

**PURCHASE AGREEMENT BETWEEN THE
CITY OF SOUTH SAN FRANCISCO AND DELL MARKETING L.P.**

These terms and conditions govern the purchase of materials, supplies, and/or equipment, including any related installation, training, and/or minor services and repairs described in this Purchase Agreement (“Purchase Agreement”) by Dell Marketing L.P. (“Vendor”) for the City of South San Francisco (“City”). Vendor and City are collectively referred to in this Purchase Agreement as “the Parties.”

1. Time of Performance. This Purchase Agreement shall commence effective as of the date that the parties have fully executed this Purchase Agreement and shall continue as specified in vendor’s quotes attached as Exhibit B (such quotes referred to herein as the “Quotes,” and products and services referenced in the Quotes are referred to as “Products” and /or “Services”).
2. Contract Terms. This Purchase Agreement is comprised of this document and the following, which are incorporated herein by reference and form a part of this Purchase Agreement:
 - California Participating Addendum No. 7-15-70-34-004 and Minnesota WSCA-NASPO Master Agreement Number MNWNC-108 with Dell Marketing L.P. effective as of April 1, 2015 (the “NASPO Contract”), attached as Exhibit A; and
 - The Quotes attached as Exhibit B.

In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the terms of the main body of this Purchase Agreement shall apply.

3. Description of Purchase. The City hereby agrees to pay Vendor for the Products and/or Services based on Exhibit B and additional invoices or quotes issued by Vendor and approved by City, subject to a not to exceed amount set forth hereunder. The total compensation for Products and/or Services performed under this Purchase Agreement is **not to exceed Two Hundred Forty Thousand Three Hundred Ninety-Six Dollars and Sixty-Six Cents (\$240,396.66)**.
4. Payment Terms. City shall pay Vendor’s invoices in full within 45 days after the date of the invoice, with interest accruing after the due date at the lesser of 1.5% per month or the highest lawful rate. In case of City’s default in payment Vendor shall, until arrangements as to payment or credit have been established, be entitled to: (i) cancel or suspend its performance of such order and/or (ii) withhold performance under this Purchase Agreement.
5. Insurance. Before beginning any installation work and continuing throughout the term of this Purchase Agreement, Vendor, at its sole cost and expense, furnish the City with certificates of insurance evidencing that Contractor has obtained and maintains insurance in the following amounts:

A. Workers’ Compensation that satisfies the minimum statutory limits.

B. Commercial General Liability and Property Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations and contractual liability coverage. The policy shall also include coverage for liability arising out of the use and operation of any City-owned or City-furnished equipment used or operated by the Vendor, its personnel, agents or subcontractors.

The Commercial General Liability policy shall be written on an occurrence basis and shall name the City Indemnitees as additional insureds with any City insurance as respects insurable liabilities assumed under this Purchase Agreement shall be secondary and in excess to Vendor’s insurance. If the Vendor’s insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer’s liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer’s liability.

The City Risk Manager, in writing, may approve a variation in the foregoing insurance requirements. A valid and executed approval by Risk Manager must accompany this Purchase Agreement for a variation to be binding.

6. Prevailing Wage. If Prevailing Wages are applicable in carrying out the Terms of this Purchase Agreement in accordance with California law, the wages to be paid for a day’s work to all classes of laborers, workmen, or mechanics on the work contemplated by this Purchase Agreement, shall be not less than the prevailing rate for a day’s work in the

same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770, *et seq.* Each laborer, worker or mechanic employed by Vendor or by any subcontractor shall receive the wages herein provided for. The Vendor shall pay two hundred dollars (\$200), or whatever amount may be set by Labor Code Section 1775, as may be amended, per day penalty for each worker paid less than prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Vendor to each worker.

An error on the part of an awarding body does not relieve the Vendor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775. The City will not recognize any claim for additional compensation because of the payment by the Vendor for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the Vendor.

A. Posting of Schedule of Prevailing Wage Rates and Deductions. If the schedule of prevailing wage rates is not attached hereto pursuant to Labor Code Section 1773.2, the Vendor shall post at appropriate conspicuous points at the site of the project a schedule showing all determined prevailing wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

B. Payroll Records. Each Vendor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Vendor in connection with the public work. Such records shall be certified and submitted weekly as required by Labor Code Section 1776.

7. 12. Payment of Employment Taxes; Tax Withholding. Vendor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. To be exempt from tax withholding, Vendor must provide City with a valid California Franchise Tax Board form 590 ("Form 590"), as may be amended and such Form 590 shall be attached hereto and incorporated herein as Exhibit C. Unless Vendor provides City with a valid Form 590 or other valid, written evidence of an exemption or waiver from withholding, City may withhold California taxes from payments to Vendor as required by law. Vendor shall obtain and maintain on file for three (3) years after the termination of this Agreement, Form 590s (or other written evidence of exemptions or waivers) from all subcontractors. Vendor accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Vendor's withholding duty to City upon request.
8. Termination. A termination for convenience shall only be permitted if expressly agreed between the parties. Either party may terminate this Purchase Agreement for material breach by the other party if such other party has failed to cure such breach within a reasonable grace period of no less than 30 days as set forth by the other party in writing. In the event of termination, the City will pay the Vendor for Products and/or Services accepted in accordance with this Purchase Agreement prior to the date of termination.
9. Prevailing Party. In the event that either party to this Purchase Agreement commences any legal action or proceeding (including but not limited to arbitration) to interpret the terms of this Purchase Agreement, the prevailing party in such a proceeding shall be entitled to recover its reasonable attorney's fees associated with that legal action or proceeding.
10. Notice. All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

Vendor:

Dell Marketing L.P. ("Dell")
One Dell Way
Round Rock, Texas 78682
Legal Notices: Dell_Legal_Notices@Dell.com

City:

City Clerk

City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080

11. Assignment, Governing Law. Neither party may assign, transfer, or novate this Purchase Agreement without the other party's written approval, which shall not be unreasonably withheld. Notwithstanding the foregoing: (i) Vendor may use affiliates or other qualified subcontractors to perform its obligations hereunder, provided that the relevant party shall remain responsible for the performance thereof; and (ii) either party may assign rights to payments arising without consent of the other party. This Purchase Agreement is governed by California law. The jurisdiction for any litigation arising from this Purchase Agreement shall be in the state of California and shall have venue in the County of San Mateo.
12. Severability. If any portion of this Purchase Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Purchase Agreement.
13. Entire Agreement. This Agreement, including the documents referenced in Section 2, represents the entire and integrated agreement between the Parties. This Purchase Agreement may be modified or amended only by a subsequent written agreement signed by both Parties.
14. Execution in Counterpart. This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

CITY OF SOUTH SAN FRANCISCO
A Municipal Corporation

DELL MARKETING L.P.

By: _____
City Manager

By: _____
[Name], Authorized Rep

Date: _____

Dates: _____

Approved as to Form:

City Attorney Date

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