

RESOLUTION 2013 - 85

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON,
APPROVING A RENTAL AGREEMENT
WITH COPIERS NORTHWEST**



WHEREAS, the City has previously entered into lease agreements with Copiers Northwest for the purpose of printing services/equipment rental; and

WHEREAS, staff has met with representatives from Copiers Northwest and has determined the city would benefit from a rental agreement that provides lower monthly payments and significant cost savings; and

WHEREAS, the City Council and the City of Sunnyside have found and determined that such agreement is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare, and that such Agreement should be continued through the terms of the agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

SECTION 1. That the Agreement attached hereto as Exhibit "A" and incorporated herein by this reference, by and among the City of Sunnyside and Copiers Northwest, is hereby approved; and the City Manager is hereby authorized to execute and administer any and all documents to necessary to enter into such agreement for and on behalf of the City of Sunnyside.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 12th day of November, 2013.



JAMES A RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, LLP
Attorneys for the City of Sunnyside



Rental Agreement

USER INFORMATION	Full Legal Name City of Sunnyside	Phone Number with Area Code 509.836.8380
	Address 818 E. Edleon Ave., Sunnyside, WA 98944	
	Federal Tax ID Number 91-8001284	County Yakima
	Send Invoice to Attention of:	Purchase Order Reference Number

A. INDIVIDUAL METER OPTION (FOR UNITS WITH INDIVIDUAL MONTHLY MINIMUM ONLY)

Make/Model/Accessories	Serial #	Base Monthly Rental	Monthly Print Allowance	Cost-Per-Print Over Monthly Allowance	Meter Reading Frequency
1. _____	_____	_____	_____	_____	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly
2. _____	_____	_____	_____	_____	<input type="checkbox"/> Copies <input type="checkbox"/> Scans <input type="checkbox"/> Prints <input type="checkbox"/> Pages

BILLING PREFERENCE Each unit invoiced separately (Include all billing locations on Multi-Location Schedule) All units on invoice **FOR ADDITIONAL UNITS ATTACH SIGNED EQUIPMENT SCHEDULE**

B. CONSOLIDATED BILLING OPTION (FOR UNITS WITH CONSOLIDATED MONTHLY MINIMUM ONLY)

Make/Model/Accessories	Serial #	Make/Model/Accessories	Serial #	Base Monthly Rental	Monthly Print Allowance	Cost-Per-Print Over Monthly Allowance	Meter Reading Frequency
1. See attached schedule of devices	_____	3. _____	_____	\$4,667.05	45,000 B&W	\$0.012 B&W	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly
2. _____	_____	4. _____	_____				
ALL UNITS LISTED ABOVE ARE CONSOLIDATED UNDER THIS PLAN BILLING PREFERENCE:							

Consolidated units with individual meter option above on one invoice
 Consolidated units separate from individual meter option above
 Service Only **FOR ADDITIONAL UNITS ATTACH SIGNED EQUIPMENT SCHEDULE**

C. CONSOLIDATED BILLING OPTION (FOR UNITS WITH CONSOLIDATED MONTHLY MINIMUM ONLY)

Make/Model/Accessories	Serial #	Make/Model/Accessories	Serial #	Base Monthly Rental	Monthly Print Allowance	Cost-Per-Print Over Monthly Allowance	Meter Reading Frequency
1. _____	_____	3. _____	_____	_____	_____	_____	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly
2. _____	_____	4. _____	_____				
ALL UNITS LISTED ABOVE ARE CONSOLIDATED UNDER THIS PLAN BILLING PREFERENCE:							

Consolidated units with individual meter option above on one invoice
 Consolidated units separate from individual meter option above
 Service Only **FOR ADDITIONAL UNITS ATTACH SIGNED EQUIPMENT SCHEDULE**

D. CONSOLIDATED BILLING OPTION (FOR UNITS WITH CONSOLIDATED MONTHLY MINIMUM ONLY)

Make/Model/Accessories	Serial #	Make/Model/Accessories	Serial #	Base Monthly Rental	Monthly Print Allowance	Cost-Per-Print Over Monthly Allowance	Meter Reading Frequency
1. _____	_____	3. _____	_____	_____	_____	_____	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly
2. _____	_____	4. _____	_____				
ALL UNITS LISTED ABOVE ARE CONSOLIDATED UNDER THIS PLAN BILLING PREFERENCE:							

Consolidated units with individual meter option above on one invoice
 Consolidated units separate from individual meter option above
 Service Only **FOR ADDITIONAL UNITS ATTACH SIGNED EQUIPMENT SCHEDULE**

Term in Months	Base Rental Payment	+	Security Deposit	+	Sales Tax	=	Total Payment Enclosed
60	0	+	0	+	0	=	\$0.00
Purchase Option	<input checked="" type="checkbox"/> FMV	<input type="checkbox"/> 10%	<input type="checkbox"/> \$1 out				

SALES TAX OPTIONS Each payment is subject to sales tax of 7.9 % or amounts or percentages that may be in effect by location.
 Exempt - Exemption Certificate Attached.

CUSTOMER SIGNATURE

YOU AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED ON THE REVERSE SIDE OF THIS AGREEMENT, AND IN ANY ATTACHMENTS TO SAME (ALL OF WHICH ARE INCLUDED BY REFERENCE) AND BECOME PART OF THIS AGREEMENT. YOU ACKNOWLEDGE TO HAVE READ AND AGREE TO ALL THE TERMS AND CONDITIONS AND UNDERSTAND THAT THIS IS A NON-CANCELABLE AGREEMENT FOR THE FULL TERM SHOWN ABOVE.

You acknowledge that the leased equipment is: NEW USED

Signature: **X** _____ Date: _____
 Print Name: _____ Title: _____
 Legal Name of Corporation or Partnership: **City of Sunnyside**

DELIVERY AND ACCEPTANCE

You acknowledge that the Equipment set forth above has been received, has been put in use, is in good working order and is satisfactory and acceptable.

Signature: _____ Date: _____
 Print Name: _____
 Title: _____
 Legal Name of Corporation or Partnership: _____

GUARANTY

TO INDUCE OWNER TO ENTER INTO THE WITHIN RENTAL AGREEMENT, THE UNDERSIGNED UNCONDITIONALLY GUARANTEES TO OWNER THE PROMPT PAYMENT WHEN DUE, OF ALL OF USER'S OBLIGATIONS TO OWNER UNDER THE AGREEMENT. OWNER SHALL NOT BE REQUIRED TO PROCEED AGAINST USER OR THE EQUIPMENT OR ENFORCE ANY OTHER REMEDY BEFORE PROCEEDING AGAINST THE UNDERSIGNED. THE UNDERSIGNED WAIVES NOTICE OF ACCEPTANCE HEREOF AND ALL OTHER NOTICES OR DEMAND OF ANY KIND TO WHICH THE UNDERSIGNED MAY BE ENTITLED. THE UNDERSIGNED CONSENTS TO ANY EXTENSIONS OR MODIFICATION GRANTED TO USER AND THE RELEASE AND/OR COMPROMISE OF ANY OBLIGATIONS OF USER OR ANY OTHER OBLIGORS AND GUARANTORS WITHOUT IN ANY WAY RELINQUISHING THE UNDERSIGNED FROM HIS OR HER OBLIGATIONS HEREUNDER. THIS IS A CONTINUING GUARANTEE AND SHALL NOT BE DISCHARGED OR AFFECTED BY DEATH OF THE UNDERSIGNED, SHALL BIND THE HEIRS, ADMINISTRATORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS OF UNDERSIGNED AND MAY BE ENFORCED BY OR FOR THE BENEFIT OF ANY ASSIGNEE OR SUCCESSOR OF OWNER. THIS GUARANTY IS GOVERNED BY AND CONSTITUTED IN ACCORDANCE WITH THE LAWS IN THE STATE OF OWNER OR ITS ASSIGNEE'S PRINCIPAL PLACE OF BUSINESS AND I CONSENT TO JURISDICTION IN ANY STATE OR FEDERAL COURT IN THAT STATE.

Signature	Date	Signature	Date
X _____	_____	X _____	_____
Print Name		Print Name	
_____		_____	
Home Address		Home Address	
_____		_____	
Phone		Phone	
_____		_____	

RENTAL TERMS AND CONDITIONS

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

1. RENTAL AGREEMENT ("AGREEMENT"): We agree to rent to YOU and YOU agree to rent from US the Equipment listed in the "Individual Meter Option" and/or "Consolidated Billing Option" section of this Agreement and/or in any attached schedules ("Equipment"). YOU promise to pay US THE BASE MONTHLY RENTAL PAYMENT ("RENTAL PAYMENT") in accordance with the terms and conditions herein and on the face of this Agreement plus the Cost-Per-Print Over Monthly Allowance ("Additional Print Charge") on prints in excess of the Monthly Print Allowance. The Additional Print 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 goes into effect on the date YOU sign the Delivery and Acceptance Form ("Effective Date"). The term of the Agreement begins on a date designated by US during the month of the Effective Date or on the first day of the month following the Effective Date ("Commencement Date") and continues for the number of months designated as "Term in Months" on the face of this Agreement. YOU agree to pay US an interim rent charge for the period between the delivery and acceptance date and the Commencement Date. The payment for this interim period will be based on the Rental Payment, the number of days in that period, and a month of 30 days. WE will apply the first Rental Payment to the first month of the term on the Commencement Date or any later date designated by US. The second Rental 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 Rental Payments and any additional Rental 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 Rental Payments and other obligations hereunder shall be absolute and unconditional. This Agreement is NON-CANCELABLE.

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

3. LATE CHARGES/DOCUMENTATION FEES: Whenever any Rental Payment or Additional Print Charge is not made when due, YOU agree to pay US, within one month, a late charge of five percent (5%) for each delayed 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 and other documentation costs. If the Equipment is located in more than one location, YOU agree to pay US an additional fee of \$10.00 for each additional filing required for each additional location.

4. 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 Copiers Northwest, Inc. ("CNW"). 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 OR 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 CNW OR THE EQUIPMENT MANUFACTURER.

5. TITLE, PERSONAL PROPERTY, LOCATION AND INSPECTION: Except for Agreements with a \$1.00 purchase option, WE 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 therefrom. 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.

6. 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.

7. REDELIVERY AND RENEWAL: Upon at least thirty (30), but not more than ninety (90), days written notice to US 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 do 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 Rental Payments and Additional Print Charges equal to 100% of the Rental Payments and Additional Print Charges at the expiration of the initial term of this Agreement.

8. 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.

9. 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.

10. 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 Rental 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 Rental 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 Rental 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.

11. 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.

12. DEFAULT: YOU are in default of this Agreement if any of the following occurs: (a) YOU fail to pay any Rental 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.

13. REMEDIES: WE have the following remedies if a default should occur:

a) Upon written notice, declare the entire balance of the unpaid Rental Payments for the full term immediately due and payable, sue for and receive all Rental 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 Rental 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.

14. 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.

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

16. UCC FILINGS AND FINANCIAL STATEMENTS: YOU authorize US to file a 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 an annual basis if requested.

17. UCC-ARTICLE 2A PROVISIONS: YOU agree that this Agreement is a Finance Lease as that term is defined in Article 2A of the Uniform Commercial Code ("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.

18. CHOICE OF LAW: This Agreement has been made in the state of owner or its assignee's principal place of business and, except for local filing requirements, is governed by and construed in accordance with the laws of that state. YOU consent to and agree that non-exclusive jurisdiction, personal or otherwise, over YOU and the Equipment shall be with any state or federal court of that state solely at OUR option with respect to any provision of this Agreement. YOU ALSO AGREE TO WAIVE YOUR RIGHT TO A TRIAL BY JURY.

19. 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.

20. UPGRADE OPTION: YOU may upgrade any item of Equipment at any time after the first twelve (12) months of the Term of this Agreement, provided (a) at least 30 days prior to such upgrade, YOU notify US in writing of YOUR intention to upgrade the Equipment and the serial number of each item of Equipment to be upgraded, (b) WE credit approve the new transaction, (c) WE and YOU sign a new agreement covering the new equipment, (d) the new equipment is acquired from Copiers Northwest, Inc., (e) YOU return the upgraded item(s) of Equipment to US in accordance with Section 7 of this Agreement, and (f) no default shall have occurred under 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	

04CNW007v1

EXHIBIT "A"

City of Sunnyside

Schedule of Consolidated Devices for PrintSmart Rental Agreement

Make/Model	Accessories
Sharp MX-2640N	MX-DE14, MX-FN17, MX-FX11
Sharp MX-3640N	MX-DE14, MX-FN10, MX-RB10, MX-FX11
Sharp MX-3640N	MX-DE14, MX-FN10, MX-RB10, MX-FX11
Sharp MX-M363N	MX-DEX9, MX-PKX1, MX-FXX2
Sharp MX-M453N	MX-DEX9, MX-PKX1, MX-FXX2, MX-FN11, MX-RBX3
Sharp MX-4111N	MX-FN10, MX-RB11, MX-DE16, MX-FX11
Sharp MX-4111N	MX-FN10, MX-RB11, MX-DE16, MX-FX11
Sharp MX-5111N	MX-FN10, MX-RB11, MX-DE16, MX-FX11
(6) HP LaserJet 4350N	
(2) HP CP4525N (Customer-Owned)	
(1) Canon iR1025iF (Customer-Owned)	
(3) Canon iR C1022i (Customer-Owned)	

Total Monthly B&W Print Allowance **45,000**
 Total B&W Cost-per-Print Over Monthly Allowance **\$0.012 Per Page B&W**

Total Monthly Color Print Allowance **10,000**
 Total Color Cost-per-Print Over Monthly Allowance **\$0.069 Per Page Color**

Base Monthly Rental **\$4,667.65**

Signature: _____ Date: _____
 X _____

Print Name: _____ Title _____

Legal Name of Corporation or Partnership:

City of Sunnyside