

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION**

MASTER AGREEMENT

Basic Information

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| Contractor | Ricoh USA, Inc. |
| Contractor's Address | 2000 Sierra Point Parkway, 7 th Floor Brisbane, CA 94005 |
| City's Address | Office of Contract Administration - Purchasing Department City and County of San Francisco City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685 |
| Commencement Date | April 1, 2013 |
| Length of Term | The Master Agreement shall be Three (3) Years with Four (4) options to extend the term of the Master Agreement for periods of one (1) year each. |
| Individual Equipment Leases | Individual Equipment Leases shall have a term of three (3), four (4) or five (5) years plus renewals. |
| Individual Rental Agreements | Individual Rental Agreements shall have a term from one (1) month to no more than twelve (12) months. |
| Renewal Term | In no case shall the term of the Master Agreement, any Individual Equipment Lease, or any extension or renewal exceed ten years. Board of Supervisors approval for contracts in excess of ten years is required. No Individual Rental Agreement may extend more than eleven (11) months beyond the term of the Master Agreement. |
| Purchase Option | As defined in Article 3, Term, 3.5, <u>Purchase Option</u> of this Master Agreement. |

MASTER AGREEMENT

The foregoing Basic Information is incorporated into and made a part of this Agreement (to be defined below). Except where it is specifically stated in the Master Agreement that other terms set forth in the Proposal are more favorable to the City and therefore control, and if there is any conflict between provisions, the provisions of the Master Agreement shall govern, followed in order by the provisions of the RFP (solely with respect to specifications and pricing), the provisions of the Equipment Schedule and finally the provisions of the Proposal.

This Master Agreement (the "Agreement") made as of the date specified in Article 3 in the City and County of San Francisco, State of California, by and between the Person specified in the Basic Information ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of Purchasing.

WITNESSETH:

WHEREAS, City desires to lease, rent or own certain Equipment (as hereinafter defined) and Contractor desires to lease, rent or sell such Equipment to city.

WHEREAS, City desires to have Contractor service and maintain such equipment.

NOW, WHEREFORE, in consideration of the promises and mutual covenants contained in this Agreement and for the other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DEFINITIONS AND OTHER TERMS

1.1 **Specific Terms.** Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

"Appraisal Procedure" shall mean the following procedure for determining the Fair market Sales Value of any Equipment and the Fair Market Lease or Rental Value of any Equipment; such matter shall be determined on the basis of an appraisal by an independent appraiser mutually agreed upon by Contractor and City. If Contractor and City fail to agree upon a mutually acceptable appraiser within five (5) Business Days after Contractor or City delivers a written request therefore to the other, each shall appoint, within five (5) Business Days thereafter, an independent appraiser, and such appraisers shall jointly determine such matter, or, if such appraisers cannot agree on such matter within thirty (30) days, such matter shall be determined by the two (2) independent appraisers and a third independent appraiser chosen by agreement of such first two appraisers within five (5) Business Days after such thirty (30) day period. If such three (3) appraisers fail to reach an agreement, the estimates of such three (3) appraisers shall be averaged, unless the estimate of one appraisers differs from the median of the three estimates by more than twice the amount that any other estimate differs from the median, in

which case the estimate which differs from the median shall be discarded and the two remaining estimates averaged. If such third appraiser is not appointed within such period of five (5) Business Days or such appraisal is not made within thirty (30) days of such appointment then such appraisal shall be made promptly by an appraiser appointed by the American Arbitration Association. If either party fails to appoint an appraiser within the time required, the determination of the appraiser appointed by the other party shall be final. The expenses of the Appraisal Procedure shall be borne equally between Contractor and City.

“Basic Information” shall mean the Basic Information set forth at the beginning of this Agreement.

“Business Day” means any day other than a City holiday, a Saturday, Sunday or day upon which banks in the State of California are authorized or required to be closed.

“Commencement Date” for any items or item of equipment means the commencement date specified in the applicable supplemental Basic Information.

“Consumable Supplies” Supplies utilized in the normal use of a copier, including toner, developer, fuser agent, sumps, and preventative maintenance kits. Consumable supplies shall not include staples or paper.

“Controller” shall mean the Controller of the City.

“Equipment” shall mean the personal property (including any documentation related thereto), provided by Contractor to City pursuant to this Agreement.

“Equipment Schedule” shall mean the mutually agreed upon ordering request form and encumbrance document which includes, at a minimum, the equipment description and quantity, the lease or rental term and the price of each individual order under the Master Agreement. The parties agree that the “individual equipment lease” and “individual rental agreements” will be in the Equipment Schedule rather than in free-standing separate agreements.

“Event of Default” shall mean each of the events set forth in Sections 12.1 and 13.1.

“Fair Market Value” shall mean the fair market lease or rental value that would be obtained in an arm’s-length transaction between an informed and willing buyer and an informed and willing seller, both under no compulsion, respectively, to lease or rent, and neither of which is related to Contractor or City, for the purchase of the Equipment in question.

“Fair Market Sales Value” shall mean the value that would be obtained in an arm’s-length transaction between an informed and willing buyer and willing seller for the purchase of the Equipment in question.

“HRC” shall mean the City’s Human Rights Commission or its successor for implementation of Administrative Code 14B, the Contracts Monitoring Division, a division of the Office of the City Administrator.

“Indemnified Parties” shall mean: (i) City, including all commissions, departments, agencies and other subdivisions of City; (ii) City’s elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

“Liens” shall mean all judgments, materialmen’s liens, mechanics’ liens, claims, demands, encumbrances and other liens of whatever nature or character, but excluding any liens or encumbrances created by or through Contractor.

“Losses” shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatever kind and nature.

“Person” means an individual, partnership, corporation, association, trust or any other legal entity.

“Payment” means the payment for any item of Equipment that City is required to make to Contractor under this Agreement as set forth in the applicable Equipment Schedule.

“Payment Date” means the date the Payment for any item of Equipment is due.

“Request for Proposal” or “RFP” means RFP 96103, the City’s Request for Proposals for the Lease, Rental and Purchase of Multi-function Copier Devices issued May 18, 2012 and it’s two addendums.

“Supplemental Basic Information” shall mean for each item of Equipment, the Supplemental Basic Information contained in the applicable Equipment Schedule.

“Term” shall mean the length of the Master Agreement and any exercised options to renew.

“Lease Term” shall mean the length of time as designated in increments of three (3), four (4) or five (5) years for an equipment order.

“Rental Term” shall mean the length of time, as designated in increments of one (1) month and not exceeding a total of twelve (12) months, for an equipment order.

Additional Terms. The terms “approval”, “acceptable”, “consent” or “satisfactory” or similar terms shall mean approved by, acceptable to, consented to or satisfactory to City, acting through the department or commission recommending this Agreement below. The terms “include”, “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation.” The use of the term “Successor” or “assign” herein refers only to a successor or assign expressly permitted under Article 15.

1.2 **References to this Agreement.** References to this Agreement include: (a) this Master Agreement and (b) any and all appendices including but not limited to Appendix A; Pricing Matrix, exhibits, other schedules attached hereto and (c) any and all statutes, ordinances,

regulations or other documents expressly incorporated by reference herein; and (d) any and all amendments, modifications, or supplements hereto made in accordance with Section 18.14. Equipment Schedules (sometimes referred to as “Supplemental Basic Information,” “Equipment Leases” and/or “Rentals” or “Rental Agreements” entered into under this Agreement shall incorporate this Agreement by reference and be governed by its terms.

1.3 **Order of Precedence.** In cases of conflict, the order of precedence shall be as follows: first, Agreement (i.e. Master Agreement and all appendices), second, the applicable Equipment Schedule (sometimes referred to as “Supplemental Basic Information,” “Equipment Leases” and/or “Rentals” or “Rental Agreements”), third, the Request for Proposal, and fourth, Contractor’s Response to the Request for Proposal, and with respect to the third and fourth precedence, solely with respect to specifications and pricing, as applicable.

ARTICLE 2

EQUIPMENT SCHEDULES

2.1 **Delivery of Equipment.** Contractor shall cause each item of Equipment to be delivered at the delivery address specified in the Supplemental Basic Information within fourteen (14) business days after the City orders the specified unit. All transportation costs and other expenses, if any, incurred in connection with the delivery of Equipment shall be the responsibility of the Contractor, except where City and Contractor agree that delivery requires unusual and excessive rigging costs. In that case, additional charges will be negotiated at the time the order is placed. Contractor has affirmatively represented that this Agreement does not include software development or require the purchase by City of any software license. If, during the term of the Master Agreement, the City orders any item from Contractor that requires a software license, the parties agree to enter in to a software license agreement in substantially the form of the City’s Form P-545 as it may be amended from time to time.

2.2 **Installation.** Any Equipment that requires installation as indicated in the Supplemental Basic Information, shall be installed by Contractor or its authorized representative. Installation shall take place in accordance with plans and specifications approved by City and in accordance with all applicable laws, rules and regulations. Contractor shall obtain any permits or licenses required for the installation for the Equipment, unless City otherwise agrees in writing. It shall be the Contractor’s responsibility to examine such delivery site specified in the Supplemental Basic Information and to advise the City of any electrical, safety, space or special requirements that are to be met prior to delivery of Equipment. It shall be the City’s responsibility to have the site properly prepared for the delivery of Equipment. All costs and expenses incurred in connection with installation of the Equipment shall be the responsibility of Contractor.

Contractor agrees that the City may, upon reasonable notice to Contractor, relocate the Equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City’s sole discretion and at no additional charge to City. Prior to any such relocation, the City agrees to execute and to deliver to Contractor such documents that Contractor reasonably requests to protect Contractor’s right, title and interest in the Equipment.

2.3 **Training.** Training shall be provided to the personnel of the delivery sites on the same day, or within one day following the delivery of the equipment. Additional training shall be provided as often as required at no additional cost to the City.

2.4 **Maintenance.**

a. **Responsibility.** Price paid under this Agreement shall include the cost for the copier and features, delivery, installation, software if any, training, all maintenance, including drum replacement, and all consumable supplies. Consumable supplies shall include but not be limited to toner, developer, fuser agent, sumps and preventive maintenance kits but shall exclude staples and paper. The Contractor shall provide preventive and remedial maintenance service from 8:00 a.m. to 5:00 p.m., Monday through Friday, except on City holidays. All preventive maintenance shall be performed in accordance with the manufacturer's specifications. The City shall not be charged for copies made by the Contractor's technicians during maintenance service.

b. **Response Time.** Repeated service calls for the same recurring problems will not be tolerated by the City. If the Contractor's technician fails to repair a serious recurring problem the City may select to have the Equipment immediately replaced with another unit that is acceptable to City, at the cost of Contractor. The City may invoke these provisions related to "a serious recurring problem" for any problem that prevents the Equipment from performing according to specifications that is not rectified after three service calls. The replacement of a piece of Equipment shall not alter the term of the Equipment Lease or Rental Agreement applicable to the unit being replaced. The maximum service response time for any equipment problem shall be 4 working hours from the time the service request is initiated; if the problem is not rectified by the third service call for the same problem or such later time as City may allow, the City shall notify Contractor in writing that the equipment has a serious recurring problem requiring equipment replacement, and Contractor shall provide an equivalent replacement machine no later than three days after receipt of City's notification. If replacement takes longer than three business days, Contractor shall provide a credit to City equal to 1/30 of the monthly lease or rental fee for that piece of Equipment for each 24 business hours that the Equipment was not in service. Response time shall not include the period that is not considered the City's normal working hours or the period of time in which the service technician takes to repair the Equipment. Each service call shall be documented by the Contractor in the form of a service call report, a copy of which shall be left with the using department. This service call report shall, at a minimum, indicate the date and time of the service and a description of the needed repair. The response times listed in this section are minimum requirements. If the Contractor's Proposal contains response times and/or benefits that exceed these minimum requirements, the Contractor shall be bound by the terms of the Proposal. All replacement equipment shall be required to be added to the lease documents and reported to the Office of Contract Administration.

c. **Uptime Reports.** On a quarterly basis, Contractor shall provide the City a machine uptime report, which shall indicate the using department, model number, serial number, and description of each machine at that location, the install date of each machine, total number of service calls for each machine, the response time for each machine on a service call, the total downtime and the total percent uptime of each installed machine. Contractor shall keep Equipment in working order 98% of the available work time. Failure by Contractor to maintain a 98% uptime standard will be grounds for requiring the Contractor to replace the Equipment at

Contractor's expense with a like or better unit and provide a credit to City of 1/30 of the monthly lease or rental for that piece of Equipment for each 24 business hours that the Equipment was not in service. The 98% standard listed in this section is a minimum requirement. If the Contractor's Proposal contains standards and/or benefits that exceed these minimum requirements, the Contractor shall be bound by the terms of the Proposal.

2.5 **No Exclusivity.** Nothing contained in this Agreement shall be deemed to grant Contractor an exclusive right during the term of this Agreement to supply City with any equipment or any minimum volume of equipment. City reserves the right, at its sole discretion, to lease, rent or purchase similar or different equipment from any other supplier or contractor that may be used contemporaneously with any item of Equipment provided hereunder.

ARTICLE 3

TERM

3.1 **Effective Date of Agreement.** The term of this Agreement shall be from April 1, 2013 to March 31, 2016. In addition the City, at its sole discretion, shall have the option to extend the term of this Agreement for up to four, one year periods, for a total term of up to seven years.

3.2 **Term for Each Equipment Lease or Rental.** Subject to Section 4.4, the term of each Equipment Lease or Rental shall commence with respect to such Equipment when the vendor has installed the Equipment, the Equipment has successfully run all diagnostic routines and production checks, and made the Equipment available for use by the City. Such term shall end at 11:59 P.M. San Francisco time on the Expiration Date certified in the applicable Equipment Lease or Rental.

3.3 **Duration of this Agreement.** The Master Agreement shall have a 3-year term with the option to renew, in the sole discretion of the City, for up to 4 additional 1-year terms. Individual Equipment Leases shall have a term of 3, 4 or 5 years plus renewals. Individual Rental Agreements shall have a term of 1 month not to exceed a total of 12 months. The period beginning with the effective date of the Master Agreement and ending on expiration date of the last expiring Individual Equipment Lease(s) and/or Individual Equipment Rental(s) shall not exceed ten years, unless the City's Board of Supervisors specifically approves a longer term as to the Master Agreement or any individual Equipment Lease. This Agreement shall be incorporated in all Equipment Leases and Rentals, and its terms remain in effect as to those individual Equipment Leases or Rentals until each such individual agreement has expired or been terminated. If no Equipment Schedule has been executed and delivered within one (1) year after the date of this Agreement specified in the Basic Information, then this Agreement shall automatically be terminated and neither Contractor nor City shall have any rights or obligations hereunder.

3.4 **Individual Equipment Lease Renewal Option.** Unless an Event of Default by City shall have occurred and be continuing at the time of giving notice referred to in this Section 3.4 or an Event of Default by City shall have occurred and be continuing at the end of the initial term hereof or the current renewal term, as the case may be, and subject to the maximum terms

limitations set forth in Section 3.3 above, City may, at least thirty (30) days prior to the expiration of each Individual Equipment Lease initial term or any extension or renewal term, as the case may be, give Contractor written notice of its election to renew the Individual Equipment Lease in accordance with one of the following two options as mutually agreed to with the Contractor.

- a. Payments for the term of any renewal shall not exceed 50 percent of the original lease rate; or
- b. Upon expiration, the City has the option to have Contractor provide a quote on a 12 or 24 month lease extension on the in-place equipment. The quote shall be based upon a calculation of at most 60% of the Fair Market Value of the in-place unit at the end of the lease multiplied by the prevailing State and Local interest rates as mutually agreed to for a Fair Market Value lease, and shall include the same base monthly Full Service maintenance component that was in effect during the original lease.

If City fails to exercise its option to renew as herein provided, Contractor shall, subject to Section 3.5, be free to lease or to sell the Equipment on or after the end of the initial term or current renewal term, as the case may be.

3.5 Purchase Option. Unless an Event of Default by City shall have occurred and be continuing at the end of the initial term or the current renewal term, as the case may be, City shall have the option to purchase all or any portion of the Equipment on the last day of the initial term or current renewal term, as the case may be, for a purchase price equal to the Fair Market Sales Value thereof as of the date of purchase. Such option shall be exercised by written notice to Contractor at least thirty (30) days prior to the last day of the initial term or current renewal term, as the case may be. Fair Market Sales Value of the Equipment in question shall be determined by mutual agreement of Contractor and City within ten (10) days after receipt by Contractor of the notice from City, or, if the parties shall fail to agree within such ten (10) day period, by the Appraisal Procedure. City shall be obligated to pay for such Equipment on the last day of the initial term or the current renewal term, as the case may be. Upon the purchase of any item of Equipment pursuant to this Section 3.5, all of Contractor's right, title and interest in and to such Equipment, and any improvements or additions to such Equipment, shall be automatically transferred directly to City, free and clear of all liens or other encumbrances created by or through Contractor and all interests of Contractor. Contractor shall execute and deliver, upon the request of City, such bills of sale and any other documents, certificates or statements reasonably necessary in connection with such transfer. If City fails to exercise its option under this Section 3.5, the Contractor shall, subject to Section 3.4, be free to sell or lease the Equipment on or after the end of the initial term or the current renewal term, as the case may be.

3.6 Termination for Convenience.

a. City shall have the option, in its sole discretion, to terminate the Master Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor 30 days prior written notice of termination. The notice shall specify the date on which termination shall become effective. For purposes of clarification, the parties agree that this Section 3.6 applies solely to the Master Agreement and does not apply

to the parties' rights and obligations under Individual Equipment Lease or Rental Agreements entered into under the Master Agreement (which are addressed in Section 3.7, below).

3.7 **Termination for Convenience – Individual Equipment Leases Agreements.** City may terminate all or any Individual Equipment Lease(s) for City's convenience and without cause at any time by giving Contractor thirty days written notice of such termination. In the event the City decides to terminate all or part of any Individual Equipment Lease for convenience the following payment formula shall apply: City shall pay the remaining balance due on the Lease Term less any unearned charges, including but not limited to interest, and/or maintenance. Within 10 days after City makes this payment Contractor shall remove the terminated equipment.

3.8 **Termination for Convenience – Individual Rental Agreements.** City may terminate all or any Individual Equipment Rental Agreements for City's convenience and without cause at any time by giving Contractor thirty days written notice of such termination without incurring a Termination Fee or any other fee.

ARTICLE 4

PAYMENTS

4.1 **Amount.** City shall pay to Contractor for the Equipment Payments in the amount set forth in Appendix A (the "Pricing Matrix" for Equipment). All pricing shall be firm for the initial term of the Agreement. Pricing during option periods, if any, shall be negotiated. Leases and Rentals shall be fixed at a monthly amount and/or a cost per copy charge for the term of the lease or rental, plus any equipment options or upgrades. The lease or rental price shall include, but not be limited to, preorder assistance with a needs assessment and analysis for departments, recommendations, equipment, all maintenance (including drum replacement), service, supplies (paper and staples excluded), on-going analysis of office equipment environments, reports, implementation of fleet management, installation and training. Any renewals or extensions shall be charged as set forth in Section 3.4. Each Payment shall be paid on the Payment Date specified in the Equipment Lease or Rental. Payments shall include the cost per month of the copier and features and delivery. Unless otherwise specified by Contractor in writing, each Payment shall be sent to Contractor at the address for notices specified in Article 16. If any Equipment Lease or Rental should expire or terminate before the end of any period covered by the applicable Payment, such Payment shall be prorated on a per diem basis based on the actual number of calendar days falling within such period.

4.2 **Payment Dates; Statements.** At least fifteen (15) days prior to the Payment date for each item of Equipment hereunder, Contractor shall provide to City departments listed in the Supplemental Basic Information a statement setting forth the total amount due and payable on such Payment Date including any applicable discounts. Should Contractor fail to receive any Payment when due and payable, Contractor shall within five (5) days of the Payment Date send written notice thereof to City. Notwithstanding the foregoing requirement, City's receipt of the foregoing billing statement and notices from Contractor is not a condition precedent to City's obligation to make the required Payments when due and payable. Additionally, the City may