quarterly basis.

18. UCC-ARTICLE 2A PROVISIONS: YOU agree that this Agreement is a Finance Lease as that term is defined in Article 2A of the UCC. YOU acknowledge that WE have given YOU the name of the supplier of the Equipment. WE hereby notify YOU that YOU may have rights under the contract with the Supplier and YOU may contact the supplier for a description of any rights or warranties that YOU may have under this supply contract. YOU also waive any and all rights and remedies granted by Sections 2A-508 through 2A-522 of the UCC.

19. CHOICE OF LAW: This Agreement has been made in Wayne, Pennsylvania and, except for local filing requirements, is governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. YOU consent to and agree that non-exclusive jurisdiction, personal or otherwise, over YOU and the Equipment shall be with the Courts of the Commonwealth of Pennsylvania or the Federal District Court for the Eastern District of Pennsylvania solely at OUR option with respect to any provision of this Agreement. YOU ALSO IRREVOCABLY WAIVE YOUR RIGHT TO A TRIAL BY JURY.

20. ENTIRE AGREEMENT; SEVERABILITY; WAIVERS: This Agreement contains the entire agreement and understanding. No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Agreement which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Agreement. It is further agreed that the rights and remedies of the parties are governed by this Agreement.

21. FACSIMILE DOCUMENTATION: YOU agree that a facsimile copy of the Agreement with facsimile signatures may be treated as an original and will be admissible as evidence of the Agreement.

OWNER ACCEPTANCE	Signature	Date
	X	
	Print Name	Title
	For	
DE LAGE LANDEN FINANCIAL SERVICES, INC.		

060ED0C171

ADDENDUM 1
TO
C-P-C Terms and Conditions

2. TERM

Second paragraph is deleted

Third paragraph is deleted

3. Late Charges/Document Fees

Paragraph is deleted in its entirety and replaced with the following:

Full payment shall be made within thirty (30) days from the date of receipt of invoice. Partial payments may be made with City's concurrence at no less than monthly intervals. City shall endeavor to pay each invoice within thirty (30) days, but shall not be responsible to Contractor for additional charges, interest or penalties due to failure to pay within that period.

8. Redelivery and Renewal:

Paragraph is deleted, see item 14 below.

10. Indemnity

Paragraph is deleted and replaced with the following:

Caltronics shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to Caltronics, the City, City employees, or parties designated in any contract provision, on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences, or other causes predicated on active or passive negligence of the City, or of parties designated in any contract provisions. Caltronics shall assume the defense of and shall indemnify, and hold harmless the City, its officers, officials, directors, employees, and agents from and against any or all loss, liability, expense, claim, costs, suits, and damages of every kind, nature, and description directly or indirectly arising from the performance of the work.

12. Insurance:

Paragraph is deleted and replaced with the following:

During the term of this agreement, at the City's cost, the City will: (1) keep the Equipment insured against all risks of physical loss or damage for its full replacement value; (b) maintain public liability insurance, covering personal injury and property damage for not less than \$300,000 per occurrence, naming Caltronics as additional insured.

14. Remedies:

Delete a,b,d and replace with the following:

The City may terminate this Agreement, in whole or in part, whether or not Caltronics has failed to fulfill its obligations, if the City has a reasonable basis for termination (such as major changes in the work or loss of City funding). Caltronics will be given: (1) not less than ninety (90) calendar days' written notice of the intent to terminate, and (2) an opportunity for consultation with the City before termination.

In the event of such termination, Caltronics shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of termination. Caltronics may enter upon the premises peaceably with or without legal process where the equipment is located and repossess the equipment.

15. Security Deposit:

Paragraph is deleted

18. UCC-Article 2A Provisions:

Paragraph is deleted

19. UCC-Article 2A Provisions:

Replace all references to Pennsylvania to County of Santa Clara, California

Last sentence is deleted.

20. Entire Agreement; Severability; Waivers:

Paragraph deleted and replaced with the following:

This Agreement, addendum 1, City of Sunnyvale Request for Proposal F13-03 consisting of a Notice Inviting Proposals, Instructions to Proposers, Specifications, Terms and Conditions, Caltronics proposal, negotiated documents contain the entire agreement and understanding.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

CALTRONICS BUSINESS SYSTEMS

By _____
City Attorney

By _____

Title and Date