



DATE: June 10, 2009

TO: Honorable Mayor and City Council Members

FROM: Michael Sherwood, Chief Information Officer

SUBJECT: **APPROVAL OF MICROSOFT MASTER VOLUME SOFTWARE LICENSING AGREEMENT FOR SOFTWARE LICENSING AND MAINTENANCE.**

SYNOPSIS

Staff recommends the City Council approve a forty two month master software licensing agreement with Microsoft of Redmond, Washington, in the amount of \$276,980, for software licensing and annual maintenance of Microsoft Windows Operating Systems and associated applications such as Windows XP, Vista, Server 2003, 2008 and Microsoft Enterprise Desktop software, including Office (Excel, Word, PowerPoint and Outlook), and the connectivity licenses to access the server based applications; approve the Microsoft financing Master Installment Payment Agreement with CIT Technology Financing Services, Inc. a Florida corporation, to finance the lease of the software and four years of annual maintenance and authorize the City Manager to execute the agreement.

BACKGROUND

The City currently utilizes a Microsoft master software licensing agreement, negotiated by the State of California in alliance with Riverside County. The current agreement is being revised to take advantage of improved licensing terms and pricing.

Microsoft is the sole source manufacturer of its software. Microsoft only allows resellers such as Dell Computer Corporation to sell and distribute Microsoft software. Dell Computer Corporation is the reseller used by the City to provide the Microsoft software licenses.

ANALYSIS

By utilizing the Microsoft Master Volume Licensing Agreement the City saves approximately forty percent of the cost of a single Microsoft software license. The more significant cost savings is the time saved in maintaining software upgrades and providing remote desktop software support. Also, the Microsoft Master Volume Licensing Agreement eliminates the need for multiple hard copy disks of the software. This approach not only saves space in maintaining hundreds of copies of the same

SI 2011 11

software licenses, it saves in off-site storage costs, recycling costs and the man hours associated with the listed time consuming tasks.

Instead of installing each Microsoft software license on every workstation computer in the City, the software is installed when the workstation is purchased. Then, the Microsoft suite of software is activated and maintained by servers that are managed by Information Technologies analysts and technicians. Information Technologies staff may update Microsoft software through remote access to the user's workstation computers through the servers using the Microsoft connectivity licenses. This approach enables the Information Technologies Division to manage hundreds of Microsoft applications for hundreds of workstation computers without visiting individual workstations to update software or troubleshoot software challenges. This approach also saves a significant amount of time for the user who has reported a Microsoft software challenge to the Support Center.

FISCAL IMPACT

The combined cost of the software, annual maintenance, and interest for the Microsoft Master Volume software agreement is \$276,980. The first of six semi-annual software lease and maintenance payments of \$46,163.28 is due on September 1, 2009. Each additional semi-annual lease payment will be due consecutively in March and September. Funding of the agreement will be effective beginning with the 2009-2010 fiscal year budget. The funding account number with semi-annual available funds effective July 1, 2009, is 00841.194282.5214.

COMMISSION/COMMITTEE REPORT

Not applicable

CITY ATTORNEY'S ANALYSIS

The referenced document has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends the City Council approve a forty two month master software licensing agreement with Microsoft of Redmond, Washington, in the amount of \$276,980, for software licensing and annual maintenance of Microsoft Windows Operating Systems and associated applications such as Windows XP, Vista, Server 2003, 2008 and Microsoft Enterprise Desktop software, including Office (Excel, Word, PowerPoint and Outlook), and the connectivity licenses to access the server based applications; approve the Microsoft financing Master Installment Payment Agreement with CIT Technology Financing Services, Inc. a Florida corporation, to finance the lease of the software and four years of annual maintenance and authorize the City Manager to execute the agreement.

PREPARED BY:



Michael L. Sherwood
Chief Information Officer,
Information Technologies Division

SUBMITTED BY:

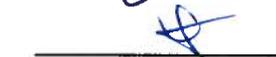


Peter A. Weiss
City Manager

Reviewed By:

Michelle Skaggs Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director

Microsoft® Financing

Master Agreement 774122

MASTER INSTALLMENT PAYMENT AGREEMENT (Software and Services)

TO OUR VALUED CUSTOMER: This Master Installment Payment Agreement ("Master Agreement") has been written in "Plain English". When we use the words **you** and **your** in any Schedule and this Master Agreement, we mean you, our customer, which is the Customer indicated below. When we use the words **we**, **us**, and **our** in this Agreement, we mean the Lender, CIT Technology Financing Services, Inc. Our address is One Deerwood, 10201 Centurion Parkway North, Suite #100, Jacksonville, FL 32256.

This Master Installment Payment Agreement is dated as of May 11th, 2009 by and between CIT Technology Financing Services, Inc. as the Lender, and City of Oceanside, CA, as the Customer with a principal place of business at 300 North Coast Hwy, Oceanside, CA 92054.

TERMS AND CONDITIONS

BY SIGNING THIS MASTER AGREEMENT: (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS MASTER AGREEMENT; (ii) YOU AGREE THAT YOU CANNOT TERMINATE OR CANCEL ANY SCHEDULE TO THIS MASTER AGREEMENT, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER EACH SCHEDULE TO THIS MASTER AGREEMENT, AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON, INCLUDING BUT NOT LIMITED TO: (1) LOSS, DAMAGE OR THEFT TO OR OF ANY ONE OR MORE OF THE PRODUCTS, 2) ANY CLAIM THAT LICENSOR HAS BREACHED ANY REPRESENTATION, WARRANTY, COVENANT OR OTHER OBLIGATION OR OTHERWISE FAILED TO PERFORM UNDER THE LICENSE AGREEMENT, OR (3) ANY REVOCATION, EXPIRATION OR TERMINATION OF THE LICENSE AGREEMENT OR THE LICENSES GRANTED THEREUNDER, FOR ANY REASON; (iii) YOU WILL USE THE PRODUCTS ONLY FOR BUSINESS PURPOSES; (iv) YOU WARRANT THAT THE PERSON SIGNING ANY SCHEDULE TO THIS MASTER AGREEMENT FOR YOU HAS THE AUTHORITY TO DO SO; (v) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO ANY SCHEDULE TO THIS MASTER AGREEMENT RATHER THAN PURCHASE THE PRODUCTS FOR THE TOTAL CASH PRICE; AND (vi) YOU AGREE THAT ANY SCHEDULE TO THIS MASTER AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS AND YOU CONSENT TO THE JURISDICTION OF ANY LOCAL, STATE, OR FEDERAL COURT LOCATED WITHIN THE COMMONWEALTH OF MASSACHUSETTS. YOU AND WE EXPRESSLY WAIVE ANY RIGHTS TO A TRIAL BY JURY.

1. FINANCING OF SOFTWARE LICENSE FEES AND SERVICES: ACCEPTANCE. You agree to finance the Total Product Fee for the software license fee associated with the software ("Software") described in any schedule ("Schedule") to the Master Agreement and the services ("Services") related thereto, if any, (the Software and the applicable Services identified in a Schedule are collectively referred to as the "Products") that incorporates this Master Agreement by reference and which Software and Services, if any, are licensed by you from either Microsoft Corporation or one of its affiliates (collectively "Microsoft Corporation" or "MC") or any authorized Microsoft provider or other third party (each a "Licensor", "Supplier" or "Product Provider" collectively and individually, as applicable, refers to the manufacturer, sub-licensor, distributor or supplier of the Software and/or provider of the Services). Each such Schedule will incorporate and be governed by the terms and conditions of this Master Agreement as well as the specific terms and conditions set forth in each Schedule. Each Schedule shall constitute a separate and distinct finance agreement or loan from this Master Agreement and all other Schedules. In the event of any conflict between the terms of any Schedule and this Master Agreement, the terms of such Schedule shall prevail. The termination of this Master Agreement will not affect any Schedules executed prior to the effective date of such termination. All obligations under this Master Agreement shall survive the termination of the licenses relating to the Software. You will arrange for the delivery and installation of the Products. The applicable Schedule will begin, and be valid and enforceable against you, on the date when the Schedule is signed by you (*whether or not we have received a copy of the Schedule and/or the Acceptance Certificate signed by you*). The Products will be irrevocably accepted by you upon the delivery to us of a properly signed Acceptance Certificate, but any failure to execute and deliver such Acceptance Certificate will not relieve you of your obligations to us hereunder or under each Schedule. The periodic installment payments ("Installment Payments") due under a Schedule will be due and payable as set forth therein. If the Products have been accepted by you in accordance with this Section 1, the remaining Installment Payments will be due on the day of each subsequent month or such other time period specified on our invoices to you. If any Installment Payment or other amount payable under a Schedule is not paid within 10 days of its due date, you will pay us a late charge not to exceed 7% of each late payment and each month thereafter, past due interest on the unpaid balance at 1% per month (or such lesser rate as is the maximum rate allowable under applicable law). You acknowledge that the sum of your Installment Payments may exceed the Total Product Fee. *You authorize us to amend a Schedule by increasing or decreasing the Total Product Fee (and therefore the Amount Financed and Installment Payment Amounts) by up to 15% if the final, total cost of the Products you order changes.*

2. NO WARRANTIES. We are financing your use of the Products under Schedules on an "AS-IS" basis. YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE, LICENSE, SUB-LICENSE OR SUPPLY THE PRODUCTS, WE DO NOT REPRESENT THE LICENSOR, AND YOU HAVE SELECTED THE PRODUCTS AND SUPPLIER BASED UPON YOUR OWN JUDGMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT. YOU AGREE THAT NEITHER THE LICENSOR NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE LICENSOR IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY.

3. LICENSE AGREEMENT. YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ AND RECEIVED EACH LICENSE AGREEMENT ("LICENSE AGREEMENT") RELATED TO THE SOFTWARE UNDER THE APPLICABLE SCHEDULE. YOU ARE THE LICENSEE OR SUB-LICENSEE UNDER EACH SUCH LICENSE AGREEMENT AND YOU AGREE TO PERFORM ALL THE OBLIGATIONS OF THE LICENSEE AND/OR SUB-LICENSEE UNDER EACH SUCH LICENSE AGREEMENT. YOU WILL USE THE SOFTWARE IN ACCORDANCE WITH THE TERMS OF EACH SUCH LICENSE AGREEMENT. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT WE HAVE NOT ASSUMED ANY OF THE LICENSOR'S OBLIGATIONS UNDER ANY LICENSE AGREEMENT OR OTHER AGREEMENT AND THAT WE SHALL HAVE NO LIABILITY AND YOU SHALL HAVE NO REMEDY AGAINST US FOR THE PERFORMANCE OF THE LICENSOR'S OBLIGATIONS UNDER ANY LICENSE AGREEMENT OR OTHER AGREEMENT. In the event of any breach or default under the License Agreement, your sole remedy shall be against the Licensor under the License Agreement. You further agree that in the event there is a conflict between the terms of the License Agreement and this Master Agreement or any Schedule, the terms of this Master Agreement or the relevant Schedule shall prevail.

4. TAXES AND FEES. If the sales tax related to the Products is calculated by the Supplier and added to the cost of the Products being financed under a Schedule, your periodic Installment Payment will reflect the financing of such tax. NOTE: Your "quote" and/or the Amount Financed above may not have included applicable taxes, or may have included "estimated" taxes. If your invoices reflect a different Installment Payment Amount than stated in the relevant Schedule, such difference is due to the addition of applicable taxes or an adjustment for "actual" taxes. If taxes are not financed for you, you agree to pay such taxes directly to the Licensor and/or Supplier.

5. TITLE TO THE PRODUCTS. You will keep the Products free of all liens and encumbrances. The Software Licensor is the owner and hold title to the Software; you are the licensee and/or sub-licensee of the Software. Upon the acceptance of a Schedule, you acknowledge that we shall pay on your behalf the amounts owing to the Licensor of the Software under the applicable License Agreement.

6. YOUR OBLIGATIONS. You agree that your obligations to pay all amounts due under each Schedule are absolute and unconditional and shall not be subject to any defense, setoff, or counterclaim that you may have against Licensor of the Products, regardless of whether or not (a) Licensor has breached any warranty, representation or other covenant under the License Agreement or other agreement with you, (b) the license(s) granted under the License Agreement have been revoked or otherwise terminated for any reason whatsoever, or (c) the License Agreement has expired or been terminated for any reason whatsoever. Accordingly, in the event of any breach or default under the License Agreement, your sole remedy shall be against Licensor under that License Agreement and you shall have no right to withhold or otherwise

not to make any Installment Payment required hereunder and under all Schedules. In order to secure the payment and performance of your obligations under each Schedule and this Master Agreement, you grant us a first priority security interest in your right to use the Products pursuant to the License Agreement and in all attachments, accessories, additions, substitutions, products, replacements, and proceeds (including insurance proceeds) therefrom. You hereby waive grace, demand, presentment for payment, notice of dishonor or default, notice of intent to accelerate, notice of acceleration and diligence in collecting and bringing suit.

7. DEFAULT. Each of the following is a default ("Default") under this Master Agreement and all Schedules: (a) you fail to pay any Installment Payment or any other payment within 10 days of its due date; (b) you breach any representation, warranty or covenant or otherwise do not perform any of your other obligations under the License Agreement, a Schedule or in any other agreement with us or with any of our affiliates and this failure continues for 10 days after we have notified you of it; (c) you become insolvent, you dissolve or are dissolved, you assign your assets for the benefit of your creditors, you sell, transfer or otherwise dispose of all or substantially all of your assets, or you enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) without our prior written consent, you merge or consolidate with any other entity and you are not the survivor of such merger or consolidation; (e) any guarantor of a Schedule dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed in clause (c) above.

8. REMEDIES. If a Default occurs, we may do one or more of the following: (a) we may cancel or terminate this Master Agreement and all Schedules or any or all other agreements that we have entered into with you; (b) we may require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to: (i) all past due Installment Payments under any or all Schedules, plus (ii) the present value of all unpaid Installment Payments for the remainder of the term of any or all Schedules, each discounted at 4% per year, compounded monthly, plus (iii) all other amounts due or that become due under the Schedules; (c) we may request that the Licensor cease providing maintenance and/or support for the Products and/or terminate the License Agreement and you acknowledge that Licensor, as a third party beneficiary to this Master Agreement, may terminate your rights under the License Agreement, without liability; and d) we may exercise any other right or remedy available at law or in equity. **You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees.** We may also charge you \$25.00 for each check that is returned for insufficient funds or for any other reason or if an ACH debit is not honored by your bank.

9. YOUR REPRESENTATIONS. You represent and warrant to us that: (a) you are an entity duly organized, validly existing and in good standing under applicable state law; (b) each Schedule when executed, and this Master Agreement, is genuine, legal, valid and binding obligation of yours, enforceable against you in accordance with their terms, subject to applicable bankruptcy and other similar laws affecting creditors' rights generally, and the execution, delivery and performance of each Schedule and this Master Agreement will not violate or create a default under any law (including any applicable usury law), regulation, judgment, order, instrument, agreement or charter document binding on you or your property; (c) each Schedule and this Master Agreement has been duly authorized, executed and delivered by you; (d) each signatory of each Schedule and this Master Agreement on behalf of you has the authority to bind you to each Schedule and this Master Agreement; (e) you have read and accepted the terms and conditions of the License Agreement and each Schedule and this Master Agreement; and (f) the financial statements and other information, if any, furnished to us are and will be materially true and correct and prepared in accordance with generally accepted accounting principles consistently applied.

10. ASSIGNMENT. YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLICENSE THE PRODUCTS OR YOUR INTEREST IN ANY SCHEDULE OR THIS MASTER AGREEMENT. We may, without notifying you, sell, assign, or transfer any Schedule and/or this Master Agreement, including but not limited to, sales of participation interests therein to third parties, including but not limited to, Microsoft Financing Corporation. You agree that the assignee will have the same rights and benefits that we have now under any such Schedule and this Master Agreement but not our obligations. The rights of the assignee will not be subject to any claims, defenses or set-off that you may have against us. This waiver will not affect any rights you have against any Licensor to the extent such Licensor is the assignee.

11. INDEMNIFICATION. You are responsible for any losses, damages, penalties, claims, suits and actions (collectively, "Claims"), whether based on a theory of strict liability or otherwise caused by or related to (a) the manufacture, installation, licensing, use, ownership, financing, possession, or delivery of the Products or (b) any defects in the Products. You agree to reimburse us for and if we request, to defend us against, any Claims.

12. CREDIT INFORMATION. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRIES THAT WE DETERMINE ARE NECESSARY. YOU ACKNOWLEDGE THAT WITHOUT FURTHER NOTICE WE MAY USE OR REQUEST ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION SO LONG AS YOUR OBLIGATIONS TO US ARE OUTSTANDING.

13. MISCELLANEOUS. You agree that the terms and conditions contained in each Schedule and this Master Agreement make up the entire agreement between you and us regarding the financing of the Products. Any Schedule or this Master Agreement is not binding on us until we sign it. Any change in any of the terms and conditions of a Schedule or this Master Agreement must be in writing and signed by us. **You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in any Schedule or this Master Agreement.** If we delay or fail to enforce any of our rights under any Schedule or this Master Agreement, we will still be able to enforce those rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail, addressed to the party receiving the notice at its address shown on the front of each Schedule (or to any other address specified by that party in writing) with postage prepaid. All of our rights and indemnities will survive the termination of a Schedule or this Master Agreement. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Installment Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under a Schedule or this Master Agreement, we have the right, but not the obligation, to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one person or entity has signed this Master Agreement, each of you agree that your liability is joint and several hereunder and under all Schedules.

14. FAX TRANSMISSION. A fax version of a Schedule when received by us shall be binding on you for all purposes as if originally signed. **However, such Schedule shall only become effective and binding against us when originally signed by us.** You agree that the only version of such Schedule that is the original for all purposes is the version containing your fax signature and our original signature. If you elect to sign and transmit a Schedule by fax, you waive notice of our acceptance of such Schedule and receipt of a copy of the original Schedule.

CIT TECHNOLOGY FINANCING SERVICES, INC.

Lender
X

Authorized Signature

Print Name & Title

Date

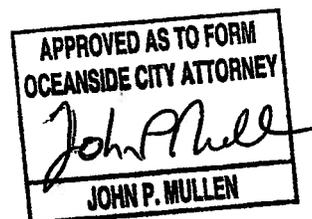
City of Oceanside, CA

Customer
X

Authorized Signature

Print Name & Title

Date



Microsoft Financing

SCHEDULE NO. 806757 TO MASTER INSTALLMENT PAYMENT AGREEMENT 774122

Customer: City of Oceanside, CA

Customer Address: 300 North Coast Hwy
Oceanside, CA 92054

Solution Provider Name & Address	Reference Number	Amount *
Microsoft Licensing GP 1401 Elm St. 5 th Floor Dallas, Texas 75202	Year 2 True Up – EA Products	\$240,668.53

* plus applicable taxes, you acknowledge that tax related adjustments may occur pursuant to the Master Agreement

TOTAL PRODUCT FEE: \$240,668.53

FUNDING DISBURSEMENT DATES AND AMOUNTS (if applicable):

Disbursement Date	Amount	Disbursement Date	Amount	Disbursement Date	Amount
Commencement	\$240,668.53		\$		\$

Finance Terms:

YOU HAVE REQUESTED AND HEREBY EXPRESSLY DIRECT LENDER TO PAY THE TOTAL PRODUCT FEE UNDER THIS SCHEDULE TO PRODUCT PROVIDER(S) WHEN LENDER RECEIVES PRODUCT PROVIDER'S INVOICE, OR, ON THE DATES INDICATED IF MULTIPLE DISBURSEMENT DATES ARE SHOWN, REGARDLESS OF WHETHER ALL PRODUCTS HAVE BEEN DELIVERED. You shall make all product related claims solely against Product Provider and shall, nevertheless, pay

Lender all amounts required to be paid under this Schedule, irrespective of any unsatisfactory resolution of such claims

Amount Financed: \$ 240,668.53

Term: 42 months

Installment Payment Frequency : Semi-annual

Installment First 6 @ \$ 46,163.28 due 09-01-2009

Payment Next 1 @ \$ due

Amount: Next 1 @ \$ due

Your First Installment Payment and each subsequent Installment Payment are due on the date specified on our invoices to you.

1. You agree to finance with us the Total Product Fee (including taxes and professional services fees, if applicable) identified above for the scheduled term specified above ("Term"). You acknowledge that the Total Product Fee may be disbursed by Lender either at commencement of this agreement or in installments as set forth above. You agree that in the event of a Default under this schedule or the Master Agreement, we have no obligation to disburse any pending or future annual installments under this Schedule. This Schedule shall be governed by and incorporates all of the terms and conditions of the Master Installment Payment Agreement identified above ("Master Agreement") and by the terms and conditions set forth in this Schedule or any exhibit or addendum to this Schedule. This Schedule shall constitute an independent finance contract separate and distinct from the Master Agreement or any other Schedule. Capitalized terms used in the Schedule that are not otherwise defined herein shall have the meaning given such terms in the Master Agreement.
2. **BY SIGNING THE MASTER AGREEMENT AND THIS SCHEDULE: (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON ALL PAGES OF THE MASTER AGREEMENT AND THIS SCHEDULE; (ii) YOU AGREE THAT THIS SCHEDULE CANNOT BE TERMINATED OR CANCELLED BY YOU. YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL INSTALLMENT PAYMENTS DUE UNDER THIS SCHEDULE, AND YOU CANNOT WITHHOLD, SET OFF, OR REDUCE SUCH INSTALLMENT PAYMENTS FOR ANY REASON, INCLUDING BUT NOT LIMITED TO (1) LOSS, DAMAGE OR THEFT TO OR OF ANY ONE OR MORE OF THE PRODUCTS (2) ANY CLAIM THAT LICENSOR HAS BREACHED ANY REPRESENTATION, WARRANTY, COVENANT OR OTHER OBLIGATION OR OTHERWISE FAILED TO PERFORM UNDER THE LICENSE AGREEMENT, (3) ANY REVOCATION, EXPIRATION OR TERMINATION OF THE LICENSE AGREEMENT OR THE LICENSES GRANTED THEREUNDER, FOR ANY REASON; OR (4) NON-DELIVERY, NON-PERFORMANCE, OR NON-ACCEPTANCE BY YOU, OF THE PRODUCT (iii) YOU WILL USE THE PRODUCTS ONLY FOR BUSINESS PURPOSES; (iv) YOU WARRANT THAT THE PERSON SIGNING THE MASTER AGREEMENT AND THE SCHEDULE HAS THE AUTHORITY TO DO SO AND TO GRANT THE AUTHORITY SET FORTH IN SECTION 7 OF THE MASTER AGREEMENT; (v) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THE MASTER AGREEMENT AND THE SCHEDULE RATHER THAN PAY CASH FOR THE TOTAL PRODUCT FEE.**

Lender: CIT TECHNOLOGY FINANCING SERVICES, INC.

Customer: City of Oceanside, CA

By: _____
Authorized Signature

By: _____
Authorized Signature

Print Signer's Name and Title

Date Signed

Print Signer's Name and Title

Date Signed

Microsoft® Financing

INCUMBENCY CERTIFICATE

Master Installment Payment Agreement No. 774122 between City of Oceanside, CA and CIT Technology Financing Services, Inc. ("CIT") signed by Company on May 20, 2009

I, _____, certify that I am the duly elected or appointed and acting Secretary/Clerk of City of Oceanside, CA, a political subdivision or agency duly organized and existing under the laws of the State of California, that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are duly elected or appointed officers of such entity holding the offices set forth opposite their respective names. I further certify that: (i) the signatures set opposite their respective names and titles are their true and authentic signatures and (ii) such officers have the authority on behalf of such entity to enter into the Master Installment Payment Agreement identified above by and between such entity and CIT and all Schedules executed from time to time in accordance therewith.

NAME

TITLE

SIGNATURE

_____	_____	_____
_____	_____	_____
_____	_____	_____

Signed and sealed by the undersigned on _____, _____

Secretary/Clerk

DELIVERY AND ACCEPTANCE CERTIFICATE

TO SCHEDULE NO. 806757 TO MASTER INSTALLMENT PAYMENT AGREEMENT NO. 774122

Customer certifies that all of the Products have been accepted by the Customer pursuant to the terms of the above referenced Schedule and any applicable agreements between you and the Product Provider(s), and Customer specifically authorizes Lender to pay the Product Provider now and commence Customer's obligations under the Schedule.

_____ Date

City of Oceanside, CA ("Customer")

By: _____

Name: _____

Title: _____

Microsoft® Financing

NON APPROPRIATION RIDER

This Non-Appropriation Rider to the Master Installment Payment Agreement No. 774122 dated May 20, 2009 and all Schedules executed in accordance therewith from time to time (each Schedule incorporating this Master Installment Payment Agreement, the "Agreement"), is by and between **CIT Technology Financing Services, Inc.** (Lender) and City of Oceanside, CA (Customer). Capitalized terms used herein without definition shall be defined as provided in the Agreement.

Notwithstanding anything contained in the Agreement to the contrary,

1. Customer presently intends to continue the Agreement for its entire term and to pay all Installment Payments or other payments relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the Installment Payments and all other payments owing thereunder may be made. To the extent permitted by law, the person or entity in charge of preparing Customer's budget will include in the budget request for each fiscal year during the term of the Agreement the Installment Payments to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all Installment Payments coming due therein. The parties acknowledge that appropriation for Installment Payments is a governmental function which Customer cannot contractually commit itself in advance to perform and the Agreement does not constitute such a commitment. However, Customer reasonably believes that moneys in an amount sufficient to make all Installment Payments can and will lawfully be appropriated and made available to permit Customer's continued utilization of the Equipment and Software in the performance of its essential functions during the term of the Agreement.

2. If Customer's governing body fails to appropriate sufficient moneys in any fiscal year for Installment Payments or other payments due under the Agreement and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Customer shall give Lender immediate notice of such Non-Appropriation and provide written evidence of such failure by Customer's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the Installment Payments due under the Agreement (the "Return Date"), Customer shall cease all use of all of the Products and shall return to Lender all, but not less than all, of the Products covered by the Agreement, at Customer's sole expense, in accordance with the terms hereof; and (iii) the Agreement shall terminate on the Return Date without penalty or expense to Customer and Customer shall not be obligated to pay the Installment Payments beyond such fiscal year, provided, that Customer shall pay all Installment Payments and other payments due under the Agreement for which moneys shall have been appropriated or are otherwise available, provided further, that Customer shall pay the Installment Payment at the rate set forth in the Agreement for each month or part thereof that Customer fails to return the Products as required herein.

3. The Agreement shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Agreement, and no liability on account thereof shall be incurred by the Customer beyond the amount of such monies. The Agreement is not a general obligation of the Customer. Neither the full faith and credit nor the taxing power of the Customer are pledged to the payment of any amount due or to become due under the Agreement. It is understood that neither the Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Agreement.

4. The Customer and Lender agree that they intend that by the execution of the Agreement, Customer acquires no ownership interest in any software and/or services compromising the Products whether vested or contingent. The Customer's interest in any software and/or services compromising the Products is limited to that of a customer and/or licensee. Any provisions indicating to the contrary in this Rider are for precautionary purposes only.

IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the ____ day of ____ 20____.

CIT Technology Financing Services, Inc.
(Lender)

City of Oceanside, CA
(Customer)

By _____
(Date)

By _____
(Date)

Name/Title _____

Name/Title _____

State & Local Government -- Opinion of Counsel
(To be typed on letterhead of counsel)

<Date>

CIT Technology Financing Services, Inc.
One Deerwood, 10201 Centurion Pkwy N. #100
Jacksonville, FL 32256

Attention: _____

Re: Master Installment Payment Agreement No. _____ and all Schedules executed from time to time in accordance therewith (individually and collectively, the "Agreement")

Ladies and Gentlemen:

I am legal counsel for _____ (Customer), and I am familiar with the above-referenced Agreement by and between the Customer and your company.

Based upon my examination of the Agreement, the information statement(s) required for purposes of Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code") and such other documents, records and papers as I deem to be relevant and necessary as the basis for my opinion set forth below, it is my opinion that:

1. The Customer is a State or a political subdivision thereof, as those terms are used in Section 103 of the Code, and is authorized by the applicable Constitution and laws to enter into the transaction(s) contemplated by the Agreement and to carry out its obligations thereunder.
2. Customer's obligation(s) under the Agreement is a State or local bond within the meaning of Section 103 of the Code.
3. The Agreement and other related documents have been duly authorized, executed and delivered by Customer and constitute valid, legal and binding agreements enforceable against Customer in accordance with its terms.
4. No further approval, consent or withholding of objections is required from any Federal, state or local governmental authority with respect to the entering into or the performance by the Customer of the Agreement and the transaction(s) contemplated hereby.
5. The entering into and performance of the Agreement and other related documents will not violate any judgment, order, law or regulation applicable to the Customer or result in any breach of, or constitute a default under, any instrument or agreement binding upon Customer or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of the Customer or the Software (as defined in the Agreement), other than those created by the Agreement.
6. There are no actions, suits or proceedings pending or threatened against or affecting the Customer in any court or before any governmental commission, board or authority that, if adversely determined, would have a material adverse effect on the ability of the Customer to perform its obligation(s) under the Agreement.
7. The Products will not be or become a fixture or real property under the laws of the state where the Equipment and Software is being used by the Customer.
8. All required public bidding procedures regarding an award to your company of the transaction(s) contemplated under the Agreement have been properly and completely followed by the Customer.
9. The Customer shall be the only entity to own, operate and use the Products during the Term (as defined in the Agreement).
10. The Agreement does not constitute, and is not expected to become, an arbitrage bond within the meaning of Section 148 of the Code or a private activity bond within the meaning of Section 141 of the Code

Counsel

By: _____

Title: _____

Date: _____



This Quote Prepared for: City of Oceanside
fritzi_mulkey@dell.com
Fritzi Mulkey

05/18/09

Year 2 True Up Quotation

<u>MS Part#</u>	<u>Product Description</u>	<u>Unit Price</u>	<u>Qty</u>	<u>Totals</u>
Enterprise Products				
269-12441	OfficeProPlus ALNG LicSAPk MVL Pltfm	\$551.02	220	\$121,224.40
66J-00579	WinVistaBsns ALNG UpgrdSAPk MVL Pltfm wVistaEnt	\$224.51	167	\$37,493.17
76A-00579	EntCAL ALNG LicSAPk MVL Pltfm DvcCAL wSrvcs	\$352.10	220	\$77,462.00
WSB-00068	DsktpOptmznPkforSA ALNG SubsVL MVL PerDvc forWinSA	\$26.88	167	\$4,488.96
Total				\$240,668.53