Hollie Berry
Mayor

Martin Granum
City Manager

City of Red Bank

BOARD OF COMMISSIONERS WORK SESSION

Work Session Agenda
June 20, 2023
5:00 PM

The purpose(s) of the meeting shall be for the Commission to receive, consider, discuss, deliberate, and debate the matters listed herein below and such other public business as may lawfully be undertaken provided that no formal votes are to occur and no matters or issues will be formally decided upon at this meeting.

I. **Use of Purchasing Cards and the Red Bank Purchasing Card Policies and Procedures Guide for P-Card use discussion only (DPWD Johnson)**

II. **Accept the Tennessee American Water's 2023 Environmental Grant Program in the amount of $1,000.00 Res No. 23-1582 (DPWD Johnson)**

III. **Authorize an agreement between the City of Red Bank and South East Tennesee Development District (SETDD) to provide local planning advisory services Res No. 23-1583 (DPWD Johnson)**

IV. **Purchase of in-car computers from Waypoint Solutions for FY24 in the amount of $51,820.23 Res No 23-1581 (PC Seymour)**

V. **Adoption of the Agenda Prep and Distribution Policy Res No. 23-1577 (CR Perry)**

VI. **Any other business to discuss**

Red Bank, TN Procurement Card (P-Card) Policies & Procedures Guide

Office of Finance Director
3105 Dayton Blvd
Red Bank, TN 37415
(423) 877-1103

June 2023

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SECTION 1 INTRODUCTION

Red Bank has established a Procurement Card program for the primary purpose of providing an efficient, well-controlled and cost-effective method of purchasing and paying for small dollar transactions – those with amounts up to and including **$2,500.00**. The Procurement Card (hereinafter referred to as a "P-Card") is a procurement tool that is an integral part of the Red Bank Procurement Rules and associated processes and is designed to support and comply with such.

A Procurement Card, when issued in your name on behalf of Red Bank, is both a privilege and obligation. Outlined in this Guide, the Cardholder Enrollment Form (Exhibit A), and the Cardholder Agreement Form (Exhibit B) are your responsibilities for properly using and safeguarding the card. Your card is issued with the expectation that the best interests of Red Bank will always be first and foremost in your procurement decisions. Please be aware that procedures for closely monitoring the card's usage are in place to ensure that it is being used solely for its intended purposes.

SECTION 2 OVERVIEW

The Procurement Card system facilitates the procurement of goods and services by allowing the cardholder to place orders directly with vendors. Additionally, use of the P-Card enhances the efficiency and effectiveness of disbursement (accounts payable) efforts since only one payment is made each month for all approved Procurement Card transactions. This compares to literally hundreds of payments required for the same number of transactions administered under a purchase order and direct billing scenario.

When a purchase authorization is initiated by the vendor at the point of sale, the issuing bank of the Procurement Card System validates the transaction against preset limits. All transactions are approved or declined (electronically) based on the established procurement card authorization criteria. These criteria may be adjusted periodically as needed and may include, but are not limited to, the following:

- Per transaction spending limits
- Monthly spending limits
- Authorized Merchant Category Codes (MCC)

Approval procedures and a mandate for detailed records to support payment of these transactions further facilitate the timely and accurate payment of transactions.

In summary, the Red Bank Procurement Card system is designed to make the purchase of goods and services more convenient and efficient than ever while simultaneously enhancing internal controls and promoting strict adherence to the City's Procurement Rules.

Additional details and guidance for participating in the City's Procurement Card Program are provided in the remaining sections of this document.

SECTION 3 KEY PROCEDURES

The following provides an overview of key procedures relevant to the use, responsibilities, and governance relative to the Procurement Card Program.

1. All prospective cardholders must:
    - attend a formal City-sponsored training session prior to receiving a Procurement Card;
    - review the Red Bank Procurement Card Procedures Guide; and
    - complete a Cardholder Agreement Form (Exhibit B).

2. The City Manager, Finance Director and Directors are authorized to approve a spending profile for each cardholder. Several pre-set spending profiles which include different single transaction and monthly spending limits are available on the Cardholder Enrollment Form. These varying profiles and limits are designed to provide flexibility to meet individual Department needs. After the initial set up, this profile may be subsequently changed with a written request from the City Manager, Finance Director, or Department Director by contacting the City's Procurement Card Program Administrator (hereinafter referred to as "Program Administrator").

3. The City Manager, Finance Director, or Director is required to designate a default general ledger account code to be used initially at the time of each transaction. It should be noted that the Department Coordinator may adjust this account code to accurately reflect the nature of the purchase if the expense type is different from the default code.

4. All P-Card transactions must be processed in accordance with the procedures established in the Red Bank Procurement Card (P-Card) Policies & Procedures Guide and must comply with the most recent edition of the Red Bank Procurement Rules as well as any applicable sections of the Red Bank Employee Handbook.

5. All purchase transactions processed against a Procurement Card must be made by the individual to whom the card has been issued. Note however that administrative personnel who make travel arrangements for employees may use the cardholder's P-Card to guarantee reservations on behalf of the cardholder. NO OTHER PERSON IS AUTHORIZED TO USE THE CARD UNDER ANY OTHER CIRCUMSTANCE.

6. It is the cardholder's responsibility to obtain documentation (i.e., customer copy of itemized Procurement Card receipts, itemized vendor's sales receipts) in accordance with instructions provided throughout this Guide and to forward all such documentation <u>daily</u> to his/her designated Department Procurement Card Coordinator (hereinafter referred to as "Department Coordinator"). If the cardholder does not have documentation of the transaction to submit, he/she must submit an explanation that includes a description of the item, date of purchase, vendor's name and why there is no supporting documentation to their Department Coordinator. The Department Coordinator will make every attempt to obtain a duplicated receipt from the merchant. Instances of frequent abuse of this provision will, at a minimum, result in cancellation of the cardholder's Procurement Card.

7. The cardholder is responsible for managing any returns/exchanges and ensuring that proper credit is received for returned merchandise and/or the return/refund of any inappropriately charged sales tax.

8. All Procurement Card transactions must be made for the use and benefit of Red Bank. Personal purchases are not permitted. Any misuse will require immediate reimbursement (inclusive of applicable sales taxes). Documentation relative to the reimbursement, including a copy of the check repaying the City, shall be placed in the applicable P-Card Log. <u>Misuse will result in disciplinary action which may include termination of the offending party's employment with Red Bank</u>.

9. Fraudulent use of the Procurement Card will result in further action to be taken at the joint direction of the City Manager, the Human Resources Director Administrator, and the City Finance Director and in accordance with applicable Red Bank policies and procedures.

10. Procurement Cards are **NOT** to be used to purchase Gift Cards or Gift Certificates under any circumstances. In the event there is a need for purchase of Gift Card or Gift Certificates, contact the Director of Finance, in advance, and a Red Bank check can be issued to the merchant with Department Director approval.

11. Due to controls required for fixed assets inventory tracking purposes, Procurement Cards are **NOT** to be used to purchase computer hardware (including desktops, monitors, laptops, or tablets), radio equipment, or weaponry of any type. Such items are considered fixed assets and must be tracked as such, thus requiring the need for purchases to be made with requisitions.

12. The Procurement Card may be used to purchase certain goods and services outside of general operating expenses so long as they are under the approved transaction threshold and approved by the Department Director. If approved in advance by the City Manager or Director of Finance and Department Director, the P-Card may be utilized for employee training / recognition of events and retirement celebrations and flowers purchased in the event of the death of any employee (but not family members of an employee).

13. Per Section 2.10 of the Procurement Rules, the Purchasing Department must be consulted in advance when enrolling in or accepting rebates or incentives associated with a purchase. Documentation should be included in the P-Card Log as to any such rebate or incentive received and how it is to be utilized for the City's benefit. It should be noted that ALL REBATES AND INCENTIVES BELONG TO THE CITY AND ANY EFFORT BY A CITY EMPLOYEE TO CONVERT SUCH ITEM TO PERSONAL USE / GAIN WILL SUBJECT THE OFFENDING INDIVIDUAL(S) TO SERIOUS DISCIPLINE UP TO AND INCLUDING, BUT NOT LIMITED TO, TERMINATION OF EMPLOYMENT AND LEGAL PROSECUTION.

14. All non-travel expense transactions made with the Procurement Card in the State of Tennessee and any reciprocal States are to be exempted from all taxes. This should be cleared with the vendor before the transaction is formalized.

15. Each month the issuing bank will provide one copy of the billing statement to the respective individual cardholders with transaction activity for the current billing cycle. The cardholder is required to review the statement for any errors or disputed transactions, note any such items, then sign, date, and forward the statement to his/her Department Coordinator within two (2) working days after the statement is received. The Department Coordinator will then combine the previously submitted receipts and the signed cardholder's statement into a Procurement Card Log envelope (Exhibit C), sign the log as the Coordinator and then obtain the signature of the cardholder prior to further processing.

16. Upon receipt back from the Cardholder, the Department Coordinator shall make a final review of the Procurement Card Logs prepared for cardholders throughout their designated areas of responsibility. After review and within two (2) working days after receipt from the cardholder, the Department Coordinators will submit all Procurement Card Logs to the Department Director for approval. The Department Coordinator will focus attention upon the accuracy and timeliness of each filing.

17. The respective Department Director will be responsible for approving and forwarding all Procurement Card Logs for their respective area(s) of responsibility to the Finance Director within three (3) working days after receipt from their Department Coordinator(s).

18. If an unsubstantiated charge appears on a monthly statement, the cardholder must first attempt to verify the charge with records of purchase. If the cardholder does not agree with the charge posted on the statement, the Department Coordinator will then be notified and appropriate dispute procedures will be initiated.

19. If items purchased with the Procurement Card are found to be defective or the repair or services are faulty, the cardholder has the responsibility to return the item(s) to the vendor for replacement or to receive a credit on the purchase. If the vendor refuses to replace or correct the faulty item, the Department Coordinator will then be notified, and appropriate dispute procedures will be initiated.

20. For all items considered to be in dispute:

    - The cardholder must complete the "Customer Statement of Disputed Charges" form (Exhibit D), available from their Department Coordinator, and submit it to the designated Department Coordinator as soon as the disputed transaction is identified.
    - The cardholder also must ensure that any disputed item is listed in Section III of his/her Procurement Card Log envelope.
    - The Department Coordinator shall forward a copy of the "Customer Statement of Disputed Charges" form to Accounting and the Program Administrator.
    - The Department Coordinator is responsible for working with the issuing bank for appropriate investigation of the disputed item.
    - The Department Coordinator is also responsible for tracking all disputed charges and maintaining documentation of such disputes and the resulting resolution of the disputes.
    - In certain circumstances when Fraud is detected, the form may be generated by the issuing bank and sent directly to the Cardholder to be completed as directed above.

21. **CASH REFUNDS/REBATES FOR CANCELLED ORDERS, RETURNED ITEMS, DEFECTIVE MERCHANDISE, ETC. ARE NOT PERMITTED.** Any violation of this provision may result in disciplinary action which may include termination of the offending party's employment with the City of Red Bank.

SECTION 4 OBTAINING AND ACTIVATING A PROCUREMENT CARD

The following steps are to be following to obtain and activate a Procurement Card:

1. A Cardholder Enrollment Form must be completed for the prospective cardholder. The completed Cardholder Enrollment Form should be submitted to the appropriate Department Director for approval and then forwarded to the Program Administrator for processing.

2. Upon receipt of the approved form, the Program Administrator will review and forward the pertinent information for final processing. The new Procurement Card will be mailed to the Director of Finance.

3. **The Program Administrator will then schedule a training session for the new cardholder. The cardholder is required to attend a formal Procurement Card Training Session and read all of the material in the Red Bank Procurement Card (P-Card) Policies & Procedures Guide, and complete a Cardholder Agreement Form (Exhibit B) before taking possession of his/her Procurement Card.**

Once in possession of the Procurement Card, the new cardholder must contact the issuing bank to activate the card by using the instructions located on the card (this number must be called from a landline phone, either the home or business (cell phones will not process the activation). When requesting activation, the caller will be asked to provide specific personal information that has been supplied by the employee during the Procurement Card application process. New cards contain Chip Technology, which upon activation, require the cardholder to establish a PIN. Upon successful completion of this call, the card will be activated for immediate use.

SECTION 5 SUMMARY OF RESPONSIBILITIES OF KEY PERSONNEL

The following outlines an overview of responsibilities of key personnel involved in the use and administration of the Procurement Card Program.

A. CARDHOLDERS

Authorized cardholders are required to conduct procurement activities in keeping with all instructions contained in the latest versions of the Red Bank Procurement Card (P-Card) Policies & Procedures Guide, the Red Bank Procurement Rules, and any other regulations applicable to the transaction in question.

Individually determined, needs-based spending limits are established for each Procurement Card issued under this program. Although competitive pricing is not required for Procurement Card transactions, the cardholder is encouraged to check multiple sources, where practical, to be assured the best pricing and delivery terms are obtained.

Cardholders are required to:

- Protect their Procurement Card and all related information.
- Limit purchases to those goods/services that are necessary to successfully meet the cardholder's job responsibilities as authorized by their management.
- Confirm that the supplier agrees to process the procurement as a tax-exempt transaction.
- Verify all shipping and freight information with the supplier.
- Verify the accuracy of the phone number on the receiving end of a faxed order transaction.
- Never provide a Procurement Card number to a supplier-initiated call; the cardholder should always initiate the call when making a purchase by telephone.
- Verify that a secured server is in use before providing a Procurement Card number for a purchase made over the Internet (Note: When entering a secure site, you should look for indications such as a locked padlock on the page or the https:// in the web address, or a message indicating that you are entering a secure site)
- Obtain itemized receipts (i.e., packing lists, statements, cash register tapes, order forms, etc.) from the vendor and forward those to the Department Coordinator as the card is utilized.
- When a cardholder uses the Procurement Card for business meals local or otherwise, it is the cardholder's responsibility to document the nature of the discussion as well as provide a list of the names and company of the attendees included in the transactions.
- Maintain accurate and complete supporting documentation for all Procurement Card transactions.
- Review, edit, sign, and submit a copy of their monthly cardholder statements to a designated Department Coordinator within 2 working days of its receipt.

- Initiate efforts to resolve any disputes that arise with vendors by completing and filing a "Customer Statement of Disputed Charge" form with the appropriate Department Coordinator
- Notify the Department Coordinator if personal efforts to resolve vendor disputes are unsuccessful.
- Immediately report a lost or stolen Procurement Card to the issuing bank and his/her Department Coordinator (see Reporting a Lost or Stolen Procurement Card (Section 6.1)
- In the event of Fraud that results in the replacement of a Procurement Card, the cardholder is responsible for notifying their Department Coordinator and the Program Administrator of the card replacement.

B. DEPARTMENT PROCUREMENT CARD COORDINATORS

Any individual serving as a Department Coordinator will have the following responsibilities:

- Collect and review the receipts from the cardholder for program compliance with Procurement Card Policies & Procedures Guide, Procurement Rules, and any applicable sections of the appropriate City Employee Handbook, including but not limited to, Cardholder responsibilities as listed in Section A above.
- Verify that all purchases relative to the following list comply:
    - Sales tax not paid on applicable tax-exempt items.
    - If applicable, policies relative to rebates and incentives have been followed and documented.
    - Items covered by the City's fixed asset policy (i.e., computer hardware, weapons, and radio equipment, etc.) not purchased utilizing the P-Card.
    - Purchases of flowers only allowed for the death of an employee and not authorized for other family members.
    - Purchases of food/flowers/plants/decorations, etc. for events, such as weddings, showers, birthdays, are not approved by the Department Director and must be reimbursed including any sales tax that may have been charged.
- Reconcile receipts with the bank system.
- Reconcile the receipts with the monthly statement.
- Create, compile, and review monthly Procurement Card Logs for individual cardholders in their designated area(s) of responsibility.
- Forward Procurement Card Logs to appropriate Department Director for authorizing payment of charges.
- Assist cardholder efforts to resolve disputed charges.
- Act as liaison with the Finance Department.

- Request Procurement Cards for designated employees and provide "as needed" assistance as prospective cardholders complete the application process.
- Take action to ensure cards are returned to the Program Administrator when employees transfer or their employment terminates.
- Notify the Program Administrator when a card is lost or stolen and verify with the Cardholder that the issuing bank has been notified.
- Log and track all disputed items to their final resolution.
- In the event of Fraud that results in the replacement of a Procurement Card, the Department Coordinator is responsible for verifying that the Program Administrator has been notified of the card replacement.

C. PROCUREMENT CARD PROGRAM ADMINISTRATOR

The Red Bank Finance Department has designated a member of its staff as the Procurement Card Program Administrator ("Program Administrator"). Cardholders and others should expect the Program Administrator to provide the following program support:

- Ensure Cardholder Enrollment Form has been properly completed and approved prior to requesting a Procurement Card from the issuing bank.
- Coordinate training for new Procurement Cardholders and Department Coordinators.
- Ensure that the required Cardholder training is completed, and that the Cardholder Agreement Form has been signed before allowing new cardholders to possess their cards.
- Provide copies of each completed Employee Agreement and Cardholder Enrollment Form to the new cardholder and his/her Department Coordinator.
- Assist Department Coordinator efforts to resolve disputed transactions on an "as-needed" basis.
- Verify that the issuing bank has been notified in the case of a lost or stolen card.
- Serve as the City's liaison with representatives of the issuing bank regarding issuance, modification, renewal and cancellation of Procurement Cards.
- When notified of a change in employee status (i.e., change in Department, leave of absence, termination, retirement, resignation, etc.) the Program Administrator will coordinate efforts with the employee's appropriate department personnel to ensure that the appropriate actions are taken and the issuing bank notified, if applicable.
- Maintain the City's Procurement Card (P-Card) Policies & Procedures Guide and will notify and publish revised versions to program participants as needed.

CI. PROCUREMENT CARD ACCOUNTANT

The Finance Department employee assigned to this function shall, among other things, perform the following duties:

- Receive the consolidated monthly statement from the issuing bank.

- Review and approve the monthly consolidated statement for payment.
- Receive monthly Procurement Card Logs from all areas.
- Confirm that all charges have been properly approved for payment.
- Securely file and store Procurement Card Logs.
- Participate in ongoing program reviews.
- Participate, as needed, in resolving billing disputes.

E. CITY AUDITOR

The Finance Director shall among other things, perform the following duties:

- Conduct periodic operational and compliance audits.
- Provide reports in a timely manner to the City Manager as to the audit findings.

SECTION 6 PROCUREMENT CARD SECURITY

The cardholder is solely responsible for the security and use of his/her Procurement Card. **Only the cardholder is authorized to use their assigned Procurement Card.** At no time should the card or the card number be given to another Red Bank employee for his/her use, whether for official business or otherwise. (Note however that administrative personnel who make travel arrangements for employees may use the cardholder's P-Card to guarantee reservations on behalf of the cardholder.) Furthermore, the Procurement Card and card number must be safeguarded against use by unauthorized individuals.

Section 6.1 Reporting a Lost or Stolen Procurement Card

If a Procurement Card is lost or stolen, it is the responsibility of the cardholder to notify the issuing bank **immediately** upon discovering the condition. The telephone number for contacting the issuing bank is 1-800-836-8562, if there are problems when contacting the bank, please call your Department Coordinator or the Program Administrator. Failure to promptly notify the issuing bank of the theft, loss or misplacement of the Procurement Card may result in the City being liable for fraudulent use of the card and loss of privileges for the cardholder. Also, disciplinary action may be taken against the cardholder.

After notifying the bank of a lost or stolen card, the cardholder should also provide notification to his/her Department Coordinator. Upon receipt of such notice, the Department Coordinator will immediately email the pertinent details regarding a lost or stolen card to the Program Administrator, if a new card is to be issued to the cardholder. A card that is subsequently found by the cardholder after it has been reported as lost or stolen shall be immediately cut in half and returned in a secure manner to the Program Administrator.

Section 6.2 Canceling a Procurement Card

To cancel a Procurement Card, the cardholder or his/her Department Coordinator or Director must notify the Program Administrator via email.

Section 6.3 Renewal of Procurement Cards

Renewal Cards are automatically sent to the Finance Department approximately thirty (30) days prior to the expiration date listed on the Procurement Card. The Program Administrator will notify the appropriate personnel prior to distributing these cards.

Section 6.4 Verification of Address

There are times when an address is used for verification purposes during transactions. When the billing address is requested during a transaction, the cardholder should use their physical office address. If the transaction is not accepted after using the cardholder's physical office address, then use the following:

3105 Dayton Blvd
Red Bank, TN 37415

SECTION 7 ACCOUNTING INFORMATION

All charges made using a Procurement Card are consolidated into one City-wide master statement by the issuing bank and forwarded directly to the Finance Division's Accounting unit on a monthly billing cycle basis.

Section 7.1 Use of Account Codes

As noted elsewhere in this document, all payments for transactions against a particular card will be charged to the accounting code selected for that card at the time of card issuance. However, this coding may subsequently be overridden by the Department Coordinator as it is necessary to record expenditures in the proper expense category.

Section 7.2 Travel Related Procurement Card Usage

When reporting travel expenses charged to Procurement Cards, please follow these guidelines:

- Travel-related expenses should be reported in the Red Bank Employee Travel Expense Report regardless of their method of payment.
- The maximum allowable amount for tips line shall be no more than 20% of the total. When the P-Card is used any tip amount over 20% will be deemed excessive and will have to be paid by the employee.
- Either copies of the original receipts and/or copies of your Procurement Card Statement are to be attached with your expense report.

SECTION 8 KEY CONTACTS

Procurement Card Program Administrator
John Alexander, Finance Director
JAlexander@redbanktn.gov

SECTION 9 EXHIBITS A – D

A: Cardholder Enrollment Form
B: Cardholder Agreement Form
C: Procurement Card Log
D: Cardholder Statement of Disputed Charges

Cardholder Enrollment Form

This form is to be completed and approved by a Department Director or City Manager and submitted to:
Procurement Card Program Administrator
Finance Department

Cardholder Name:________________________ Title: ______________________________

Last Four Digits of SSN: ________ Telephone #: _________________

Email Address: ___________________________________

Supervisor: _________________________________ Department: ___________________________

Select One):

- Single Transaction $1,000 / $3,000 Monthly (No Travel) _____
- Single Transaction $1,000 / $5,000 Monthly (No Travel) _____
- Single Transaction $2,499 / $5,000 Monthly (Includes Travel) _____

Designated Department Account Code: __________ - _____

Departmental Approval:

____

Director Name

____

Director Signature and Date

Exhibit B **Cardholder Agreement Form**

Cardholder Agreement—Procurement Card

I, *(insert Employee's Name)* ________________________________, hereby request that Red Bank honor my application for a City Procurement Card. As a cardholder, I agree to comply with the terms and conditions regarding my use of the card as outlined to me in my training and summarized below.

I understand that this card is to be used strictly for Red Bank business purposes. I will follow the established procedures as set forth in the Red Bank Procurement Rules, the Red Bank Procurement Card Procedures Guide and any applicable section of the appropriate City Employee Handbook. I realize that failure to do so may result in either revocation of my cardholder privileges or other disciplinary actions, up to and including, termination of my employment and legal prosecution.

I further understand that the Program Administrator (City Finance Director) or the City Manager will audit the use of this card and report and take action on any discrepancies detected.

I have been given a copy of the Procurement Card (P-Card) Policies & Procedures Guide and understand the requirements for the card's use.

If the card is lost or stolen, I agree to notify the issuing bank and my Department Coordinator immediately upon discovering the card is missing.

____

Employee Signature and Date

____

Director Signature and Date

Exhibit C Procurement Card Log

RED BANK PROCUREMENT CARD LOG

Cardholder Name: ________________________________ **Statement Date:** ___/___/___

Department/Division: ________________________________

I. VERIFIED TRANSACTIONS WITH RECEIPTS ENCLOSED	**$**	**A**
# of Transactions ***with*** Receipts Enclosed: _________		
II. VERIFIED TRANSACTIONS WITH*OUT* RECEIPTS ENCLOSED	**$**	**B**
Vendor / Date / Amount / Explanation for Missing Documentation		
/ / /		
/ / /		
/ / /		
III. DISPUTED TRANSACTIONS ON THIS STATEMENT *(NOTE: Each item must be documented on a "Cardholder Statement of Disputed Item" form)*	**$**	**C**
Vendor / Date / Amount / Basis for Dispute		
/ / /		
/ / /		
IV. TRANSACTION TOTALS (A + B + C)	**$**	**D**
V. STATEMENT TOTAL	**$**	**E**
VI. DIFFERENCE (D - E)	**$**	

Department Coordinator Sign-off:
I have prepared this Log and reviewed its contents. I hereby declare that I have matched all receipts listed in Section I above to the enclosed procurement card statement for this cardholder and found no exceptions to applicable policies and procedures.

_______________________________ / / ________

Department Coordinator Signature Date

Cardholder Sign-Off:
I have reviewed the enclosed procurement card statement and hereby declare that all items listed on it are solely for valid transactions that I have executed for the benefit of Red Bank TN, with the sole exception of any disputed items listed above.

_______________________________ / / ________

Cardholder Signature Date

Approval:

____

Director / City Manager

Date:

______/______/________

Exhibit D Cardholder Statement of Disputed Items

From: Kathryn A Robinson on behalf of Daphne Kirksey
To: Leslie Johnson
Subject: Tennessee American Water"s Environmental Grant - Congrats!
Date: Wednesday, May 3, 2023 2:34:16 PM
Attachments: image002.png

Dear Leslie,

Congratulations! Tennessee American Water has approved an Environmental Grant of $1,000 to the City of Red Bank. You should be proud that your application was selected after a thorough and competitive process. We are encouraged by the interest in this year's grant round and the number of quality applications.

We are pleased to assist your efforts for watershed protection and education through Red Bank National Clean UP Day. We look forward to seeing the positive impact this project will have in our community now and in the future. Our goal is to be a community partner and to support your efforts throughout the project. **Please submit a final written report on the project results/ impact no later than December 15, 2023, per the 2023 Environmental Grant brochure.**

We will be in contact to arrange a photo op and check presentation as well as see first-hand the great work you are doing! Please call me at 423.771.4750 with any questions or email me at Daphne.Kirksey@amwater.com.

Sincerely,
Daphne

Daphne L. Kirksey
External Affairs Manager
Tennessee American Water
109 Wiehl Street
Chattanooga, TN 37403
Office: 423-771-4750
Mobile: 423-413-8419

TENNESSEE AMERICAN WATER

WE KEEP LIFE FLOWING®

EDGE BEST PLACES TO WORK 2022

HB

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Chattanooga Area Regional Council of Governments
Southeast Tennessee Development District

SOUTHEAST TENNESSEE DEVELOPMENT
www.sedev.org

May 19, 2023

The Honorable Hollie Berry

Re: FY2024 & FY2025 Local Planning Assistance Contract for Services

Dear Mayor Berry,

The Southeast Tennessee Development District (SETD) has provided staff assistance to planning commissions throughout Southeast Tennessee on a contract basis since July 2011. Since then, our staff has enjoyed working with your local planning commission and/or legislative body to promote quality growth and development in City of Red Bank. We hope to continue this partnership in the coming years.

The current contract for local planning services between City of Red Bank and SETD expires on June 30, 2023. I have attached a copy of the new contract covering the next 2 fiscal years, which includes the scope of services. The contracts have been updated with a new scope of services, so please read carefully. There are some services such as long-range planning, assistance with design review standards, and other special projects that may require additional contract fees above the base fee for service. Also, our fee schedule has remained the same for the last four years, and this year we had to make an increase of around 10% for most communities as well as a graduated fee scale for communities who maintain zoning ordinances. The updated fees were presented to the SETD Executive Board in March of this year.

Please review the contract and let me know if you have any questions regarding the contract or the services provided. If you wish to add any services that require an additional fee, please contact me to discuss. Otherwise, if you find the contract and scope of services agreeable, please sign and return one copy to me. An invoice will be sent to you once the contract has been fully executed in the first few months of FY 2024.

We appreciate the opportunity to serve your community with this important function of local government and look forward to assisting you in the future.
www.sedev.org/planning

Sincerely,

Chad Reese
Planning Director
423-424-4263
creese@sedev.org

1000 Riverfront Parkway • P. O. Box 4757 • Chattanooga, TN 37405-0757
Phone (423) 266-5781 • Fax (423) 267-7705

A CONTRACT BETWEEN THE

SOUTHEAST TENNESSEE DEVELOPMENT DISTRICT

AND

THE CITY OF RED BANK

PROVIDING FOR LOCAL PLANNING ADVISORY SERVICES

This **CONTRACT**, entered into as of the first day of July 2023, by the Southeast Tennessee Development District (SETD), an agency composed of member governments in Southeast Tennessee, and Red Bank, Tennessee, hereafter known as the COMMUNITY or Local Government.

Contract Agreed Upon Annual Base Rate for FY2024 & FY2025: $21,885 AMOUNT Per Fiscal Year

I. <u>FINDINGS & DECLARATIONS</u>

A. Tennessee Code Annotated §13-14-101 and its following sections establish a delineation of regions deemed viable to the economic development of the state, and allow creation of development districts for these regions, encompassing one (1) or more counties or parts of counties, so they are conducive to efficient planning and orderly economic development of the state.

B. Tennessee Code Annotated §13-14-101 and its following sections established the Southeast Tennessee Development District (SETD), a public body on behalf of the counties of Bledsoe, Bradley, Grundy, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie and all incorporated municipalities and metropolitan governments located within these counties.

C. SETD is empowered, among other duties, "to receive and expend funds from any sources for regional staffing, research, planning, coordination, economic development, demonstration projects and other activities deemed necessary to promote the efficient, harmonious economic development of the region."

D. The City of Red Bank requests the SETD provide planning advisory services, and agrees to appropriate the necessary funds for these services, and may renegotiate this contract at any time to include additional services above the base rate.

II. <u>CONTRACT</u>

In consideration of these findings and declarations and other valuable considerations, the parties agree as follows:

A. During the twenty-fourth month period beginning July 1, 2023, and ending June 30, 2025, SETD agrees to furnish the services of professionally trained planning advisors who will confer with the local planning commission, board of zoning appeals, and other local officials with respect to the local government's land-use planning program. Planning services may include the following:

1. Staff attendance at no more than one (1) planning commission meeting each month, one (1) board of zoning appeals (BZA) meeting each month, and other planning functions. It is encouraged, where practical, to hold BZA hearings and planning commission meetings on the same day. Additional meetings will be discussed, and in some cases, covered at no additional charge provided they are not held on a continuing basis. Work sessions sometimes held prior to planning commission meetings are also included under this contract, provided the work session takes place during regular business hours or on the date of a scheduled Planning Commission or BZA hearing. Confirmation of quorum must be established at least twenty-four (24) hours prior to a scheduled meeting in order to have a staff planner present at the meeting. Assurance of a quorum can be done by simply having members respond to the email invitation containing the agenda with notice of their plans to attend or not. Meetings occurring after regular business hours should be limited to a maximum of two (2) hours.

2. Preparing amendments and minor updates to land use controls for adoption, implementation, and enforcement by local community officials, including but not limited to zoning ordinances, subdivision regulations, floodplain management regulations, and other land use controls. In addition, SETD planning staff will provide advisement to local officials on matters of interpretation and enforcement of said land use controls. The creation of brand new land-use regulations and major re-writes of existing land-use regulations are very time consuming and may require an additional cost that would be negotiated between SETD and the community.

3. Assistance to communities for Design Review Regulations and/or Historic Zoning is NOT included as part of this contract and would require a separate negotiated contract amount and amendment to this contract for these additional services.

4. Assist with developing and reviewing the planning commission's long-range work program, Public Chapter 1101 Growth Management Plans and amendments, and other land-use planning studies and documents. SETD may assist the community in procuring a consultant for drafting new comprehensive planning documents and long-range plans, and work with the consultant in the development of the plans. However, entire plans to be drafted by SETD staff would be considered to be outside the base rate of this contract, and would require a contract amendment at a negotiated rate and dependent upon staff availability due to the complexity and tremendous amounts of time needed to complete these plans and conduct public input meetings. Other long-range planning documents completed solely be SETD staff, such as recreation plans, capital expenditure plans, facilities plans, etc. may also require a contract amendment at a negotiated rate. *For communities that do not require the assistance of planners at their planning commission meetings, these items may be covered under this contract without the need for an amendment or additional fees.* The completion of documents, maps, studies, and plans of services for annexations are included in the base rate for up to two (2) annexations per year.

5. Reviewing, and preparing staff recommendations for site plans, subdivision plats, variance requests, zoning map amendments, and other development proposals. SETD planning recommendations are considered advisory only; local communities and their appropriate representatives have the sole authority to enforce their ordinances and regulations.

While our staff are able to provide sound advice based on research, investigations, reviews, and legal research, we do not supplement or replace the need for legal opinions when needed from the local government's legal counsel.

6. Providing access to the resources of a regional office including mapping services, geographic information systems support, and planning-related research.

7. Providing training for planning commissioners, board of zoning appeals members, and local administrators.

8. Advising and providing assistance on matters relating to state, federal, and regional programs that affect planning and implementation for local governments.

Any additional services outside of the scope of services listed above may be considered depending on the nature of the desired services and SETD capacity. Any activities requiring additional compensation above and beyond this local planning assistance contract, as determined by SETD, must be agreed upon mutually by the COMMUNITY and SETD and will be attached as an amendment to this contract for basic services.

B. Responsibilities of the COMMUNITY Under This Contract:
   1. The drafting of official meeting minutes are the responsibility of the community by either a Planning Commission or BZA member or a person appointed to take minutes by the community.
   2. SETD can prepare public notices for public hearings as required to amended zoning ordinances, zoning maps, and subdivision regulations, but the community shall be responsible for placing these advertisements in the appropriate public places, websites, and newspapers as required by state and local law and with the proper number of days' notice.
   3. SETD will send out electronic copies of all meeting documents, recommendations, and agendas to members via email, but mailed documents and printed materials for both the members and the public shall be the responsibility of the local government.
   4. Digital recordings of official meetings, audio/visual equipment, and live streaming or broadcasting shall be the sole responsibility of the local government.
   5. It is the responsibility of the local government to return copies of signed ordinances, resolutions, and other legally approved documents to SETD staff in a timely manner to ensure local land-use regulations and zoning maps are maintained and kept up-to-date. By signing this contract, the local government will not hold SETD responsible for any legal issues that arise from inaccurate information, legal documents, ordinances, or maps involved in maintaining an updating land-use regulations and maps.
   6. While SETD does provide review and recommendations on floodplain regulations and the review of site plans and subdivision plats for compliance with floodplain regulations, it is the responsibility of the local government's floodplain administrator to ensure development complies with these regulations, requires the proper documentation through building permits and/or elevation certificates, does the required inspections of the development pre- and post-construction, and will review all necessary engineering plans and submitted changes to the floodplain areas through LOMAs, LOMA-Rs, and LOMC.

C. For the purpose of providing funds necessary to carry out the provisions of this contract, **IT IS AGREED** that the chief legislative body will pay to the SETD the sum of **$21,885** annually, payable in total upon the effective date of this contract, or in annual installments, due and payable on the first day of each fiscal year. The City of Red Bank hereby authorizes the SETD to apply on their behalf for eligible funds from State sources to supplement the planning contract anytime funds are available.

D. Within each twelve (12)-month period from July 1 to June 30, and upon request by the community, SETD may provide two (2) oversize copies of the zoning map or any other community map up to 36" x 44" in size. After the initial two (2) copies, additional printed copies of any document over 11" x 17" will be provided at $30.00 per copy. It should be noted most of our community mapping is now hosted online with interactive maps being available to the public at www.sedev.org/planning. Planning fees help to cover the cost of hosting these online maps, documents, and webpages for our communities.

E. Either party may terminate this Contract by giving written notice to the other party specifying the date of termination, at least ninety (90) days before the termination date. Upon termination of the Contract, the obligation of the SETD to conduct and carry on the program agreed to under this Contract shall cease, and the financial obligation of the chief legislative body as described in this Contract above shall likewise cease. If prepayment has been made by the chief legislative body, SETD will determine, by prorating, the amount to be refunded.

F. This Contract is for a period of twenty-four (24) months. After the initial twelve months, the contract will automatically renew for another year unless notice of termination is given as provided for in Section E above. Local governments are under no obligation to continue SETD planning services beyond the dates specified in this contract.

G. In all matters relating to the performance of this contract, the SETD Executive Director acts for the SETD, and the Mayor acts for Red Bank, Tennessee.

The parties execute this contract through their duly authorized representatives.

FOR THE SOUTHEAST TENNESSEE DEVELOPMENT DISTRICT

By: Chuck H. Hammonds ______________________ Date: 5/18/2023

Chuck Hammonds, SETD Executive Director

FOR City of Red Bank

By: ______________________ Date: ______________

Mayor Hollie Berry

waypoint

118 Vintage Park Blvd, W414, Houston, TX 77070
Phone: 832-479-8540

QUOTE

Number AAAQ16410

Date Apr 24, 2023

Bill To

Red Bank Police Department
Dan Seymour
3117 Dayton Blvd
Red Bank, TN 37415

Phone (423) 877-1103
Email dseymour@redbanktn.gov

Ship To

Red Bank Police Department
Dan Seymour
3117 Dayton Blvd
Red Bank, TN 37415

Phone (423) 877-1103
Email dseymour@redbanktn.gov

Account Manager

Darren Orsag
979-325-0523
DOrsag@waypointsolutions.com

Contract

Notes:

Here is the quote you requested.

Line	Qty	Description	Unit Price	Ext. Price
1	21	Dell Latitude 5430 Rugged Intel Core Processor i5-1145G7, (QC, 2.6 to 4.0 GHz, 28W, vPro) Windows 10 Pro (Includes Windows 11 Pro License) English, French, Spanish No Microsoft Office License Included Intel® Core™ vPro i5-1145G7 with Iris Xe Graphics ME Lockout MOD - Manageability 16GB, 2x8GB, 3200 MHz DDR4 Non-ECC 256GB M.2 PCIe NVMe Class 35 Solid State Drive 14" Touch 1100 nits WVA FHD (1920 x 1080) 100% sRGB Anti-Glare, Outdoor Viewable English US RGB Backlit Sealed Internal keyboard Intel AX210 WLAN Driver Intel AX210 Wireless Card with Bluetooth 5G - Qualcomm® Snapdragon™ X55 Global 5G (DW5930e), w/o eSIM, AT&T, no NMEA GPS port Hot surface warning label Primary 3 Cell 53.5 Whr ExpressCharge Capable Battery 90W 461G Type-C EPEAT Adapter No Fingerprint, no Smartcard reader Power Cord 1M US Setup and Features Guide Dummy Airbay Cover ENERGY STAR Qualified Custom Configuration Dell Applications for Windows 10 Mix Ship, Notebook, 5430 Rugged Microphone +RGB HD camera; Touch; WLAN/WWAN antennae; Pogo vehicle docking and RF passthrough EPEAT 2018 Registered (Silver)	$2,413.33	$50,679.93

Created on 04/24/23 14:04:37 by Waypoint Business Solutions, LLC

Line	Qty	Description	Unit Price	Ext. Price
		No Option Included Additional USB-A rear port Additional TBT/Type-C port Rigid handle ProSupport Plus: Next Business Day Onsite, 2 Years Extended ProSupport Plus: Next Business Day Onsite, 3 Years Dell Limited Hardware Warranty Initial Year ProSupport Plus: Accidental Damage Service, 5 Years ProSupport Plus: Keep Your Hard Drive, 5 Years ProSupport Plus: 7X24 Technical Support, 5 Years Dell Limited Hardware Warranty Extended Year(s) Thank you for choosing Dell ProSupport Plus. For tech support, visit www.dell.com/contactdell or call 1-866-516-3115		
2	21	TrippLite PowerVerter Ultra-Compact Inverter with 1 AC Outlet	$54.30	$1,140.30

SubTotal	$51,820.23
Tax	$0.00
Shipping	$0.00
Total	**$51,820.23**

Please contact me if I can be of further assistance.

DELL CONTRACT CODE# 51AHO

CUSTOMER PURCHASE AGREEMENT FOR PRODUCTS AND SERVICES

between

Dell Marketing L.P. One Dell Way Round Rock, TX 78682 **("Dell")**	and	**Wilson County Board of Education** 415 Harding Drive Lebanon, Tennessee 37087 **("Customer")**

This Customer Purchase Agreement ("CPA"), made between Customer and Dell as of the date of last signature below (the "**Effective Date**"), together with any Schedules, governs Customer's purchase of Products and Services from Dell for internal use. Customer and Customer's Affiliates may order from Dell and Dell's Affiliates under this CPA, in which case such Affiliates shall be "Customer" and "Dell" for the purposes of such orders. Dell and Customer are each referred to individually as a "party," and collectively as the "parties."

1. DEFINITIONS

A. "**Dell**" means Dell Marketing L.P. or the Dell Affiliate identified on the Order.

B. "**Dell Affiliate**" means a direct or indirect subsidiary of Dell Inc. located in the United States.

C. "**Hardware**" means computer hardware, related devices and other accessories including all embedded components (excluding Software).

D. "**Hardware Services**" means (a) services to be performed by or on behalf of Dell necessary to repair a defect in materials or workmanship of Hardware and as otherwise defined in the Hardware Schedule or SOW, (b) standard deployment services, such as Basic Deployment Services, ProDeploy or ProDeploy Plus services, or c) standard configuration services, including Static and Dynamic Imaging, Asset Tagging, Asset Reporting, standard System Configuration services (BIOS Settings, Hard Drive Partitioning, Application Installation and Operating System Settings).

E. "**Order**" means an order placed for Products and/or Services by (a) a written ordering document or agreement under this CPA that is executed by the parties, such as a signed Dell quotation or SOW, (b) Dell's online ordering process at Dell.com or other Dell electronic ordering process agreed to by Dell and Customer, or (c) a Customer purchase order accepted by Dell.

F. "**Products**" means Hardware, Software or both.

G. "**Professional Services**" means services, other than Hardware Services, to be performed by or on behalf of Dell pursuant to an SOW.

H. "**Schedule(s)**" means the Product Schedule or Services Schedule to this CPA, and any other schedules later executed by the parties under this CPA, as well as any attachments to such Schedule(s). Unless otherwise defined in a Schedule, capitalized terms in Schedules shall have the meaning defined in the CPA.

I. "**Services**" means either Hardware Services, Professional Services, or both.

J. "**SOW**" means any mutually agreed document or agreement describing Services to be provided by or on behalf of Dell to Customer, including without limitation, "Statements of Work," "Service Descriptions," "Specification Sheets," "Task Orders," "Order Forms" and any other such documents executed under the terms of a Professional Services Schedule hereto or otherwise available at Dell.com/servicecontracts/global.

K. "**Third-Party Products**" means any Products or Services that are not manufactured, created, licensed, branded or performed by or on behalf of Dell.

2. TERM; AUTO-RENEWAL

This CPA continues for a period of five (5) years from the Effective Date. Unless terminated under Section 10 ("Termination"), this CPA may be renewed on the anniversary of the Effective Date for one (1) additional five (5) year period (each period, a "**Term**"), unless either party provides written notice of non-renewal at least 30 days prior to the expiration of the then-current Term. Each Service and Software license will continue for the term stated in the applicable SOW or Software Agreement (as defined in Section 5.B), unless terminated earlier in accordance with its terms or this CPA. Hardware Service may be renewed if Customer pays a renewal invoice from Dell or continues to use the Hardware Service past its initial term.

3. ORDERING AND PAYMENT

A. **Quotes and Orders**. Customer must identify Dell's quotation (if any), the Dell Contract Code assigned to this CPA (if any), the Products and Services ordered, the requested shipment dates, and shipping and invoice addresses on all Orders. Each Order is subject to acceptance by Dell. Quoted prices are effective until the expiration date of the quote, but may change due to shortages in materials or resources. Orders for Third-Party Products are subject to availability and are cancellable only by Dell. Dell may, prior to shipment, cancel and refund Orders affected by typographical errors. Customer shall place all Orders in the country where the Products and Software are to be shipped and for Services, where the Services benefit is received.

B. **Payment.** Invoices are due and payable within 30 days of the invoice date unless the invoice states payment terms greater than 30 days. Payment must be made in the method and currency identified by Dell. Dell must approve in writing any assignment by Customer of its payment obligations to a third-party financing company (other than Dell Financial Services, LLC). Dell, without waiving any other rights or remedies and without liability to Customer, may suspend any or all Services until all overdue amounts are paid in full. Customer will pay all reasonable legal fees (including reasonable attorney's fees) and costs associated with collection of overdue amounts.

C. **Taxes**. Customer is responsible for payment of any sales, use, VAT, GST and any other similar taxes or governmental fees associated with Customer's Order, except for taxes based on Dell's net income, gross revenue or employment obligations. If Dell is obligated by applicable law to collect and remit any taxes or fees, then Dell will add the appropriate amount to Customer's invoices as a separate line item. If Customer qualifies for a tax exemption, Customer must provide Dell with a valid certificate of exemption or other appropriate proof of exemption. The charges stated on each line item of the invoice shall include all duties, levies or any similar charges and exclude VAT or equivalent sales or use tax. Customer shall also pay all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, goods and services, and excise taxes). Dell's invoice shall be in accordance with applicable law. If Customer is required by law to make a withholding or deduction from payment, Customer will make payments to Dell net of the required withholding or deduction, and will supply to Dell satisfactory evidence (e.g. official withholding tax receipts) that Customer has accounted to the relevant authority for the sum withheld or deducted. If such evidence is not provided to Dell within 60 days of remittance to the applicable tax authority, Dell will impose a penalty payment on Customer, and Customer will be liable for such penalty, in the amount of the withholding imposed on that particular transaction.

4. SERVICES

The following shall apply to all purchases of Services under this CPA:

A. **SOW**. Services shall be subject to the additional terms contained in any SOW executed or otherwise provided by Dell in connection with the Service.

B. **Third-Party Products**. If Customer provides or makes available Third-Party Products for Dell to use in connection with the Services, Customer (a) authorizes Dell to use such Third-Party Products as needed to provide the Services, (b) warrants that it has all consents, licenses, and sublicense rights as may be necessary to make the Third-Party Products available to Dell, and (c) agrees that Dell shall not be liable to Customer if Dell's authorized use causes warranties or other services contracts for the Third-Party Products to become void.

C. **Services Software**. "**Services Software**" is Software that Dell may make available to Customer as necessary to enable Customer to receive and use the Services. Services Software may be hosted by Dell or installed on Customer's computers. Customer agrees that it shall (i) only use the Services Software as necessary to receive and/or use the Services during the term thereof, (ii) use any Services Software hosted by Dell in a lawful manner, without interfering with other Dell customers' use of the Services Software, and without attempting to disrupt the security or operation of the network or systems used to provide the Services Software; and (iii) not misappropriate, disclose, or otherwise violate Dell's or its suppliers' intellectual property rights in the Services Software.

D. **Customer Obligations**. Except as may be expressly agreed by the parties in writing, Customer shall be solely responsible to back up all data on its systems and to install all equipment or technology upgrades, refreshes, and replacements. Customer shall provide timely access to Customer personnel, systems and information as may be needed for Dell to perform the Services. If the Services are provided on Customer's premises, Customer shall provide, without charge to Dell, a reasonable work environment for Dell personnel that is in compliance with all applicable laws and regulations and that includes work space, reproduction, computer, and other equipment, supplies, and services all as may be needed to perform the Services.

E. **Data**. In connection with Dell's performance of or Customer's use of the Services or Services Software, Dell may obtain, receive, and/or collect data or information, including system-specific data (collectively, the "**Data**"). Customer grants Dell (i) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to provide the Services or the Services Software; (ii) a license to aggregate and use the Data in an anonymous manner in support of Dell's internal, marketing and sales activities; and (iii) the right to copy and maintain the Data on Dell's or its suppliers' servers as necessary to provide the Services. Customer represents and warrants that it has obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which Customer is located in order for Dell to provide Services hereunder.

F. **Updates**. It may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Services Software, which may temporarily degrade the quality of the Services or result in a temporary outage of the Services Software.

5. SOFTWARE

Customer may purchase Software licenses under this CPA for Software licensed to Customer by Dell or a Dell Affiliate ("**Dell Licensed Software**") and for Software licensed to Customer by a third party ("**Third-Party Software**").

A. **"Software"** means any software, library, utility, tool, or other computer or program code, each in object (binary) code form, and the printed materials, online and electronic documentation provided by Dell with the Software and any copies thereof.

B. **"Software Agreement"** means either (i) the software license agreements included with the software media packaging or presented to Customer during the installation or use of the Software, or (ii) if no license terms accompany Dell Licensed Software or are not otherwise made available to Customer by Dell, then the applicable licensing terms found at www.dell.com/licenseagreements will apply.

C. **"Software Terms"** means the terms in a Software Agreement for Dell Licensed Software that state (a) the Dell Affiliate that is the licensor of the Software (the "Licensor") (b) Software title, license definitions, rights, and restrictions; (c) Software warranties and remedies; (d) maintenance and support services for the Software; (e) the Licensor's rights in connection with a change of control of Licensor or a sale of its assets; (f) Customer's compliance obligations with respect to the Software; (g) the parties' rights and obligations with respect to a termination of the Software Agreement or a license granted thereunder, and (h) the parties' liability in the event of a misappropriation, misuse, or disclosure of the other party's intellectual property, including, but not limited to the Software.

D. **Governing Terms**. Dell Licensed Software shall be governed by this CPA, the Software Terms, and the applicable Order provided to Customer by Dell (if any). Third-Party Software shall be governed by the Software Agreement that is provided with such Software and, as between Dell and Customer, the sections of this CPA regarding payment, taxes, warranty, and liability.

6. LIMITED WARRANTY

DELL'S WARRANTY TERMS FOR PRODUCTS SHALL BE PROVIDED AS INDICATED IN THE PRODUCT SCHEDULE OR THE SOFTWARE TERMS. DELL'S WARRANTIES FOR SERVICES SHALL BE PROVIDED IN THE SERVICES SCHEDULE. EXCEPT AS

EXPRESSLY STATED BY DELL ELSEWHERE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, DELL (INCLUDING DELL AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (a) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (b) FOR ANY THIRD-PARTY PRODUCTS OR SERVICES; (c) FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM ANY PRODUCTS OR SERVICES; OR (d) THAT THE PRODUCTS OR SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR. PRODUCTS AND SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS, REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS ANY APPLICATION IN WHICH THE FAILURE OF THE PRODUCTS OR SERVICES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "**HIGH-RISK ACTIVITIES**").

WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICES NOT PERFORMED OR AUTHORIZED BY DELL (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS OR HARDWARE SERVICES. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER. ALL THIRD-PARTY PRODUCTS ARE PROVIDED BY DELL "AS IS."

7. CONFIDENTIALITY

"**Confidential Information**" means information that is designated as confidential or should reasonably be understood to be confidential. Confidential Information may only be disclosed to the receiving party's personnel, professional advisors, agents, and subcontractors ("**Representatives**"), or governmental taxing authorities, on a "need-to-know" basis in connection with this CPA. Representatives shall be bound to treat the Confidential Information under terms at least as restrictive as those herein, and the receiving party shall be liable for unauthorized disclosures by its Representatives. Each party will use at least the same degree of care as it employs with respect to its own Confidential Information, but not less than a commercially reasonable standard of care. The foregoing shall not apply to information that (i) is independently developed without use of the other party's Confidential Information; (ii) has been obtained from a source which is not under a confidentiality obligation; or (iii) is or becomes publicly available without fault of the receiving party. If receiving party must disclose Confidential Information as required by law, it shall give reasonable prior notice to the disclosing party. These obligations shall continue for 3 years from the initial date of disclosure, except that obligations related to information about a party's trade secrets and intellectual property shall never expire.

8. INDEMNIFICATION

A. Dell shall defend and indemnify Customer against any third-party claim that Dell-branded Products, Services or any tangible items provided as part of the Services (excluding Third-Party Products and open source software) infringe or misappropriate that third party's U.S. patent, copyright, trade secret, or other intellectual property rights ("**Claims**"). In addition, if Dell receives prompt notice of a Claim that Dell believes is likely to result in an adverse ruling, then Dell shall at its option, (1) obtain a right for Customer to continue using such Products or Service-related deliverables, if any, or for Dell to continue performing the Services; (2) modify such Products or Services to make them non-infringing; (3) replace such Products or Services with a non-infringing substitute; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product or Service-related deliverables, if any. Dell shall have no obligation for any claim arising from (a) modifications of the Products or Services that were not performed by or on behalf of Dell; (b) misuse, or the combination or use with Third-Party Products; (c) Dell's compliance with Customer's written specifications or directions, including the incorporation of any software or other materials or processes Customer provides or requests or (d) Customer's failure to incorporate free Software updates or upgrades that would have avoided the alleged infringement. Dell's duty to indemnify and defend under this Indemnification Section is contingent upon: (i) Customer's prompt written notice of the Claim (ii) Dell's right to solely control the defense and resolution of the Claim, and (iii) Customer's cooperation in defending and resolving the Claim. These are the exclusive remedies for any third-party intellectual property claim, and nothing in this CPA or elsewhere will obligate Dell to provide any greater indemnity.

B. Subject to the availability of lawful appropriation and consistent with the Tennessee Governmental Tort Liability Act, Customer shall indemnify, to the extend allowed by law, Dell against any third-party claim resulting or arising from (1) Customer's failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by Customer, or associated with non-Dell software or other components directed or requested by Customer to be used with, installed or integrated as part of the Products or Services; (2) Customer's violation of Dell's proprietary rights; (3) any inaccurate representation regarding the existence of an export license or any allegation made against Dell due to Customer's violation or alleged violation of applicable export laws; or (4) Customer transferring or providing access to Excluded Data to Dell.

C. Subject to the availability of lawful appropriation and consistent with the Tennessee Governmental Tort Liability Act, each party shall indemnify, to the extend allowed by law, the other against any third-party claim for personal bodily injury, including death, where the injury has been exclusively caused by the indemnifying party's gross negligence or willful misconduct in the performance of its obligations under this CPA.

D. The indemnified party will (a) promptly notify the indemnifying party in writing of any such claim and grant the indemnifying party sole control of the defense and resolution of such claim and (b) cooperate with the indemnifying party, at the indemnifying party's expense, in defending and resolving such claim.The indemnification provisions of this section shall be limited by the availability of lawful appropriation and consistent with the Tennessee Governmental Tort Liability Act as applied to Customer.

9. COMPLIANCE WITH LAWS

A. Customer's purchase of Dell's Products or Services is for its own use, not for resale, export, re-export, or transfer. Customer is subject to and solely responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions, as well as comply with Dell's trade compliance policies. Customer's purchase may not be used, sold, leased, exported, re-exported, or transferred except with prior written authorization by Dell's trade compliance and/or legal teams and in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory that is the subject or target of, economic sanctions of the United States and other applicable jurisdictions.

B. Customer certifies that all items (including hardware, software, technology and other materials) it provides to Dell for any reason that contain or enable encryption functions either (i) satisfy the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies or (ii) employ key length of 56-bit or less symmetric, 512-bit asymmetric or less, and 112-bit or less elliptic curve. Dell is not responsible for determining whether any Third-Party Product to be used in the Products and Services satisfies regulatory requirements of the country to which such Products or Services are to be delivered or performed, and Dell shall not be obligated to provide any Product or Service where the resulting Product or Service is prohibited by law or does not satisfy the local regulatory requirements.

C. Dell's privacy policies explain how Dell treats personal information and protects its customers' privacy and can be found at Dell.com/privacy.

10. TERMINATION

Either party may terminate this CPA for convenience by providing at least 30 days prior written notice to the other or by providing timely written notice of non-renewal under Section 2. Either party may terminate this CPA, a SOW, or a Software Agreement (a) for a material breach of the CPA, SOW, or Software Agreement by the other party whichis not cured within 30 days of the breaching party's receipt of written notice of the breach

Dell may terminate this CPA, a SOW, or a Software Agreement with 10 days' written notice if Customer does not make payment as required by this CPA or the applicable SOW or Software Agreement (where such payment is not subject to a good faith dispute).If this CPA is terminated for convenience (or not renewed), all then-existing SOWs and Software Agreements shall remain in force for their stated term and shall continue to be governed by this CPA. If this CPA or an SOW or Software Agreement is otherwise terminated, all rights and obligations of the parties under this CPA or the terminated SOW or Software Agreement shall automatically terminate, except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.

11. LIMITATION OF LIABILITY

A. EXCEPT FOR CLAIMS RESULTING FROM A PARTY'S GROSS NEGLIGENCE, FRAUD, CRIMINAL CONDUCT OR WILLFUL MISCONDUCT, A VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS CPA OR THE PRODUCTS OR SERVICES, OR FOR ANY OF THE FOLLOWING: (a) LOSS OF REVENUE, INCOME, PROFIT (IN EACH CASE, EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS), SAVINGS OR SHARE VALUE; (b) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK, OR THE RECOVERY OF SUCH; (c) LOSS OF BUSINESS OPPORTUNITY; (d) BUSINESS INTERRUPTION OR DOWNTIME; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES.

B. EXCEPT FOR CLAIMS RESULTING FROM THE A PARTY'S GROSS NEGLIGENCE, FRAUD, CRIMINAL CONDUCT OR WILLFUL MISCONDUCT, CUSTOMER'S BREACH OF ITS PAYMENT OBLIGATIONS, VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR OTHER RESTRICTIONS ON USE IN AN ORDER OR SOFTWARE AGREEMENT, OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, EACH PARTY'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS, ACTIONS AND CAUSES OF ACTION RELATED TO ANY DISPUTE (AS DEFINED BELOW) SHALL BE LIMITED TO THE AMOUNTS PAID DURING THE 12 MONTH PERIOD PRECEDING THE DATE THAT THE DISPUTE FIRST AROSE, FOR (i) THE PRODUCT THAT IS THE SUBJECT OF THE DISPUTE OR (ii) THE SERVICES THAT ARE THE SUBJECT OF THE DISPUTE, IN EACH CASE EXCLUDING AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES OR PAYMENT OF TAXES.

C. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS APPLY TO ALL DISPUTES AND CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, STATUTE, EQUITY OR OTHERWISE. THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL'S SALE OF PRODUCTS OR SERVICES TO CUSTOMER, AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12. ADDITIONAL TERMS

A. **Independent Contractor Relationship; Assignment; Subcontracting.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an express or implied obligation on behalf of the other party except as specified in this CPA. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees of the other party. Dell has the right to assign, transfer, subcontract, or delegate in whole or in part this CPA, or any of its rights, duties, obligations or liabilities provided that if it delegates or subcontracts its duties in providing Services, Dell shall remain responsible for the performance of such Services under this CPA. Customer may not assign or transfer this CPA without Dell's permission, which shall not be unreasonably withheld.

B. **Excused Performance.** Neither party shall be liable to the other for any failure or delay in performing its obligations due to circumstances beyond its reasonable control, provided that the other party is promptly notified in writing, and such party uses reasonable commercial efforts to resume performance. The failure of Dell, its affiliates or their subcontractors to perform their obligations under this CPA will be excused to the extent such non-performance is caused by the acts or omissions of Customer, its Affiliates, agents, contractors or other third parties. This Section shall not relieve either party of its obligations under this CPA (including payment), but rather will only excuse a delay in performance.

C. **Personnel.** If Customer submits a written notice (with details of Customer's concerns) request to Dell to discontinue immediately or as of a certain date from using a particular individual or subcontractor (whether an individual or entity) to provide services under this CPA, Dell will work to quickly comply with the request and notify Customer of the steps to be taken to address the request; and, Customer understands and acknowledges that any change that may occur as a result of the request may have an impact on the timing and availability of the services and products that are impacted by any such change.

D. **Excluded Data.** Customer acknowledges that Products and Services provided under this CPA are not designed to process, store or be used in connection with any of the following categories of data: (i) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (ii) articles, services and related technical data designated as defense articles and defense services; (iii) ITAR (International Traffic in Arms Regulations) related data; and (iv) other personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices or by law (collectively referred to as "**Excluded Data**"). Customer is solely responsible for reviewing data that will be provided to or accessed by Dell to ensure that it does not contain Excluded Data.

E. **U.S. Government Restricted Rights**. The software and documentation provided with the Products and Services are "commercial items" as that term is defined at 48 C.F.R. 12.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer of Dell-branded Products is Dell, One Dell Way, Round Rock, Texas 78682.

F. **Governing Law.** This CPA and any related SOW(s) and Software Agreements, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND DELL, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "**Dispute**") will be governed by the laws of the State of Tennessee, without regard to conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

G. **Venue.** The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in the State of Tennessee. The parties agree to submit to the personal jurisdiction of such courts and waive any right to have any Dispute resolved in any other venue. If any party breaches this provision by filing in any other court, the breaching party will owe the non-breaching party all their attorneys' fees and costs incurred in response to that breach.

H. **Limitation Period.** NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM OR DISPUTE FILED MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

I. **Dispute Resolution**. Customer and Dell will attempt to resolve any Dispute through negotiation. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

J. **Attorneys' Fees.** In any Dispute, each party will bear its own attorneys' fees and costs.

K. **Notices.** Notice to Dell under this CPA or any related Order must be in writing and sent by registered or certified mail (postage prepaid first-class mail and return receipt requested) by overnight delivery service or by electronic mail to the address below, to be effective upon receipt.

Dell Marketing L.P., Attn: Contracts Manager
One Dell Way, Round Rock, Texas 78682
Dell_Legal_Notices@dell.com

Wilson County Schools
Deputy Director of Schools
415 Harding Drive
Lebanon, TN 37087

L. **Entire Agreement; Order of Precedence; Severability**. This CPA, including its Schedules, attachments and Orders, each of which is incorporated in this CPA for all purposes, constitutes the entire agreement between the parties concerning the subject matter of this CPA. There are no representations, understandings or agreements, written or oral, relative to this CPA that are not fully expressed in this CPA. In entering into this CPA, neither party is relying upon any representations or statements of the other that are not fully expressed in this CPA; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statements not expressly set forth in this CPA. In the event of a conflict or ambiguity between the terms of this CPA, a Schedule, or an Order, the terms will take precedence in the following order: the Order, the Schedule, and this CPA. In the event of a conflict or ambiguity between the terms of this CPA, a Software Agreement, or an Order, the terms will take precedence in the following order: the Order, the Software Terms, and this CPA. Notwithstanding the foregoing, any preprinted terms on Customer's purchase order shall be of no force or effect. Modifications to this CPA will be made only through a written amendment signed by both parties. If any provision of this CPA, or any Schedule or SOW is found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this CPA or the affected Schedule or SOW will remain in full force. No rights may arise by implication or estoppel, other than those expressly granted herein.

By their signatures below, Dell and Customer agree to the terms and conditions in this CPA:

Dell Marketing L.P. ("Dell")

By:

Amanda Eliz Hudson

Signature

Amanda E. Hudson

Printed Name

Contracts Manager

Position

March 28, 2019

Date

Wilson County Board of Education ("Customer")

By:

Donna L Wright

Signature

Donna L. Wright

Printed Name

Director of Schools

Position

3-22-19

Date

By:

Larry Tomlinson

Signature

Larry Tomlin

Printed Name LARRY TOMLINSON

Chairman of the Board

Position

3/22/19

Date

Product Schedule to Customer Purchase Agreement

1. **General.** This Product Schedule ("Schedule"), in addition to the Customer Purchase Agreement ("CPA"), into which this is hereby incorporated, states the terms for Orders for Products and Hardware Services by Customer from Dell. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the CPA.

2. **Prices.** The prices charged for Products purchased under this Schedule shall be the fixed price for Standard Configurations as specified in Exhibit A to this Schedule or as otherwise quoted by Dell. Additional charges will apply if Customer requests Hardware Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Hardware Service.

3. **Shipping Charges; Title; Risk of Loss.** Shipping and handling charges are not included in Product prices unless expressly indicated at the time of sale. Title to Hardware passes from Dell to Customer upon shipment. Delivery of Software is FOB Origin. Loss or damage that occurs during shipping (including returns) is the responsibility of the party that selected the carrier. Shipping and delivery dates are estimates only. Customer must notify Dell within 5 days of the invoice date if Customer believes any part of its order is missing, wrong, or damaged.

4. **Hardware Returns, Exchanges and Repairs.** Customer agrees to Dell's return policy at Dell.com/returnspolicy. Before returning or exchanging Hardware, Customer must contact Dell to obtain an authorization number for the return. Customer must return Hardware in its original or equivalent packaging, and Customer is responsible for risk of loss and shipping and handling fees. Additional fees may apply. If Customer fails to follow the return or exchange instructions, Dell will not be responsible for any loss, damage, or modification of Hardware, or processing of Hardware for disposal or resale. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with Customer's purchase. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned. Title to returned or exchanged Hardware shall pass to Dell upon receipt at the specified Dell facility.

5. **Cancellation of Order.** Customer may change or cancel an order for Dell-branded Products only up until the time Dell begins manufacturing the Products. Otherwise, Customer may change or cancel an order as set forth in the applicable Dell quote or as expressly agreed by both parties.

6. **Exclusions.** Hardware Services do not include preventive maintenance or repairs required due to (a) software problems; (b) alteration, adjustment, or repair of the Hardware by anyone other than Dell or Dell's representatives; (c) accident, misuse, or abuse of the system or component (such as fire, water leakage, use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) that have not been caused by Dell; (d) moving of the system from one geographic location or entity to another; or (e) an act of nature.

7. **Suspension of Hardware Services.** Dell may suspend Hardware Services if Customer purchased the Hardware Services through a reseller and the agreement between Customer and such reseller expires or is terminated, or Customer's reseller is delinquent on its payment obligations to Dell due to nonpayment by Customer.

8. **Limited Warranty.** The limited warranties for Dell-branded hardware shall be as stated in the documentation provided with the hardware. If there is no such documentation, then the warranties shall be as stated at Dell.com/warrantyterms. Dell warrants that Hardware Services shall be performed in a good and workmanlike manner. Customer's exclusive remedy and Dell's sole obligation for any breach of any Hardware Services warranty shall be for Dell to re-perform the non-conforming Hardware Services.

Exhibit A to Product Schedule
Special Pricing Structure for Fixed Configurations

Special Pricing. During the Special Pricing Period, the referenced/attached Dell Configurations will be available to Customer for Customer's direct purchases from Dell and only for Customer's own internal use at the stated prices (for purchases from and delivered within the United States). Customer may only use such purchased items for its' own internal business uses and the purchases may not be sold, transferred, leased, or otherwise provided to any other entity or individual. The stated prices are fixed prices for the specific Dell Configurations and may not be aggregated or combined with any other discounts for which Customer may be eligible. In addition, the pricing terms set out above only apply to the specific Dell Configurations and any modifications or other items will be quoted by Dell for acceptance by Customer or otherwise as agreed in writing by Customer and Dell.

The Dell Configurations may be revised as mutually agreed without amending the contract, via mutually agreed quotations through the online electronic ordering portal made available for use by Customer.

Quarterly Reviews and Product Transition. Dell's account team will meet with Customer on a quarterly basis to review pricing, as well as Customer's purchased volumes and purchase forecasts. If an above Dell Configuration reaches the end of its life cycle during the Special Pricing Term, Dell will continue to work with Customer to develop a plan for a smooth transition to a comparably configured (specifications and functionality at or above the overall system levels of the discontinued Dell Configuration). The prices for any future configurations offered to Customer are subject to change for: (i) any factor external to Dell that may have a material impact on Dell's business operations or supply chain (ii) in the event of structural or significant changes in the way Dell develops its list pricing; (iii) if key vendors to Dell significantly change their pricing structure to Dell; or (iv) if Customer breaches or otherwise materially fails to comply with its commitments under this Agreement. In the event of a pricing change (whether a reduction or an increase), the new pricing will apply only to future orders placed by the Customer, and the new pricing will be subject to acceptance and approval by Customer through orders through Customer's electronic ordering portal or by a formal amendment to this agreement.

Technology Changes. As technology changes rapidly in our industry, with new products and revisions coming in to the marketplace on a regular basis, Dell's policy is necessarily one of product update and revision. Dell may revise and discontinue products (including components thereto) at any time without notice. In the event a product is discontinued, Dell will provide a product of the same or greater functionality, providing the product is available as part of Dell's standard product listing. Should the original product be discontinued before the replacement product has reached price parity with the original product, Dell reserves the right to re-negotiate prices for the products.

Exhibit A to the Product Schedule

Special Pricing Structure for Catalog Offers

Discount Structure

For general purchases, Dell will provide the minimum discounts identified below for select offerings generally described in the below table. The discounts are based on Dell's then current retail pricing and Dell reserves the right to change the retail pricing (which would also change the discounted selling price) at any time to apply to future orders.

Discounts: Product classifications and Categories may be changed by Dell without notice.

Discount Category	Product Classification	Minimum Discount off Dell Retail Price
A	PowerEdge Departmental Servers, PowerApp Appliance Servers, PowerVault Storage Products, Precision Workstations, Selected Dell/EMC; Selected OptiPlex Desktops and Selected Latitude Notebooks, VxRail	11.5%
F	Toner; Third-Party Printers through Dell S&P	No discount
H	Value Latitude, OptiPlex , Workstation, Future Products to be Determined	5%
M	3rd Party Software & Peripherals – Mainstream Products	5%
O	Selected Service on PowerEdge Departmental Servers; Directline Service; 4-Hr On-Site Critical Care Plus, Business Care Plus-On-Site Service (all years)	13%
R	On-Site Service – NBD On-Site Service (Extended years), Critical Care On-Site Service (all years)	14.5%
S	Selected Promotional Offers; Inspiron; Selected Latitude, SC PowerEdge; Selected Dell/EMC Branded Peripherals/Imaging; Power Connect, Axim, Projector, Printer	2%
X	Software and Peripheral (S&P) Specific, Non-discountable Products	No discount
ZS	Non-Discountable Service	No discount

Dell's current published retail price list is available at http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf

In the event customers purchasing products and services receive more advantageous pricing based on the customer's requested solutions or participate in special promotional offers (included those that provide additional discounted or specially priced and bundled options), the above discounts will not be applicable. The final customer-accepted Dell Quote or Dell procurement response will contain the applicable pricing and other details for the ordered individual offerings or for bundled offering configurations or special offers. Customer understands that the bundled offering or special promotional offerings may include other discounted or reduced cost or no additional cost products and services and the Customer may compare the bundled offering and any additional services to the line item pricing and minimum discounts to the Dell retail price list.

Services Schedule to Customer Purchase Agreement

1. **General.** This Services Schedule ("**Schedule**"), in addition to the Customer Purchase Agreement ("**CPA**"), into which this Schedule is hereby incorporated, states the terms for Orders for Professional Services under the CPA.

2. **Orders.** An Order for Professional Services may be (a) in the form of an SOW or other order form executed by the parties; (b) as agreed to by Customer via a Dell online ordering process; or (c) a Customer purchase order for those Professional Services described in Service Descriptions at Dell.com/servicecontracts/global as of the date Dell receives the purchase order. For orders described in the preceding subsection (c), the Service Descriptions shall be deemed incorporated into the Order and preprinted terms on the purchase order shall not apply.

3. **Charges.**

   A. **Billing.** Professional Services shall be billed at the rates stated in the SOW, which shall either be (a) per-hour or per-eight hour day ("**Time and Materials**") or (b) a fixed price for the tasks to be performed and deliverables to be provided ("**Fixed Price**"). The hours or days stated in a Time and Materials Services SOW are a good faith estimate of the time required to perform the Professional Services described in the SOW, but not a commitment to complete them in that amount of time. However, Dell will only perform Professional Services beyond the contracted hours on the written authorization of Customer. Additional charges will apply if Customer requests Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service.

   B. **Travel Expenses; Taxes**. Unless otherwise stated in an SOW, Customer shall (i) reimburse Dell for actual, reasonable travel-related and other out-of-pocket expenses incurred in connection with any Services and (ii) pay any applicable sales, use, or other taxes Dell is required to collect in connection with the Services, except that Dell shall be responsible for its franchise, property, and employment taxes and taxes based on its net income.

   C. **Cost of Living Adjustment.** This Section 3.C shall apply to SOWs with a term longer than 1 year. Dell may adjust prices on any anniversary of the effective date of such an SOW if on such date the ECI (as defined below) is higher than it was on the immediately preceding anniversary date. The permitted price adjustment shall be calculated by multiplying the then-existing price(s) by a factor equal to the new ECI divided by the immediately preceding ECI, minus one. Each price adjustment shall remain in effect until the next permitted adjustment.

   For purposes of this Schedule, "**ECI**" means the Employment Cost Index, Total Compensation, Not Seasonally Adjusted, Private Industry for Professional, Specialty and Technical Occupations published by the Bureau of Labor Statistics of the United States Department of Labor or, if such index ceases to be published, then another comparable measure agreed to by Dell and Customer.

4. **Warranty.** Dell warrants that the Professional Services shall be performed by qualified personnel in a workmanlike manner consistent with or superior to good practice in the US information technology services industry. Customer's exclusive remedy and Dell's sole obligation for any breach of foregoing warranty shall be for Dell to re-perform the non-conforming Professional Services at no charge or cancel the fees applicable to the non-conforming Services. All breaches of the warranty stated in this Section must be reported within 30 days of the performance of the Services.

5. **Suspension of Professional Services.** Dell may suspend Professional Services if Customer purchased the Professional Services through a reseller and the reseller is delinquent on its payment obligations to Dell due to nonpayment by Customer. If Professional Services is purchased through a reseller and the agreement between Customer and such reseller expires or is terminated prior to the end of a SOW, the terms between Customer and the reseller to which Dell is a third party beneficiary shall remain in force as between Dell and Customer.

6. **Intellectual Property.** During the course of providing Professional Services, Dell may create and provide to Customer items including, but not limited to documents, designs, computer code, know-how, and methodologies which are protected by the intellectual property law of the United States, Canada, or the location in which the Professional Services are being provided ("**IP**"). Subject to payment in full, Customer is hereby granted a perpetual, irrevocable (except for non-payment), non-transferable, non-sublicenseable license to use the IP and any pre-existing Dell intellectual property that may be provided to Customer as part of the Professional Services ("**Pre-existing Dell IP**") for non-commercial purposes to manage its and its Affiliates' internal business operations. Except as may otherwise be expressly stated in an SOW, Dell shall have sole and exclusive ownership of all IP, except (a) Customer shall retain all its rights in any Customer information or pre-existing intellectual property that may be contained in the IP and (b) Dell may not disclose or distribute the IP to any third party unless it first removes any such Customer information or intellectual property. Other than the license granted to Customer in this Section, Dell shall retain all rights and ownership in all Pre-existing Dell IP.