

**CITY OF MIRAMAR
PROPOSED CITY COMMISSION AGENDA ITEM**

Meeting Date: September 4, 2019

Presenter's Name and Title: Clayton D. Jenkins, Director of Information Technology

Temp. Reso. Number: 7005

Item Description: Temp. Reso. #R7005, APPROVING THE LEASE AGREEMENT WITH DELL FINANCIAL SERVICES LP, THROUGH THE UTILIZATION OF THE STATE OF FLORIDA CONTRACT NO. 250-WSCA-10-ACS, FOR THE LEASE OF 204 DESKTOPS AND 105 LAPTOP COMPUTERS, IN A TOTAL AMOUNT NOT-TO-EXCEED \$363,501 OVER A THREE-YEAR PERIOD, WHICH INCLUDES AN AMOUNT NOT-TO-EXCEED \$116,500 FOR FY20; AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE LEASE DOCUMENTS. (Information Technology Director Clayton Jenkins)

Consent ☒ Resolution ☐ Ordinance ☐ Quasi-Judicial ☐ Public Hearing ☐

Instructions for the Office of the City Clerk:

Public Notice – As required by the Sec. ____ of the City Code and/or Sec. ____, Florida Statutes, public notice for this item was provided as follows: on ____ in a ____ ad in the ____; by the posting the property on ____ and/or by sending mailed notice to property owners within ____ feet of the property on ____
(fill in all that apply)

Special Voting Requirement – As required by Sec. ____, of the City Code and/or Sec. ____, Florida Statutes, approval of this item requires a ____ (unanimous, 4/5ths etc.) vote by the City Commission.

Fiscal Impact: Yes ☐ No ☐

REMARKS: Funding of \$116,500 will be appropriated in the FY20 budget in the Information Technology Fund, GL Account 504-58-582-516-000-604404, Leased Computer. As this is a three-year contract, approval of this item will require funding to be appropriated in future budgets.

Content:

- Agenda Item Memo from the City Manager to City Commission
- Resolution TR 7005
- Attachment(s)
 - Attachment 1: Dell Lease Proposal
 - Attachment 2: Dell Master Lease Agreement and Amendments
 - Attachment 3: Resolution No. 01-35
 - Attachment 4: Participating Addendum, State Contract No. 250-WSCA-10-ACS



**CITY OF MIRAMAR
INTEROFFICE MEMORANDUM**

TO: Mayor, Vice Mayor, & City Commissioners

FROM: Vernon E. Hargray, City Manager *For [Signature]*

BY: Clayton Jenkins, Director of Information Technology

DATE: August 29, 2019

RE: Temp. Reso. No. 7005, Approving Lease Agreement with Dell Financial Services, LLC

RECOMMENDATION: The City Manager recommends approval of Temp. Reso. No. 6641, for the lease of 204 desktops and 105 laptop computers, from Dell Financial Services, LLC ("DFS") in an amount not-to-exceed \$363,501 over a three year period, which includes an amount not-to-exceed \$116,500 for FY20, under the existing Master Lease Agreement with Dell Financial Services LP utilizing Florida Contract No. 250-WSCA-10-ACS.

ISSUE: City Commission approval is required for expenditures exceeding \$75,000, in accordance with City Code Section 2-412 (a)(1).

BACKGROUND: On November 15, 2000, the City adopted Reso. No. 01-35, approving the execution of a Master Lease Agreement (the "Lease") with Dell Financial Services LP, the predecessor in interest to DFS, for the lease of Dell computer equipment.

Since the execution of the Lease, the City has used the Lease to purchase computer equipment as part of its Annual Computer Replacement Program, which requires the replacement of all of the City's computer technology on a regular three year schedule. Replacing one-third of the City's computer equipment every year helps to accomplish the City's best practices and green initiative and provides an overall cost savings to the City by reducing maintenance costs, replacing obsolete technology, ensuring software compatibility, and meeting the needs of the City's personnel. The lease of this equipment through the Annual Computer Replacement Program further allows for computer acquisitions to be centralized and monitored by the IT Department, eliminating the need for individual departments to determine replacement and upgrade needs. At the

termination of the three year period, DFS will provide asset recovery and will dispose of the equipment in an environmentally appropriate manner at no additional cost.

Pursuant to the Lease and DFS's proposal regarding the equipment requiring replacement this year, 204 dekstop computers and 105 laptop computers, are to be leased for three years and paid for in 4 quarterly installments of \$116,500 each year. Discounted pricing will be provided through the utilization of State of Florida Contract No. 250-WSCA-10-ACS, which includes a price schedule negotiated by the State of Florida. Per City Code Section 2-413(6), utilization of this contract exempts this lease of equipment from competitive bidding requirements. The total cost will not exceed \$363,501 over the three year lease period, which includes an amount not-to-exceed \$116,500 for FY20. These amounts include a state-mandated personal property lease tax in the estimated amount of \$1,333 per quarter.

Funding to support the Annual Computer Replacement Program is provided for in the Information Technology FY20 budget and expenditures will be available upon Commission's approval of the City budget.

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**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING THE LEASE AGREEMENT WITH DELL FINANCIAL SERVICES LP, THROUGH THE UTILIZATION OF THE STATE OF FLORIDA CONTRACT NO. 250-WSCA-10-ACS, FOR THE LEASE OF 204 DESKTOPS AND 105 LAPTOP COMPUTERS, IN A TOTAL AMOUNT NOT-TO-EXCEED \$363,501 OVER A THREE-YEAR PERIOD, WHICH INCLUDES AN AMOUNT NOT-TO-EXCEED \$116,500 FOR FY20; AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE LEASE DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City strives to maintain computer equipment and technology that provides the most effective and efficient services for City staff and residents; and

WHEREAS, the City has implemented an Annual Computer Replacement Program consistent with its best practices and green initiative, which provides for the replacement of the City's computer technology over a three-year cycle; and

WHEREAS, the replacement of one-third of the City's computer technology per calendar year reduces the need for equipment maintenance, replaces obsolete technology, ensures software compatibility, and guarantees that the equipment meets the ongoing needs of the City's personnel; and

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WHEREAS, on November 15, 2000, the City Commission adopted Reso. No. 01-35, approving a Master Lease Agreement (the "Lease") with Dell Financial Services LP, the predecessor in interest to Dell Financial Services, LLC ("DFS"); and

WHEREAS, the equipment previously leased under the Lease Agreement pursuant to the Annual Computer Replacement Program is being returned in accordance with the terms of the Lease Agreement, and the City desires to lease 204 desktops and 105 laptop computers, in the next scheduled phase of the Annual Computer Replacement Program; and

WHEREAS, City Code Section 2-413(6) exempts from competitive bidding requirements of commodities procured utilizing other governmental agencies' contracts where the commodities are the subject of a price schedule negotiated by the State of Florida; and

WHEREAS, the State of Florida has negotiated a price schedule with a DFS-related entity through State of Florida Contract No. 250-WSCA-10-ACS, which provides for the lease of computer equipment from DFS at discounted rates; and

WHEREAS, pursuant to City Code Section 2-412(a)(1), City Commission approval is required for expenditures exceeding \$75,000 per year to a single vendor; and

WHEREAS, DFS has offered to lease the City 204 dekstop computers and 105 laptop computers, for three years under the Lease Agreement with DFS's predecessor in

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interest, utilizing State of Florida Contract No. 250-WSCA-10-ACS, to be paid for by the City over the course of three years in 12 quarterly installments, in a total amount not-to-exceed \$363,501 over the three year lease term, including an amount not-to-exceed \$116,500 for FY20, which amount includes a state-mandated personal property lease tax in the amount of \$1,333 per quarter; and

WHEREAS, the City Manager recommends approval of the expenditures for the lease of 204 desktops and 105 laptop computers, from DFS pursuant to the City's existing Master Lease Agreement with DFS's predecessor in interest, utilizing State of Florida Contract No. 250-WSCA-10-ACS, in a total amount not-to-exceed \$363,501 over the three year lease term, including an amount not-to-exceed \$116,500 for FY 2020; and

WHEREAS, the City Commission deems it to be in the best interest of the residents and citizens of the City of Miramar to approve the expenditures for the lease of 204 desktops and 105 laptop computers, from DFS in a total amount not-to-exceed \$363,501 over the three year lease term, including an amount not-to-exceed \$116,500 for FY 2020, pursuant to the City's existing Master Lease Agreement with DFS's predecessor in interest and utilizing State of Florida Contract No. 250-WSCA-10-ACS.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:

Section 1: That the foregoing "**WHEREAS**" clauses are ratified and confirmed as being true and correct and made a specific part of this Resolution.

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Section 2: That it approves the expenditures for the lease of 204 desktops and 105 laptop computers, from Dell Financial Services, LLC, in a total amount not-to-exceed \$363,501 for a three year period, including an amount not-to-exceed \$116,500 for FY 2020.

Section 3: That the City Manager is authorized to execute all appropriate documents to effectuate the lease of this equipment, subject to the approval of the City Attorney as to form and legal sufficiency.

Section 4: That the appropriate City officials are authorized to do all things necessary and expedient to carry out the aims of this Resolution.

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Section 5: That this resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, _____.

Mayor, Wayne M. Messam

Vice Mayor, Alexandra P. Davis

ATTEST:

City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved
this RESOLUTION as to form:

City Attorney
Weiss Serota Helfman
Cole & Bierman, P. L.

Requested by Administration

Commissioner Winston F. Barnes
Commissioner Maxwell B. Chambers
Commissioner Yvette Colbourne
Vice Mayor Alexandra P. Davis
Mayor Wayne M. Messam

Voted



Prepared For:

CITY OF MIRAMAR, FL
Contract No: WN08AGW
Customer Agreement No: 43211500-WSCA-15-ACS

July 25, 2019

Thank you for giving Dell Financial Services L.L.C. ("DFS") the opportunity to provide a technology financing solution. Enclosed is a financing proposal for your new technology needs. We look forward to discussing this opportunity in further detail with you. If you have any questions, please contact me at the phone number or email address below.

Term	36
Option	FMV
Payments:	Quarterly
Consolidation:	Monthly
Payments Due:	Advance
Interim Rent:	None

Dell Quote Number	Summary Product Description	Product Price	Quantity	Extended Price	Lease rate	12 Payments
3000042960661.1	Dell Latitude 5400 & Briefcase	\$1,033.00	39	\$40,287.00	0.07575	\$3,051.74
3000042959950.1	Dell Latitude 5400 & Additional	\$1,452.45	37	\$53,740.65	0.07575	\$4,070.85
3000042887906.1	Optiplex 5060 SFF, Monitor & Soundbar	\$867.00	187	\$162,129.00	0.07575	\$12,281.27
3000041575935.1	Precision Workstation T3620, Monitor & Soundbar	\$1,397.00	17	\$23,749.00	0.07575	\$1,798.99
3000041968372.1	Dell Latitude 5424	\$1,854.00	29	\$53,766.00	0.08039	\$4,322.25
3000042448914.1	PowerEdge R340	\$2,170.55	1	\$2,170.55	0.07575	\$164.42
3000042448914.1	PowerEdge R640	\$13,829.53	2	\$27,659.06	0.07575	\$2,095.17
Property tax						\$1,332.60
TOTALS				\$363,501.26		\$29,117.29

Proposal Expiration Date:

August 24, 2019

Leasing and financing provided by Dell Financial Services L.L.C. or its affiliate or designee ("DFS") to qualified customers. Offers may not be available or may vary in certain countries. Where available, offers may be changed without notice and are subject to product availability, credit approval, execution of documentation provided by and acceptable to DFS, and may be subject to minimum transaction size. Offers not available for personal, family or household use. Dell and the Dell logo are trademarks of Dell Inc. Proposal is property of DFS, contains confidential information and shall not be duplicated or disclosed in whole or part. Proposal is not a firm offer of financing. Pricing and rates based upon the final amount, configuration and specification of the supplied equipment, software, services or fees. Prorata payment may be due in the first payment cycle. Proposal excludes additional costs to customer such as shipping, maintenance, filing fees, applicable taxes, insurance and similar items. Proposal valid through the expiration date shown above, or if none is specified, for 30 calendar days from date of presentation.

End of Term Options:**Fair Market Value (FMV) Lease:**

- Exercise the option to purchase the products at the then fair market value.
- Return all products to lessor at the lessee's expense.
- Renew the lease on a month to month or fixed term basis.

Caren Wright

FSR

Dell | Financial Services

office + 512-728-6628

caren_wright@dell.com**Additional Information:**

LEASE QUOTE: The Lease Quote is exclusive of shipping costs, maintenance fees, filing fees, licensing fees, property or use taxes, insurance premiums and similar items which shall be for Lessee's account. Lessee will pay payments and all other amounts without set-off, abatement or reduction for any reason whatsoever. Additionally, Lessee shall declare and pay all sales, use and personal property taxes to the appropriate taxing authorities. **If you are sales tax exempt, please provide a copy of your Exemption Certificate with the Lease Contract.** If Lessee provides the appropriate tax exemption certificates to DFS, sales and use taxes will not be collected by DFS. However, if your taxing authority assesses a **personal property tax** on leased equipment, and if DFS pays that tax under your lease structure, **Lessee must reimburse DFS for that tax expense in connection with the Lessee's lease.**

PURCHASE ORDER: The Purchase Order must be made out to Dell Financial Services L.L.C., One Dell Way, RR8-23, Round Rock, TX 78682. The Purchase Order will need to include the quote number, quantity and description of the equipment. Please be sure to indicate that the PO is for a lease order and shows the type of lease, the term length, and payment frequency. The date of the lease quote referenced should be included. Please be sure to include any applicable shipping costs as a line item and include your address as the SHIP TO destination.

INSURANCE: The risk of loss on the equipment is borne solely by the Lessee. Lessee shall be required to purchase and maintain during the Term (i) comprehensive public liability insurance naming Lessor as additional insured; and (ii) "all-risk" physical damage insurance in a minimum amount of the Purchase Price, naming DFS as first loss payee.

APPROPRIATION COVENANT: The Lease will contain an appropriation of funds clause. The Lessee will covenant that it shall do all things legally within its power to obtain and maintain funds from which the payments may be paid.

DOCUMENTATION: In addition to a duly executed Agreement, other documents as reasonably requested by DFS may be required, such as but not limited to, opinions of counsel, IRS tax exemption forms (if applicable), and audited financials.

PROPOSAL VALIDITY / APPROVALS: This is a proposal based upon market conditions and is valid for 30 days, is subject to final credit approval, review of the economics of the transaction, and execution of mutually acceptable documentation.



MASTER LEASE AGREEMENT

NO. 2803376

Financial Services

This Master Lease Agreement dated and effective as of December 10, 1999 (the "Effective Date") between Dell Financial Services L.P., with its principal office at One Dell Way, SP1, Round Rock, Texas, 78682 (the "Lessor") and City of Miramar, Florida with its principal office at 8700 Miramar Parkway, Miramar, FL, 33023 (the "Lessee").

TERMS AND CONDITIONS

1. Definitions.

Asset(s). All of the personal property, including hardware, software or licensed products, services, and/or maintenance listed on any Schedule. When Asset(s) refers to software licensed to Lessee it shall be understood that said software shall continue to be owned by licensor as set forth in the applicable software license agreement.

Commencement Date. The date(s) Lessee's obligation to pay Rent begins, which will be the delivery date for each Asset.

Initial Schedule Term. The period initially agreed to constitute the lease period as set forth in the Schedule.

Schedule Term. For each Schedule shall include the Initial Schedule Term and any Renewal Schedule Terms.

Renewal Schedule Term. Any period subsequent to the Initial Schedule Term.

Rent. The payment by Lessee to Lessor of money for the lease of the Asset(s) covered by the Schedule.

Schedule. The document entitled "This Lease Schedule" specifying the Asset(s), Rent payments, currency values, Lessor's costs and other information.

2. Schedules.

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, subject to the terms and conditions of this Master Lease Agreement, the Asset(s) described in each Schedule. Each Schedule constitutes a separately assignable agreement between the parties and incorporates in full the terms and conditions of this Master Lease Agreement.

3. Term of Master Lease Agreement and Schedules.

(a) The term of this Master Lease Agreement commences on the execution date hereof and continues until (i) the obligations of Lessee under every Schedule are fully discharged and (ii) either party provides thirty (30) days prior written notice of termination.

(b) The Initial Schedule Term for each Schedule shall be as set forth therein. Unless either party provides the other with prior written notice of termination, Renewal Schedule Terms of each Schedule shall extend automatically, at the Rent first in effect, for successive three-month terms beyond the expiration of the Initial Schedule Term. All such terminations are effective only (i) following written notice received not less than ninety (90) days prior to the end of the Schedule Term, (ii) on the last day of the Initial Schedule Term or Renewal Schedule Term then in effect and (iii) with respect to not less than all Asset(s) under a Schedule. Notice of termination by Lessee may not be revoked without Lessor's consent.

4. Rent; Non-Abatement; Late Payments.

(a) As Rent for the Asset(s), Lessee shall pay Lessor the amounts on the due dates set forth in the Schedule.

(b) Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Asset(s). Lessee acknowledges and agrees, except as expressly provided in Section 18 hereof, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assigns, shall be absolute and unconditional in all events, and shall not be subject to any abatement, reduction set-off, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Asset(s), or any person for any reason whatsoever.

(c) On all amounts not paid by Lessee when due, late charges shall accrue at the rate of eighteen percent (18%) per annum (or the maximum rate allowable by law, if less) from the due dates hereof until received by Lessor. Late charges and attorney's fees necessary to recover Rent and other amounts owed hereunder are considered an integral part of this Master Lease Agreement.

5. Selection; Inspection; Acceptance.

(a) The Asset(s) are of a size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. Neither the manufacturer nor vendor is an agent of Lessor. No representation by the manufacturer or vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this lease. Lessee acknowledges either (a) that Lessee has reviewed and approved any written purchase order, supply contract or purchase agreement ("Supply Contract"), covering the Equipment purchased from the manufacturer or vendor thereof ("Vendor") for lease to Lessee; or (b) that Lessor has informed or advised Lessee, in writing, either previously or by this Lease of the following: (i) the identity of the Vendor; (ii) that the Lessee may have rights under the Supply Contract; and (iii) that the Lessee may contact the Vendor for a description of such rights that Lessee may have under the Supply Contract. Lessor shall not be liable for damages for any reason, for any act or omission of the Vendor. Lessor agrees, to the extent they are assignable, to assign to Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment.

(b) Promptly upon delivery, Lessee will inspect the Asset(s), and, not later than 5 business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate in the form of Exhibit A hereto for the Asset(s), or (ii) written notification of any

defects in the Asset(s). If Lessor has not given notice within such time period, the Asset(s) shall be conclusively deemed accepted.

6. Warranties: Quiet Enjoyment and Disclaimer; Indemnity.

- (a) Lessor warrants that, provided Lessee is not in default, Lessor will not interfere with Lessee's quiet use and enjoyment of the Asset(s).
- (b) EXCEPT FOR THE PROVISIONS OF 6(a) ABOVE, WITH REGARD TO THE ASSET(S), LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION: THOSE OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR USE, OF CONDITION, PERFORMANCE, SUITABILITY OR DESIGN, OR CONFORMITY TO ANY LAW, RULE, REGULATION, AGREEMENT OR SPECIFICATION, OR OF INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTANGIBLE PROPERTY RIGHT. Lessor shall have no liability to Lessee, nor any other party, nor shall Lessee abate payments, for any loss, claim or damage of any nature caused or alleged to be caused directly, indirectly, incidentally or consequentially by the Asset(s), any inadequacy thereof, deficiency or defect therein (whether known or knowable by Lessor), by any incident whatsoever arising in connection therewith, whether in strict liability or otherwise, or in any way related to or arising out of this Master Lease Agreement or any Schedule.
- (c) Except as may directly result from Lessor's gross negligence or willful misconduct, Lessee hereby indemnifies Lessor and its Assignee(s) against, and holds them harmless from, any and all claims, including court costs and attorney's fees, arising out of this Master Lease Agreement, any Schedule, or the Asset(s), including without limitation: the manufacture, selection, purchase, license, delivery, possession, use, operation, control, maintenance, infringement of any patent, trade secret, trademark, copyright or other intangible property right, or personal injury or death, arising in strict liability, breach of warranty or negligence. In addition, Lessee hereby indemnifies Lessor and its Assignee(s) for any loss or damages incurred (including without limitation, loss of anticipated yield). Lessee's obligations hereunder shall survive the expiration of the Master Lease Agreement and the Schedule(s).

7. Installation; Use; Repair and Maintenance.

- (a) Lessee shall provide a place of installation which conforms to the requirements of the manufacturer.
- (b) Subject to the terms hereof, Lessee shall be entitled to unlimited use of the Asset(s) except that in the case of software, the Asset(s) are subject to the parties rights under the applicable software license agreement. Lessee shall not use or permit the use of the Asset(s) for any purpose which, according to the specifications of the manufacturer, the Asset(s) are not designed or reasonably suited. Lessee shall use the Asset(s) in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Asset(s).
- (c) Lessee shall be solely responsible for the delivery, installation, maintenance and repair of the Asset(s). During the Schedule Term, Lessee shall (i) keep the Asset(s) in good repair, condition and working order; (ii) maintain in force a maintenance contract with the manufacturer or with another qualified service organization; and (iii) permit access to the Asset(s) for installation of engineering changes required to maintain the Asset(s) at the manufacturer's current engineering levels.

8. Ownership; Inspection, Relocation, Personal Property.

- (a) The Asset(s) shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Asset(s).
- (b) Lessor, its assigns or their agents shall be permitted free access at reasonable times to inspect the Asset(s).
- (c) Lessee shall at all times keep the Asset(s) within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Asset(s) to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and perfect the interests of Lessor and its assigns in the Asset(s), (iii) Lessee pays all costs of, and provides adequate insurance during such movement and (iv) Lessee pays all costs otherwise associated with such relocation.
- (d) Lessee agrees that the Asset(s) shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon request, Lessee will enter into all agreements necessary to ensure that the Asset(s) remain the personal property of Lessor.

9. Liens; Taxes.

- (a) Lessee shall at its expense keep the Asset(s) free and clear of all levies, liens, and encumbrances, except those in favor of Lessor or its assigns;
- (b) Throughout the Schedule Term, Lessee shall declare and pay all license fees, registration fees, assessments, charges and taxes related to the Asset(s), excluding however, any taxes based or measured solely on Lessor's net income. Lessee may in good faith and by appropriate proceedings contest any such taxes so long as such proceedings do not involve any danger of sale, forfeiture or loss of the Asset(s) or any interest therein. In such event, Lessee agrees to indemnify Lessor and hold it harmless from any damages, claims or charges which may result from Lessee's commencement of such proceedings. Lessee is hereby appointed attorney-in-fact of Lessor solely to declare, file and pay all of the aforementioned amounts when due and owing for any period assessed while Lessee is in possession of the Asset(s).

10. Risk of Loss.

- (a) Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss with respect to any Asset damage, destruction, loss, theft, or governmental taking, whether partial or complete, for any reason. No event of loss shall relieve Lessee of its obligation to pay Rent under any Schedule.
- (b) If any Asset is damaged, Lessee shall promptly notify Lessor and, at Lessee's expense, within 60 days of such damage, cause to be made such repairs as are necessary to return such item to its previous condition.
- (c) In the event any Asset is destroyed, damaged beyond repair, lost, stolen, or taken by governmental action for a stated period extending beyond the term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor and pay to Lessor, on the next Rent payment date following such Event of Loss, an amount equal to the Casualty Value for the Asset suffering the Event of Loss then in effect as set forth on the Schedule. After payment of such Casualty Value and all Rent and other amounts due and owing on and before such Rent payment date, Lessee's obligation to pay further Rent allocable to the Asset which suffered the Event of Loss shall cease. After receipt of such Casualty Value by Lessor or its assigns, Lessee shall be entitled to receive any insurance or other recovery received by Lessor or its assigns in connection with such Event of Loss, and the Asset(s) for which such Casualty Value was received shall be conveyed to Lessee

AS IS, WHERE IS and free and clear of all liens and encumbrances created by or arising through Lessor, but otherwise WITHOUT FURTHER WARRANTY (EXPRESS OR IMPLIED) WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR USE.

- (d) In the event of a governmental taking of an Asset for an indefinite period or for a stated period which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Asset (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

11. Insurance.

Lessee at its expense shall maintain fire and extended coverage insurance against loss, theft, damage, or destruction of the Asset(s). In an amount not less than the Casualty Value of the Asset(s). Lessee shall further, at its expense, provide and maintain comprehensive public liability insurance in an amount of \$1,000,000 per occurrence against claims for bodily injury, death and/or property damage arising out of the use, ownership, possession, operation or condition of the Asset(s), together with such other insurance as may be required by law which names Lessee as an insured and Lessor and its assign(s) as additional insureds as their respective interest may appear. Such insurance shall contain a clause requiring the insurer to give Lessor at least one month prior written notice of the cancellation or any alteration in the terms of such policy. Each policy of property damage insurance shall name Lessor and its assign(s) as loss payees and shall state that all claims thereunder shall be payable to such party(ies) irrespective of any breach of warranty or other act or omission of Lessee. Each insurance policy shall be with an insurance carrier licensed to provide the insurance required herein in the states where the Asset(s) are located. Lessee hereby appoints Lessor as Lessee's attorney-in-fact upon Lessee's failure to act promptly in any manner with regard to any claim, to make proof of loss and claim for insurance, to make adjustments with insurers, and to receive payment of and execute or endorse all documents, checks, and drafts in connection with payments made as a result of such insurance policies. Lessee will not make adjustments with insurers except with Lessor's written consent. Lessee shall furnish to Lessor, upon request, certificates of insurance or other evidence satisfactory to Lessor that such insurance coverage is in effect or, if Lessor consents, that Lessee is self insured. Lessee's liability for loss under Section 10 shall not be diminished by any insurance payment less than the actual amount of the loss.

12. Surrender of Asset(s).

- (a) On the last day of the Schedule Term, Lessee shall return the Asset(s) to Lessor in good repair, condition and working order, ordinary wear and tear alone excepted, at the location specified by Lessor. Lessee shall arrange and pay for demobilization and packing in accordance with the manufacturer's specifications and for insured transportation, such insurance coverage to be not less than the Asset(s) Casualty Value last in effect. Lessee shall, at its expense, cause each Asset to be repaired as necessary to conform to the foregoing return conditions.
- (b) If, on the last day of the Schedule Term Lessee shall fail to return to Lessor any Asset listed on the Schedule, Lessee shall be treated as a holdover tenant for all of the Asset(s) listed on the Schedule for a Renewal Schedule Term in accordance with Section 3(b) above and shall continue to pay Rent in the amount set forth in the Schedule for all Asset(s). This provision shall continue for periods beyond the first such renewal term. In no event may Lessee avoid the effect of this provision by returning less than all Asset(s) listed on any Schedule or by returning substitute assets unless Lessor, in its sole discretion, shall expressly agree in writing.
- (c) This Section shall not derogate from Lessor's right, to be exercised in its sole discretion, to obtain return of all Asset(s) on the last day of any Schedule Term, or to declare an Event of Default for any failure of Lessee to so return the Asset(s).

13. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the Master Lease Agreement and each Schedule:

- (a) Lessee is an entity organized and existing under and by virtue of the authorizing statute or constitutional provisions of its state and is a state or political subdivision under Internal Revenue Code Section 103(a);
- (b) The Master Lease Agreement and each Schedule have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding agreements of Lessee, enforceable in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of this Master Lease Agreement or any Schedule;
- (d) The entering into and performance of the Master Lease Agreement or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Asset(s) pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the Master Lease Agreement or any Schedule; and
- (f) The use of the Asset(s) is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule hereto written certification to that effect.

14. Default and Remedies.

- (a) The occurrence of any of the following events shall constitute an event of default ("Event of Default") under a Schedule: (i) nonpayment by Lessee of Rent or any other sum payable by its due date; (ii) failure by Lessee to perform or observe any other term, covenant or condition of this Master Lease Agreement, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; (iii) insolvency by Lessee; (iv) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (v) subjection of a substantial part of Lessee's property or any part of the Asset(s) to any levy, seizure, assignment or sale for or by any creditor or governmental agency; (vi) any representation or warranty made by Lessee in this Master Lease Agreement, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Asset(s) shall be untrue in any material respect; or (vii) a termination of any applicable software license agreement.
- (b) Upon the occurrence of an Event of Default and at any time thereafter Lessor may, in its sole discretion, do any one or more of the following: (i) By notice to Lessee, terminate any or all Schedules; (ii) Proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages, including all of Lessor's economic loss for the breach thereof; (iii) Whether or not the Schedule is terminated, upon notice to Lessee, take possession of the Asset(s) wherever located, without demand, liability, court order or

other process of law, and for all purposes Lessee hereby authorizes Lessor, its assigns or its agents or either to enter upon the premises where such Asset(s) are located or cause Lessor, and Lessee hereby agrees, to return such Asset(s) to Lessor in accordance with the requirements of Section 12 hereof; (iv) By notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and not as a penalty, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Assets are not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Assets at the end of the Schedule Term as determined by Lessor, each discounted at a rate of four percent (4%) per annum; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) costs, fees (including all attorneys' fees and court costs), expenses and (d) interest on (a) and (b) from the date of default at 1 1/2% per month or portion thereof (or the highest rate allowable by law, if less) and, on (a) from the date Lessor incurs such fees, costs or expenses.

- (c) Upon return or repossession of the Asset(s), Lessor may, if it so decides in its sole discretion, use reasonable efforts to sell, re-lease or otherwise dispose of such Asset(s), in such manner and upon such terms as Lessor may determine in its sole discretion (the amount, if any, which Lessor certifies it obtained through remarketing shall be conclusively presumed to be the Asset(s) fair market value), with or without notice to Lessee, which notice Lessee hereby waives. Lessee waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, license or otherwise use any of the Assets in mitigation of Lessor's damages or which may otherwise limit or modify any of Lessor's rights or remedies. Upon disposition of the Asset(s), Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Asset(s) shall be the sale price paid to Lessor less the Casualty Value in effect as of the date of default. Proceeds upon a re-lease of the Asset(s) shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at the Lessor's current applicable debt rate. "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Asset(s), in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceed the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- (d) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event of Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

15. Effect of Waiver; Substitute Performance by Lessor.

- (a) No delay or omission to exercise any right or remedy accruing to Lessor upon any breach or default of Lessee shall impair any such right or remedy or be construed to be a waiver of any such breach or default, nor shall any waiver of any single breach or default be construed to waive or impair Lessor's rights and remedies with respect to any breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval on the part of Lessor of any breach or default under this Schedule, or of any provision or condition hereof, must be in writing and shall be effective only to the extent such writing specifically sets forth.
- (b) Should Lessee fail to make any payment or do any act as herein provided, Lessor shall have the right, but not the obligation, and without releasing Lessee from any obligation hereunder, to make or do the same. All sums so incurred or expended by Lessor shall be immediately due and payable by Lessee and shall bear interest at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the date incurred until received by Lessor.

16. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this Master Lease Agreement and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the Master Lease Agreement, any Schedule and/or any Asset(s); and/or (iii) sell or transfer its title and interest as owner of the Asset(s) and/or as Lessor under any Schedule; and Lessee further understands and agrees that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to Lessee's rights under the assigned Schedule. Lessee hereby consents to such Assignments, agrees to comply fully with the terms thereof, and agrees to execute and deliver promptly such acknowledgments, opinions of counsel and other instruments reasonably requested to effect such Assignment. Lessee acknowledges that the assignee do not assume Lessor's obligations hereunder and agrees to make all payments owed to the assignee without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which the Lessee may possess against the Lessor or any other party for any reason. Lessor and Lessee acknowledge and agree that no Assignment shall be deemed to materially change Lessee's duties or obligations nor materially increase the burdens or risks imposed upon Lessee. Upon any such Assignment, all references to Lessor shall also include all such assignee, whether specific reference thereto is otherwise made herein.
- (b) Without the prior written consent of Lessor, Lessee shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement, any Schedule, the Asset(s), any part thereof, or any interest in the foregoing.

17. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Opinion of Counsel; (c) Certificate of Insurance; (d) Financial Statements; (e) Incumbency Certificate; and (f) Other documents as reasonably required by Lessor.

18. Appropriation of Funds.

Lessee intends to continue each Schedule for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to do all things lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Asset(s) on the Schedule so affected, provided Lessee provides Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be so terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Asset(s) in accordance with Section 12 hereof. Notwithstanding the foregoing, Lessee agrees (i) not to terminate a Schedule under this provision if any funds are appropriated to it for the Fiscal Period in question for the acquisition (by purchase, lease, or otherwise) of functionally similar asset(s) or asset(s) performing similar applications and procedures; (ii) without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use its best efforts to obtain appropriation of funds to avoid termination of the Schedule by taking all appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force; (iii) that it will not give priority or parity in the application of funds to any other functionally similar equipment for use by the Lessee; and, (iv) that if the Schedule is terminated pursuant to Section 18, Lessee will not in the then current or succeeding Fiscal Period purchase, lease or rent asset(s) performing functions similar to those performed by the Asset(s), and agree not to permit functions similar to those performed through the use of the Asset(s) to be performed by its own employees or by any agent or entity affiliated with or hired by Lessee. Lessee represents and warrants it has adequate funds to meet its obligations

during the first Fiscal Period of the Schedule. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

19. Miscellaneous.

- (a) Notices shall be conclusively deemed to have been received by a party hereto on the day it is delivered to such party at the address given above (or at such other address as such party shall specify to the other party in writing) or, if sent by certified mail, on the third business day after the day on which mailed, addressed to such party at such address.
- (b) Applicable Law/Disputes. The Master Lease Agreement and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE FLORIDA. In the event of a dispute between the parties suit may be brought in the federal or state courts of FLORIDA, or the state where Lessee has its principal office or where the Asset(s) are located.
- (c) Counterparts. Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MASTER LEASE AGREEMENT, IN ANY OF THE SCHEDULE(S), OR IN ANY OF THE ASSETS MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MASTER LEASE AGREEMENT ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MASTER LEASE AGREEMENT BY REFERENCE.
- (d) Suspension of Obligations of Lessor. Prior to delivery of any Asset, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of cause beyond its control.
- (e) Severability. In the event any provision of the Master Lease Agreement or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (f) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understandings, written or oral, between them with respect to the Asset(s), other than as set forth in this Master Lease Agreement and in each Schedule and that this Master Lease Agreement and each Schedule contain the entire agreement between Lessor and Lessee. Neither this Master Lease Agreement nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.


Lessor's Initials


Lessee's Initials

20. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon Lessee by the Uniform Commercial Code or other applicable law, including without limitation, Lessee's rights to (i) subject to Paragraph 16 above, cancel this Lease; (ii) repudiate this Lease; (iii) reject the Assets; (iv) revoke acceptance of the Assets; (v) recover damages from Lessor for any breach of warranty or for any other reason; (vi) claim a security interest in the Assets in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under this lease; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Assets due from Lessor; (x) recover any special, general, incidental or consequential damages, for any reason whatsoever, and (xi) specific performance, replevin, detinue, sequestration, claim and delivery, or the like, for any Equipment identified in this Lease. To the extent permitted by applicable law, Lessee also waives any rights now or later conferred by law which may require Lessor to sell, lease or otherwise dispose of the Assets in mitigation of Lessor's damages as set forth in Paragraph 14 or which may otherwise limit or modify any of Lessor's rights or remedies under Paragraph 14. Any action by Lessee against Lessor for any default under this Lease, including breach of warranty or indemnity, if any, shall be commenced within one (1) year after any such cause of action arose.

21. UCC Filings.

Lessor and Lessee agree that a reproduction of this Lease may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code. Lessee irrevocably appoints Lessor, its officers and employees, as Lessee's attorney-in-fact, with full power in Lessor's or Lessee's name to execute and file all such financing statements and other documents as Lessor deems necessary or advisable hereunder. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Master Lease Agreement to be executed by their duly authorized representatives.

DELL FINANCIAL SERVICES L.P.
"Lessor"

BY:

NAME:

TITLE:

DATE:

William J. Estabrook

DEC 18 2000

President
Dell Financial Services

CITY OF MIRAMAR, FL

"Lessee"

BY:

NAME:

TITLE:

DATE:

William J. Estabrook

WILLIAM J. ESTABROOK

CITY MANAGER

12-10-99

DFSTLMLA1007

Approved as to form and legality:

[Signature]
Weiss Serota Helfman Pastorkin &
Guedes, P.A., City Attorney

**AMENDMENT NO. 1 DATED December 10, 1999
TO THE MASTER LEASE AGREEMENT DATED December 10, 1999
BETWEEN THE CITY OF MIRAMAR, A MUNICIPAL CORPORATION OF THE STATE OF
FLORIDA, BY AND THROUGH ITS CITY COMMISSION AND DELL FINANCIAL
SERVICES L.P.**

This Amendment No. 1 is made part of and modifies the Master Lease Agreement (the "Agreement") between the City of Miramar, a municipal corporation of the State of Florida, by and through its City Commission ("Lessee") and Dell Financial Services L.P. ("Lessor"). Terms otherwise not defined herein shall have the meaning ascribed to them in the Agreement. To the extent of any conflict or inconsistency between this Amendment and the terms and conditions of the Agreement, this Amendment will prevail.

The following sections of the Agreement are hereby modified:

1. Section 3(b). Term of Master Lease Agreement and Schedules

Insert a new third sentence in subsection (b) which reads as follows: "Lessor shall give Lessee at least 120 days notice prior to the expiration of the Schedule Term. Lessee shall then give Lessor at least 90 days prior written notice of termination."

2. Section 4(c). Late Payments

In the first sentence of subsection (c), replace the wording "eighteen percent (18%)" with "twelve percent (12%)".

3. Section 5(b). Inspection; Acceptance

In the first sentence of subsection (b), replace the wording "5 business days" with "10 business days".

Append the following to the end of the second sentence of subsection (b): ", subject to Lessee's right to return Dell Computer Corporation branded products under Dell Computer Corporation's 'Total Satisfaction Return Policy', so long as Dell Computer Corporation is offering such program at the time the Asset(s) are shipped to Lessee."

4. Section 6. Indemnity

Delete subsection (c) in its entirety and replace with the following: "To the extent allowed by the laws and Constitution of the State of Florida, Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to any Asset(s) and for injury to or death of any person, or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers or employees."

5. Section 8(c) Relocation.

Insert a new third sentence in subsection (c) which read as follows: "Notwithstanding the preceding sentence, the Lessee may move the Asset(s) to another location of Lessee without the Lessor's prior written consent, provided the location is within the same County as the Lessee."

6. Section 9(b) Taxes

Restate the third sentence of subsection (b) as follows: "In such event, to the extent permitted by law, Lessee agrees to indemnify Lessor and hold it harmless from any damages, claims or charges which may result from Lessee's commencement of such proceedings."

7. Section 10 (c) Risk of Loss

Restate the first sentence of subsection (c) as follows: "In the event any Asset is destroyed, damaged beyond repair, lost, stolen, or taken by governmental action for a stated period extending beyond the term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor and shall promptly pay to Lessor, an amount equal to the Casualty Value for the Asset suffering the Event of Loss then in effect as set forth on the Schedule."

8. Section 11. Insurance

Restate the section as follows: "Lessee at its expense shall maintain fire and extended coverage insurance or be self insured against loss, theft, damage, or destruction of the Asset(s), in an amount not less than the Casualty Value of the Asset(s). Lessee represents that it is self funded for liability insurance in accordance with §768.28, Florida Statutes. Lessee shall furnish to Lessor, upon request, a certificate of insurance or other evidence satisfactory to Lessor that Lessee is self insured. Each policy of property damage insurance shall name Lessor and its assign(s) as loss payees and shall state that all claims thereunder shall be payable to such party(ies) irrespective of any breach of warranty or other act or omission of Lessee. Lessee's liability for loss under Section 10 shall not be diminished by any insurance payment less than the actual amount of the loss."

9. Section 13 (c) Representations and Warranties of Lessee

After the wording "governmental authority or instrumentality" insert the wording "other than appropriations approval"

10. Section 14. Default and Remedies

In subsection (a)(ii), replace the wording "ten (10)" with "fifteen (15)".

Restate subsection (a)(vii) as follows: "(vii) a termination of any applicable software license agreement for software that is being leased under any Schedule(s)."

Restate subsection (b)(ii) as follows: "(ii) Proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages allowed by law;"

Restate subsection (b)(iii) as follows: "(iii) Whether or not the Schedule is terminated, upon notice to Lessee sufficient to allow removal of stored data, under order or writ of court take

possession of the Asset(s), and Lessee agrees to return such Asset(s) to Lessor in accordance with the requirements of Section 12 hereof."

In subsection (b)(iv)(d), replace the wording "1 1/2%" with "1%".

In the sixth sentence of (c), replace the wording "eighteen percent (18%)" with "twelve percent (12%)".

11. Section 15(b) Substitute Performance by Lessor

In the second sentence of subsection (b), replace the wording "eighteen percent (18%)" with "twelve percent (12%)".

12. Section 17. Delivery of Related Documents

After the wording "(c) Certificate of insurance" insert "if any".

13. Section 21. UCC Filings

Restate the second sentence as follows: "Lessee agrees to execute and file all such financing statements and other documents as Lessor deems necessary or advisable hereunder."

Except as amended hereby, the Agreement is restated and shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment has been duly executed by each party as of the day and year first above written.

LESSEE, CITY OF MIRAMAR

By: William J. Estabrook
William J. Estabrook, City Manager

ATTEST:

Debra A. Walker
Debra A. Walker, City Clerk

APPROVED AS TO FORM

By: Weiss Serota Helfman Pastoriza & Guedes, P.A.
Weiss Serota Helfman Pastoriza & Guedes, P.A., City Attorney

(SEAL)

ATTEST

By: Debra A. Walker
Print: Debra A. Walker
Title: City Clerk

LESSOR, DELL FINANCIAL SERVICES, L.P.

By: Markus M. M...
Print: DEC 18 2000
Title: President
Dell Financial Services

AMENDMENT NO. 2 DATED 11/30, 2000 1999 (1)
 TO THE MASTER LEASE AGREEMENT DATED 12/10, 2000
 BETWEEN THE CITY OF MIRAMAR, A MUNICIPAL CORPORATION OF THE STATE OF
 FLORIDA, BY AND THROUGH ITS CITY COMMISSION AND DELL FINANCIAL
 SERVICES L.P.

This Amendment No. 2 is made part of and modifies the Master Lease Agreement (the "Agreement") between the City of Miramar, a municipal corporation of the State of Florida, by and through its City Commission ("Lessee") and Dell Financial Services L.P. ("Lessor"). Terms otherwise not defined herein shall have the meaning ascribed to them in the Agreement. To the extent of any conflict or inconsistency between this Amendment and the terms and conditions of the Agreement, this Amendment will prevail.

The following sections of the Agreement are hereby modified:

1. Section 13, Representations and Warranties of Lessee.

Restate the first sentence of this Section as follows: "Lessee represents and warrants for the benefit of Lessor and its assigns that as of the time of execution of the Master Lease Agreement and each Schedule, and will provide an Opinion of Counsel acceptable to Lessor at the time of execution of the Master Lease Agreement and the initial Schedule, and for such subsequent Schedules or event(s) when an Opinion of Counsel is required by Lessor for a Schedule pursuant to Section 17 of this Agreement to the effect that:"

2. Section 17, Delivery of Related Documents.

Restate this Section in its entirety as follows: "For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Certificate of insurance, if any; (c) Financial Statements; (d) Incumbency Certificate; and (e) Other documents as reasonably required by Lessor. Lessee will also provide an Opinion of Counsel acceptable to Lessor (a) for each Schedule where the original equipment cost of the Asset(s) is in excess of \$250,000; (b) for any Schedule constituting a lease-purchase or a sale-leaseback of Asset(s) (e.g. a lease purchase schedule); and, (c) when Lessee's obligations under all Schedules entered into by Lessee under this Agreement shall total in the aggregate \$500,000.00, and for every \$500,000.00 in Schedules thereafter."

Except as amended hereby, the Agreement is restated and shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment has been duly executed by each party as of the day and year first above written.

LESSEE, CITY OF MIRAMAR

By: William J. Estabrook
 William J. Estabrook, City Manager

ATTEST:

Debra A. Walker
 Debra A. Walker, City Clerk

(SEAL)

APPROVED AS TO FORM

By: Weiss Serota Helfman Pastoriza
 & Guedes, P.A., City Attorney

ATTEST

By: _____
Print: _____
Title: _____

LESSOR, DELL FINANCIAL SERVICES L.P.

By: *Mark West*
Print: DEC 18 2000
Title: President
Dell Financial Services

Temp. Reso. #R1563
11/8/00

CITY OF MIRAMAR
MIRAMAR, FLORIDA

RESOLUTION NO. 01-35

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF
MIRAMAR, FLORIDA, APPROVING A MASTER LEASE
AGREEMENT WITH DELL COMPUTERS AND PROVIDING FOR AN
EFFECTIVE DATE.

WHEREAS, due to the rapid advances in computer technology, it was becoming increasingly difficult for the city to maintain an up to date inventory of computers; and

WHEREAS, after reviewing several alternatives, it was decided that entering into a lease program would be the most cost effective way for the City to provide current computer technology to its employees; and

WHEREAS, Section 2-242 of the Code of Miramar provides for an exemption from bidding when commodities are purchased from state contracts; and

WHEREAS, such a state contract for computer leasing was available from Dell Computers at rates that the City found to be reasonable and within budget; and

WHEREAS, the City Manager and the Finance Director recommend approval.
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF
MIRAMAR, FLORIDA AS FOLLOWS:

Section 1: Recitals: That the recitals contained in the preamble to this resolution are incorporated by reference herein.

Section 2: That the computer Master Lease Agreement between Dell Computers and the City, attached as Exhibit "A," together with such nonmaterial changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved, and the appropriate City officials are authorized to execute the agreement

and to take such other actions as may be necessary to effectuate the intent of this resolution.

Section 3: Effective date: That this resolution shall be effective upon adoption.

PASSED AND ADOPTED this: 15 day of November, 2000.

ATTEST:


CITY CLERK, DEBRA A. WALKER


MAYOR, LORI C. MOSELEY


VICE MAYOR, STEVEN T. BOGERT

I HEREBY CERTIFY that I have approved this
RESOLUTION as to form


CITY ATTORNEY, WEISS SEROTA
HELFMAN PASTORIZA & GUEDES, P.A.

Requested by Administration
Vice Mayor Steven T. Bogert
Commissioner Marjorie J. Conlan
Commissioner Kevin A. Fernander
Commissioner Sallie L. Stephens
Mayor Lori C. Moseley

Voted
yes
yes
Absent
yes
yes

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

Amendment #2

For

WSCA/NASPO PC Contracts 2009-2014

COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

MASTER PRICE AGREEMENT NUMBER B27164

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State"]

(Participating State Contract No. 250-WSCA-10-ACS)

WHEREAS, The State of Florida (the "State") Department of Management Services (the "Department") is authorized by Section 287.042(16) Florida Statutes (F.S.), to evaluate contracts let by the Federal Government, another state, or a political subdivision and, when determined in writing to be cost-effective and in the best interest of the State, to enter into agreements authorizing agencies (as defined by s. 287.012(1), F.S.) to make purchases under such contracts, and;

WHEREAS, agencies and Eligible Users (as that phrase is defined in Rule 60A-1.005, F.A.C.) may purchase commodities and contractual services from contracts established by the Department, and;

WHEREAS, the Department has evaluated the Western States Contracting Alliance Contract No. B27164, Computer Equipment, Peripherals, and Related Services, together with any amendments and exhibits thereto, (hereinafter the "Master Price Agreement"), and hereby acknowledges in writing that authorizing use of the Master Price Agreement and this Addendum is cost-effective and in the best interest of the State, and;

WHEREAS, the parties, entered into the Participating Addendum to the Master Price Agreement on October 12, 2009, and;

WHEREAS, pursuant to Section 25 of the Master Price Agreement, the parties, upon mutual agreement, may Amend the Contract, in whole or in part, and;

NOW THEREFORE, the Department enters this Amendment that replaces and supersedes the previous Participating Addendum for the purpose of authorizing and regulating the use of the Master Price Agreement by state agencies and other Eligible Users.

A. Scope

This Addendum covers the WSCA/NASPO PC Contract 2009-2014 (Computer Equipment, Peripherals and Related Services) led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

B. Participation

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

C. Changes:

1. This Participating Addendum shall become effective on the last date signed below and shall have a term that is coterminous with the Master Price Agreement, unless terminated earlier

pursuant to the Master Price Agreement, this Participating Addendum, or Florida law. In addition to the rights contained in the Master Price Agreement, the Department reserves the right to terminate this Participating Addendum, effective upon notice, if Contractor fails to cure the breach within thirty (30) days after receipt of a written notice describing the breach, for Contractor's failure to comply with the provisions of this Participating Addendum, including, but not limited to, the MyFloridaMarketPlace Transaction Fee provisions of Paragraph C.4., and the provisions of Section 287.058(1)(a) through (f), F.S., as required by Paragraph C.6.

2. **Purpose and Strategy.** The Department's intent is that the Contractor will act with the State to furnish quality Computer Equipment, Peripherals and Related Services as outlined in the Master Price Agreement at the lowest price available in a timely and efficient manner for Eligible Users.

The Department has developed a list of "Market Basket" products to include but not be limited to the categories of Standard Desktop Configurations, Standard Laptop Configurations, Monitors, Other Desktops, Other Laptops, Ruggedized and Semi-Rugged, Tablets and Ultra Mobile, Warranty, Services, Desktop and Laptop Peripherals, Processors, Memory, Storage, and Other. For items in these categories the Department will obtain "firm pricing" for each item that the Contractor offers on the Master Price Agreement.

On a periodic basis, not to exceed six months, a request may be issued to the Contractor to provide updated firm pricing for the "Market Basket" products. These requests will contain spreadsheets that may contain updated Standard Configurations for Desktops and Laptops, and new products and/or new product categories to adjust to technology changes and emerging needs. The purpose of these updated price requests is for the Department to continue to obtain the most favorable pricing offered by the Contractor while also maintaining a flexible "Market Basket" of products. The Department may accept the submissions by the Contractor or request negotiation sessions to discuss the submissions further. The requests may also include tiered discounts for quantity and bulk purchases. All pricing submitted by the Contractor and accepted by the Department shall be in effect for the duration of the pricing cycle.

State Agency Purchase of Standard Desktops and Laptops. For the period covered by this Agreement only, updates to Florida Standard Configurations for Desktops, Laptops and Monitors contained in this Agreement are limited to the identification and inclusion of the current (3rd) generation Intel Pentium Processor in all Standard and Performance Desktops and Laptops. The updated Standard Configurations for Desktops, Laptops and Monitors are attached, incorporated into this Agreement by reference, and available on the WSCA/Florida website. Pursuant to Section 282.318(j) F.S., Florida State Agencies are required to make purchases based on the Standard Configurations for Laptops, Desktops and Monitors covered in this Agreement.

3. **Purchasing Requirements.** In order to procure Products or Services hereunder, Eligible Users shall issue purchase orders referencing "Alternate Contract Source No. 250-WSCA-12-ACS (WSCA No. B27164 – Dell Marketing, L.P.)". Eligible Users are responsible for reviewing the terms and conditions of this Participating Addendum and the Master Price Agreement. Eligible Users must follow their applicable statutes, laws, rules, ordinances, codes, policies, and procedures in the purchase of goods or services under this Participating Addendum. Unless otherwise provided by Florida law, statute, rule, or this Participating Addendum, the Department will not implement any additional restrictions on any Eligible User to purchase off of this Participating Addendum. Neither the Department nor the Western States Contracting Alliance is a party to any purchase order authorized by or issued under this Participating Addendum. Any purchases made between September 1, 2012, and the last signed date below are covered under this Participating Agreement.

4. **MyFloridaMarketPlace Registration and Transaction Fee.** In order to complete any transaction between the Eligible User and the Contractor, the Contractor must be registered in MyFloridaMarketPlace. Rule 60A-1.031, F.A.C., is hereby incorporated by reference.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), which the vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the vendor shall pay the Transaction Fee pursuant to subsection 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

The vendor shall receive a credit for any Transaction Fee paid by the vendor for the purchase of any item(s) if such item(s) are returned to the vendor through no fault, act, or omission of the vendor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the vendor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the vendor in default. CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

5. **Contract Reporting Requirements.** The Contractor shall be responsible to submit a Monthly Transaction Fee Report, Quarterly Sales Reports, and an Annual Product Replacement Cycle Matrix will be provided under a Non-Disclosure Agreement ("NDA") during the quarterly business review. These reports will be submitted as follows:

Monthly Transaction Fee Report. The Contractor is required to submit monthly Transaction Fee Reports in electronic format. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendors on the MyFloridaMarketPlace website (located at <http://dms.myflorida.com/mfmp>). Assistance is also available with the Transaction Fee Reporting System from the MyFloridaMarketPlace Customer Service Desk at feeprocessing@myfloridamarketplace.com or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 5:30 PM Eastern Time.

Quarterly Sales Report. The following data must be reported electronically to the Department on a quarterly basis using a Contract Sales Summary form supplied to the contractor by the Department's Primary Contact shown in Paragraph F below. The electronic report shall include:

- Contractor's Company Name,
- Contractor's Company Address,
- Reporting Period,
- Contractor's Company Contact Person with email address and phone number
- Excel report itemizing each purchase for the period that includes columns for the following information: Part Number/SKU, Item Description/Service Name, Item Category, Item Family Product Description, Customer Name, Commodity Code (if available), Unit of Measure, Unit of Measure Description, Volume/Quantity, Order Date, Date Delivered, List Price, Contract Price, and Additional Fields (if needed and if available through Contractor's automated reporting, as mutually agreed).

The reporting periods coincide with the State of Florida's fiscal year which is July 1st through June 30th of each year. The quarters are divided as follows:

- 1st Quarter – July 1st through September 30th
- 2nd Quarter – October 1st through December 31st
- 3rd Quarter – January 1st through March 31st
- 4th Quarter – April 1st through June 30th

Failure to provide quarterly reports, including no sales, within thirty (30) calendar days following the end of each quarter, or annual EXCEL™ line item reports within thirty (30) calendar days, may result in the default proceeding and/or termination of this contract.

Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor, and supplied without prompting or notification by the Primary Contact. The Contractor will submit the completed Contract Sales Summary forms by email to the Primary Contact as stipulated. The Primary Contact shall distribute at the time of contract formation, in electronic format, the Contract Sales Summary form to be used by the Contractor.

The Contractor shall report to the Department the amount of spend with certified and other minority business enterprises. Reports must include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this contract.

6. The provisions of Section 287.058(1)(a), (c), and (f), F.S., are hereby incorporated by reference. If the transaction involves contractual services, the provisions of Section 287.058(1)(b), (d), and (e), F.S., are also incorporated by reference.
7. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The Contractor shall comply with Sections 11.062, F.S. and 216.347, F.S., prohibiting use of funds to lobby the Legislature, Judiciary, or state agencies.
8. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the Contractor shall comply with Section 247 of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, disability, marital status, or veteran's status.
9. Payment shall be made in accordance with Section 215.422, F.S. Interest penalties for late payment are available subject to the provisions in Section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency may be contacted at 850-488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.
10. The exclusive venue of any legal or equitable action that arises out of or relates to this Participating Addendum shall be the appropriate State court in Leon County, Florida; in any such action Florida law shall apply and both parties waive any rights to a jury trial that either party may have.
11. The Department, at its sole discretion, may unilaterally amend the Primary Contact name and their contact information in Paragraph F of this Participating Addendum during the term of this Participating Addendum. Any amendment shall be contained in a separate document affixed to this Participating Addendum.
12. If an additional ordinance, rule, or other local governmental authority requires additional contract language before an Eligible User can make a purchase from this Participating Addendum, in lieu of this Participating Addendum the Eligible User is responsible for signing

a separate Participating Addendum with the Contractor.

13. Intellectual Property: The parties do not anticipate that any Intellectual Property ("IP") will be developed as a result of this Participating Addendum. It is understood that the State shall own all right, title and interest to the Deliverables and Dell agrees to grant to the State a perpetual, non-exclusive, non-transferable, royalty-free license to use Dell's Background IP (defined below), Utilities, and Residual IP solely for the State to use the Deliverables, subject to the following:

- Dell has received full payment for the Deliverables and applicable Services,
- Each party will retain all Intellectual Property Rights that it owned or controlled prior to the effective date of this Agreement or that it develops or acquires from activities independent of the Services performed under this Agreement ("Background IP"),
- Dell will retain all right, title and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Dell in the course of performing the Services or creating the Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of the State (collectively, the "Residual IP"), even if embedded in the Deliverable, and
- The State use of software, online services, or software-enabled services in connection with the Services is pursuant to the terms of the Dell Services Acceptable Use Policy, which is available for review at www.dell.com/aup.

This provision will survive the termination or expiration of the contract.

14. Price Guarantees: Section 13 (Price Guarantees) of the Master Price Agreement shall apply to this Participating Addendum.

15. Termination for Convenience: The State may terminate the Contract in whole or in part, by providing thirty (30) days written notice to the Contractor, when the State determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

16. Employment Eligibility Verification: Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the contract term.

17. Electronic Invoicing. The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MFMP, after an account has been established, with an agency. Contractor agrees, upon DMS' request, to establish electronic invoicing within ninety (90) days of written request. Electronic invoices shall be submitted to the agency through the Ariba Supplier Network (ASN) in one of three mechanisms as listed below. Suppliers can select the method that best meets their capabilities from the following list:

- **cXML (commerce eXtensible Markup Language)**
This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services. *The cXML format is the Ariba preferred method for eInvoicing.*
- **EDI (Electronic Data Interchange)**
This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services.
- **PO Flip via ASN**
The online process allows suppliers to submit invoices via the ASN for catalog and non-catalog goods and services. Suppliers have the ability to create an invoice directly from their Inbox in their ASN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor represents that it is authorized and empowered to and hereby grants the State and the third party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor represents that it is authorized and empowered to and hereby grants the State and the third party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

18. **Scrutinized Companies Lists.** In executing this agreement, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to section 287.135(5), F.S., Contractor agrees the Department may immediately terminate this contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the contract.
19. **Punch-out Catalog Request.** The Contractor hereby agrees to cooperate with the Department and MyFloridaMarketPlace (and any authorized agent or successor entity to MyFloridaMarketPlace) in the event the Department selects this statewide contract to be exhibited on the MyFloridaMarketPlace. At a minimum, the Contractor agrees to the following:
 - a. Contractor agrees, upon the Department's request, to deliver a punch-out catalog within ninety (90) days of the date that the Participating Addendum is signed by the Department. The punchout catalog content must be limited to the Contractor's Master Agreement and this Participating Addendum offering.

Punch-out Catalog. By providing a punch-out catalog, Contractor is providing its own online catalog, which must be capable of communication between the MyFloridaMarketPlace eProcurement System (MFMP) and a supplier's ERP system via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor ensures its online catalog marketplace is up-to-date by periodically updating the offered products/services and pricing listed on its online catalog.
 - b. In addition to the Contractor's punchout catalog in MFMP, the Contractor shall provide a specific online ordering portal and product catalog (referred to as the online catalog) to the State of Florida containing only State of Florida items and prices. The Contractor will, within ninety (90) days of contract award, make available the online catalog that

contains only items that are in the scope of the awarded contract. For each item, the following information shall be provided at a minimum: item description, manufacturer name, manufacturer part number, unit of measure, list price and contract price, and item image.

- c. The Contractor agrees to meet the following requirements:
 - Catalog must contain the most current pricing, including all applicable administrative fees and or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the statewide contract; and
 - The accuracy of the catalog must be maintained by Contractor throughout the duration of the statewide contract; and
 - The catalog must include a State-specific contract identification number; and
 - The catalog must include detailed product line item descriptions; and
 - The catalog must include pictures when possible; and
 - The catalog must include any additional content required by the Department.
- d. Contractor agrees that the Department controls which statewide contracts appear in MFMP and that the Department may elect at any time to remove any Contractor's offering from MFMP.
- e. Contractor must be able to accept Purchase Orders via fax, e-mail, cXML or EDI INT AS 12.

20. The configuration limit of servers and storage has been increased up to \$500,000.

D. Lease Agreements

Agencies may lease equipment through alternative financing arrangements other than CEFP. This option is governed by § 287.063 and 287.064, Florida Statutes; Rule 69I-3, Florida Administrative Code; and Comptroller Memorandums 10 (1992-93), 13 (1985-86), 04 (1995-96), and 07 (1995-96). The Department of Financial Services (DFS) Finance and Leasing Section will review proposed leases to determine compliance with all requirements and to ensure leases are economical and cost effective. The Contractor and customer (working together) will be required to complete and submit to DFS the "Checklist for Requesting Department of Financial Services Approval to Lease Equipment" for any lease valued at \$25,000 or more. A copy of the form may be found on the DFS website under the heading of "Equipment Leases":

http://www.myfloridacfo.com/aadir/statewide_financial_reporting/

Each piece of equipment or service offered on this WSCA Participating Addendum shall be available for lease. The customer is authorized to enter into a lease agreement for equipment by issuance of a purchase order referencing this contract number and that incorporates the manufacturer's lease terms and conditions as approved by DFS.

E. Primary Contacts

The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State

Name: Susan Kahle
 Address: 112 Admin Bldg, St Paul, MN 55155
 Telephone: (651) 201-2434
 Fax: (651) 297-3996
 E-mail: susan.kahle@state.mn.us

Contractor State Contract Manager

Name: Ashleigh Lane
 Address: One Dell Way, RR8-07, Round Rock, TX 78682

Telephone: (512) 723-1033
Fax: (512) 283 9092
E-mail: Ashleigh_Lane@Dell.com

Contractor WSCA Program Manager

Name: Ashleigh Lane
Address: One Dell Way, RR8-07, Round Rock, TX 78682
Telephone: (512) 723-1033
Fax: (512) 283-9092
E-mail: Ashleigh_Lane@Dell.com

Participating State

Name: Colin Barton
Address: 4050 Esplanade Way, Suite 360A, Tallahassee, FL 32399
Telephone: (850) 921-9231
Fax: (850) 414-6122
E-mail: Colin.Barton@dms.MyFlorida.com

F. Servicing Subcontractors:

Dell may engage third party service providers to perform various services and has several authorized Dell Service Providers (DSPs). DSPs will not accept orders or payments.

Dell wishes to identify Servicing Subcontractor(s) ("WSCA Authorized Agent or WSCA Authorized Reseller") to market Dell's Products and Services, as identified on Dell's Products and Services Schedule ("PSS"), on behalf of Dell. The Participating Entity may utilize WSCA Authorized Agents or WSCA Authorized Resellers pursuant to the Dell defined WSCA Agent and Reseller program as defined in a separate written Agreement between Dell and WSCA Authorized Agent or Authorized Reseller.

WSCA Agents and/or Resellers authorized within the State will have their names identified on the State's respective www.Dell.com/naspowsca Dell state store page at http://content.dell.com/us/en/slqgov/d/slq/contract_selection_florida.aspx.

For WSCA Authorized Agents, placement of Orders and shipment of Order directly from Dell will remain unchanged in the PA.

For WSCA Authorized Resellers, Placement of Orders will occur with the WSCA Authorized Reseller and shipment of Order will continue to come from Dell.

For WSCA Authorized Agents, all orders and payments are to be issued directly to: Dell Marketing L.P.

For WSCA Authorized Resellers, all orders and payment are to be issued directly to: the WSCA Authorized Reseller.

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: [250-WSCA-10-ACS] and the Master Price Agreement Number B27160.

Dell Responsibilities for Authorized Resellers and Agents

Dell will be responsible for the actions of their authorized resellers and agents and Dell will continue to be the one to report contract sales and pay the 1% transaction fee to MFMP.

WSCA Agents and/or Resellers authorized within the State will have their names identified on the State's respective www.Dell.com/naspowsca Dell state store page at http://content.dell.com/us/en/slqgov/d/slq/contract_selection_florida.aspx.

Dell must ensure that all authorized agents and resellers are legally established to do business in the State of Florida (www.sunbiz.org), registered in the MyFloridaMarketPlace system (www.MyFloridaMarketPlace.com), not be on the Convicted / Suspended / Discriminatory / Complaints Vendor Lists (http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists) or have an outstanding balance on their MyFloridaMarketPlace account.

G. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"): If Dell is notified by ordering entity that a specific purchase order is being made with ARRA funds, Dell agrees to assist the ordering entity with their requirement to comply with the data element and reporting as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing Dell at the time of purchase order placement that ARRA funds are being used. Dell will include the tracking data, if provided by ordering entity, as an element within the utilization report, as per Article 44 of the MPA. Dell, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

H. Services:

The terms of the Agreement shall apply each time Customer engages Dell to provide services. All services provided will be described in one or more of the following:

- (i) "Service Descriptions" used to describe any services purchased by an entity;
- (ii) any mutually agreed upon "Statement of Work" ("SOW") executed by the parties; or
- (iii) any "Technical Specification Form" approved by the parties

I. Evaluation Equipment:

Dell, by mutual agreement with the Participating Entity, wishes to allow the use of equipment for the purposes of evaluation prior to purchase. Purchases of the equipment shall comply with the terms of the Master Purchase Agreement and participating addendum.

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Addendum, which is effective as of the date of the last signature below.

State of Florida

Contractor: Dell Marketing, L.P.

Department of Management Services

Kelly Loll
Kelly Loll, C.P.M.

Chief Procurement Officer and
Director of State Purchasing

11/8/12
Date

Ashleigh Lane
Signature

Ashleigh Lane

Name

Program and Contract Manager

Title

11/1/2012

Date

Approved as to form and legality

By: Buttman Adk Y
Office of the General Counsel

11/7/12
Date