

SUBJECT: Authorization To Enter Into A Lease Agreement In The Annual Amount Of \$4,908 With Valley Business Machines For A Copy Machine For The Clerk's Office.

REQUESTED BY: Kristie VanGorder, City Clerk *KV.*

PREPARED BY: Jamie Newman, Deputy Clerk *JN.*

DATE: October 29, 2001

FOR AGENDA OF: November 5, 2001

SUMMARY:

As approved by the council in the FY-02 budget, we are upgrading our copy machine for approximately \$120 more per month. We are requesting authorization from the council to enter into a 60-month lease, at \$409 per month with Valley Business Machines. The proposed lease agreement includes all toner, developer, drums, rollers, cleanings, parts and labor.

FISCAL IMPACT: ___ No X Yes, amount requested: \$4,908 annually

CLERK'S RECOMMENDED ACTION:

Administration Initial: *CR*

Attachments: None

Presented to council on *Nov. 5, 2001*
Action taken: Approved Denied
other _____
Verified by *KV.*



NAME AND ADDRESS OF LESSEE	SUPPLIER OF EQUIPMENT
City of Wasilla 290 E. Herning Avenue Wasilla, AK. 99654	Valley Business Machines, Inc. 224 Yenlo Street Suite 5 Wasilla, AK. 99654

Person To Contact	Telephone No.	Salesperson	Telephone No.
Jamie Newman	373-9065	Loren Rupe	376-5077

Delivery Location:

DESCRIPTION OF EQUIPMENT LEASED (include make, year, model, identification and model numbers)
1 – Royal Ri-6230 Digital Copier with Standard Document Processor, Automatic Duplex and Finisher

TERMS AND CONDITIONS OF EQUIPMENT LEASE AGREEMENT ("LEASE")

1. SCHEDULE OF LEASE PAYMENTS DURING INITIAL TERM OF LEASE

TERM OF LEASE NO. OF MONTHS	NUMBER OF PAYMENTS	AMOUNT OF EACH LEASE PAYMENT			TOTAL INITIAL PAYMENT REPRESENTING
		PAYMENT	TAX	OTHER	
60 Months	60	\$334.00	-0-	-0-	First Month

ADDITIONAL PROVISIONS:

2. LEASE. Valley Business Machines, Inc. (hereinafter called "LESSOR") hereby lease to the LESSEE the above Equipment (hereinafter called "Equipment") for the number of months and the lease payments as set forth above and on the terms and stated. LESSEE agrees that, if there is any inconsistency between the Terms and Conditions of this Lease and of any of the LESSEE'S written purchase orders, the terms of this Lease will govern. The Lease Payments shall commence when the LESSEE has received Equipment which is equal to fifty percent of the value at cost to LESSOR of all Equipment to be leased hereunder, and shall continue thereafter to be paid on the same day of each succeeding month in the amount specified and for the total number of payments as provided in the Schedule of Lease Payments as set forth above. All Lease Payments be LESSEE shall be payable at the office of LESSOR or at such other place as LESSOR may from time to time appoint. LESSEE hereby authorizes LESSOR the use of the Initial Lease Payments made by LESSEE under this Lease, provided that LESSOR accounts to LESSEE for said payments at the termination of the Lease.

3. WARRANTIES. LESSOR warranties that during the term of the Lease, if the Equipment listed herein should fail and be unable to be repaired to operate within manufacturer's standards (listed on front page of Owner's Manual), LESSOR will at no additional cost to LESSEE provide LESSEE with a comparable replacement.

4. USE. LESSEE shall use Equipment solely in the conduct of its business, and in careful and proper manner, and will not assign this Lease or its interest hereunder. Additionally, the LESSEE, at its own cost and expense, shall keep Equipment in good repair, condition and working order and shall furnish any and all parts and labor required for that purpose. LESSEE shall not make any alterations to Equipment without the prior written consent of LESSOR. All Equipment, accessories, parts and replacements for or which are added to or become attached to Equipment shall immediately become the property of LESSOR and shall be deemed incorporated in Equipment and subject to the terms of this Lease as if originally leased hereunder. LESSEE covenants that it will make lawful use of the Equipment.

5. EQUIPMENT. Equipment shall be located at the address to which Equipment is to be shipped and shall not be removed from such location without the prior written consent of LESSOR.

6. TIME. Time being of essence to this Lease, in the event that any Lease Payment(s) required to be made hereunder are not received by LESSOR within five (5) days from their due date, LESSEE agrees to pay in addition thereto a delinquency charge equal to five percent (5%) of the amount of said payment(s).

7. LOSS AND DAMAGE. Upon shipment of Equipment to LESSEE, the LESSEE hereby assumes and shall bear the entire risk of loss and damage to Equipment from any and every cause whatsoever.

8. INSURANCE. LESSEE shall keep Equipment insured against all risk of loss or damage from every cause whatsoever in an amount of not less than the aggregate amount of unpaid total Lease Payments for the balance of the term of this Lease, plus an amount equal to twenty percent (20%) of the actual cost to LESSOR of such Equipment, and shall also carry public liability insurance for both personal injury and property damage covering Equipment. All of the aforesaid insurance shall be in such form and with insurance companies satisfactory to LESSOR.

9. TAXES AND OTHER FEES. LESSEE shall comply with all laws and regulations relating to, and shall promptly pay, when due, all license fees, registration fees, assessments, charges and taxes, municipal, state and federal (excluding, however, any taxes payable in respect to LESSOR'S income), which now or hereafter be imposed upon the ownership, possession, leasing, renting, operation, control, use, maintenance, delivery and/or return of Equipment, and shall save LESSOR harmless against actual or asserted violations, and pay all costs and expenses of every character in connection therewith or arising therefrom. If compliance with any law, ordinance, rule or permit by any Government agency requires changes or additions to be made or to Equipment, such changes or additions shall be made by LESSEE at its own expense.

10. TITLE/RECORDING. Title to Equipment shall at all times remain in LESSOR. The LESSEE shall at all times keep Equipment free and clear from all levies, attachments, liens, encumbrances and charges or other judicial process of every kind whatsoever, shall give LESSOR immediately written notice thereof and shall indemnify and save LESSOR harmless from any loss or damage caused thereby. LESSEE authorizes LESSOR, its successors, assigns and lenders to LESSOR, to file a carbon, photographic or other reproduction of this Lease as a financing statement for the Equipment, and LESSEE further authorizes LESSOR in LESSEE'S name to execute and file financing statements for the Equipment. Such filings under the Uniform Commercial Code are not intended to imply that this Lease is not a true Equipment Lease Agreement. The Equipment is and shall remain personal property irrespective of its use or manner of attachment to realty, and LESSEE will not cause or permit Equipment to be attached to realty in such manner that it might become part of such realty without securing the prior written consent of LESSOR.

11. DEFAULT. In the event LESSEE shall default in the payment, when due, of any Lease Payment, additional Lease Payment, or any other sums due hereunder for a period of five (5) consecutive days thereafter, or in the event of any other default or breach of the other terms and conditions of this Lease or in the event of any default or breach of the terms and conditions of any Equipment Lease Agreements or Rental Agreements between LESSEE and LESSOR, or if any execution or other process shall be issued in any action or proceeding against the LESSEE, whereby the said Equipment may be taken or distrained, or if the LESSEE shall enter into any agreement or composition with its creditors, or LESSEE becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, trustee, conservator or liquidator of all or a substantial part of its assets is appointed with or without the application or consent of LESSEE, or a petition is filed by or against LESSEE under the Bankruptcy Code or any of the terms of any loan or credit agreement, or default thereunder, or if the financial condition of the LESSEE'S business affairs shall so change as to, in LESSOR'S opinion, impair LESSOR'S equipment, or increase the credit risk involved, then and upon the happening of any of these event(s), LESSOR shall have the right to do any one or more of the following:

- (1) declare this Lease in default upon written notice to LESSOR, whereupon the entire amount of Lease Payments remaining to be paid over the balance of the Lease Term of this Lease of all Equipment then leased hereunder, together with all other obligations as hereinafter set forth, shall become immediately due and payable; and;
- (2) proceed to appropriate court action or actions at law or in equity or in bankruptcy to enforce performance by LESSEE of the covenants and terms of this Lease and/or to recover damages for the breach thereof; and;
- (3) terminate this Lease upon written notice to LESSEE; and
- (4) whether or not this Lease be so terminated, and without notice to LESSEE, repossess the Equipment wherever found, with or without legal process, and for this purpose LESSOR and/or its agents may enter upon any premises of or under the control or jurisdiction of LESSEE of LESSEE or any agent of LESSEE without liability for suit, action or other proceeding by LESSEE (any damages occasioned by such repossession being hereby expressly waived by LESSEE) and remove the Equipment therefrom.

Notwithstanding the fact that any and all of the Equipment is returned to or repossessed by LESSOR, as aforesaid, LESSEE shall remain liable for, and LESSOR may forthwith recover from LESSEE as liquidated damages, for breach thereof under this Lease, and not as penalty, in addition to the entire amount of unpaid Lease Payments pursuant to sub-paragraph (1) above, all other unpaid sums or charges that accrued prior to the date of LESSEE'S default, together with all costs and expenses incurred by LESSOR as set forth herein.

If LESSEE fails to redeliver any Equipment to LESSOR, or LESSOR is unable for any reason to effect repossession of any equipment, then, with respect to such Equipment, LESSEE shall be liable for, and LESSOR may forthwith recover from LESSEE, as liquidated damages, for breach thereof under this Lease, and not as a penalty, in addition to the entire amount of unpaid Lease Payments pursuant to sub-paragraph (1) above, the sum of twenty percent (20%) of the actual cost to LESSOR of such Equipment, plus all other unpaid sums or charges that accrued prior to the date of LESSEE'S default, together with all costs and expenses incurred by Lessor as set forth herein.

LESSOR may also recover from LESSEE all costs and expenses, including, without limitation, reasonable attorney's fees incurred by LESSOR in exercising any of its rights or remedies hereunder.

LESSOR, at its option may apply the advance Lease Payments against the LESSEE'S obligations under this Lease.

Any repossession, resale or re-lease of any Equipment by LESSOR shall not be a bar to the institution of litigation by LESSOR against LESSEE for damages for breach of this Lease, as hereinbefore provided, and the commencement of any litigation or the entry of judgment against LESSEE shall not be a bar of LESSOR'S rights to repossess any or all of the Equipment.

With respect to any Equipment returned to LESSOR, or repossessed by LESSOR pursuant to sub-paragraph (4) above, LESSOR may hold or use such Equipment for any purpose whatsoever, or may sell same at a private or public sale, for cash or credit, or may re-lease same for such term and upon such Lease Payment as shall be solely determined by LESSOR. In the event of the sale of re-leasing by LESSOR of any such Equipment, LESSEE shall be liable for, and LESSOR may forthwith recover from LESSEE as liquidated damages for breach of this Lease, and not as a penalty, in addition to the entire amount of unpaid Lease Payments pursuant to sub-paragraph (1) above, the sum of twenty percent (20%) of the actual cost to LESSOR of such Equipment, plus all other unpaid sums or charges that accrued prior to the date of LESSEE'S default, less the proceeds of any sale or re-leasing of such Equipment, after first deducting there from all costs and expenses incurred in repossession, storage, repairs, reconditioning, sale, re-leasing, attorney's fees and collection fees with respect to such Equipment.

To the extent permitted by law, LESSEE hereby waives any rights now or hereafter conferred by statute or otherwise which may require LESSOR to sell, lease or otherwise use any Equipment in mitigation of LESSEE'S damages, as set forth in this paragraph 12, or which may otherwise limit or modify any of LESSOR'S rights or remedies under this paragraph 12.

In the event that any court of competent jurisdiction determines that any provision of this Lease is invalid or unenforceable in whole or in part, such determination shall not prohibit LESSOR from establishing its damages sustained as a result of any breach of this Lease in any action or proceeding in which LESSOR seeks to recover such damages or the return of its Equipment.

12. CUMULATIVE REMEDIES. All remedies of LESSOR hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the LESSOR to exercise, and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by LESSOR of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. Damaged occasioned by LESSOR'S taking possession of Equipment are hereby waived by LESSEE. LESSEE waives any right of venue and agrees that all legal, equitable, or arbitration actions between LESSEE and LESSOR can be brought in a court of competent jurisdiction at the sole election and determination of LESSOR, and LESSEE consents thereto.

13. RETURN OF EQUIPMENT. On termination or expiration of this Lease, or upon LESSEE'S default, LESSEE shall return the Equipment to LESSOR at an address specified by LESSOR in the same condition as received, reasonable wear and tear and normal depreciation excepted. The LESSEE shall, in addition to all other payments due to LESSOR under the terms of this Lease, pay to LESSOR such sums as may be necessary to cover replacement for all damaged, broken or missing parts of the Equipment.

14. RENEWAL. Unless LESSEE, sixty (60) days prior to the expiration of the Lease, notifies LESSOR in writing of its intentions to terminate this Lease at its expiration date, then this Lease may automatically be extended upon all of the terms and conditions as stated herein for a period of one year from its expiration date without the necessity of the execution of any further instrument or document and shall continue from year to year thereafter under the same terms and conditions until terminated.

15. ASSIGNMENT. This Lease or any Equipment or any Lease Payments or other sums due or to become due hereunder may be transferred or assigned by LESSOR, without notice, and in such event, LESSOR'S transferee or assignee shall have all the rights, powers, privileges and remedies of LESSOR under this Lease, and LESSEE'S obligations under this Lease shall not be subject to any defense, offset or counterclaim available to LESSEE against LESSOR.

16. CONFLICTS. If any provision of this Lease is in conflict with any statute or rule of law of any state or territory wherein it may be sought to be enforced, then such provision shall be deemed null and void to the extent that it may conflict therewith, but without invalidating the remaining provisions of this Lease. For the sole purpose of resolving any problem of conflict of laws with respect solely to filing or recording hereof, it is agreed that questions of filing or recording shall be determined by the law of such place where the Equipment is located. In all other respects, this Lease shall be governed by the Laws of the State of Alaska.

17. NOTICES. All notices relating hereto shall be in writing and delivered in person to an officer of the party to which such notice is being given or mailed by certified mail to such party at the address specified above its signature hereto, or at such other address as may be hereafter specified by like notice by either party to the other.

18. CAPTIONS. Captions are intended for convenience or reference only, and shall not be construed to alter or vary the text.

19. ACCESS. LESSEE shall, whenever requested, advise LESSOR of the exact location of the Equipment. LESSOR may, for the purpose of inspection, at all reasonable times, enter upon any job, building or place where Equipment is located and may remove forthwith without notice to LESSEE, if Equipment is, in the opinion of the LESSOR, being used beyond its capacity or in any manner improperly cared for, abused or misused.

20. INDEMNITY. LESSEE shall and does hereby agree to indemnify and save LESSOR, its successors and assigns harmless from any and all liability, damages, or loss, including reasonable counsel fees, arising out of the ownership, selection, possession, leasing, renting, operation (regardless of where and how and by whom operated), control, use, condition (including but not limited to latent and other defects, whether or not discovered by LESSEE), maintenance, delivery and return of the Equipment, or in the event that the LESSEE shall be in default hereunder, arising out of the condition of any item of Equipment sold or disposed of after use by the LESSEE. The indemnities and obligations herein provided shall continue in full force and effect notwithstanding and termination of this Lease.

21. INDEMNIFICATION FOR LOSS OF TAX BENEFITS. LESSEE agrees that it and LESSOR have entered into this Lease on the assumption that LESSOR or any assignee of LESSOR shall be entitled to all deductions, credits, and other tax benefits which are provided by Federal, State or local income tax laws to an owner and lessor of new personal property intended for domestic use by a person which is neither a governmental entity nor a tax-exempt organization (the "Tax Benefits"). In the event that LESSOR shall lose the right to claim, or there shall be disallowed or recaptured with respect to LESSOR all or any portion of the Tax Benefits with respect to any item of Equipment, (any such loss being hereafter referred to as a "Loss"), not notwithstanding anything contained in this Lease to the contrary, LESSEE shall pay LESSOR, within 30 days after written notice by LESSOR to LESSEE that a Loss has occurred, an amount which, in the reasonable opinion of LESSOR will cause LESSOR'S net after-tax yield to remain what it would have been had such a Loss not occurred. LESSEE shall not be obligated to indemnify LESSOR, pursuant to this section, if a Loss results from (i) a casualty event with respect to an item of Equipment if the Casualty Value of such item is paid by LESSEE to LESSOR, or (ii) a voluntary sale or exchange of an item of Equipment by LESSOR; or (iii) an act of omission on the part of the LESSOR, unless such act or omission is contemplated by this Lease. LESSOR agrees to give LESSEE prompt notice of any action on the part of any tax authority which could result in a Loss. After such a notice is given, LESSOR agrees to consult with LESSEE and to take such action as LESSOR, in its sole discretion, deems appropriate to contest such action by the tax authority. This tax indemnification shall continue in full force and effect, notwithstanding termination of this Lease.

22. ENTIRE LEASE, CHANGES. This Lease contains the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed, except by a writing signed by an executive officer of LESSOR. Notwithstanding the foregoing, LESSEE hereby authorizes LESSOR, without further notice, to complete the description of the Equipment to be rented, the quantity thereof, and to fill in any blank spaces on this Lease and to date this Lease.

23. MISCELLANEOUS. This Lease shall be valid and enforceable when accepted in writing by LESSOR and shall be governed by the Laws of the State of Alaska and shall be binding upon LESSOR and LESSEE and their respective legal representatives, successors and assigns.

24. OTHER COVENANTS AND WARRANTIES OF LESSEE. LESSEE agrees that this Lease is irrevocable for the full term thereof; that LESSEE'S obligations under this Lease are absolute and shall continue without abatement and regardless of any disability to use the Equipment or any part thereof because of any reason including, but not limited to, war, act of God, governmental regulations, strike, loss, damage, destruction, obsolescence, failure or delay in delivery, failure of the Equipment properly to operate, termination by operation of law, or any other cause.

25. DELIVERY AND ACCEPTANCE. The Equipment shall be shipped directly to the LESSEE by the LESSOR. LESSEE agrees to accept such delivery of the Equipment and upon installation thereof to execute and deliver to LESSOR the Delivery and Acceptance Receipt submitted by LESSOR.

By execution thereof, the signer hereby certifies that he has read this Lease consisting of the foregoing and that he is duly authorized to execute this Lease on behalf of the LESSEE, and hereby acknowledges receipt of a copy of this Lease.

VALLEY BUSINESS MACHINES, INC., LESSOR

CITY OF WASILLA, LESSEE:

by: *Loren Rife President*
Authorized Signature and Title

by: _____
Authorized Signature and Title

Date: 10/22/01

Date: _____

V ALLEY
B BUSINESS
M MACHINES

PLAN: Option 2

MACHINE: Royal Ri6230

CUSTOMER: City of Wasilla

SERIAL:

ADDRESS: 290 E. Herning Avenue

BEG. COPY COUNT:

Wasilla, AK. 99654

END COPY COUNT:

PHONE: 373-9065

EFFECTIVE DATE:

1. Valley Business Machines, Inc. agrees to place under our Guaranteed Maintenance Agreement the Copier and accessories listed herein for a period of one year or **60,000** copies (whichever comes first) at the prevailing rate of **\$900.00**.
2. The equipment listed on this form will receive regular service during preventive maintenance. This will include adjustments, cleanings, and replacement of defective parts. This agreement includes interim emergency calls during normal working hours. Service after hours and weekends are billed at 1 ½ times the hourly rate. Any damages caused by carelessness or improper handling of the equipment, damage caused by fire, lightning, floods, riots, or acts of God are not covered.
3. If equipment is installed as a printer, only problems associated with the equipment are covered. Problems associated with customers computer or network are not covered and will be charged at our normal hourly rate.
4. Customer understands that this contract may be voided if repairs are made by persons other than those authorized by Valley Business Machines, Inc., or if supplies used in the machine are not approved by Valley Business Machines, Inc.
5. Customer understands that liability with respect to any property damage or injury to persons arising out of, or in connection with service performed under this agreement is limited strictly to that imposed by law and that there is no contract imposing any greater degree of liability on Valley Business Machines, Inc.
6. The term of this agreement is for the period specified and is automatically renewed at prevailing rates, unless terminated by 30 days written notice by either party.
7. No modification or amendment to this agreement will be binding unless in writing and signed by an officer of Valley Business Machines, Inc.
8. Valley Business Machines, Inc. accepts this contract as stated with the exception to mathematical error.

***COVERAGE INCLUDES ALL TONER, DEVELOPER, DRUMS, ROLLERS, CLEANINGS, PARTS AND LABOR. EXCLUDES TONER AND PAPER. OVERAGES BILLABLE AT .015 CENTS PER COPY.**

TL 10/24/01

Optional Equipment

Approved and Accepted this

By: Loren Rupe
 Loren Rupe, President

Customer Acceptance

By: _____

Title: _____