

PARTICIPATING ADDENDUM

THIS PARTICIPATING ADDENDUM (this “Agreement”) is made between the **CITY OF COMMERCE CITY**, a municipal corporation of the State of Colorado (the “City”), and **DELL MARKETING L.P.**, a Texas limited partnership, whose address is One Dell Way, Mailstop RR1-33 Legal, Round Rock, Texas 78682 (the “Contractor”), collectively, the “Parties” and individually a “Party.”

RECITALS

WHEREAS, after a competitive procurement process, NASPO ValuePoint (“NASPO”) through its lead state, the State of Minnesota, entered into Contract No.23026, dated July 14, 2023 (the “NASPO Agreement”), with the Contractor to provide computer equipment, peripherals and related services. A copy of the NASPO Agreement is attached hereto as **Exhibit A** and incorporated herein by reference, to the extent not inconsistent with this Agreement;

WHEREAS, as a participating entity of NASPO, the State of Colorado entered into Participating Addendum Contract No. 186019, dated February 1, 2024, (the “State Addendum”), with the Contractor for computer equipment, peripherals and relates services. A copy of the State Addendum is attached hereto as **Exhibit B** and incorporated herein by reference, to the extent not inconsistent with this Agreement;

WHEREAS, the City is permitted to purchase such products and/or services under the NASPO Agreement and the State Addendum, at its discretion and with the assent of the awarded Contractor, and the NASPO Agreement and State Addendum permits its cooperative use by other public entities, including the City; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the NASPO Agreement, State Addendum, and this Agreement; (ii) establishing the terms and conditions by which the Contractor may provide the City with computer equipment, peripherals and related services, as more particularly set forth in this Agreement; and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

- 1. COORDINATION AND LIAISON:** The Contractor shall fully coordinate all services under this Agreement with designated personnel of the Department of Information Technology (“Department” or “IT”). This Agreement may be used by all departments, offices, and other agencies of the City subject to the any applicable restrictions set forth herein.
- 2. TASK ORDERS AND SERVICES TO BE PERFORMED:** The Contractor agrees to cooperate with the City in the preparation of detailed “Task Orders” in accordance with the Scope of Work, and the rates, contained therein, attached hereto as **Exhibit C**. Each Task Order shall include a detailed scope of services, level of effort, schedule, rates, and payment schedule, including a “not to exceed” amount, specific to each the Task Order. Task Orders shall be construed to be in addition to, supplementary to, and consistent with the provisions of this Agreement subject to the terms and conditions of the NASPO Agreement and State Addendum. In the event of a conflict between a particular provision of any Task Order and a provision of this Agreement, this Agreement shall take

precedence. A Task Order may be amended by the Parties by a written instrument prepared by the Parties jointly and signed by their authorized representatives. The City may execute Task Orders in its sole discretion, and the City is not required to execute any minimum number of Task Orders under this Agreement. The City shall have no liability to compensate the Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement or a properly executed Task Order. In no event shall a Task Order term extend beyond the Term unless the City has specifically agreed in writing. If this Agreement is terminated for any reason, each Task Order hereunder shall also terminate unless the City has specifically directed otherwise in writing. The Contractor agrees to fully coordinate its provision of services with any third party under contract with the City doing work or providing services which affect the Contractor's performance. The Contractor shall faithfully perform the work in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement. The Contractor represents and warrants that all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; all services and/or deliverables will conform to applicable, agreed upon specifications, if any; and, it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to any deliverable and services free and clear from any and all liens, adverse claims, encumbrances, and interests of any third party.

3. **TERM**: This Agreement will commence on execution of this Participating Addendum and will expire, unless sooner terminated as provided in this Agreement, on June 30, 2028 (the "Term").

4. **COMPENSATION AND PAYMENT**

- 4.1. **Fees**: The City shall pay, and the Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement the fees described in the attached **Exhibit C** and any duly executed Task Order. Amounts billed may not exceed rates set forth in **Exhibit C**. The Contractor is responsible for maintaining a current price list of available products and services.

- 4.2. **Reimbursable Expenses**: There are no reimbursable expenses allowed under this Agreement. All of the Contractor's expenses are contained in **Exhibit C**. The City will not be obligated to pay the Contractor for any other fees, costs, expenses, or charges of any nature that may be incurred and paid by the Contractor in performing services under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses.

- 4.3. **Invoicing**: The Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City.

- 4.4. **Maximum Contract Amount**

- 4.4.1. Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 (\$1,750,000) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement, Task Order, or any amendments for any further

services, including any services performed by the Contractor beyond that specifically described in **Exhibit C**. Any services performed beyond those in **Exhibit C** are performed at the Contractor's risk and without authorization under this Agreement.

- 4.4.2.** The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the City, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. INCORPORATION AND ORDER OF PRECEDENCE: The NASPO Agreement and State Addendum shall apply to this Agreement to the extent not inconsistent with this Agreement. If any term of this Agreement conflicts with the NASPO Agreement or State Addendum, then this Agreement shall control for all transactions between the City and the Contractor under this Agreement. If there is any conflict between the NASPO Agreement and State Addendum, the State Addendum shall control. All terms defined in the NASPO Agreement and State Addendum shall have the same meaning as defined therein, except for those terms specifically defined differently in this Agreement.

6. RIGHTS AND PRIVILEGES: To the extent provided under the NASPO Agreement and State Addendum, the City shall be afforded the same rights and privileges afforded to the State and shall be the "State," as defined in the NASPO Agreement and State Addendum, for the provisions of the NASPO Agreement and State Addendum that are incorporated herein by reference.

7. INSURANCE

7.1 Required Policies. Contractor will procure and keep in force the following insurance subject to the conditions below, for the duration of this Agreement:

7.1.1 Commercial General Liability Insurance. Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the performance of the Services with minimum combined single limits of One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) general aggregate.

7.1.2 Products and Completed Operations Insurance. Products and completed operations insurance insuring against any liability for bodily injury or property damage caused by the completed Services, with a combined single limit of at least One Million Dollars (\$1,000,000).

7.1.3 Comprehensive Automobile Liability Insurance. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) for any one occurrence with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in connection with performance of the Services. If Contractor's insurance does not cover non-owned or hired vehicles, the requirements of this paragraph shall be met with respect to each such vehicle used in connection with performance of the Service, and Contractor agrees to assure compliance prior to allowing use of a vehicle not owned by Contractor for such purpose.

7.1.4 Professional Liability Insurance. If Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant or other licensed professional, or if it is customary in the trade or business in which Contractor is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Contractor against any professional liability with a limit of at least One Million Dollars (\$1,000,000.00) per claim and annual aggregate.

7.1.5 Other Insurance. Workers' compensation insurance (unless Contractor provides a completed Declaration of Independent Contractor Status Form) and other insurance required by applicable law.

7.1.6 Excess or Umbrella Requirements. For the coverages required in Sections VI(A)(1-4), Contractor shall provide umbrella or excess coverage written on a "follow-form" basis to the underlying policy and in a coverage amount not less than One Million Dollars (\$1,000,000.00). In so doing, the coverage shall provide complete protection to the City consistent with the liability limits that may be imposed upon the City pursuant to C.R.S. § 24-10-114, as may be amended.

7.1.7 Technology Errors & Omissions. The Contractor shall maintain Technology Errors and Omissions insurance including network security, privacy liability and product failure coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

The limits of any insurance required by this Agreement will not limit Contractor's liability.

7.2 Terms of Insurance.

7.2.1 Additional Insured. Except for the professional liability policy, if applicable, and workers' compensation policy, all required insurance policies shall name the City as an additional insured and will provide that the City, although named as an additional insured, will nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees or agents by reason of the negligence of Contractor or its officers, employees, agents, subcontractors or business invitees. The insurance policies will be for the mutual and joint benefit and protection of Contractor and the City. Such policies will be written as primary policies not contributing to and not in excess of coverages the City may carry.

7.2.2 Qualification; Deductible. Insurance required by this Section will be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as Contractor deems reasonable for the Services, but in no event greater than Ten Thousand Dollars (\$10,000.00), and Contractor will be responsible for the payment of any such deductible.

7.2.3 Cancellation. No such policies will be cancelable or subject to reduction in coverage limits or other modification unless previously approved by the City in writing.

7.2.4 Coverage Type. Contractor will identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor

changes to “occurrence,” Contractor will carry a twelve (12) month tail. Contractor will not do or permit to be done anything that will invalidate the policies.

7.2.5 Pollution Coverage. The insurance required by this Agreement will cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and will not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. If necessary, Contractor will secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits with at least Two Million Dollars (\$2,000,000) each occurrence, subject to approval by the City, which approval will not be unreasonably withheld.

7.2.6 Evidence of Coverage. Before commencing work under this Agreement, Contractor will provide certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. The City will not be obligated under this Agreement until Contractor provides acceptable such certificates of insurance and endorsements. If the Term extends beyond the period of coverage for any required insurance, Contractor will, at least ten (10) days before the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage.

7.3 Subcontracts. Contractor will include the insurance requirements of this Agreement in all subcontracts. Contractor will be responsible if any subcontractor fails to procure and maintain insurance meeting the requirements of this Agreement.

7.4 Waiver of Subrogation. For all coverages required under this Agreement, with the exception of Professional Liability – if required, the Contractor’s insurer shall waive subrogation rights against the City.

8. **INDEMNIFICATION AND DEFENSE**: The City shall be afforded all the rights, privileges, and indemnifications afforded to the State, participating entities, purchasing entities, and its agencies and employees under the NASPO Agreement and State Addendum, and such rights, privileges, and indemnifications shall accrue and apply with equal effect to the City under this Agreement including, but not limited to, the Contractor’s obligation to provide indemnification and insurance. In any event, the Contractor agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City. The Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. The Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by

claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages. The Contractor shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy. Insurance coverage in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

9. **STATUS OF CONTRACTOR**: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the for any purpose whatsoever.

10. **ASSIGNMENT; SUBCONTRACTING**: The Contractor is authorized to use subcontractors to provide sales and support to the City as authorized by either the City, the Master Agreement, or the State Addendum. The Contractor's subcontractor's participation shall be in accordance with the terms and conditions set forth herein. The Contractor shall not assign any of its rights or obligations under this Agreement without obtaining the City's prior written consent, and any assignment without such consent will be ineffective and void.

11. **TERMINATION**

11.1. The City has the right to terminate this Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the City.

11.2. The City is entering into this Agreement to serve the public interest. If this Agreement ceases to further the City's public interest, the City, in its sole discretion, may terminate this Agreement, in whole or in part, for convenience by giving written notice to the Contractor.

11.3. Upon termination of this Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement. Upon termination, the City is entitled to take possession of all materials, equipment, tools, and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient.

12. **COLORADO GOVERNMENTAL IMMUNITY ACT**: In relation to this Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

13. **COLORADO OPEN RECORDS ACT**: Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S. ("CORA"). In the event of a request to the City for

disclosure of confidential materials, the City shall advise the Contractor of such request to give the Contractor the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Contractor objects to disclosure of any of its material, the Contractor shall identify to the City the legal basis under CORA for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Contractor agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Contractor further agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss, or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay.

14. **TAXES, CHARGES, AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature. The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.
15. **NOTICES:** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, electronic mail, or mailed via United States mail, postage prepaid, if to the Contractor at the address above and to City at the following addresses: Chief Information Officer, Information Technology, City of Commerce City, 7887 East 60th Avenue, Commerce City, Colorado 80022; with a copy to: City Attorney's Office, 7887 East 60th Avenue, Commerce City, Colorado 80022. Notices hand delivered, sent by electronic mail, or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.
16. **GOVERNING LAW; VENUE:** This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances and regulations of the City, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Adams County.
17. **COMPLIANCE WITH ALL LAWS:** The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules and regulations of the City. These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated.

- 18. PROHIBITED TERMS:** Any term included in this Agreement that requires the City to indemnify or hold the Contractor harmless; requires the City to agree to binding arbitration; limits the Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be *void ab initio*. Any agreement containing a prohibited term shall otherwise be enforceable as if it did not contain such term or condition, and all agreements entered into by the City, except for certain intergovernmental agreements, shall be governed by Colorado law notwithstanding any term or condition to the contrary.
- 19. DATA PROTECTION:** The Contractor shall comply with all applicable laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Contractor under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data's classification relevant to the Contractor's performance hereunder. The Contractor shall maintain security procedures and practices consistent with C.R.S. §§ 24-73-101 *et seq.*, and shall ensure that all regulated or protected data, provided under this Agreement and in the possession of the Contractor or any subcontractor, is protected and safeguarded, in a manner and form acceptable to the City and in accordance with the terms of this Agreement, including, without limitation, the use of appropriate technology, security practices, encryption, intrusion detection, and audits.
- 20. CITY EXECUTION OF AGREEMENT:** This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City of Commerce City.
- 21. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.
- 22. EXTERNAL TERMS AND CONDITIONS DISCLAIMER:** Notwithstanding anything to the contrary herein, the City shall not be subject to any provision including in any terms, conditions, or agreements appearing on the Contractor's or a subcontractor's website or any provision incorporated into any click-through or online agreements unless that provision is specifically referenced and incorporated into this Agreement.
- 23. LEGAL EFFECT OF SECTION 20.K OF THE STATE ADDENDUM:** The Parties agree and acknowledge that the terms and provisions of Section 20.K of the State Addendum shall be of no force and effect as to the enforcement of this Agreement.
- 24. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature under this Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the

ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

25. ATTACHED EXHIBITS INCORPORATED: The following attached exhibits are hereby incorporated into and made a material part of this Agreement:

Exhibit A, NASPO Agreement

Exhibit B, State Participating Addendum

Exhibit C, Price List/Quote

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE CITY

Jason Rogers, City Manager
City Manager's Office

ATTEST:

APPROVED AS TO FORM:

Dylan A. Gibson, City Clerk

Deanne Durfee, Deputy City Attorney

DELL MARKETING L.P.

Signature

Printed Name, Title