



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/24/11		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, repealing prior Council action approving the Agreement with Microsoft Corporation for support services on October 25, 2010; approving a new Agreement By and Between Microsoft Corporation and the City of Plano, Texas in an amount not to exceed \$70,620.00 for support services; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,828,389	0	2,828,389
Encumbered/Expended Amount	0	-2,073,054	0	-2,073,054
This Item	0	-2,310	0	-2,310
BALANCE	0	753,025	0	753,025
FUND(S): TECHNOLOGY SERVICES FUND (066)				
<p>COMMENTS: The additional funds required for this secondary Microsoft Support agenda item are available in the 2010-11 Technology Services adopted budget. The remaining balance will be used for other maintenance agreements and support.</p> <p>STRATEGIC PLAN GOAL: Software support and service agreements relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Technology Services recommends Council approve an agreement with Microsoft Corporation through the Department of Information Resources, State of Texas (DIR), in the amount of \$70,620 for a premier support services agreement to provide the City with critical Microsoft support. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter F of the Local Government Code and by doing so satisfies any Sate Law requiring local governments to seek competitive bids for items. (DIR Contract No. DIR-SDD-821).</p>				
List of Supporting Documents: Staff Memo and Contract and Resolution			Other Departments, Boards, Commissions or Agencies	

Interoffice Memo

Date: January 13, 2011
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Microsoft Premier Support Contract

Since substantial changes were made to the contract between Microsoft Corporation and the City of Plano after it was approved by the City Council on October 25, 2010, Technology Services is requesting City Council repeal their earlier approval of the contract for Microsoft Premier Support services, and approve the new contract terms and conditions with the pricing of \$70,620.00. This purchase is being made through the State of Texas DIR contract number DIR-SDD-821 and will be for one year. This support contract provides the City with critical Microsoft support. It includes a total of 80 hours of support assistance hours and a total of 120 hours of support for problem resolution support. This support contract is crucial for our continuing support of the network. With it, we improve our network continuity and have less downtime for outages.

A Resolution of the City Council of the City of Plano, Texas, repealing prior Council action approving the Agreement with Microsoft Corporation for support services on October 25, 2010; approving a new Agreement By and Between Microsoft Corporation and the City of Plano, Texas in an amount not to exceed \$70,620.00 for support services; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, on October 25, 2010, the City Council approved an agreement with Microsoft Corporation for support services with the Microsoft system; and

WHEREAS, the department requests that the Council repeal its prior action approving the agreement on October 25, 2010 as substantial changes were made to the terms and conditions of the agreement after it was approved; and

WHEREAS, the City Council has been presented a new agreement for Premier Support Services between Microsoft Corporation and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, upon full review and consideration of the new agreement, and all matters attendant and related thereto, the City Council is of the opinion that its prior action approving the agreement on October 25, 2010 should be repealed, and the terms and conditions in the new agreement should be approved, and that the City Manager or his authorized designee shall be authorized to execute on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The prior action approving the agreement with Microsoft Corporation on October 25, 2010 is hereby repealed.

Section II. The terms and conditions of the new agreement with Microsoft Corporation for support services at an amount not to exceed Seventy Thousand Six Hundred Twenty and 00/100 Dollars (\$70,620.00), having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section III. The City Manager or his authorized designee is hereby authorized to execute the revised agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the revised agreement.

Section IV. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 24th day of January, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND MICROSOFT CORPORATION
FOR PREMIER SUPPORT SERVICE**

THIS CONTRACT is made and entered into by and between **MICROSOFT CORPORATION**, whose address is 5335 Wisconsin Ave., NW, Suite 600, Washington, DC 20015, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**I.
SCOPE OF SERVICES**

Contractor shall provide premier support service for the City's Microsoft Products. These services shall be provided in accordance with this Contract and with The Department of Information Resources Contract No. DIR-SDD-821, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Department of Information Resources Contract No. DIR-SDD-821 on file with the City of Plano Technology Services Department;
- (c) The Premier Support Services Description Agreement, to be executed simultaneously with this Agreement, including the Fee and Named Contracts (Exhibit "A"); and
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
TERM OF CONTRACT**

Services provided under this contract shall commence on January 25, 2011 and expire on January 24, 2012.

**III.
PAYMENT**

Payments hereunder shall be made to Contractor within thirty (30) days of receiving Contractor's invoice for the services to be provided pursuant to this contract. Total compensation under this contract shall not exceed the sum of **SEVENTY THOUSAND SIX HUNDRED TWENTY AND 00/100 DOLLARS (\$70,620.00)**.

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

IV. DESCRIPTION OF SERVICES

Contractor will provide the support services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the Department of Information Resources Contract No. DIR-SDD-821, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

V. CITY CONTACT

City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

VI. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

VII. TIME AND PLACE OF SERVICE, LOSSES FROM NATURAL CAUSES

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Contractor or its subcontractors will not be imposed as a site access requirement. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**X.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor entity. Contractor may subcontract any portion of its performance under this Agreement. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**XI.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XII.
HINDRANCES AND DELAYS**

Neither party is liable for delays or lack of performance resulting from any causes or acts of God that are beyond that party's reasonable control.

XIII.
AFFIDAVIT OF NO PROHIBITED INTEREST

To the extent copies are provided to Contractor, Contractor acknowledges and represents Contractor is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "B."

XIV.
DEFAULT/TERMINATION

If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If Contractor is the defaulting party, Contractor will have the opportunity to provide a written plan to cure the default that is acceptable to the City. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by City to Contractor will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

XV.
SEVERABILITY

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

XVI.
TERMINATION

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those

Services and City agrees to pay for such services on a time and materials basis at Contractor's then effective hourly rates.

**XVII.
PROPRIETARY INFORMATION; CONFIDENTIALITY;
INTELLECTUAL PROPERTY RIGHTS**

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Agreement will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

**XVIII.
MAILING OF NOTICES**

Unless instructed otherwise in writing, Contractor agrees that all notices or communications to City permitted or required under this Contract shall be addressed to City at the following address:

City of Plano
Technology Services
P.O. Box 860358
Plano, Texas 75086-0358
Attn: David Stephens

City agrees that all notices or communications to Contractor permitted or required under this Contract shall be addressed to Contractor at the following address:

Microsoft Corporation
5335 Wisconsin Ave., NW
Suite 600
Washington, DC 20015
Attn: Kevin Hartley
Senior Attorney

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

**XIX.
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

City agrees to reference this Agreement and The Department of Information Resources Contract No. DIR-SDD-821 on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XX.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XXI.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

MICROSOFT CORPORATION

Date: 01/14/11

By: David T. Gallagher
Name: David T. Gallagher
Title: Director of Contracts

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF Virginia §

COUNTY OF Fauquier §

This instrument was acknowledged before me on the 14 day of January, 2011 by David T. Gallagher of MICROSOFT CORPORATION, a Washington corporation on behalf of said corporation.



Melissa Ranslem
Notary Public, State of ~~Texas~~
Virginia

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 20___ by _____, **Thomas H. Muehlenbeck**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Exhibit A

State and Local Government – Microsoft Premier Support Services Description

DIR-SDD-821

Tex DIR Website:

<http://www.dir.state.tx.us/store/busops/go-direct/microsoft821.htm#con>

(Microsoft Affiliate to complete)

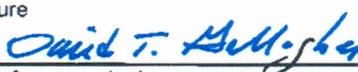
Services Description Number.
(For Microsoft Internal Purposes Only)
MSL Number

U7025244

This services description (“**Services Description**”) is made pursuant to the Microsoft Master Services Agreement – State & Local (the “**Agreement**”) effective as of 10/17/2008, which is incorporated herein by this reference. In this Services Description “**You**”, “**Your**” or “**Customer**” means the undersigned customer and “**We**,” “**Us**,” or “**Our**” means the undersigned Microsoft affiliate. Any terms not otherwise defined herein will assume the meanings set forth in the Agreement. This Services Description is comprised of this cover page and the Services Description terms below, which are incorporated herein by this reference.

Customer Invoice Information		
Name of Customer City of Plano	Contact Name (This person receives invoices under this Services Description unless otherwise specified on Your purchase order.)	
Name of Customer or Affiliate that executed the Agreement if different than the undersigned State of Texas, acting by and through the Department of Information Resources		
Street Address	Contact E-mail Address	
City	State/Province	Phone
Country	Postal Code	Fax
Invoicing		
Premier Support is a prepaid service and all fees and any applicable taxes are due upon acceptance of this Services Description. We must be in receipt of a purchase order, check, or other acceptable form of payment before We will begin providing Services. We will invoice You for additional Services performed and expenses incurred. Our invoices are payable in full within 30 days of receipt by You and will be directed to Your representative for payment at the address shown above unless otherwise provided in a purchase order. Notwithstanding the foregoing, multi-year Service Descriptions will be invoiced upon Our acceptance of this Services Description for year one and the remaining installments will be invoiced at the subsequent anniversaries of the Commencement Date as defined on the Fee and Named Contacts Schedule(s). We reserve the right to adjust Our fees prior to entering into any new Fee and Named Contacts Schedule(s).		
Term		
This Services Description will commence on <u>1/25/2011</u> and will expire on <u>1/24/2012</u> (the “Expiration Date”) unless otherwise extended by a subsequent FNC(s).		

By signing below the parties acknowledge and agree to be bound to the terms of the Agreement and this Services Description.

Customer	Microsoft Affiliate
Name of Customer (please print) City of Plano	Name Microsoft Corporation
Signature	Signature 
Name of person signing (please print)	Name of person signing (please print) David T. Gallagher

Title of person signing (please print)	Title of person signing (please print) Director of Contracts
Date	Date 01-14-2011

1. OVERVIEW. This Services Description describes the various types of services that may be obtained (the "Services"). In addition, it sets forth the parties' respective responsibilities, prerequisites and assumptions that underlie the provision of the Services, applicable fees, and additional terms and conditions. The Services focus on the following key areas:

Support Account Management from an assigned Microsoft resource ("Services Resource") helps to build and maintain relationships with Your management and service delivery staff and helps You arrange each element of the Premier Support to meet Your business requirements.

Workshops help You to prevent problems, increase system availability and assist with creating products and solutions based on Microsoft technologies.

Problem Resolution Support provides assistance for problems with specific symptoms encountered while using Microsoft products, where there is a reasonable expectation that the problem is caused by Microsoft products.

Support Assistance provides short-term advice and guidance for problems not covered with Problem Resolution Service as well as requests for consultative assistance for design, development and deployment issues.

Information Services provide Your staff with the latest knowledge on Microsoft technologies to enhance Your in-house support capabilities.

2. AVAILABLE SERVICES. You may utilize any combination of the following Services. Unless We specify otherwise, the Services are charged on an hourly basis and will be deducted from the total number of hours You have purchased as set forth in the attached Fee and Named Contacts Schedule(s). The complete list of Services below may not be available in all countries. For a detailed list of Services available outside the US, please contact Your Services Resource.

2.1 Support Account Management. Support Account Management services are intended to help coordinate the support and services relationship. The Services Resource is Your advocate within Microsoft and facilitates a team that can provide Workshops, Problem Resolution Support, and Support Assistance. The Services Resource also serves as the point of information delivery and provides Your feedback regarding the Services to other Microsoft groups. The Services Resource will engage with You in the following activities which will be deducted from the pre-paid hours listed in the "Premier Support Fees" section below:

- a. Planning and Resource Facilitation. At the commencement of this Service Description, an orientation and planning session can be conducted with Your management and staff via teleconference or onsite if an onsite visit has been purchased. The purpose of this meeting is to discuss the Services available, gather input regarding Your support needs, and jointly plan Your use of the Services.
- b. Status Meetings and Reporting. A standard status report can be prepared on a regular basis, to summarize the Services delivered during the previous reporting period. Status meetings will be conducted to discuss Service activities, monitor Your satisfaction levels, and discuss actions or adjustments that may be required. Customized reporting can be provided at Your request and any additional related labor will be deducted from Your Support Assistance hours.
- c. Escalation Management. Support issues that require escalation to other resources within Microsoft can be closely managed by the Services Resource to expedite resolution.

2.2 Workshops and Events. The goal of Workshops and Events is to provide You proactive technical information to assist in the design, development or deployment of Microsoft technologies. **All registration requirements for Workshops and Events must be completed by You 60 days prior to the expiration date of the applicable Fee and Named Contacts Schedule(s).** Additional benefits may include instruction to help reduce the number and minimize the impact of problems related to Microsoft Products that You experience. Workshops and Events can include the following:

- a. Workshops. We can conduct instructor-led training sessions that emphasize Microsoft technologies at Your facility or on location at Microsoft. If You elect to have a Workshop conducted at Your facility, We will provide You with specifications for configuring Your environment prior to the delivery of the Workshops. Workshops are

individually scoped and priced depending upon the length, delivery location and material presented. Your Services Resource can provide You with a current list of available Workshops.

- b. **Events.** We can provide broad and deep technical development-focused presentations, combined with hands-on labs that provide training and facilitate Your implementations of Microsoft technologies. These Events provide the opportunity to interact with Microsoft product groups, Premier support development resources and marketing contacts. Your Services Resource can provide You with notification of scheduled Events.

2.3 Problem Resolution Support. Problem Resolution Support provides assistance for problems with specific symptoms encountered while using Microsoft products, where there is a reasonable expectation that the problems are caused by Microsoft products. Problem Resolution Support is available 24 hours a day, 7 days a week. Requests for support may be submitted via telephone or electronically through the Premier online website by Your designated contacts, except for Severity 1 and A which must be submitted via telephone as set forth below in Section 2.3(a). Problem Resolution Support can include any combination of the following:

- a. **Problem Request (Break-Fix).** An assisted break-fix support request, also known as an incident, is defined as a single support issue and the reasonable effort needed to resolve it. A single support issue is a problem that cannot be broken down into subordinate issues. If a problem consists of subordinate issues, each shall be considered a separate incident. Incidents requiring an onsite visit will be charged on an hourly basis and will include charges for reasonable travel and living expenses. In certain situations, We may provide You with a modification to the commercially available Microsoft product software code to address specific critical problems ("Hotfix(es)") in response to an assisted break-fix support request. Hotfixes are designed to address Your specific problems and are not regression tested. Except as otherwise provided herein or in an Exhibit, Hotfixes may not be distributed to unaffiliated third parties without Our express written consent.

Problem resolution support is charged on an hourly basis and includes the commercially reasonable amount of hours of Services necessary to troubleshoot and help resolve the support issue. Hours-based incidents are deducted from the pre-paid hours set forth in the attached Fee and Named Contacts Schedule(s) or charged to You in arrears if all pre-paid hours have been exhausted.

You are responsible for setting the initial severity level in consultation with Us and You can request a change in severity level at any time. The incident severity will determine the response levels within Microsoft and estimated response times and Your responsibilities are defined in the following table:

Severity	Situation	Our Expected Response	Your Expected Response
1 Submission via phone only	<ul style="list-style-type: none"> Catastrophic business impact: Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention 	<ul style="list-style-type: none"> 1st call response in 1 hour or less Our Resources at Your site as soon as possible. Continuous effort on a 24x7 basis Rapid Escalation within Microsoft to Product teams Notification of Our Senior Executives 	<ul style="list-style-type: none"> Notification of Your Senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis² Rapid access and response from change control authority
A Submission via phone only	<ul style="list-style-type: none"> Critical business impact: Significant loss or degradation of services Needs attention within 1hour 	<ul style="list-style-type: none"> 1st call response in 1 hour or less Our Resources at Your site as required. Continuous effort on a 24x7 basis Notification of Our Senior Managers 	<ul style="list-style-type: none"> Allocation of appropriate resources to sustain continuous effort on a 24x7 basis² Rapid access and response from change control authority Management notification
B Submission via phone or web	<ul style="list-style-type: none"> Moderate business impact: Moderate loss or degradation of services but work can reasonably continue in an impaired manner. Needs attention within 2 Business Hours¹ 	<ul style="list-style-type: none"> 1st call response in 2 hours or less Effort during Business Hours¹ only 	<ul style="list-style-type: none"> Allocation of appropriate resources to sustain Business Hours¹ continuous effort Access and response from change control authority within 4 Business Hours¹
C Submission via phone or web	<ul style="list-style-type: none"> Minimum business impact: Substantially functioning with minor or no impediments of services. Needs attention within 4 	<ul style="list-style-type: none"> 1st call response in 4 hours or less Effort during Business Hours¹ only 	<ul style="list-style-type: none"> Accurate contact information on case owner Responsive within 24 hours.

Business Hours¹

¹ Business Hours are defined as 6AM to 6PM Pacific Time, Monday through Friday excluding holidays.

² We may need to downgrade the severity level if You are not able to provide adequate resources or responses to enable Us to continue with problem resolution efforts.

You may be required to perform problem determination and resolution activities as requested by Us. Problem determination and resolution activities may include performing network traces, capturing error messages, collecting configuration information, changing product configurations, installing new versions of software or new components, or modifying processes.

You are responsible for implementing the procedures necessary to safeguard the integrity and security of Your software and data from unauthorized access and to reconstruct lost or altered files resulting from catastrophic failures.

- b. Rapid Onsite Support Services. You can request on-site support as an additional billable service. Our ability to provide onsite support is subject to Our resource availability, and the tasks performed will vary depending on the situation, environment, and business impact of the issue.
- c. Software Assurance Benefits. You may elect to convert Your Software Assurance 24x7 Problem Resolution Support Incidents (SA PRS Incidents) to Premier Problem Resolution Support (PPRS) hours or incidents for use consistent with Your Premier service plan at the time of transfer. This conversion is based on a local rate calculation that will be provided by your Services Resource. You may be required to purchase additional Support Account Management hours before converting SA PRS incidents/hours. All SA PRS Incidents You transfer are subject to this Services Description.

2.4 Support Assistance. Support Assistance provides short-term advice and guidance for problems not covered with Problem Resolution Support as well as requests for consultative assistance for design, development and deployment issues. Your Services Resource will work with You to determine Your specific Support Assistance needs.

The following are types of Support Assistance that can be utilized under this Services Description:

- a. Infrastructure Support Assistance. Infrastructure Support Assistance includes informal advice, guidance and knowledge transfer intended to help You implement Microsoft technologies in ways that avoid common support issues and decrease the likelihood of system outages.

These services also help You to resolve problems that are not attributed to Microsoft Products including:

- Errors caused by Your networking infrastructure, hardware, non-Microsoft software, operational procedures, architecture, IT service management process, system configuration or human error.
- Multi-vendor coordination interoperability problems. Upon Your request, We will collaborate with third-party software suppliers to help resolve complex multi-vendor product interoperability issues.

- b. Reviews. A review is an assessment of a specific system, application or architecture to address design, development, deployment, and supportability issues for current or planned implementations of Microsoft technologies. Each review is individually scoped and estimated prior to scheduling resources, and a written report is produced to document findings and recommendations. **All requests for reviews and the applicable data must be submitted to Us no later than 60 days prior to expiration date of the applicable Fee and Named Contacts Schedule(s).**
- c. Development Support Assistance. Development Support Assistance helps You in Your creation and development of internal applications on the Microsoft platform that integrate Microsoft technologies. Development Support Assistance specializes in Microsoft development tools and technologies.
- d. Lab Access. Microsoft can provide You with access to a lab facility to assist You with product development, benchmarking and testing, prototyping and migration activities on Microsoft products. These facilities must be scheduled in advance and are subject to availability.

2.5 Information Services. Information Services provide You with technical information about Microsoft products and support tools that help You to implement and operate Microsoft products in a more efficient and effective manner. Information Services can include any combination of the following:

- a. Premier online website. The Premier online website provides access to the following information resources at no additional charge:

- Regularly updated product news flashes documenting key support and operational information about Microsoft products.
 - Critical problem alerts notifying You of potentially high-impact problems.
 - Web response tool for submitting and checking the status of support incidents.
 - Microsoft KnowledgeBase of technical articles and troubleshooting tools and guides.
- b. Support Webcasts. Support webcasts are regularly scheduled webcast discussions led by Our program managers, developers and professionals covering key areas of Microsoft technology. These are provided at no additional charge and require high speed internet access to participate.

2.6 Additional Services. You may request changes or additions to this Services Description at any time. Additional Services that are available for purchase, and the specific terms and conditions applicable to those Services, may be set forth in this Services Description, an attached Exhibit and/or Fee and Named Contacts Schedule(s). Additional Services will be invoiced at the prevailing price at the time the Services are rendered or upon acceptance of an Exhibit and/or Fee and Named Contacts Schedule(s) referencing this Services Description. If you purchase additional Problem Resolution Support hours or convert Software Assurance hours to Problem Resolution Support hours, you may also be required to purchase additional Services Management hours. Prior to delivering additional Services, We must be in receipt of a purchase order, check or other acceptable form of payment.

3. PREREQUISITES AND ASSUMPTIONS. Our delivery of Services under this Services Description is based upon the following Prerequisites and Assumptions:

- a. All Services will be provided remotely to Your locations in the United States unless otherwise set forth in an Exhibit to this Services Description (see section 3(k) below). Where additional onsite visits are mutually agreed, and not pre-paid and defined on your Fee and Named Contacts Schedule, You will be billed for reasonable travel and living expenses in arrears.
- b. All Services will be provided in the English language unless otherwise agreed to by You and Us in writing or in an Exhibit to this Services Description.
- c. We will provide support for all United States versions of commercially released generally available Microsoft products unless otherwise set forth in an Exhibit to this Services Description or specifically excluded on the Premier online website. Support for those Microsoft products that have entered the Extended Support Phase, as defined on the Premier online website, will be charged on an hourly basis only. Non-security related Hotfix support is not available for Microsoft products that have entered the Extended Phase of support unless You have purchased such support in an Exhibit to this Services Description.
- d. Support for pre-release products is not provided except as otherwise provided in an attached Exhibit.
- e. **ALL SERVICES, INCLUDING ANY ADDITIONAL SERVICES PURCHASED DURING THE TERM OF FEE AND NAMED CONTACTS SCHEDULE(S) SHALL BE FORFEITED IF NOT UTILIZED DURING THE TERM OF THE APPLICABLE FEE AND NAMED CONTACTS SCHEDULE(S).**
- f. Support Assistance is dependent upon the availability of resources.
- g. We can access Your system via remote dial-in to analyze problems at Your request. Our personnel will access only those systems authorized by You. We may provide You with software to assist with problem diagnosis and/or resolution. Such software is Microsoft's property and must be returned to Us promptly upon request. In order to utilize remote dial-in assistance, You must provide Us with the appropriate access and necessary equipment.
- h. You must have access to the Internet in order to take advantage of Internet-based services.
- i. Additional Prerequisites and Assumption may be set forth in relevant Exhibits.
- j. When purchasing Problem Resolution Support, we will require a corresponding quantity of Support Account Management to facilitate delivery of your Problem Resolution Support. If you purchase additional Problem Resolution Support, Support Assistance, or if you convert Software Assurance hours to Problem Resolution Support hours or incidents, you may be required to purchase additional Support Account Management.
- k. Resource Site Visits (number of trips to Your location) are mutually agreed upon at acceptance of this Services Description and the total fixed price amount for these visits are included in Your Fee and Named Contacts Schedule.

4. YOUR RESPONSIBILITIES. This section sets forth Your performance obligations under this Services Description. Our performance is predicated upon You fulfilling the following responsibilities in addition to those set forth in Section 2.3 and any applicable Exhibits. Failure to comply with the following responsibilities may result in delays of Service.

- a. You can designate named contacts as set forth in the attached Fee and Named Contacts Schedule(s), one of which will be the Customer Support Manager ("CSM") for support related activities. The CSM is responsible for leading Your team and will manage all of Your support activities, and internal processes for submitting support requests to Us. Each contact will be supplied with an individual account number for access to the Premier online website, support issue submission and access to Your Services Resource. In addition to the named contacts, You may also identify two types of group contacts as follows:
 - One type will receive a shared account ID that provides access to the Premier online website for information content and the ability to submit support requests through the Premier online website or by telephone.
 - One type will receive a shared account ID that provides access to the Premier online website for information content only.
- b. You agree to work with Us to plan for the utilization of Services based upon the service level You purchased.
- c. You agree to provide an internal escalation process to facilitate communication between Your management and Us as appropriate.
- d. You agree to respond to customer satisfaction surveys We may provide to You from time-to-time regarding the Services.
- e. You agree to provide reasonable office space, telephone and high speed internet access, and access to Your internal systems and diagnostic tools to Our Services Resources that are required to be on-site.
- f. You are responsible for any travel and expenses incurred by Your employees or contractors.

5. ADDITIONAL TERMS AND CONDITIONS. Except as otherwise set forth in an Exhibit (or attachment to an Exhibit) to this Services Description, this section governs the ownership and use rights of any computer code or other materials that may be provided under this Services Description.

- a. **Pre-existing Work.** All rights in any computer code or materials developed or otherwise obtained by or for Us or Our affiliates, or You or Your affiliates independently of this Services Description ("Pre-existing Work") shall remain the sole property of the Party providing the Pre-existing Work. During the performance of the Services for this Services Description, each Party grants to the other Party (and Our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its Pre-existing Work provided to the other Party solely for the performance of such Services. We grant You a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) Our Pre-existing Work in the form delivered to You for Your internal business operations without any obligation of accounting or payment of royalties. Your licenses to Our Pre-existing Work are conditioned upon Your compliance with the terms of the Agreement and this Services Description and the perpetual license applies solely to Our Pre-existing Work that is left to You at the conclusion of Our performance of the Services.
- b. **Materials.** All rights in any materials developed by Us (other than software code) and provided to You in connection with the Services ("Materials") shall be owned by Us except to the extent such Materials constitute Your Pre-existing Work. Upon payment in full, We grant You a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify the Materials solely for Your internal business operations and without any obligation of accounting or payment of royalties. You may sublicense the rights granted herein to Your Affiliates. All rights not expressly granted, are reserved.
- c. **Sample Code.** We grant You a nonexclusive, perpetual, royalty-free right to use and modify any software code provided by Us for the purposes of illustration ("Sample Code") and to reproduce and distribute the object code form of the Sample Code, provided that You agree: (i) to not use Our name, logo, or trademarks to market Your software product in which the Sample Code is embedded; (ii) to include a valid copyright notice on Your software product in which the Sample Code is embedded; and (iii) to indemnify, hold harmless, and defend Us and Our suppliers from and against any claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of the Sample Code.
- d. **Open Source License Restrictions.** Because certain third party license terms require that computer code be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge (collectively, "open source license terms"), the license rights that each Party has granted to any computer code (or any intellectual property associated

therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject the other's computer code to open source license terms.

Furthermore, each Party warrants that it will not provide or give to the other Party computer code that is governed by open source license terms.

e. **Reservation of Rights.** All rights not expressly granted in this Section 5 are reserved..

6. Attachments: The following Schedule(s) and Exhibits are attached at the execution of this Services Description:

✓ Microsoft Premier Support Services Description Schedule: Fee and Named Contacts Schedule

**Microsoft Premier Support Services Description Schedule:
Fee and Named Contacts**

DIR-SDD-821

Tex DIR Website:

<http://www.dir.state.tx.us/store/busops/go-direct/microsoft821.htm#con>

Customer: City of Plano	(Microsoft Affiliate to complete) Premier Support Services Description Number (Microsoft Affiliate to complete) Schedule Number	
-------------------------	--	--

This Schedule is made pursuant to the Microsoft Premier Support Services Description identified above (the "Services Description"). The terms of the Services Description and applicable Exhibits are incorporated herein by this reference and by accepting Our performance of Services under this Schedule You agree to be bound by these terms. Any terms not otherwise defined herein will assume the meanings set forth in the Agreement and the Services Description. Regardless of any terms and conditions contained in any purchase order, the terms of this Schedule apply.

Term
 This Schedule will commence on 1/25/2011 (the "Commencement Date") and will expire on 1/24/2012 (the "Expiration Date").

1. PREMIER SUPPORT SERVICES AND FEES. The quantities listed in the table below represent the amount of Services that You have pre-purchased for use during the term of this Schedule and applicable fees.

a. Fee Summary

Services Summary	Price (US\$)
Country: United States	\$70,620
Total	\$70,620

b. Services by Support Location

Country: United States (Premier Standard 0 +10)
<ul style="list-style-type: none"> • Support Account Management (estimated at 130) • Up to 80 hours Workshops, Support Assistance* • Up to 120 hours Problem Resolution Support

*All registration requirements for Workshops and Events must be completed by You no later than 60 days prior to the expiration date of this Fee and Named Contacts Schedule(s).

2. MICROSOFT CONTACT

Microsoft Contact: Contact for questions and notices about this Schedule and the Services Description:

Microsoft Contact Name: Robert Van Meter
Address: Microsoft Corporation 7000 N. SH 161, LC-1/3761 Irving, TX 75039
Phone: 469-775-7048
Email: robvme@microsoft.com
Facsimile: 425-708-0154

3. CUSTOMER NAMED CONTACTS

a. Premier Customer Named Contacts: Any subsequent changes to the Named Contacts should be submitted to the Services Resource CSM.

CSM Name:	Named Contact Name:
Address: _____ _____	Address: _____ _____
Phone: ()	Phone: ()
Email:	Email:
Facsimile: ()	Facsimile: ()

Named Contact Name:	Named Contact Name:
Address: _____ _____	Address: _____ _____
Phone: ()	Phone: ()
Email:	Email:
Facsimile: ()	Facsimile: ()

EXHIBIT "B"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of **Microsoft Corporation**, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **Microsoft Corporation** is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Microsoft Corporation
Name of Contractor

By: David T. Gallagher
Signature

David T. Gallagher
Print Name

Director of Contracts
Title

1-14-11
Date

STATE OF Virginia §
§
COUNTY OF Fauquier §

SUBSCRIBED AND SWORN TO before me this 14 day of January,
2011.

Melissa Ranslem
Notary Public, State of Virginia

