

**COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
DELL MARKETING LIMITED PARTNERSHIP**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of October 19, 2015, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Dell Marketing Limited Partnership, a Texas limited partnership (the "Contractor").

RECITALS

A. After a competitive procurement process, WSCA-NASPO Cooperative Purchasing Organization ("WSCA-NASPO") through its lead state, the State of Minnesota, entered into Contract No. MNWNC-108, dated April 1, 2015 (the "Master Agreement"), with the Contractor to provide computer equipment, including related peripherals and services. A copy of the Master Agreement is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. As a participating entity of WSCA-NASPO, the State of Arizona (the "State") entered into Participating Addendum Contract No. ADSP015-093839, dated July 7, 2015, and amended by that certain Contract Amendment No. 1, dated July 31, 2015, changing the Contract No. to ADSP016-098163 (collectively, the "State Addendum"), with the Contractor for the purchase of computer hardware including peripherals and associated services. A copy of the State Addendum is attached hereto as Exhibit B and incorporated herein by reference, to the extent not inconsistent with this Agreement.

C. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the Master Agreement and State Addendum, at its discretion and with the agreement of the awarded Contractor, and the Master Agreement and State Addendum permits its cooperative use by other public entities, including the Town.

D. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Master Agreement, State Addendum and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with computer hardware including peripherals and associated services, as more particularly set forth in Section 2 below (the "Equipment and Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Equipment and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until October 18, 2016, unless terminated as otherwise provided in this Agreement, the Master Agreement or the State Addendum.

2. Scope of Work. Contractor shall provide to the Town the Equipment and Services under the terms and conditions of the Master Agreement, State Addendum and as set forth in the Quotation, attached hereto as Exhibit C and incorporated herein by reference.

3. Inspection; Acceptance. All Equipment and Services are subject to final inspection and acceptance by the Town. Equipment failing to conform to the requirements of this Agreement, the Master Agreement or State Addendum will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Equipment or Services, the Town may elect to do any or all of the following by written notice to the Contractor: (A) waive the non-conformance; (B) stop the work immediately; or (C) bring the Equipment or Service into compliance and withhold the cost of same from any payments due to the Contractor.

4. Compensation. The Town shall pay the Contractor an amount not to exceed \$15,905.70 for the Equipment and Services at the unit rates set forth in the Master Agreement, the State Addendum and as more particularly set forth in the Quotation.

5. Payment. Payment for completion of an order under this Master Agreement is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

6. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 7 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 7 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even

if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

7. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

8. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

10. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of the Master Agreement, State Addendum, this Agreement, any Town-approved work orders and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement, the Master Agreement or the State Addendum (collectively, the "Unauthorized Conditions"), other than the Town's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any work order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Master Agreement or State Addendum shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

11. Indemnification; Insurance. The Town shall be afforded all of the rights, privileges and indemnifications afforded to the Lead State, Participating Entities and its agencies and employees under the Master Agreement or to the State under the State Addendum, and such rights, privileges and indemnifications shall accrue and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide indemnification and insurance.

12. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail,

registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:           Town of Fountain Hills  
                                  16705 East Avenue of the Fountains  
                                  Fountain Hills, Arizona 85268  
                                  Attn: Grady E. Miller, Town Manager

With copy to:            GUST ROSENFELD P.L.C.  
                                  One East Washington Street, Suite 1600  
                                  Phoenix, Arizona 85004-2553  
                                  Attn: Andrew J. McGuire, Esq.

If to Contractor:        Dell Marketing Limited Partnership  
                                  One Dell Way  
                                  Round Rock, Texas 78682  
                                  Attn: David F. White

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]



**“Contractor”**

DELL MARKETING LIMITED PARTNERSHIP,  
a Texas limited partnership

By: *Amy Ivy*

Name: *Amy Ivy*

Title: *Contracts Manager*

(ACKNOWLEDGMENT)

STATE OF *TEXAS* )  
COUNTY OF *TRAVIS* ) ss.

On *OCTOBER 19TH*, 2015, before me personally appeared *AMY IVY*, the *CONTRACTS MANAGER* of DELL MARKETING LIMITED PARTNERSHIP, a Texas limited partnership, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the limited partnership.

*Israel J. Gibbs*  
Notary Public

(Affix notary seal here)

