

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030042

1. REQUESTED MOTION:

ACTION REQUESTED: Approve Project # PB030249, the utilization (piggyback) of the Western States Contracting Alliance's agreement, which has gone through their competitive negotiation process, for the annual purchase of Dell personal computers, servers, and related peripherals for use by various departments and divisions throughout the County; from Dell Marketing LP; and authorize the Board Chairman on behalf of the BOCC to execute and sign the accompanying contract. The County presently expends approximately \$1.5 million dollars annually for Dell personal computers, related hardware and peripherals. Contract pricing represents a 10% discount off of the Dell retail price list (vs. 6.58% achieved on the Florida State Contract - the current procurement methodology). Authority is requested to expend the funds necessary to purchase this equipment on an as-needed basis using this agreement through its full term (expiration date is 9/4/04).

WHY ACTION IS NECESSARY: According to Section 9.4.1 of the Lee County Purchasing & Payment Procedures Manual, approved by the Board on 7/9/02, purchases over \$50,000.00 must be approved by the Board.

WHAT ACTION ACCOMPLISHES: Allows Lee County departments and divisions to obtain Dell personal computers, related hardware and peripherals in a cost effective, efficient, and timely manner.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #

C6C

3. MEETING DATE:

03-11-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

AC-4-1

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT
 - C. DIVISION *Purchasing*
- BY: *Janet K. Sheehan, Director*

7. BACKGROUND:

--BACKGROUND BEGINS ON PAGE TWO--

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>Janet Sheehan</i> <i>2-14-03</i>	<i>[Signature]</i>	<i>N/A</i>		<i>[Signature]</i> <i>2/17/03</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i> <i>2/18/03</i>	Risk <i>[Signature]</i> <i>2/18/03</i>	GC <i>[Signature]</i> <i>2/18/03</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *2/17/03*
Time: *1:00 pm*
Forwarded To:
Budget
2/17/03

RECEIVED BY
COUNTY ADMIN
2-17-03
J. O'S
COUNTY ADMIN.
FORWARDED TO: *HS*
2/19 9:00 AM

1:15 PM

--BACKGROUND CONTINUED FROM PAGE ONE--

On August 1, 2002 the new Florida State Contract for IT Hardware (including Dell) was made available for use by governmental entities. In reviewing the new contract and pricing structure, the Division of Purchasing determined that it would be in the County's best interest to explore other options for procuring Dell personal computers and related peripherals.

It should be noted that the avenues open to governments to purchase Dell product are limited as the company prices and sells direct; not through a standard reseller network. Further, the Lee County Oversight and Standards committees have standardized on Dell as the only acceptable brand of computer that may be purchased for the County's use.

The County's Dell purchases have traditionally been via the Florida State Contract; which had offered an extremely generous discount from Dell's retail price list. However, the issuance of the new contract offered a discount of 6.58% off of list; which motivated the Division of Purchasing to research to find out if there were any other methodologies which would offer a more attractive discount for the County. While this research uncovered several other potential options; the most attractive was the competitively negotiated Western States Contracting Alliance – the lead agency of which is the State of New Mexico – which offers a discount of 10% off the Dell Retail Price List.

The County presently expends approximately \$1.5 million dollars annually for Dell personal computers, related hardware and peripherals. According to Section 9.4.1 of the Lee County Purchasing & Payment Procedures Manual, approved by the Board on 7/9/02, purchases over \$50,000.00 must be approved by the Board.

Therefore, Board approval is requested to utilize (piggyback) the Western States Contracting Alliance's agreement, which has gone through their competitive negotiation process, for the annual purchase of Dell personal computers, servers, and related peripherals for use by various departments and divisions throughout the County; from Dell Marketing LP. Authority is also requested to use this agreement through its full term (expiration date is 9/4/04).

Funding will be made available through individual department/division accounts on an as-needed basis.

Attachments:

- (1) Division Request for Piggyback
- (2) Western States Contracting Alliance Master Price Agreement
- (3) Office of the County Attorney's Approval to Piggyback on this Agreement
- (4) Western States Contracting Alliance Participating Addendum

ATTACHMENT #1

MEMORANDUM
FROM
THE DIVISION OF PURCHASING

DATE: FEBRUARY 13, 2003

TO: BOB FRANCESCHINI
PURCHASING MANAGER

Janet Sheehan
FROM: JANET SHEEHAN, CPPB
PURCHASING DIRECTOR

RE: WESTERN STATES CONTRACTING ALLIANCE FOR DELL PURCHASES

Please proceed with a blue sheet to the Board for the purpose of obtaining approval to piggyback the Western States Contracting Alliance agreement for the County-wide purchase of Dell personal computers, servers and related peripherals.

Funding will be made available through individual department/division accounts on an as-needed basis.

Thank you for your assistance.

JKS/rdf

ATTACHMENT # 2

WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P.
MASTER PRICE AGREEMENT
92-00151

This Agreement is made and entered into by Dell Marketing L.P (“contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance.

The parties agree as follows:

1. Definitions

“Agreement Administrator” refers to the individual appointed by the NMSPA to administer this agreement on behalf of the State of New Mexico, the participating WSCA members and other authorized purchasers.

“Announced Promotion Prices” are prices offered nationally to specific categories of customers (including WSCA Participants) for defined time periods under defined Terms and Conditions.

“Documentation” refers to manuals, handbooks, and other publications and listed in the ESS or supplied with products listed in the ESS or supplied in connection with services.

“Educational Discount Price” means the price offered in a nationally announced promotion , which is limited to educational customers only.

“Equipment” refers to desktop and laptop computers, servers, workstations, printers, displays, peripherals and LAN and hardware components and spare parts listed in the contractor’s ESS. Peripherals to include: Monitors/Projectors; Audio/Video; Accessories; Networking Equipment; Scanners; Cameras; Plotters; and Storage and Memory.

“Equipment and Services Schedule” (“ESS”) refers to a complete list, grouped by major product categories, of the equipment, software, services, media and documentation available for purchase by procuring agencies. The ESS contains an item number, item description and the maximum price for each product or service.

“Equipment and Service Schedule (ESS) prices” mean the prices offered to WSCA members exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices.

“General Price Reduction Price” means the price offered to WSCA members under the WSCA agreement at prices lower than ESS pricing. Selection and pricing of General Price Reduction items shall be by mutual agreement of the

parties. Either party can propose additions or deletions to the listing of General Price Reduction Items.

“General purpose” includes the following classes of software: operating systems, report generators, spreadsheets, text and test processing, workgroup management, database, project management, messaging and electronic mail, graphics construction and presentation, publishing, data communications, statistical and/or analysis, imaging, compilers and interrupters, utilities, and programmer productivity tools. Educational software designed for K-12 public schools and/or universities is included.

“Large Order Negotiated Price” means the price offered to specific WSCA members or classes of WSCA members under defined additional Terms and Conditions. Selection and pricing of Large Order Negotiated Prices shall be by mutual agreement of the parties. Large Order Negotiated Prices shall apply only to those items which meet the applicable additional Terms and Conditions (e.g., order quantity, time limitation, product configuration) negotiated by the parties.

“Local-Area-Network” (“LAN”) refers to a high-speed communications system optimized for connecting information-processing equipment within a building or group of buildings. The communications devices that are required to transmit data between buildings via a public or private network are included.

“Participating Addendum” means a written statement of agreement signed by the appropriate participating entity authority and contractor indicating the entities’ willingness to purchase and the contractor’s willingness to provide products and services under the terms and conditions of this agreement with any and all exceptions noted and agreed upon. The terms and conditions contained in any participating addendum shall effect only the purchases of procuring agencies within the jurisdiction of the participating entity signing the participating addendum. A participating addendum shall have no effect whatsoever on any other participating addendum or the scope of this agreement. One signed and one electronic copy of each participating addendum shall be filed with the agreement administrator within five (5) days after execution.

“Participating Entity” means WSCA member state, a governmental entity within a WSCA member state or other authorized state or governmental entity that chooses to purchase products and services under the terms of this agreement by executing a participating addendum.

“Price Agreement” means a indefinite quantity contract which requires the contractor to furnish products or services to a procuring agency which issues a

valid purchase order.

“Procuring agency” means any New Mexico or participating state agency or local public body. State agency means department, commission, council, board, committee, institution, legislative body, agency, government corporation, or educational institution. Local public body means every political subdivision of the state and the agencies, instrumentalities and institutions thereof including all cities, counties, courts and public schools.

“Products” refers to equipment, software and documentation or any other item furnished under this agreement but not to services.

“Purchase Order” means an electronic or paper document issued by the procuring agency which directs the contractor to deliver products or services pursuant to this agreement.

“Servicing Subcontractors” refers to contractor authorized subcontractors who may be assigned by the procuring agency or contractor to service the products listed in a purchase order. Servicing contractors must be certified by contractor to service the products. Participating entities may select and designate a list of servicing subcontractors from a list of potential servicing subcontractors who are otherwise certified to perform services in a given geographic region. The list of selected servicing subcontractors must appear in the participating addendum.

“Services” refers to maintenance services related to products offered or supplied. All forms of application development services and other professional services are beyond the scope of this agreement and may not be procured under the terms of this agreement.

“Software” refers to general purpose software products preloaded on equipment or listed separately in the ESS. The term “Software” applies to all parts of software, including new releases, updates, and modifications of software. For software, the term “purchase” means “license”.

“WSCA” means the Western States Contracting Alliance, a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

2. Scope of Work

The contractor shall deliver computing system products and services to procuring agencies in accordance with the terms of this agreement. This Agreement is a "price agreement". Accordingly, the contractor shall provide products or services only upon the issuance and acceptance by contractor of valid "purchase orders". Purchase orders may be issued to purchase the license for software or to purchase or lease products listed on the contractor's ESS. A procuring agency may purchase any quantity of product or service listed in the contractor's ESS at the prices stated therein. For large orders, contractor and procuring agency may negotiate quantity price discounts below the ESS price(s) for a given purchase order. Contractor may offer authorized educational institutions educational price discounts that result in prices below the ESS listed prices.

3. Title Passage

Title to equipment shall pass to the procuring agency at the procuring agency's dock. Agency shall have 30 days from date of invoice to accept the equipment or return per Contractor's 30 day "Total Satisfaction Guarantee" as follows:

To Return Dell Branded Equipment

If you are an end-user customer who bought products directly from Dell, you may return them to Dell up to thirty (30) days from the date of invoice for a refund of the product purchase price if already paid. To return products, you must call Dell Customer Account Services to receive a Credit Return Authorization Number. You must ship the products to Dell in their original packaging. You may return software for refund or credit only if the sealed package containing the diskette(s) or CD(s) is unopened. Returned products must be in as-new condition, and all of the manuals, diskette(s), CD(s), power cables, and other items included with a product must be returned with it.

To Return Non Dell Branded Equipment

If you are an end-user customer who bought DellWare products directly from Dell, you may return DellWare products that are in as-new condition to Dell up to 30 days from the date of invoice for a refund of the product purchase price if already paid. To return products, you must call Dell Customer Service to receive a Credit Return Authorization Number. You must ship the DellWare products to Dell in their original manufacturer's packaging. To qualify for refund or replacement, returned products must be in as-new condition, and all of the manuals, diskette(s), CD(s), power cables, and other items included with a product must be returned with it.

4. Quantity Guarantee

This agreement is not an exclusive agreement. Procuring agencies may obtain computing system products and services from other sources during the agreement term. The NMSPA and WSCA make no express or implied warranties whatsoever that any particular number of purchase orders will be issued or that any particular quantity or dollar amount of products or services will be procured.

5. Order of Precedence

Each purchase order that is accepted by the contractor will become a part of the agreement as to the products and services listed on the purchase order only; no additional terms or conditions will be added to this agreement as the result of acceptance of a purchase order. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. the terms and condition of this agreement;
- B. exhibits to this agreement;
- C. executed participating addendum(s);
- D. the list of products and services contained in the purchase order;
- E. the request for proposals document; and
- F. contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this agreement are subject to the following provisions:

A. Acceptance

A procuring agency shall determine whether all products delivered to it meet the contractor's published specifications. Payment shall be made thirty (30) days from date of invoice. Unless otherwise agreed upon between the procuring agency and the contractor, within thirty (30) days from the date of invoice, the procuring agency shall accept or reject the products or services.

B. Payment of Invoice

Payments shall be submitted to the contractor at the address shown on the invoice. Payment shall be tendered to the contractor within thirty (30) days of the date of invoice. After the thirtieth day from the date of the invoice unless mutually agreed to, interest shall be paid on the unpaid balance due to the contractor at the rate of one and one-half percent per month. The procuring agency shall make a good-faith effort to pay within thirty (30)

days after date of invoice.

In the event an order is shipped incomplete (partial), the procuring agency must pay for each shipment as invoiced by the contractor unless the procuring agency has clearly specified "No Partial Shipments" on each purchase order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the contractor's sole responsibility and shall be reported under the contractor's federal and state tax identification numbers. If a procuring agency is not exempt from sales, gross receipts, or local option taxes for the transaction, the contractor shall be reimbursed by the procuring agency to the extent of any tax liability assessed.

D. Invoices

Invoices shall be submitted to the procuring agency.

7. Agreement Term

The agreement is effective September 3, 1999 through September 2, 2002 and may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this agreement. In no event shall this agreement remain in effect longer than five (5) years from the effective date.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the NMSPA may terminate this agreement, in whole or in part, by giving the contractor (30) days written notice; provided, however, neither the NMSPA nor a procuring agency has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, contractor may terminate this agreement, in whole or in part, by giving the agreement administrator thirty (30) days written notice. Such termination shall not relieve contractor of warranty or other service obligations incurred under the

terms of this agreement.

B. Termination for Cause

Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Procuring Agency's Rights

In the event the agreement expires or is terminated for any reason, a procuring agency shall retain its rights in all products and services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event the agreement expires or is terminated for any reason, a procuring agency shall pay the contractor all amounts due for products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this agreement and any purchase order issued for multiple years under this agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this agreement or in any purchase order or other document, a procuring agency may terminate its obligations under this agreement, if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The procuring agency's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final and binding.

A procuring agency shall provide sixty (60) days notice, if possible, of its intent to

terminate this contract for non-appropriation. Such termination shall relieve the procuring agency, its officers and employees from any responsibility or liability for the payment of any future purchase orders. However all outstanding invoices from the contractor will be paid by the procuring agency.

10. Shipment and Risk of Loss

A. Contractor shall ship all products F.O.B. destination. Risk of loss or damage to the products shall pass to the procuring agency upon delivery to the procuring agency. Contractor agrees to assist the procuring agency with the processing of claims for such loss or damage and to expedite the processing of claims for such loss or damage and to expedite replacement of lost or damaged products. Destination charges shall be included in the product price on the ESS.

B. Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency.

Unless otherwise agreed upon by the contractor, the procuring agency is responsible for the return of the equipment. Software and documentation will be returned via U.S Mail at the expense of the procuring agency.

C. Unless otherwise arranged between the procuring agency and contractor, all shipments of products shall be by 3-5 day ground shipment.

11. Warranties

A. The products are covered under the warranties in effect at the time the products are delivered. Exhibit A contains the warranties in effect as of the date of this agreement.

B. The parties acknowledge and agree that the warranties described in Exhibit A may be modified by contractor, from time to time, in contractor's sole discretion.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

A. The contractor shall defend, at its own expense, the State of New Mexico, participating entities and its agencies against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a procuring agency based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the State for those associated costs awarded in the judgment. To qualify for such defense and/or payment, the State of New Mexico or participating entity shall:

1. give the contractor prompt written notice of any claim;
2. allow the contractor to control the defense or settlement of the claim; and
3. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

1. provide a procuring agency the right to continue using the product or service;
2. replace or modify the product or service so that it becomes non-infringing; or
3. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency to the extent such modification is the cause of the claim.

13. Price Guarantees

The procuring agencies shall pay the lower of the prices contained in the ESS or an announced promotion price, educational discount price, general price reduction price or large order negotiated price as applicable to the WSCA customer set in a transaction with like configurations, terms and conditions, volumes, delivery schedules and market conditions. Only general price reduction price decreases will apply to all subsequent orders accepted by contractor after the date of the issuance of the revised prices. Contractor agrees to maintain ESS product prices in accordance with the volume price discount guarantees filed with the agreement administrator. Prices set forth in the ESS are subject to change without prior notice.

14. Equipment and Service Schedule

The contractor agrees to maintain the ESS in accordance with the following provisions:

- A. The ESS prices for products and services will conform to the guaranteed prices discount levels.
- B. The contractor may change the price of any product or service at any time, based upon list price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period.
- C. The contractor may make product model changes, add new products, product upgrades or services to the ESS at any time and the pricing for the same shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the parties.
- D. The contractor agrees to delete obsolete and discontinued products from the ESS on a timely basis.
- E. Major product model changes shall be incorporated in the ESS as soon as possible after the announcement. In conjunction therewith or as soon as possible, the parties shall negotiate a price discount level for the new product line as comparable as possible to the price discount level quoted herein for similar products.
- F. The ESS shall be maintained by the contractor on an Internet web site.

15. Product Substitutions

Contractor may make product substitutions either to the internal system components, options or external peripherals as long as the substitute item is the same or better technology at the same or lower price. Delivery order modifications will not be required.

The invoice will reflect the actual product shipped NOT the product ordered. To effect administrative savings, procuring agencies are instructed to make payments in accordance with this paragraph without requiring a delivery order modification. The following note will appear on the invoice.

"In accordance with the Product Substitutions paragraph in the Master Price Agreement, Dell Marketing L.P. has substituted a product on this order. The substitution is the same or better technology at the same or lower price."

16. Technical Support

The contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to procuring agency personnel who wish to obtain competent technical assistance regarding the installation or operation of products supplied by the contractor.

17. Year 2000

The internal mechanisms for handling system time and date functionality in the Dell-branded systems will not be affected by and will accommodate the rollover to the year 2000, and any date within the architecture range as detailed in the specifications for each product offered on the ESS. Dell-branded systems will work with and accommodate any compatible software which is itself Year 2000 compliant. However, contractor is not responsible for any accessories, including software provided by third party suppliers, that improperly set, reset, or calculate dates. The procuring agency must satisfy itself that the software it chooses to use on Dell-branded system is Year 2000 compliant.

18. Product Delivery

Contractor agrees to deliver products to procuring agencies within an estimated 14-30 days after receipt of a valid purchase order.

19. Impracticality of Performance

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, court order or industry wide constraints, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

20. Records and Audit

Contractor agrees to maintain detailed records pertaining to the price of services rendered and products delivered for a period of three years from the date of acceptance of each purchase order. These records shall be subject to inspection by the procuring agency and appropriate governmental authorities with the procuring agency's state. The procuring agency shall have the right to audit billings either before or after payment. Payment under this agreement shall not foreclose the right of the procuring agency to recover excessive or illegal payments.

21. Independent Contractor

The contractor and its agents and employees are independent contractors and are not employees of the State of New Mexico or of any participating entity. The contractor has no authorization, express or implied to bind the State of New Mexico, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the State of New Mexico, WSCA, or participating entity, except as expressly set forth herein. The contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico or participating entity as a result of this agreement.

22. Use of Subcontractors

The contractor may subcontract installation, training, warranty or maintenance services. However, the contractor shall remain solely responsible for the performance of this agreement. All procuring agency payments for products or services shall be made directly to the contractor. If subcontractors are to be used, the name of the authorized subcontractor(s) shall be identified in the applicable participating addendum(s).

23. Indemnification

The contractor shall hold the State of New Mexico, participating entities and its agencies and employees harmless and shall indemnify the State of New Mexico, participating entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the State of New Mexico, the participating entity, or its employees.

To the extent permitted by State law, participating entities agree to be responsible for their own acts, errors or omissions pertaining to this Indemnification provision.

24. Amendments

The agreement shall only be amended by written instrument executed by the parties.

25. Scope of Agreement

This agreement incorporates all of the agreements of the parties concerning the subject matter of this agreement, and all prior agreements have been merged into this agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

26. Invalid Term or Condition

If any term or condition of this agreement shall be held invalid or unenforceable, the remainder of this agreement shall not be affected and shall be valid and enforceable.

27. Enforcement of Agreement

A party's failure to require strict performance of any provision of this agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

28. Web Site Maintenance

Contractor agrees to maintain and support an Internet website for access to the ESS, configuration assistance, product descriptions, product specifications and other aides in accordance with instructions provided by the agreement administrator. In addition, contractor may provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting.

29. Equal Opportunity Compliance

The contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which it's primary place of business is located. In accordance with such laws, regulations, and executive orders, the contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity

performed by the contractor under this agreement. If the contractor is found to be not in compliance with these requirements during the life of this agreement, the contractor agrees to take appropriate steps to correct these deficiencies.

30. Limitation of Liability

The contractor's liability to a procuring agency for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services on an individual purchase order that are the subject the procuring agency's claim. The foregoing limitation does not apply to Paragraphs 12 and 23 of this agreement or to damages resulting from personal injury caused by the contractor's negligence. In no event shall the contractor be liable for any indirect, special or consequential damages arising out of this agreement or the use of the products purchased by the procuring agency hereunder, even if the contractor has been advised of the possibility of such damages.

31. Applicable Law

This agreement shall be governed by the laws of the State of New Mexico. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the agreement administrator to maintain, support and market this agreement. The NMSPA reserves the right to require a change in contractor's then-current primary representative if the assigned representative is not, in the opinion of the NMSPA, serving the needs of the State of New Mexico and the participating entities adequately.

33. Release

The contractor, upon final payment of the amount due under this agreement, releases the NMSPA, State of New Mexico and participating entities its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this agreement. The contractor agrees not to purport to bind the State of New Mexico or any participating entity to any obligation, unless the contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Confidentiality

Any confidential information provided to or developed by the contractor in the performance of this agreement shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the participating entity.

35. Conflict of Interest

The contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this agreement.

36. Replacement Parts

Replacement parts may be refurbished.

37. FCC Certification

The contractor agrees that hardware supplied by the contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination.

38. Site Preparation

A procuring agency shall prepare and maintain its site in accordance with written instructions furnished by the contractor prior to the scheduled delivery date of any equipment or service and shall bear the costs associated with the site preparation.

39. Assignment

The contractor shall not assign nor transfer any interest in this agreement or assign any claims for money due or to become due under this agreement without the prior written approval of the NMSPA.

40. Agreement Administrator

The NMSPA shall appoint an agreement administrator whose duties shall include but not be limited to the following:

- A. The administrator shall provide instructions concerning the contents of the contractor's website.

- B. The administrator will facilitate dispute resolution between the contractor and procuring agencies. Unresolved disputes shall be presented to the NMSPA for resolution.
- C. The administrator shall promote the use of the agreement by WSCA members and other participating entities.
- D. The administrator shall advise the NMSPA regarding the contractor's performance under the terms and conditions of the agreement.
- E. The administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The administrator shall periodically verify the product prices in the ESS conform with the contractor's volume price guarantees.

42. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability shall survive the expiration of this agreement. Software licenses, lease, warranty and service agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

43. Lease Agreements

Contractor may lease equipment to procuring agencies in accordance with terms and conditions approved by the appropriate governing authority for the procuring agency's jurisdiction. Such approval shall be indicated in the participating addendum.

44. Succession

This agreement shall be entered into and be binding upon the successors and assigns of the parties.

45. Notification

Either party may give written notice to the other party in accordance with the terms of this paragraph 45. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To NMSPA:

New Mexico State Purchasing Agent
Purchasing Division
Joseph M. Montoya State Building, Room 2016
1100 St. Francis Drive
Santa Fe, New Mexico 87505

or

P.O. Drawer 26110
Santa Fe, New Mexico 87502-0110

To Contractor:

Dell Marketing L.P. – RR8 , Box 6
1, Dell Way, Round Rock, Texas

Either party may change its representative or address above by written notice
To the other in accordance with the terms of this Paragraph 45. The carrier for mail
delivery and notices shall be the agent of the sender.

46. Administration Reporting and Fees

The contractor agrees to provide periodic price agreement utilization reports to the
agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
October 31	December 15
January 31	March 15
April 30	June 15
July 31	September 15

The periodic report shall include the gross sales for the period subtotaled by procuring
agency name or identifying number, within the procuring agency's state name. The report
shall be accompanied with a check payable to Western States Contracting Alliance for an
amount equal to one-tenth of one percent (0.0010) of the gross sales for the period.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds
for the removal of the contractor's primary representative, suspension of the price
agreement or termination of the price agreement for cause.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the New Mexico State Purchasing Agent, below.

State of New Mexico
State Purchasing Agent

Contractor
Dell Marketing L.P.

By: Louis T. Higgins
Louis T. Higgins
Date: 9-21-99

By: [Signature]
Title: Manager, Proposals
Date: September 17, 1999

EXHIBIT A

Hardware Warranties (Systems)

Dell-branded hardware products come with either a one-year limited warranty or a three-year limited warranty. The standard one-year and three-year limited warranties for systems purchased in the U.S. are included in this section. The actual limited warranty statement is noted on your invoice and included in the documentation accompanying your system.

Three-Year Limited Warranty (United States Only)

Dell Computer Corporation ("Dell") manufactures its hardware products from parts and components that are new or equivalent to new in accordance with industry-standard practices. Dell warrants that the hardware products it manufactures will be free from defects in materials and workmanship. The warranty term is three years beginning on the date of invoice, as further described below.

Damage due to shipping the products to you is covered under this warranty. Otherwise, this warranty does not cover damage due to external causes, including accident, abuse, misuse, problems with electrical power, servicing not authorized by Dell, usage not in accordance with product instructions, failure to perform required preventive maintenance, and problems caused by use of parts and components not supplied by Dell.

This warranty does not cover any items that are in one or more of the following categories: software; sound cards; speakers; external devices; accessories or parts added to a Dell system after the system is shipped from Dell; accessories or parts added to a Dell system through Dell's system integration department; accessories or parts that are not installed in the Dell factory; or DellWare products. Monitors, keyboards, and mice that are included on Dell's standard price list are covered under this warranty; all other monitors, keyboards, and mice (including those sold through the DellWare program) are not covered. Product batteries for portable computers are covered only during the initial one-year period of this warranty.

Limited Warranty Coverage During Year One (United States Only)

During the one-year period beginning on the invoice date, Dell will repair or replace products returned to Dell's facility. To request warranty service, you must call Dell within the warranty period. Refer to the chapter titled "Getting Help" in your Diagnostics and Troubleshooting Guide, Reference and Troubleshooting Guide, Installation and Troubleshooting Guide, or Service Guide to find the appropriate telephone number for obtaining customer assistance. If warranty service is required, Dell will issue a Return Material Authorization Number. You must ship the products back to Dell in their original or equivalent packaging, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment. Dell will ship the repaired or replacement products to you freight prepaid if you use an address in the U.S. (excluding Puerto Rico and U.S. possessions). Shipments to other locations will be made freight collect.

NOTE: Before you ship the product(s) to Dell, back up the data on the hard-disk drive(s) and any other storage device(s) in the product(s). Remove any removable media, such as diskettes, CDs, or PC Cards. Dell does not accept liability for lost data or software. If you have any questions, call Dell for technical assistance.

Dell owns all parts removed from repaired products. Dell uses new and reconditioned parts made by various manufacturers in performing warranty repairs and building replacement products. If Dell repairs or replaces a product, its warranty term is not extended.

Limited Warranty Coverage During Years Two and Three (United States Only)

During the second and third years of this limited warranty, Dell will provide, on an exchange basis, replacement parts for the Dell hardware product(s) covered under this limited warranty when a part requires replacement. You must report each instance of hardware failure to Dell Technical Support in advance to obtain Dell's concurrence that a part should be replaced and to have Dell ship the replacement part. Dell will ship parts using next-business-day delivery, shipping prepaid if you use an address in the U.S. (excluding Puerto Rico and U.S. possessions). Shipments to other locations will be made freight collect. Dell will include a prepaid shipping container with each replacement part for your use in returning the replaced part to Dell. Replacement parts are new or reconditioned. Dell may provide replacement parts made by various manufacturers when supplying parts to you. The warranty term for a replacement part is the remainder of the limited warranty term.

You will pay Dell for replacement parts when the replaced part is not returned to Dell within 30 days after the date the replacement part was shipped by Dell and for parts used to repair systems not covered by this limited warranty. In these events, replacement parts will be priced at Dell's then-current standard prices. Payment for these parts is due within 30 days from the date of invoice. You accept full responsibility for your software and data. Dell is not required to advise or remind you of appropriate backup and other procedures.

General

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION. DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SET FORTH ABOVE AND NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER SUCH PERIOD. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

DELL DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH IN THIS WARRANTY STATEMENT OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST DATA OR SOFTWARE. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU.

These provisions apply to Dell's three-year limited warranty only. For provisions of any on-site service contract covering your system, refer to the separate on-site service contract that you will receive.

NOTE: If you chose one of the available warranty and service options in place of the standard Three-Year Limited Warranty described above, the option you chose will be listed on your invoice.

Warranties (Dell Customer Kits)

One-Year Limited Warranty (United States Only)

Dell Computer Corporation ("Dell") manufactures its hardware products from parts and components that are new or equivalent to new in accordance with industry-standard practices. Dell warrants that the hardware products it manufactures will be free from defects in materials and workmanship. The warranty term is one year beginning on the date of invoice, as further described below.

Damage due to shipping the products to you is covered under this warranty. Otherwise, this warranty does not cover damage due to external causes, including accident, abuse, misuse,

problems with electrical power, servicing not authorized by Dell, usage not in accordance with product instructions, failure to perform required preventive maintenance, and problems caused by use of parts and components not supplied by Dell.

This warranty does not cover any items that are in one or more of the following categories: software; sound cards; speakers; external devices; accessories or parts added to a Dell system after the system is shipped from Dell; accessories or parts added to a Dell system through Dell's system integration department; accessories or parts that are not installed in the Dell factory; or DellWare® products. Monitors, keyboards, and mice that are included on Dell's standard price list are covered under this warranty; all other monitors, keyboards, and mice (including those sold through the DellWare program) are not covered.

Dell will repair or replace products returned to Dell's facility. To request warranty service, you must call Dell within the warranty period. Refer to the chapter titled "Getting Help" in your *Diagnostics and Troubleshooting Guide, Reference and Troubleshooting Guide, Installation and Troubleshooting Guide, or Service Guide* to find the appropriate telephone number for obtaining customer assistance. If warranty service is required, Dell will issue a Return Material Authorization Number. You must ship the products back to Dell in their original or equivalent packaging, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment. Dell will ship the repaired or replacement products to you freight prepaid if you use an address in the U.S. (excluding Puerto Rico and U.S. possessions). Shipments to other locations will be made freight collect.

NOTE: Before you ship the product(s) to Dell, back up the data on the hard-disk drive(s) and any other storage device(s) in the product(s). Remove any removable media, such as diskettes, CDs, or PC Cards. If you have any questions, call Dell for technical assistance.

Dell owns all parts removed from repaired products. Dell uses new and reconditioned parts made by various manufacturers in performing warranty repairs and building replacement products. If Dell repairs or replaces a product, its warranty term is not extended.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SET FORTH ABOVE AND NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER SUCH PERIOD. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

DELL DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH IN THIS WARRANTY STATEMENT OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST DATA OR SOFTWARE. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU.

These provisions apply to Dell's one-year limited warranty only. For provisions of any on-site service contract covering your system, refer to the separate on-site service contract that you will receive.

Special Policies (DellWare, ReadyWare, DellPlus)

DellWare (Software and Add-Ons)

DellWare includes all non-Dell branded third-party software and peripherals purchased -- but not installed -- through Dell. All DellWare products feature warranties from the original manufacturer or publisher, not Dell. Since third-party manufacturer warranties may vary from product to product, consult your product documentation for specific warranty information.

For assistance in locating the technical support telephone number for the manufacturer of your product purchase, call the toll-free service number, 800/753-7201, and follow the voice prompts.

No free support (including installation, configuration, and usage) is provided for DellWare items by Dell. However, hardware support may be available from the original manufacturer.

You can obtain software support for commonly asked questions from Dell's AutoTech system at 800 247-9362 or Dell's TechFax system at 800/950-1329. Software support may also be obtained by purchasing a software support contract or it may be available through the software manufacturer.

NOTE: Non-Dell branded third-party items are not covered under the Dell system service contract.

DellWare Return Policy (U.S. and Canada Only)

If you are an end-user customer who bought non-Dell branded third-party software or peripheral products directly from a Dell company, you may return as-new products to Dell up to 30 days from the date of invoice for a refund of the product purchase price (if already paid). This refund will not include any shipping and handling charges shown on your invoice.

DellWare products found to be defective in materials or workmanship may be returned to Dell for replacement at any time within 90 days after the date of the invoice for the product(s). After this 90-day period, the product is covered by any original manufacturer's warranty. Any warranty and technical support provided on a non-Dell branded third-party software or peripheral product is provided by the original manufacturer, not by Dell. The warranties and technical support may vary from product to product.

To return products, you must call Dell Customer Service to receive a Credit Return Authorization Number. You must ship the non-Dell branded third-party products to Dell in their original manufacturer's packaging, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment.

To qualify for refund or replacement, returned DellWare products must be in as-new condition, and all of the manuals, diskette(s), CD(s), power cables, and other items included with a product must be returned with it.

ReadyWare

Dell's ReadyWare program can help you customize your Dell system. The program provides a seamless process for factory installing certain applications, software packages or hardware on your Dell system for an additional fee.

ReadyWare Hardware

Dell provides support for the initial installation and configuration of hardware that is purchased and installed under the ReadyWare program. These items carry a one-year limited warranty from Dell in addition to any warranty provided by the original manufacturer. Unless excluded by limitations,

these items are covered under the system's initial on-site or parts-delivery service contract coverage.

ReadyWare Software

Installation and configuration support are provided for ReadyWare software for the first 30 days from the invoice date. Thereafter, installation and configuration support for ReadyWare software may be available from the software manufacturer or through the following Dell services:

- ◆ AutoTech system (800/247-9362)
- ◆ TechFax SM system (800/950-1329)
- ◆ Fee-Based Technical Support (available for a fee on an as-needed basis - please have a credit card number ready)
- ◆ Software support contract

ReadyWare Returns

Hardware items purchased through ReadyWare may be returned for credit under Dell's then-current "Total Satisfaction" Return Policy.

***NOTES:** To expedite the processing of your credit, Dell expects that you will return the complete package to Dell, in the proper packaging, within five days after Dell issues the Credit Return Authorization Number.*

For customers who want to return either application software or operating system software that is Dell installed, the system itself must be returned, along with any media and documentation that may have been included in the original shipment.

Returns arriving outside of the five-day window are subject to depreciation of the final credit/refund. Incomplete returns may not be credited.

DellPlus

Through the DellPlus program, you can have a system specially manufactured or custom-configured for a fee. DellPlus items are often unique, custom-designed hardware and/or software with specific applications and functions, which you select from the open market or from special vendors and developers.

The warranty and return policies for DellPlus configurations differ from Dell's standard system warranty and return policies. Please contact your sales representative and ask about the DellPlus Parts Replacement Program.

1995-1998 Dell Computer Corporation. All rights reserved.

Trademarks used in this document: Dell is a registered trademark, and DellWare and ReadyWare are registered service marks of Dell Computer Corporation.

Other trademarks and trade names may be used in this document to refer to either the entities claiming the marks and names or their products. Dell Computer Corporation disclaims any proprietary interest in trademarks and trade names other than its own.

The information in this document has been reviewed and is believed to be accurate. However, neither Dell Computer Corporation nor its affiliates assume any responsibility for inaccuracies, errors, or omissions that may be contained herein. In no event will Dell Computer Corporation or its affiliates be liable for direct, indirect, special, incidental, or consequential damages resulting from any defect or omission in this document, even if advised of the possibility of such damages.

Dell Computer Corporation reserves the right to make improvements or changes to this document and the products and services described at any time, without notice or obligation. This information applies to the continental United States and Canada only, unless specifically stated otherwise.

AMENDMENT #1
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P.
MASTER PRICE AGREEMENT
92-00151

This Amendment #1 is made and entered into by Dell Marketing L.P ("contractor") and the New Mexico State Purchasing Agent ("NMSPA") on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers.

WHEREAS: Contractor and the NMSPA, on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers entered into Price Agreement # 92-00151 ("Agreement"), for an initial term which expires September 2, 2002;

WHEREAS, under Section 24 of the Agreement the Agreement shall only be amended by written instrument executed by the parties;

NOW THEREFORE: In consideration of these premises, and other good and valuable consideration, Contractor and the NMSPA agree to add an additional paragraph to the Agreement as follows:

47. Product Evaluation

During the term of this Agreement, the procuring agency may contact contractor's sales representative to request the opportunity to evaluate a product. Upon contractor's discretion, contractor will ship the procuring agency the requested product(s), subject to the following provisions.

A. Contractor will pay shipping charges to procuring agencies' location. The procuring agency shall pay shipping to return product(s).

B. The evaluation period will be a 30 day period beginning on the date of shipment of the product(s) from contractor's facility. The procuring agency may choose to purchase the product(s) at the end of the evaluation period subject to the terms of this Agreement.

C. If the procuring agency chooses to return the evaluation product(s), the procuring agency will return them in good condition, reasonable wear and tear excepted.

IN WITNESS WHEREOF, the parties have caused this Amendment #1 to be signed by their duly authorized representatives, in duplicate original, on the date(s) below.

STATE OF NEW MEXICO

By: Louis T. Higgins
Name: Louis T. Higgins
State Purchasing Agent

Date: 4-27-2000

CONTRACTOR:
Dell Marketing L.P.

By: Patricia McCue
Name: PATRICIA MCCUE
Title: CONTRACT MANAGER

Date: 04/20/00

AMENDMENT #2
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P.
MASTER PRICE AGREEMENT
92-00151

This Amendment #2 is made and entered into by Dell Marketing L.P (“contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers.

WHEREAS: Contractor and the NMSPA, on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers entered into Price Agreement # 92-00151 (“Agreement”), for an initial term which expires September 2, 2002;

WHEREAS, under Section 24 of the Agreement the Agreement shall only be amended by written instrument executed by the parties;

NOW THEREFORE: In consideration of these premises, and other good and valuable consideration, Contractor and the NMSPA agree to add an additional paragraph to the Agreement as follows:

48. Custom Factory Integration Services Provisions

These Provisions apply to the following services or offerings from Dell (together, defined as “DellPlus Services”), which may be purchased by the procuring agency under this agreement:

- (a) installation of the procuring agency’s custom software image (which may include industry standard and/or custom software),
- (b) installation or integration of a pre-configured bundle of third party hardware and/or software, in a Dell system (“Order Ready”), and
- (c) asset tagging, hardware integration or other system integration services.

1. Technical Specifications. Dell may, from time to time at the Procuring agency’s request, deliver a DellPlus Configuration (which shall include both Order Ready configurations as well as other DellPlus service offerings) for a per-system fee in accordance with the WSCA Master Price Agreement pricing schedule. The Procuring agency acknowledges that the DellPlus Configurations are of its choosing, and that the Procuring agency is responsible for determining its technical specifications for each DellPlus Configuration and for ensuring that those technical specifications are properly documented to Dell in a verified and signed “Technical Specification” form. Dell shall be entitled to rely on the Technical Specification form and all statements of the Procuring agency set forth therein. Dell is not responsible for liability or damage arising from the installation of a DellPlus Configuration performed in accordance with the Technical Specifications and the Procuring agency’s instructions. Dell is not responsible for the operation or suitability of any DellPlus Configuration or for any revision or engineering changes in any third party products included in a DellPlus Configuration. If Dell is of the reasonable view that the DellPlus Configuration requested by the procuring agency is not technically feasible, Dell reserves the right to refuse to proceed with the development of such configuration at any time.

2. Inclusion of Third Party Products. The procuring agency may provide any third party products included in a DellPlus Configuration including items on Dell’s DellWare Price List or Gigabuys website. If the procuring agency elects to have Dell provide such third party products as are included in this Agreement’s pricing schedule, the procuring agency shall provide to Dell a firm purchase order for the number of DellPlus Configurations to be ordered for which Dell is requested to provide such products.

3. Software Installation. The procuring agency will provide Dell with any custom software image to be installed in a DellPlus Configuration and authorizes Dell to copy, install and modify, if necessary, all software to be installed in

each DellPlus Configuration or to be recorded in electronic media for subsequent re-installation or back-up up of the DellPlus Configuration. The procuring agency warrants that it has the right to authorize Dell to make, copies, alterations, modifications or adjustments to any software included in a custom software image for purposes of installation of the DellPlus Configuration. The procuring agency warrants that it has obtained the right to authorize Dell to copy and install any software included in a DellPlus Configuration under the Order Ready program.

4. Export. The procuring agency acknowledges that DellPlus Configurations licensed or sold under this Agreement are subject to the export control laws and regulations of the USA or those of other countries from which they were supplied and in which they are used. The procuring agency confirms that with respect to the Products, it will not export or re-export them, directly or indirectly, except in accordance with those laws and regulations which include but are not limited to the US Export Administration Regulations, the Enhanced Proliferation Control Initiative (EPCI) Regulations, the Foreign Asset Control Regulations and any economic sanctions imposed by the US Government upon any foreign country. The Procuring agency confirms that the Products will not be destined for a prohibited chemical, biological or nuclear weapons or missile use. The Procuring agency further represents and warrants the facts set forth on any technical specification sheet or other document completed by the procuring agency with or for Dell, which sets forth information regarding the nature of any products which are supplied by the procuring agency for inclusion in any Dell Products, and recognizes Dell's reliance on the accuracy of such matters in connection with any export of the Products for or at the request of the Procuring agency. The procuring agency is also solely responsible for obtaining any specific licenses relating to such export of DellPlus Configurations with the integrated software in the event that such licenses may be needed. Dell's acceptance of any order for a DellPlus Configuration is contingent upon the issuance of any applicable export license required by the United States Government, and in no event will Dell be liable for any delays or failure to deliver such DellPlus Configurations that may result from the Procuring agency's failure to obtain such license.

5. Regulatory Requirements. Dell shall not be under any obligation to install any third party products as part of the DellPlus Configuration or proceed with a DellPlus Configuration if such third party products, or the resulting DellPlus Configuration, do not satisfy the local regulatory requirements of the country to which the DellPlus Configuration is to be shipped.

6. **NO WARRANTIES**. DELL MAKES NO WARRANTIES RELATING TO THIRD PARTY HARDWARE OR SOFTWARE PRODUCTS INCLUDED IN ANY DELLPLUS CONFIGURATION. DELL DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO SUCH THIRD PARTY PRODUCTS.

IN WITNESS WHEREOF, the parties have caused this Amendment #2 to be signed by their duly authorized representatives, in duplicate original, on the date(s) below.

STATE OF NEW MEXICO

CONTRACTOR:
Dell Marketing L.P.

By: Louis T. Higgins
Name: Louis T. Higgins
State Purchasing Agent

By: Janet McCue
Name: JANET MCCUE
Title: Contract Manager

Date: 5-26-2000

Date: 5/24/00

AMENDMENT #3
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P.
MASTER PRICE AGREEMENT
92-00151

This Amendment #3 is made and entered into by Dell Marketing L.P ("contractor") and the New Mexico State Purchasing Agent ("NMSPA") on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers.

WHEREAS: Contractor and the NMSPA, on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers entered into Price Agreement # 92-00151 ("Agreement"), for an initial term which expires September 2, 2002;

WHEREAS, under Section 24 of the Agreement the Agreement shall only be amended by written instrument executed by the parties;

NOW THEREFORE: In consideration of these premises, and other good and valuable consideration, Contractor and the NMSPA agree to add an additional paragraph to the Agreement as follows:

49. Authorization Codes or Digital Signatures/Certifications and Procedures

This paragraph describes the understanding between Dell and a procuring agency regarding the use of online usernames and passwords ("Authorization Codes or Digital Signatures/Certifications ") that will allow procuring agency personnel to place online orders for purchases ("Purchase Orders") of computer systems and/or related products ("Products") with Dell.

To safeguard the security of your online ordering process, all transactions are protected by requiring account specific user names and Authorization Codes or Digital Signatures/Certifications. Dell will issue to the WSCA Purchasing End User a document or tool for the purpose of submitting Usernames and corresponding Authorization Codes or Digital Signatures/Certifications. WSCA Purchasing End User may use these Authorization Codes or Digital Signatures/Certifications to access the WSCA Purchasing End User online site and place online Purchasing Orders. Upon acceptance of an Authorization Code or Digital Signatures/Certifications by Dell per section 3.b, below, Dell will recognize all online Authorization Codes or Digital Signatures/Certifications submitted via the Dell-provided online site as valid Purchase Order. Each WSCA Purchasing End User will designate a representative ("Designated Representative") who will be Dell's contact regarding Purchase Orders and will be responsible for authorizing WSCA Purchasing End User employees, representatives or agents and maintaining the confidentiality and authorization of the Authorization Codes or Digital Signature/Certifications.

49.a Authorization Codes or Digital Signatures/Certifications. WSCA Purchasing End User's Authorization Codes or Digital Signatures/Certifications are required so that Dell may accept an online Purchase Order. By submitting online Authorization Code via the Dell provided online site using WSCA Purchasing End User's Authorization Codes or Digital Signatures/Certifications to access the site, WSCA Purchasing End User authorizes Dell to carry out instructions included in the Purchase Order. WSCA Purchasing End User acknowledges its duty to hold the Authorization Codes or Digital Signatures/Certifications in strictest confidence and agrees to maintain control over the Authorization Codes or Digital Signatures/Certifications, revealing its Authorization Codes or Digital Signatures/Certifications only to those WSCA Purchasing End User employees, representatives or agents

authorized to place Product and/or services orders with Dell. If WSCA Purchasing End User believes or has reason to believe its Authorization Codes or Digital Signatures/Certifications have been revealed to or obtained by unauthorized individuals, WSCA Purchasing End User will contact Dell immediately so that Dell may deactivate the Authorization Codes or Digital Signatures/Certifications. WSCA Purchasing End User further agrees that use of the Authorization Codes or Digital Signatures/Certifications in connection with an online Purchase Order will be deemed a signed and written Purchase Order, evidencing that WSCA Purchasing End User intends the order to be legally binding, and that WSCA Purchasing End User will not contest the validity or enforcement of any obligation on the ground that the Purchase Order is not written or sign

49.b. WSCA Purchasing End User's Liability. WSCA Purchasing End User agrees that full payment for any Purchase Order made using WSCA Purchasing End User's Authorization Codes or Digital Signatures/Certifications will be WSCA Purchasing End User's responsibility in accordance with this Agreement.

49.c. Instructions. End users may take advantage of this addendum as follows:

- i. Authorization Code or Digital Signature/Certifications Purchases**: WSCA Purchasing End User may purchase online using an Authorization Code or Digital Signature/Certifications at its Premier Page or at Dell's WSCA website by downloading and completing Schedule A of the Online Purchase Agreement from the following site http://www.dell.com/us/en/pub/topics/segtopic_ppo_home.htm and submitting to Dell. Dell reserves the right to accept or reject any Authorization Code or Digital Signature/Certification of an end user, in Dell's sole discretion. **Purchasing via Digital Signature/Certificates will be available soon. Instructions will be forwarded at that time.
- ii. Credit Card Purchases: End user may use a credit card to consummate an online purchase at its Premier PageSM, if any, or at Dell's website created for the WSCA contract, which is currently located at <http://www.dell.com/html/us/segments/slg/wsca/index.htm>

IN WITNESS WHEREOF, the parties have caused this Amendment #3 to be signed by their duly authorized representatives, in duplicate original, on the date(s) below.

STATE OF NEW MEXICO

By: Louis T. Higgins
Name: Louis T. Higgins
State Purchasing Agent

Date: 7.24.2000

CONTRACTOR:
Dell Marketing L.P.

By: Amelia McCue
Name: AMELIA MCCUE
Title: Contract manager

Date: 7-19-2000

SCHEDULE A

USER NAMES
(Up to five names)

AUTHORIZATION CODES
(At least 8 characters long and can contain
a combination of letters, numbers and/or symbols) —

User Names	Authorization Codes
_____	_____
_____	_____
_____	_____
_____	_____

WSCA Purchasing End User's Designated Representative

Agency: _____

Name: _____

Title: _____

Date: _____

E-Mail Address: _____

Designated Representative's Address:

Street Address: _____

City, State, ZIP: _____

Designated Representative's Telephone Numbers:

Phone: _____ FAX: _____

***Digital Signatures/Certifications will be available soon. Instructions will be forwarded at that time.*

AMENDMENT #4
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P.
MASTER PRICE AGREEMENT
92-00151

This Amendment #4 is made and entered into by Dell Marketing L.P (“contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers.

WHEREAS: Contractor and the NMSPA, on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers entered into Price Agreement # 92-00151 (“Agreement”), for an initial term which expires September 2, 2002;

WHEREAS, under Section 24 of the Agreement the Agreement shall only be amended by written instrument executed by the parties;

NOW THEREFORE: In consideration of these premises, and other good and valuable consideration, Contractor and the NMSPA agree that paragraph 46 of the Agreement is amended to read as follows:

46. Administration Reporting and Fees

The contractor agrees to provide periodic price agreement utilization reports to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The periodic report shall include the gross sales for the period subtotaled by procuring agency name or identifying number, within the procuring agency's state name. The report shall be accompanied with a check payable to Western States Contracting Alliance for an amount equal to one-tenth of one percent (0.0010) of the gross sales for the period.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the contractor's primary representative, suspension of the price agreement or termination of the price agreement for cause.

IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be signed by their duly authorized representatives, in duplicate original, on the date(s) below.

STATE OF NEW MEXICO

By: Louis T. Higgins
Name: Louis T. Higgins
State Purchasing Agent

Date: 8.14.2000

CONTRACTOR:
Dell Marketing L.P.

By: Camela McCue
Name: CAMELA MCCUE
Title: CONTRACT MANAGER

Date: 8/10/00 -

AMENDMENT #5
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P.
MASTER PRICE AGREEMENT
92-00151

This Amendment #5 is made and entered into by Dell Marketing L.P ("contractor") and the New Mexico State Purchasing Agent ("NMSPA") on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers.

WHEREAS: Contractor and the NMSPA, on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers entered into Price Agreement # 92-00151 ("Agreement"), for an initial term which expires September 2, 2002;

WHEREAS, under Section 24 of the Agreement the Agreement shall only be amended by written instrument executed by the parties;

NOW THEREFORE: In consideration of these premises, and other good and valuable consideration, Contractor and the NMSPA agree that paragraph 1 of the Agreement is amended to read as follows:

"Participating Addendum" means a written or **electronic** statement of agreement **physically or digitally** signed by the appropriate participating entity authority and contractor indicating the entities' willingness to purchase and the contractor's willingness to provide products and services under the terms and conditions of this agreement with any and all exceptions noted and agreed upon. The terms and conditions contained in any participating addendum shall effect only the purchases of procuring agencies within the jurisdiction of the participating entity signing the participating addendum. A participating addendum shall have no effect whatsoever on any other participating addendum or the scope of this agreement. One electronic copy of each participating addendum shall be filed with the agreement administrator within five (5) days after execution.

IN WITNESS WHEREOF, the parties have caused this Amendment #5 to be signed by their duly authorized representatives, in duplicate original, on the date(s) below.

STATE OF NEW MEXICO

By: Louis T. Higgins
Name: Louis T. Higgins
State Purchasing Agent

Date: 8-29-2000

CONTRACTOR:

Dell Marketing L.P.

By: Denise D. Cline
Name: Denise D. Cline
Title: CONTRACT MANAGER

Date: 8/17/00

AMENDMENT #6
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P
MASTER PRICE AGREEMENT #92-00151

This bilateral Amendment #6 is entered into by Dell Marketing L.P ("Contractor") and the New Mexico State Purchasing Agent ("NMSPA") on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers. This Amendment #6 to the Master Price Agreement (the "Agreement") is effective on date signed by NMSPA ("Effective Date"), and is issued to modify the Agreement as enumerated in the following:

Paragraph 7, Agreement Term, is amended to read as follows: The agreement is effective September 3, 1999 through September 2, 2003 with one (1) one-year optional renewal. In no event shall this agreement remain in effect longer than five (5) years from the effective date.

Paragraph 46, Administration Reporting and Fees, is amended to read as follows:

The contractor agrees to provide periodic price agreement utilization reports to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The periodic report shall include the gross sales for the period subtotaled by procuring agency name or identifying number, within the procuring agency's state name. The report shall be accompanied with a check payable to Western States Contracting Alliance for an amount equal to **one-half of one-tenth of one percent (0.0005)** of the gross sales for the periods **from October 1, 2001 through September 30, 2002.**

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the contractor's primary representative, suspension of the price agreement or termination of the price agreement for cause.

IN WITNESS WHEREOF, the Parties have caused this Amendment #6 to be signed by their duly authorized representatives, in two (2) original counterparts, on the date(s) indicated below.

STATE OF NEW MEXICO

By Louis T. Higgins
Name: Louis T. Higgins
New Mexico State Purchasing Agent
Date: 4-09-2002

Dell Marketing L.P.

By Chuck Boorman
Chuck Boorman
Senior Consultant, Public Contracts
Date: 04/05/2002

ATTACHMENT #3

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

02 NOV 12 AM 11:14

DATE: November 8, 2002

To: Janet Sheehan
Purchasing Director

FROM: 
Kristie L. Kroslack
Assistant County Attorney

RE: WESTERN STATES CONTRACTING ALLIANCE FOR DELL PURCHASES

I have reviewed the Western States Contracting Alliance (WSCA), Purchasing Agreement with Dell Marketing, L.P., which expires on September 2, 2003, and is governed by the laws of New Mexico. It appears to be a valid option to purchasing Dell computer equipment instead of utilizing the Florida State Contract. Purchasing may utilize this Agreement by "piggybacking" if the Board of County Commissioners approves such usage and executes the enrollment form.

You may wish to contact WSCA to determine if there are any new addendums to the Agreement and obtain the same.

Should you require anything further, please do not hesitate to contact me.

KLK/awe
Attachment

ATTACHMENT # 4

WESTERN STATES CONTRACTING ALLIANCE PARTICIPATING ADDENDUM



Western States Contracting Alliance

PARTICIPATING ADDENDUM MASTER PRICE AGREEMENT 92-00151

1. Scope: All eligible purchasers within this government or education entity are authorized to purchase products and services under the term of this price agreement.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS (BOCC)

2. Changes: Changes to the terms and conditions of the Master Price Agreement are as follows:

NONE

3. Lease Agreements: LEASE AGREEMENT & TERMS HAVE NOT BEEN APPROVED FOR USE BY THE LEE COUNTY BOCC.

4. Primary Contact: The primary contact individual for this participating addendum is as follows:

ROBERT FRANCESCHINI, PURCHASING MANAGER
 3434 HANCOCK BRIDGE PARKWAY, N FORT MYERS, FL 33903
 PHONE: (239) 689-7385/FAX: (239) 689-7390
 E-MAIL: rfranceschini@leegov.com

5. Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following price agreement number: 92-00151

This Addendum and the 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 Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the 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 Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

LEE COUNTY BOCC

DELL MARKETING L.P.
Contractor

By: _____

By: _____

Name: RAY JUDAH

Name: _____

Title: CHAIRMAN OF BOCC

Title _____

Date: _____

Date: _____



Western States Contracting Alliance

PARTICIPATING ADDENDUM MASTER PRICE AGREEMENT 92-00151

1. Scope: All eligible purchasers within this government or education entity are authorized to purchase products and services under the term of this price agreement.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS (BOCC)

2. Changes: Changes to the terms and conditions of the Master Price Agreement are as follows:

NONE

3. Lease Agreements: LEASE AGREEMENT & TERMS HAVE NOT BEEN APPROVED FOR USE BY THE LEE COUNTY BOCC.

4. Primary Contact: The primary contact individual for this participating addendum is as follows:

ROBERT FRANCESCHINI, PURCHASING MANAGER
3434 HANCOCK BRIDGE PARKWAY, N FORT MYERS, FL 33903
PHONE: (239) 689-7385/FAX: (239) 689-7390
E-MAIL: rfranceschini@leegov.com

5. Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following price agreement number: 92-00151

This Addendum and the 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 Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the 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 Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

LEE COUNTY BOCC

DELL MARKETING L.P.
Contractor

By: _____

By: _____

Name: RAY JUDAH

Name: _____

Title: CHAIRMAN OF BOCC

Title _____

Date: _____

Date: _____

**MEMORANDUM
FROM
THE DIVISION OF PURCHASING**

DATE: FEBRUARY 13, 2003

TO: KRISTIE KROSLACK
COUNTY ATTORNEY'S OFFICE

Janet Sheehan
FROM: JANET SHEEHAN, CPPB
PURCHASING DIRECTOR

RE: BLUE SHEET # 20030042

PROJECT: Dell Purchases Via WSCA Agreement

TYPE: Piggyback

AWARDED TO: Dell Marketing L.P.

When you have finished your review of this package, please forward it to Administration and Budget Services for final signatures.

If there are any questions or concerns with this package, please contact Bob Franceschini at 689-7385.

RECEIVED
COUNTY ATTORNEY

03 FEB 17 PM 12:48