



AGENDA REPORT

Meeting Date: July 1, 2014
Item Number: D-7
To: Honorable Mayor & City Council
From: David Schirmer, Chief Information Officer
Subject: APPROVAL OF AGREEMENTS WITH VARIOUS VENDORS FOR PROVISION OF ANNUAL SERVICES; AND

APPROVAL OF BLANKET PURCHASE ORDERS FOR EQUIPMENT AND SERVICES FOR THE INFORMATION TECHNOLOGY DEPARTMENT IN THE TOTAL NOT-TO-EXCEED AMOUNT OF \$1,473,335.03

Attachments: 1. Agreements
2. Exhibit A

RECOMMENDATION

Staff recommends that the City Council move to approve the agreements with Avaya, Inc., and Edgesoft Inc., and approve annual blanket purchase orders identified in Exhibit A in the total amount of \$1,473,335.03.

INTRODUCTION

This report seeks City Council approval of annual blanket purchase orders (BPO's) for critical Information Technology systems and services required at the beginning of the new fiscal year for business continuity. These key agreements and BPO's are needed to ensure ongoing operations for critical systems and business activities such as postage, public safety communications, Internet service, and BHUSD support.

The remaining IT BPO's were prioritized as less critical and will be presented for City Council approval with citywide BPO's at the July 29th City Council meeting.

DISCUSSION

The City issues BPO's to vendors who provide goods and services to City departments throughout the fiscal year. By issuing these vendors one purchase order rather than

several, the City increases efficiency and saves money by taking advantage of government contract pricing.

This report includes agreements and BPO's that are critical for Public Safety and / or important for citywide business continuity. This includes citywide postage, internet services, wireless service for public safety vehicles, ongoing lease of the citywide Xerox fleet, licensing and support of the Library's online system, and equipment and services for the Beverly Hills Unified School District per the existing agreement between the City and the District, as detailed below.

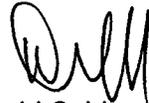
- **Neopost** – Citywide postage required for all City mailings (e.g., utility billing, notices and correspondence).
- **XO Communications** – The City's internet service provider which is billed on a monthly basis and is required to continue internet services (e.g., email, website, eGov, etc.).
- **AT&T Mobility** – The City's primary wireless services provider required by Public Safety, and all field operations including inspections and permitting applications.
- **Integrated Media Technologies** – Network switch maintenance supporting the Municipal Area Network and Wi-Fi, network professional and engineering services, allowing expansion of the City's network services per City Council initiatives (CCTV, parking systems, etc.), and ensuring continued stability and security.
- **Avaya** – Licensing, maintenance and support of the City's telephone systems.
- **Cloudeeva & Networld Solutions** – Provision of network and systems administration services for the Beverly Hills Unified School District pursuant to the existing contract with the District.
- **Innovative Interfaces** – The Beverly Hills Public Library's comprehensive online system providing a direct interface to the public, detailing Library services, and various online transactions (e.g., eBooks, extension of due dates, research resources, etc.).
- **Xerox** – Lease of the City's Xerox fleet of multifunction devices (copier, printer, scanner) relied upon for daily operations across all departments.
- **Edgesoft** – eGov related IT consulting services required for ongoing development and support of citywide eGov initiatives (mobile apps, website features, etc.), especially related to the implementation of the City's new finance and human resource system.
- **Sungard** – Maintenance of the City's legacy finance and payroll system until implementation of the new Tyler Munis enterprise resource planning system is complete for related modules (payroll, business tax, etc.), to be billed quarterly.

FISCAL IMPACT

Funds for each of the BPO's requested in Exhibit A are contained in the approved fiscal year 2014/2015 budget. The total amount requested in this report is \$1,473,335.03.



Noel Marquis
Finance Approval



David Schirmer
Approved By

Attachment 1



STATE & LOCAL GOVERNMENT/EDUCATION
CUSTOMER AGREEMENT
GENERAL TERMS

This Customer Agreement (this “**Agreement**”) is entered into by and between Avaya Inc., with an address of 4655 Great America Parkway, Santa Clara, California 95054-1233 (“**Avaya**”) and the undersigned Customer. The terms of this Agreement govern the Customer’s purchase and/or license of hardware, Software in object code form and associated Documentation (as Software and Documentation are defined in Schedule A, Section 1), (collectively, “**Products**”) and related services as described in the relevant Attachment(s) (“**Services**”) in the manner set forth herein. The “**Effective Date**” of this Agreement is the date last signed below. For purposes of this Agreement, the Customer is an agency or department of a State, County or Municipal Government, or a public educational institution.

Incorporated into this Agreement by reference is Schedule A, Avaya Global Software License Terms and, if applicable, this Agreement also consists of one or more of the following Attachments:

- These General Terms
- Attachment 1** – Supply of Generally Available Products
- Attachment 2** – Professional Services Terms
- Attachment 3** – Maintenance, Managed Services and Subscription Services Terms

The parties agree that this Agreement shall serve as a Master Agreement, which creates a set of agreed-upon terms and conditions that govern Customer’s subsequent purchase and/or license of Products and Services. Said purchase and/or license of Product and Services shall be effectuated by an order or Statement of Work (and such terms are as defined below and as further defined in Attachments 2 and 3), which said order or Statement of Work is executed by both Avaya and Customer in order to be valid and binding on the parties. An order is defined as the form customarily utilized by Avaya which provides the Product or Service description, the corresponding price and the warranty period, if any. A Statement of Work is a document customarily utilized by Avaya that provides a detailed scope of services, including deliverables, work assumptions, and other provisions for Services. Customer hereby authorizes the City Manager or his designee to execute the order and/or Statement of Work in accordance with Section 13.8.

1. ORDERS

Orders are subject to acceptance by Avaya. Avaya may accept an order by electronic email, at the email address provided by Customer to Avaya from time to time, or other agreed means of electronic communication, or by shipping Products or commencing to perform Services. Accepted orders will be deemed to incorporate and be subject to the Agreement. Orders will be governed by the terms of this Agreement even when they lack an express reference to this Agreement. All other terms and conditions contained in any Customer purchase order or other document not expressly referenced in the Agreement will have no effect. All orders will reference this Agreement or Agreement number and will specify as applicable the quantity, price, delivery location, term and quotation, proposal or statement of work number.

2. INVOICING AND PAYMENT; TAXES

2.1 Invoicing and Payment. Avaya will invoice Customer Product and Service fees as provided in the applicable Attachment. Unless otherwise requested by Customer in writing, Avaya will invoice to and process payments from Customer via Avaya’s electronic bill application. Unless otherwise governed by local statute or regulation, payment of undisputed portions of invoices is due within 30 days from the date of Avaya’s invoice. Customer will pay all bank charges, taxes, duties, levies and other costs associated with Customer required methods of invoicing and payment that differ from Avaya’s standard methods. Avaya may suspend licenses and performance of orders for which payment is overdue until the overdue amount is paid in full.

2.2 Taxes. Unless Customer provides Avaya with a current tax exemption certificate or otherwise furnishes written evidence of Customer’s tax exempt status, Customer is solely responsible for paying all legally required taxes, including without limitation any withholding, sales, excise or other taxes and fees which may be levied upon the sale, movement, transfer of ownership, license, installation or use of the Products or upon the Services, except for any income tax assessed upon Avaya.

3. CUSTOMER RESPONSIBILITIES

Customer will cooperate with Avaya as reasonably necessary, at Customer’s expense, including as specified in this Agreement, for Avaya’s delivery of Products and performance of Services in a timely manner. Customer will provide Avaya with interface and other information regarding access to third party products in Customer’s network and necessary third party consents and licenses to enable Avaya’s performance under this Agreement. Customer is responsible for ensuring that its networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up its data and files in accordance with good data retention and security practices. Customer will reasonably use, safeguard and return to Avaya any items that Avaya loans or makes available to Customer (“**Avaya Tools**”), such as, but not limited to, the Secure Intelligent Gateway. Customer will be responsible for the custody and care of the Avaya Tools until returned to Avaya. Avaya Tools will not be considered Products as that term is defined in these General Terms. If Customer fails to meet its cooperation obligations under this Section or as otherwise provided in this Agreement, Avaya may delay or suspend its delivery of Products or performance of Services relating to Customer’s failure.

4. CONFIDENTIAL INFORMATION

4.1 “Confidential Information” means either party’s business and/or technical information, pricing, discounts and other information or data, regardless of whether in tangible or other form if marked or otherwise expressly identified in writing as confidential. Information communicated verbally will qualify as Confidential Information if designated as confidential or proprietary at the time of disclosure and summarized in a writing so marked and delivered to the receiving party within 30 days after disclosure, in which case Confidential Information contained in such summary (not information contained solely in the nontangible disclosure) will be subject to the restrictions in this Agreement; or (b) a reasonable person would know, based on the circumstances surrounding disclosure and the nature of the information should be treated as confidential. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information without restriction on its dissemination or disclosure; (iii) was known by the receiving party prior to its receipt and was not received from a third party in breach of that third party’s confidentiality obligations; or (iv) was independently developed by the receiving party without use of the disclosing party’s Confidential Information. . Notwithstanding the requirements in this Agreement, Confidential Information that is required to be disclosed by court order or

other lawful government action may be disclosed as required to comply with such order or action, but only to the extent so ordered, provided that to the extent allowed by applicable law, the receiving party provides prompt written notification to the disclosing party of the pending disclosure so the disclosing party may attempt, at its expense, to obtain a protective order or other remedy. The receiving party will take reasonable steps to attempt to preserve the confidentiality of the disclosing party's Confidential Information and agrees to provide reasonable assistance to the disclosing party should the disclosing party attempt to obtain a protective order or other remedy. In the event of a potential disclosure in the case of subsection (v) above, the receiving party will provide reasonable assistance to the disclosing party should the disclosing party attempt to obtain a protective order.

4.2 Confidentiality Obligations. To the extent permitted by law and pursuant to the California Public Records Act, each party will: (i) protect such Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care, (ii) restrict disclosure of such Confidential Information to the receiving party's employees, agents, directors, officers, professional legal advisors, Affiliates or subcontractors with a need to know and who are bound by confidentiality obligations with the receiving party at least as protective as the terms herein ("Authorized Parties"); (iii) advise such Authorized Parties of the obligations assumed herein; (iv) be responsible for any Authorized Party's noncompliance with the terms of this Agreement; and (v) not disclose any Confidential Information to any third party (other than an Authorized Party). Neither party will use or disclose the other party's Confidential Information except as permitted in this Section or for the purpose of performing obligations under this Agreement. The confidentiality obligations of each party will survive for 3 years following the later of expiration/termination of this Agreement and all applicable orders thereunder, provided trade secrets shall remain confidential for so long as they remain trade secrets. Upon expiration/termination of this Agreement, each party will cease all use of the other party's Confidential Information and will promptly return, or at the other party's request destroy, all Confidential Information, including any copies, in tangible form in that party's possession or under its control, including Confidential Information stored on any medium. Upon request, a party will certify in writing its compliance with this Section. Notwithstanding the foregoing, the receiving party may retain copies of the disclosing party's Confidential Information: (a) as part of the receiving party's archival records (including backup systems) that the receiving party keeps in the ordinary course of its business, but only as required by the receiving party's records retention policies, (b) as may be required by law, or (c) if and only to the extent they are relevant to a dispute between the parties. Such retained Confidential Information may not be used or retained for any purpose other than as set out in subsections (a) through (c), and will be destroyed in the ordinary course of business in compliance with the receiving party's records retention policies. Until such destruction has occurred, Confidential Information so retained will remain subject to the terms of this Agreement.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 Customer Owns Customer IP. Customer reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any computer programs (in object or source code format or any other form), know-how, inventions, processes, data bases, documentation, training materials and any other intellectual property and any tangible embodiments of it (collectively "Intellectual Property" or "IP") that Customer owns and makes available to Avaya (collectively "Customer IP") under this Agreement.

5.2 Avaya Owns Avaya IP. Avaya reserves all rights, including, but not limited to, ownership, title, and all other rights and interest in, and to, any Intellectual Property that Avaya owned prior to providing Services under this Agreement, any Intellectual Property that Avaya develops, creates, or otherwise acquires independently of this Agreement, and any Intellectual Property that Avaya develops, creates, or otherwise acquires (excluding Customer IP) while performing Services under this Agreement.

5.3 Customer Ownership of Delivered Software. Upon the effective date of this Agreement, neither party contemplates that the Customer will order customized deliverables from Avaya that will result in the transfer of any ownership rights of Software or other proprietary data from Avaya to the Customer. Prior to any obligation of Avaya to transfer such rights, a written amendment to this Agreement shall be executed by authorized representatives of both parties expressly identifying the subject intellectual property and identifying the ownership rights that will be transferred.

6. SOFTWARE LICENSE TERMS AND RESTRICTIONS

Avaya grants Customer a license to use Software and Documentation in accordance with Schedule A, Avaya Global Software License Terms.

7. WARRANTIES AND LIMITATIONS

7.1 Specific warranties for Products and Services are provided in the Attachments. THESE WARRANTIES ARE LIMITED AS PROVIDED IN EACH ATTACHMENT AND GENERALLY AS PROVIDED BELOW.

7.2 Exclusions and Disclaimers. The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Customer's use of Products in violation of the license granted under this Agreement or in a manner inconsistent with the Documentation; (ii) normal wear due to Product use, including but not limited to Product cosmetics and display scratches; (iii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iv) Customer's failure to follow Avaya's installation, operation or maintenance instructions; (v) Customer's failure to permit Avaya timely access, remote or otherwise, to Products; or (vi) failure to implement all new updates to Software provided by Avaya. Warranties do not extend to Products that have been serviced or modified other than by Avaya or a third party specifically authorized by Avaya to provide the service or modification. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS OR SERVICES OR OTHERWISE RELATED TO THIS AGREEMENT. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS OR THAT THE PRODUCTS AND SERVICES WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY PROVIDED IN THIS AGREEMENT WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

8. INFRINGEMENT DEFENSE AND INDEMNIFICATION

8.1 Defense and Indemnity. Avaya will defend Customer, at Avaya's expense, against any Claim, as defined below, and will indemnify Customer as provided for in this Section for any judgments, settlements and court awarded attorney's fees resulting from a Claim. Avaya's obligations under this Section are conditioned on the following: (i) Customer promptly notifies Avaya of the Claim in writing upon Customer being made aware of the Claim; (ii) Customer gives Avaya sole authority and control of the defense and (if applicable) settlement of the Claim, provided that Customer's legal counsel may participate in such defense and settlement, at Customer's expense, and (iii) Customer provides all information and assistance reasonably requested by Avaya to handle the defense or settlement of the Claim. For purposes of this Section, "Claim" means any cause of action in a third party action, suit or proceeding against Customer alleging that a Product as of its delivery date under this Agreement infringes a valid U.S. patent, copyright or trademark.

8.2 Remedial Measures. If a Product becomes, or Avaya reasonably believes use of a Product may become, the subject of a Claim, Avaya may, at its own expense and option: (i) procure for Customer the right to continue use of the Product; (ii) replace or modify the Product; or to the extent that neither (i) nor (ii)

are deemed commercially practicable, (iii) refund to Customer a pro-rated portion of the applicable fees for the Product based on a linear depreciation monthly over a five (5) year useful life, in which case Customer will cease all use of the Product and return it to Avaya.

8.3 Exceptions. Avaya will have no defense or indemnity obligation for any Claim based on: (i) a Product that has been modified by someone other than Avaya; (ii) a Product that has been modified by Avaya in accordance with Customer-provided specifications or instructions; (iii) use or combination of a Product with Third Party Products, open source or freeware technology; (iv) Third Party Products, open source or freeware technology; (v) a Product that is used or located by Customer in a country other than the country in which or for which it was supplied by Avaya or as permitted by the License Portability Policy in Schedule A; (vi) possession or use of the Product after Avaya has informed Customer of modifications or changes in the Product required to avoid such Claim and offered to implement those modifications or changes, if such Claim would have been avoided by implementation of Avaya's suggestions and to the extent Customer did not provide Avaya with a reasonable opportunity to implement Avaya's suggestions; or (vii) the amount of revenue or profits earned or other value obtained by the use of Products, or the amount of use of the Products. **"Third Party Products"** means any products made by a party other than Avaya, and may include, without limitation, products ordered by Customer from third parties. However, components of Avaya-branded Products are not Third Party Products if they are both: (i) embedded in Products (i.e., not recognizable as standalone items); and (ii) not identified as separate items on Avaya's price list, quotes, order specifications forms or Documentation.

8.4 Sole Remedy. THE FOREGOING STATES AVAYA'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PARTY.

8.5 General Indemnification. Avaya shall indemnify and hold harmless Customer, Customer's agents, servants and employees against all claims, demands and judgments made or recovered against them by third parties for damages to real or tangible personal property or for bodily injury or death to any person arising out of, or in connection with this Agreement ("**Claim**"), to the extent such damage, injury or death was proximately caused by the negligence of Avaya, any subcontractor of Avaya or their employees, servants or agents while performing under this Agreement; provided, however, that such indemnification and save harmless obligation shall apply only to direct damages which are proven and shall not apply to the extent such damages, injury or death was caused by Customer's act or omission or the act or omission of Customer's agents, servants, employees or others; and, provided, further, that such indemnification and save harmless obligation is expressly conditioned on the following: (a) that Avaya shall be notified in writing promptly of any such Claim, (b) that Avaya shall have sole control of the defense of any action or such Claim and of all negotiations for its settlement or compromise provided that Customer's legal counsel may participate in such defense and settlement, at Customer's expense; and that (c) Customer shall cooperate with Avaya in a reasonable way to facilitate the settlement or defense of such Claim.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, OR TOLL FRAUD. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO TWICE THE TOTAL CONTRACT PRICE (OR IN THE ABSENCE OF A CONTRACT PRICE, TWICE THE AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THIS AGREEMENT IN THE 24 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM), UP TO \$5,000,000. THE DISCLAIMERS OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMITATIONS ON AGGREGATE LIABILITY WILL NOT APPLY TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS AGREEMENT. THIS SECTION WILL ALSO APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 Governing Law. The Agreement and any disputes, claims or controversies arising out of or relating to this Agreement ("**Disputes**") including without limitation the formation, interpretation, breach or termination of this Agreement, or any issue regarding whether a Dispute is subject to arbitration under this Agreement will be governed by the laws of the state where the Customer is located, excluding choice of law principles.

11. TERM AND TERMINATION

11.1 General Terms. The Agreement will be effective and continue in effect for 5 years from the Effective Date unless terminated earlier in accordance with this Section. Either party may terminate this Agreement by written notice to the other party if the other party fails to cure any material breach of this Agreement within a 30 day period after having received a written notice from the non-breaching party detailing the breach and requesting the breach be cured. Customer may terminate this Agreement for convenience upon 30 days written notice and subject to termination or cancellation fees, if any. Individual orders or Statements of Work (as defined in Attachments 2 and 3) may also be terminated in accordance with the conditions set forth in the applicable Attachment(s). If Customer terminates individual orders or Statements of Work for convenience, Avaya shall submit to Customer a termination settlement claim containing any charges up to the effective date of termination and any applicable termination fees, in the form of an invoice, within ninety (90) days from the effective date of the termination. Notwithstanding the foregoing, except for Customer's termination for non-appropriation of funds as set forth in subsection 11.2 below, termination of Maintenance/Managed Services shall be as set forth in Attachment 3. The provisions concerning confidentiality, license grant, license restrictions, indemnity, export control, all limitations of liability, disclaimers and restrictions of warranty, and any other terms which, by their nature, are intended to survive termination or expiration of this Agreement will survive any termination or expiration of this Agreement and any order. Except as expressly provided otherwise in this Agreement and termination for uncured breach, any termination of this Agreement will not affect any rights or obligations of the parties under any order accepted before the termination of this Agreement became effective. The imposition and/or payment of cancellation or termination fees in connection with a termination of this Agreement or an order for breach shall be without prejudice to the non-breaching party's other remedies available at law or in equity.

11.2 Availability of Funds. Customer warrants that it has funds available to pay all amounts due hereunder through the end of its current appropriation period and warrants further that it will request funds to make payments in each appropriation period from now until the end of this Agreement term. In the event that: (i) funds are not appropriated and are not otherwise available to Customer for any fiscal period following its current fiscal year ("subsequent fiscal period") for the acquisition of Services and functions which are the same as or similar to those for which the Products provided or installed under this Agreement was acquired, (ii) such non-appropriation has not resulted from Customer's act or failure to act, and (iii) Customer has exhausted all funds legally available for payment under the Agreement and no other legal procedure shall exist whereby payment thereunder can be made to Avaya, then Customer may terminate this Agreement to be effective as of the last day for which funds were appropriated or otherwise made available by giving Avaya sixty (60) days prior written notice of termination citing the unavailability of funds to continue. Notwithstanding the preceding paragraph, Customer shall remain responsible for payment to Avaya for all Services performed, as well as for all Products delivered and accepted.

12. AUDIT

Customer may inspect Avaya's records and work-papers directly related to this Agreement to determine the validity of billings for work performed under order(s) place by Customer. Such records shall be made available for inspection during Avaya's normal business hours at Avaya's business location(s) where such records are kept upon at least 30 days prior written notice. Such records and work-papers must be retained by Avaya for review for at least two (2) years after final payment is made for the order(s) subject to audit.

13. MISCELLANEOUS

13.1 Compliance. The parties will observe all applicable laws and regulations when using the Products and work product of any Services.

13.2 Assignment & Subcontractors. Subject to local law or regulation, Avaya may assign this Agreement and any order under this Agreement to any of its Affiliated entities or to any entity to which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with its performance under this Agreement. Any other assignment of this Agreement or any rights or obligations under this Agreement without the express written consent of the other party will be invalid. Avaya may subcontract any or all of its obligations under this Agreement, but will retain responsibility for the work.

13.3 Force Majeure. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, Act of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, and inability to secure materials or transportation facilities.

13.4 Notices. Except as may be required by an Attachment or Schedule incorporated into this Agreement, any notice required or permitted under this Agreement will be delivered to the facsimile numbers or the addresses of the relevant party set forth below. Such delivery will be affected by facsimile, courier or by first-class mail, postage pre-paid.

FOR CUSTOMER: [TO BE COMPLETED]

FOR AVAYA:

Contact Name: David Schirmer, CIO
Company Name: City of Beverly Hills
Street Address: 455 North Rexford Dr
City, State, and Zip Code: Beverly Hills, CA 90210
United States
FASCIMILE: 310-246-1567

ATTENTION: VICE PRESIDENT, LAW
AVAYA INC.
4655 GREAT AMERICA PARKWAY
SANTA CLARA, CA 95045-1233
UNITED STATES
FACSIMILE: 408-562-3749

13.5 Publicity. Avaya will be permitted to disclose the terms hereof or a specific project under this Agreement if such disclosure is required by U.S. or foreign state or federal law, applicable regulatory authorities (including, but not limited to, either party's obligation to disclose such information pursuant to the rules and regulations promulgated by the U.S. Securities and Exchange Commission), court order or other lawful government action; provided that, to the extent disclosure is required by court or governmental order, only to the extent the receiving party provides prompt written notification to the disclosing party of the pending disclosure so the disclosing party may attempt to obtain a protective order.

13.6 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties. This Agreement may be executed in multiple counterparts, each of which will constitute an original and all of which will constitute but one agreement. Customer requires signatures to this Agreement or any Amendment to this Agreement be handwritten original signatures. The parties hereby agree that for Avaya this Agreement or any amendment to this Agreement may be executed by electronic signature, which will be binding between the parties as though handwritten. Electronic signature can be a legible photostatic copy of handwritten signatures. Any modifications or amendments to this Agreement must be in writing and signed by both parties. Notwithstanding the foregoing, the parties agree that electronic signature, such as photostatic signature is an acceptable form for executing order forms, Statements of Work, change orders and will be binding between the parties as though handwritten. In no event will electronic mail constitute a modification or amendment to this Agreement. If any provision of this Agreement is determined to be unenforceable or invalid by court decision, this Agreement will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law.

13.7 No Waiver. The failure of either party to assert any of its rights under the Agreement, including, but not limited to, the right to terminate this Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this Agreement in accordance with their terms.

13.8 Interpretation. In this Agreement. (i) a reference to the singular includes the plural and vice versa, unless the context otherwise requires; (ii) the headings are inserted for convenience only and will not affect the interpretation of this Agreement; and (iii) whenever the words "include", "includes", "including" or "in particular" (or similar derivatives) are used, they are deemed to be followed by the words "without limitation".

13.9 Purchase Authority. Customer, through the Beverly Hills City Council, hereby delegates authority to the City Manager or his designee to purchase Products and/or Services pursuant to the terms of this Agreement with a City purchase order that has been approved pursuant to the provisions of the Beverly Hills Municipal Code. The cost for said Products and/or Services may not exceed the amount set forth in the City issued purchase order.

13.10 Avaya shall maintain the following insurance coverages during the term of this Agreement:

Worker's Compensation and Employer's Liability insurance, covering each employee engaged in the performance of work under this engagement, with limits of liability in accordance with applicable state law in the case of Workers' Compensation insurance, and with the following limits of liability in the case of Employers Liability insurance:

- Workers' Compensation – Coverage A – Statutory
- Employers Liability – Coverage B – Each Accident - \$2,500,000
- Policy Limit - \$2,500,000
- Each Employee by Disease - \$2,500,000

Commercial General Liability insurance, written on an occurrence basis including coverage for contractual liability, products and completed operations, personal injury, bodily injury and broad form property damage with liability limits in the amount of \$2,500,000 per occurrence and annual aggregate.

Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this engagement, with a combined single limit of liability for bodily injury and property damage of \$5,000,000 per occurrence.

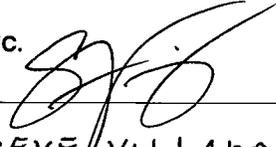
Professional Liability insurance with limits of \$5,000,000 per claim and annual aggregate.

Insurance Companies providing coverage are rated by A.M. Best with at least an A rating.

Current Certificates of Insurance can be provided prior to the commencement of work and be maintained during the term of the engagement. Avaya will include the City of Beverly Hills as an additional insured under the commercial general liability and automobile liability policy.

The parties have caused this Agreement to be executed by their duly authorized representatives with the intent to be legally bound, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged.

AVAYA INC.

BY:  _____

NAME: SEVE VILLARREAL

TITLE: TERRITORY ACCOUNT MANAGER

DATE: 6-25-14

CITY OF BEVERLY HILLS
A Municipal Corporation

LILI BOSSE
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE (SEAL)
City Clerk

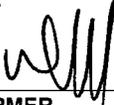
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



DAVID SCHIRMER
Chief Information Officer



KARL KIRKMAN
Risk Manager

AVAYA
CUSTOMER AGREEMENT (UNITED STATES)
SCHEDULE A
AVAYA GLOBAL SOFTWARE LICENSE TERMS

These Global Software License Terms are part of this Agreement between Avaya and Customer, which incorporates them by reference. They apply if and to the extent Customer obtains Software from Avaya under this Agreement.

1. LICENSE GRANT. For purposes of this Section and this Agreement: (1) "Documentation" means information published by Avaya in varying mediums which may include product information, operating instructions and performance specifications that Avaya generally makes available to users of its Products. Documentation does not include marketing materials; and (2) "Software" means computer programs in object code, provided by Avaya or an Avaya Channel Partner, whether as stand-alone products or pre-installed on hardware products, and any upgrades, updates, bug fixes, or modified versions thereto. Avaya grants Customer a personal, non-sublicensable, non-exclusive, non-transferable license to use Software and associated Documentation obtained from Avaya and for which applicable fees have been paid for Customer's internal business purposes at the Documentation will be used only in support of the authorized use of the associated Software. Software installed on mobile-devices and clients, such as a laptop or mobile phone, may be used outside of the country where the Software was originally installed, provided that such use is on a temporary basis only.

1.1 Right to Move License Entitlements. Notwithstanding the foregoing limitation permitting use of the Software only at the location where it is initially installed, Customer may move eligible right to use license entitlements ("RTU's") for certain specified Software from one location to another in accordance with Avaya's then-current Software license move policy ("**License Portability Policy**") which License Portability Policy is available upon request subject to the conditions set forth in this Section 1.1:

i. Customer will provide written notice within 10 days to Avaya of any RTU moves including but not limited to, the number and type of licenses moved, the location of the original Server and the location of the new Server, the date of such RTU moves and any other information that Avaya may reasonably request.

ii. Customer may only move RTU's to and from Designated Processors or Servers supporting the same Software application.

iii. Customer must reduce the quantity of the licenses on the original Server by the number of RTU's being moved to the new Server.

iv. Customer acknowledge that (1) Customer may be charged additional fees when moving RTU's as per Avaya's then-current License Portability Policy, (2) maintenance Services do not cover system errors caused by moves not performed by Avaya, and 3) Customer is responsible for any programming, administration, design assurance, translation or other activity to make sure the Software will scale and perform as specified as a result of any license moves, and if any such transfer results in a requirement for Avaya system engineering or requires the use of on-site Avaya personnel, Customer will be charged the Time & Materials fees for such activity.

v. If Customer's maintenance services coverage differs on licenses on the same Product instance at the location of the new Server, service updates, recasts and/or fees may apply and any fee adjustments for differences in coverage will only be made on a going forward basis as of the date Avaya receives notice of the RTU move; and.

vi. Customer may also move RTU's from one Affiliate to another Affiliate provided that Customer complies with the conditions of this section, including without limitation, providing the name and address of the new Affiliate in Customer's written notice under subpart 1.1.1 above, and provided such new Affiliate is bound by these Software License Terms.

1.2 Non-Production License Grant. With respect to Software distributed by Avaya to Customer for non-production purposes, the scope of the license granted herein will be to use the Software in a non-production environment solely for testing or other non-commercial purposes on a single computer or as otherwise designated by Avaya ("**Non-Production License**").

2. ALL RIGHTS RESERVED. Avaya retains title to and ownership of the Software, Documentation, and any modifications or copies thereof. Except for the limited license rights expressly granted in these Software License Terms, Avaya reserves all rights, including without limitation copyright, patent, trade secret, and all other intellectual property rights, in and to the Software and Documentation and any modifications or copies thereof. The Software contains trade secrets of Avaya, its suppliers, or licensors, including but not limited to the specific design, structure and logic of individual Software programs, their interactions with other portions of the Software, both internal and external, and the programming techniques employed.

3. GENERAL LICENSE RESTRICTIONS. To the extent permissible under applicable law, Customer agrees not to: (i) decompile, disassemble, reverse engineer, reverse translate or in any other manner decode, the Software; (ii) alter, modify or create any derivative works or enhancements, adaptations or translations of, the Software or Documentation; (iii) sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer, the Software or Documentation except as expressly authorized by Avaya in writing, and any attempt to do so is void; (iv) distribute, disclose or allow use of the Software or Documentation, in any format, through any timesharing service, service bureau, network or by any other similar means except as expressly authorized by Avaya in writing; (v) allow any service provider or other third party, with the exception of Avaya's authorized maintenance providers who are acting solely on behalf of and for the benefit of Customer, to use or execute any software commands that facilitate the maintenance or repair of any product; (vi) gain access to or the use of any Software or part thereof without authorization from Avaya; (vii) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Avaya or Avaya's authorized maintenance providers; or (viii) publish the results of any tests run on the Software; (ix) disclose, provide, or otherwise make available to any third party any trade secrets contained in the Software or Documentation; or (x) use the Software in a virtualized environment except as expressly authorized by these Software License Terms; or (xi) permit or encourage any third party to do any of the foregoing. Customer agrees not to allow anyone other than its authorized employees, agents or representatives who have a need to use the Software or Documentation to have access to the Software or Documentation. Customer agrees to inform any third party to whom Customer gives access to the Software or Documentation of these Software License Terms and will obligate such third party to comply with such terms and provisions. Customer will be responsible for any third party's failure to comply with these Global Software License Terms and will indemnify Avaya for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Avaya as a result of non-compliance with this section.

4. PROPRIETARY RIGHTS NOTICES. Customer agrees to retain, in the same form and location, all proprietary legends and/or logos of Avaya and/or Avaya's suppliers on all permitted copies of the Software or Documentation.

5. BACKUP COPIES. Customer may create a reasonable number of archival and backup copies of the Software and the Documentation.

6. UPGRADES. Customer's right to use any upgrades to the Software will be conditioned upon Customer having a valid license to use the original Software and paying the applicable license fee to Avaya for such upgrades.

7. COMPLIANCE. Avaya will have the right to inspect or audit by remote polling or other reasonable means, and to inspect Customer's books, records, and accounts during normal business hours and with reasonable notice, to determine Customer's compliance with these Software License Terms, including but not limited to usage levels. In the event such inspection or audit uncovers non-compliance with these Software License Terms, then without prejudice to Avaya's termination rights hereunder, Customer will promptly pay Avaya any applicable license fees. Customer agrees to keep a current record of the location of the Software.

8. TERMINATION OF LICENSE; EFFECT OF TERMINATION/EXPIRATION If Customer breaches these Software License Terms and if within 10 business days of Avaya's written request to cure, Customer has not cured all breaches of license limitations or restrictions, Avaya may, with immediate effect, terminate the licenses granted in these Software License Terms without prejudice to any available rights and remedies Avaya may have at law or in equity. Upon termination or expiration of the license for any reason, Customer must immediately permanently destroy all copies of the Software and any related materials in Customer's possession or control and upon Avaya's request, certify such destruction in writing. The provisions concerning confidentiality, the protection of trade secrets and proprietary rights, indemnity, license restrictions, export control, and all limitations of liability and disclaimers and restrictions of warranty (as well as any other term, by their nature, are intended to survive any termination) will survive any termination or expiration of the Software License Terms.

9. LICENSE TYPES. Avaya grants Customer a license within the scope of the license types described below, with the exception of Heritage Nortel Software, for which the scope of the license is detailed in Section 10 below. Where the order documentation does not expressly identify a license type, the applicable license will be a Designated System License. The applicable number of licenses and units of capacity for which the license is granted will be one (1), unless a different number of licenses or units of capacity is specified in the documentation or other materials available to Customer. "**Designated Processor**" means a single stand-alone computing device. "**Server**" means a Designated Processor that hosts a software application to be accessed by multiple users. "**Instance**" means a single copy of the Software executing at a particular time: a) on one physical machine or b) on one deployed software virtual machine ("VM") or similar deployment.

9.1 Designated System(s) License (DS). Customer may install and use each copy or an Instance of the Software only on a number of Designated Processors up to the number indicated in the order. Avaya may require the Designated Processor(s) to be identified in the order by type, serial number, feature key, Instance, location or other specific designation, or to be provided by Customer to Avaya through electronic means established by Avaya specifically for this purpose.

9.2 Concurrent User License (CU). Customer may install and use the Software on multiple Designated Processors or one or more Servers, so long as only the licensed number of Units are accessing and using the Software at any given time. A "**Unit**" means the unit on which Avaya, at its sole discretion, bases the pricing of its licenses and can be, without limitation, an agent, port or user, an e-mail or voice mail account in the name of a person or corporate function (e.g., webmaster or helpdesk), or a directory entry in the administrative database utilized by the Software that permits one user to interface with the Software. Units may be linked to a specific, identified Server or an Instance of the Software.

9.3 Database License (DL). Customer may install and use each copy of the Software or an Instance on one Server or on multiple Servers provided that each of the Servers on which the Software is installed communicates with no more than an instance of the same database.

9.4 CPU License (CP). Customer may install and use each copy or Instance of the Software on a number of Servers up to the number indicated in the order provided that the performance capacity of the Server(s) does not exceed the performance capacity specified for the Software. Customer may not re-install or operate the Software on Server(s) with a larger performance capacity without Avaya's prior consent and payment of an upgrade fee.

9.5 Named User License (NU). Customer may: (i) install and use the Software on a single Designated Processor or Server per authorized Named User (defined below); or (ii) install and use the Software on a Server so long as only authorized Named Users access and use the Software. "**Named User**", means a user or device that has been expressly authorized by Avaya to access and use the Software. At Avaya's sole discretion, a Named User may be, without limitation, designated by name, corporate function (e.g., webmaster or helpdesk), an e-mail or voice mail account in the name of a person or corporate function, or a directory entry in the administrative database utilized by the Software that permits one user to interface with the Software.

9.6 Shrinkwrap License (SR). Customer may install and use the Software in accordance with the terms and conditions of the applicable license agreements, such as "shrinkwrap" or "clickthrough" licenses accompanying or applicable to the Software ("**Shrinkwrap License**").

10. HERITAGE NORTEL SOFTWARE. "**Heritage Nortel Software**" means the software that was acquired by Avaya as part of its purchase of the Nortel Enterprise Solutions Business in December 2009. The Heritage Nortel Software currently available for license from Avaya is the software contained within the list of Heritage Nortel Products located at <http://support.avaya.com/licenseinfo> under the link "**Heritage Nortel Products**" or such successor site as designated by Avaya. For Heritage Nortel Software, Avaya grants Customer a license to use Heritage Nortel Software provided under this Agreement solely to the extent of the authorized activation or authorized usage level solely for the purpose specified in the Documentation and solely as embedded in, for execution on, or (in the event the applicable Documentation permits installation on non-Avaya equipment) for communication with Avaya equipment.. Charges for Heritage Nortel Software may be based on extent of activation or use authorized as specified in an order or invoice.

11. THIRD PARTY COMPONENTS. Certain software programs or portions thereof included in the Software may contain Software (including open source software) distributed under third party agreements ("**Third Party Components**"), which may contain terms that expand or limit rights to use certain portions of the Software ("**Third Party Terms**"). As required, information regarding distributed Linux OS source code (for those Products that have distributed Linux OS source code) and identifying the copyright holders of the Third Party Components and the Third Party Terms that apply is available in the Documentation or on Avaya's website at: <http://support.avaya.com/Copyright> or such successor site as designated by Avaya. Customer agrees to the Third Party Terms for any such Third Party Components.

12. PROTECTION OF SOFTWARE AND DOCUMENTATION. Customer acknowledges that the Software and contain trade secrets of Avaya and its suppliers, and Customer agrees at all times to protect and preserve in strict confidence the Software and Documentation using no less than the level of care Customer uses to protect its own information of a confidential nature and to implement reasonable security measures to protect the trade secrets of Avaya and its suppliers.

13. PERSONAL DATA. Customer privacy is important to Avaya. Avaya's data privacy policy can be found at http://investors.avaya.com/governance/data_privacy.asp or such successor site as designated by Avaya. The download or use of the Software may require the processing of personal data (including, but not limited to contact name, company address, company phone or fax, or company email) pertaining to

Customer or Customer's personnel. Such data will be used by Avaya for communication, administrative, and operational purposes related to the Software, including but not limited to tracking Software activations, communicating regarding trouble tickets and alarms, and providing Software updates. Personal data required to download or use the Software must be submitted to Avaya. Failing the submission of such data, the download or use of the Software may not be possible. Customer or Customer personnel have a right to access and correct erroneous personal data pertaining to Customer or Customer personnel and to object for legitimate reasons to the processing and transfer of this data. Customer can exercise this right by contacting in writing the Data Privacy Officer of the applicable Avaya Affiliate.

14. HIGH RISK ACTIVITIES. The Software is not fault-tolerant and is not designed, manufactured or intended for any use in any environment that requires fail-safe performance in which the failure of the Software could lead to death, personal injury or significant property damage ("**High Risk Activities**"). Such environments include, among others, control systems in a nuclear, chemical, biological or other hazardous facility, aircraft navigation and communications, air traffic control, and life support systems in a healthcare facility. Customer assumes the risks for its use of the Software in any such High Risk Activities.

15. EXPORT CONTROL. Customer is advised that the Software is of U.S. origin and subject to the U.S. Export Administration Regulations (EAR). The Software also may be subject to applicable local laws and regulations. Diversion contrary to U.S. and/ or applicable local country law and/ or regulation is prohibited. Customer agree not to directly or indirectly export, re-export, import, download, or transmit the Software to any country, Customer or for any use that is contrary to applicable U.S. and/ or local country regulation or statute (including but not limited to those countries embargoed by the U.S. government). Customer represent that neither the U.S. Bureau of Industry and Security (BIS) nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's export privileges. Customer agree not to use or transfer the Software for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. and applicable local government by regulation or specific written license. Additionally, Customer are advised that the Software may contain encryption algorithm or source code that may not be exported to government or military Customers without a license issued by the U.S. BIS and any other country's governmental agencies, where applicable.

16. U.S GOVERNMENT CUSTOMERS. The Software is classified as "commercial computer software" and the Documentation is classified as "commercial computer software documentation" or "commercial items," pursuant to 48 CFR FAR 12.212 or DFAR 227.7202, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Documentation by the Government of the United States shall be governed solely by the terms of these Software License Terms and will be prohibited except to the extent expressly permitted by these Software License Terms, and any use of the Software and/or Documentation by the Government constitutes agreement to such classifications and to these Software License Terms.

17. ACKNOWLEDGEMENT. Customer acknowledges that certain Software may contain programming that: (i) restricts, limits and/or disables access to certain features, functionality or capacity of such Software subject to the Customer making payment for licenses to such features, functionality or capacity; or (ii) periodically deletes or archives data generated by use of the Software and stored on the applicable storage device if not backed up on an alternative storage medium after a certain period of time.

AVAYA
STATE & LOCAL GOVERNMENT/ /EDUCATION
CUSTOMER AGREEMENT
ATTACHMENT 1
SUPPLY OF GENERALLY AVAILABLE PRODUCTS

These terms for Supply of Generally Available Products set forth in this Attachment 1 are part of the Customer Agreement between Avaya and Customer, which incorporates this Attachment 1 by reference. They apply if and to the extent Customer purchases or receives licenses for Products under this Agreement that are generally available on Avaya's price lists. Products acquired under this Agreement are for use in the ordinary course of Customer's business and are not for resale by Customer.

1. DELIVERY AND IN-SERVICE DATES

1.1 The "**Delivery Date**" means the date on which Avaya delivers: (i) Avaya-installed Products to Customer's premises; or (ii) other Products to a carrier for shipment. In the case of Product features that are enabled by license files, Software activations or any other electronic means, "**Delivery Date**" means the date when the Product or Product features are enabled in Avaya's license management systems. Customer agrees that for Software that Avaya delivers electronically to its customers, the instructions posted on Avaya's website for downloading and installation of the Software may be provided in English only. The "**In-Service Date**" means the date on which Avaya informs Customer that the Avaya-installed Products are installed in good working order in accordance with applicable Documentation. "**Installation Start Date**" means the date on which Avaya's personnel arrive at Customer's premises to install Products.

2. ORDER OF PRECEDENCE

In the event of a conflict between the terms of this Attachment 1 and the General Terms, the order of precedence is: (i) the terms of this Attachment 1; and (ii) the General Terms. In the event of a conflict between the license terms contained in this Agreement and the license terms the Customer accepts prior to license activation, installation or downloading of the Software that Avaya delivers electronically to its customers, the license terms in this Agreement will prevail, except with respect to third party elements subject to a Shrinkwrap License, in which case the Shrinkwrap License will prevail.

3. PRODUCT CHANGES

Avaya may make changes to Products or modify the drawings and specifications relating to Products, or substitute Products of later design, provided that the changes do not adversely and materially impact Product form, fit or function.

4. ORDER CHANGES AND CANCELLATIONS

For purposes of this Section, "**Configured Products**" means made-to-order Products provided under this Attachment and "**Non-configured Products**" are all other Products provided under this Attachment. Customer may change or cancel orders as described in Sections 4.1 and 4.2, below. In the event of a permitted cancellation, all preliminary or advance Products that have been delivered to Customer will be returned promptly to Avaya, at Customer's expense, in the original, unopened packaging and in the same condition as delivered. No other changes or cancellations are permitted.

4.1 Configured Products:

- i. Changes or cancellations within 72 hours of order placement – 5% of Product and related installation fees
- ii. Changes or cancellations after 72 hours of order placement or any cancellation prior to Delivery Date – 15% of Product and related installation fees

4.2 Non-Configured Products

- i. Changes or cancellations prior to Delivery Date – No charge
- ii. Changes or cancellations after Delivery Date, but prior to Installation Start Date – 15% of Product and related installation fees:

5. DELIVERY; RISK OF LOSS; TITLE

5.1 Delivery. Unless Avaya provides Customer with express written confirmation of a different delivery term, Products shall be shipped to the destination specified in the order form. Shipping and handling charges will be reflected as a separate line item on Avaya's invoice.

5.2 Risk. Risk of loss will pass to Customer on the Delivery Date.

5.3 Title. Title to all hardware will pass to Customer on the Acceptance date, provided Customer maintains all delivered hardware in a secure environment with controlled access. Avaya may, at its sole discretion and at any time, waive any requirements of payment prior to passing of title in this Section. Title to Software provided under this Agreement will remain solely with Avaya and its licensors.

6. INVOICING

Unless otherwise agreed in writing, Avaya will invoice Customer for Products as follows: (i) non-Avaya installed Products invoiced 100% on the Delivery Date and (ii) Avaya-installed Product invoiced 100% on the In-Service Date.

7. WARRANTY

7.1 Warranty. Avaya warrants to Customer that during the applicable warranty period, the Product will conform to and operate in accordance with the applicable Documentation in all material respects. Avaya provides Third Party Products (as defined in Section 8 in the General Terms of this Agreement) on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, unless Avaya specifies otherwise. However, such Third Party Products may carry their own warranties and Avaya will pass through to Customer any such warranties to the extent authorized. Exercise of such warranty will be directly between Customer and the third party provider.

7.2 Warranty Period. Unless a different period is specified in the applicable order, the warranty periods for Products are as follows: (i) hardware: 12 months, beginning on the In-Service Date for Avaya-installed hardware and on the Delivery Date for all other hardware; and/or (ii) Software and Software media: 90 days, beginning on the In-Service Date for Avaya-installed Software and on the Delivery Date for all other Software. Avaya offers a lifetime warranty for select Avaya Data Solutions hardware only, as specified at Avaya's support site (<https://support.avaya.com/helpcenter/getGenericDetails?detailId=C20091120112456651010>) or such successor site as designated by Avaya. The lifetime warranty begins on the Delivery Date and ends five (5) years after the hardware's end of sale date, as determined by Avaya.

7.3 Remedies. If a Product is not in conformance with the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Product failed to be in conformance, Avaya at its option will: (i) repair or replace the Product to achieve

conformance and return the Product to Customer; or (ii) refund to Customer the applicable fees upon return of the non-conforming Product to Avaya. For Software warranty claims, Avaya provides access to available Software corrective content and product support knowledge base on a self-service basis. Customer must provide Avaya with information in sufficient detail to enable Avaya to produce and analyze the failure and must provide remote access to the affected Products. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Products are warranted as above for the remainder of the original applicable Product warranty period.

7.4 Warranty Procedures. Products subject to a warranty claim must be returned to Avaya in accordance with Avaya's instructions accompanied by evidence that the Products remain under warranty (i.e. a valid invoice, and in some cases this may also require Product registration with Avaya).

7.5 Costs. If a Product is returned within the applicable warranty period subject to a valid warranty claim, Avaya will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Product. If Avaya determines that the Product was operating in conformance with its applicable warranty, Avaya may charge Customer for error identification or correction efforts, repair, replacement and shipment costs at Avaya's then current rates.

AVAYA
STATE & LOCAL GOVERNMENT/ EDUCATION
CUSTOMER AGREEMENT
ATTACHMENT 2
PROFESSIONAL SERVICES TERMS

These Professional Services Terms ("Professional Services Terms") set forth in this Attachment 2 are part of the Customer Agreement between Avaya and Customer, which incorporates these Services Terms in this attachment 2 by reference. They apply if and to the extent Customer acquires Professional Services.

1. SCOPE; ORDER OF PRECEDENCE; CHANGES

1.1 Services Provided. Avaya will provide the implementation and professional Services described in this paragraph (" **Professional Services**") as specified in an order and as may be further described in a Statement of Work executed by both parties ("**SOW**"). Professional Services can include installation and configuration of Products, consulting and other Professional Services where Avaya creates and delivers customized Software, documentation, or other work product ("**Deliverables**") and/or completes other defined objective or defined phase of Professional Services ("Project Phase") on a milestone basis or on a time and material basis. "**T&M Services**" are Professional Services provided on a time and materials basis in exchange for hourly, daily or monthly fees and expense reimbursements calculated on the basis of Avaya service records. Deliverables do not include generally available hardware and Software and are not Products. To the extent an SOW provides that Avaya will deliver Products, the terms for Supply of Generally Available Products will apply to those Products. Professional Services do not include maintenance, managed services and subscription services covered under Attachment 3, if applicable.

1.2 Order of Precedence. Unless otherwise provided for in these Professional Services Terms, in the event of conflict among the General Terms, these Professional Services Terms, an SOW and any ancillary attachments to or documents referenced in an SOW, the order of precedence is: (i) these Professional Services Terms; (ii) the General Terms; (iii) any SOW; and (iv) ancillary documents; except that in relation to limitations of liability, licensing provisions, intellectual property rights and intellectual property rights indemnification, the provisions contained in the General Terms will always take priority.

1.3 Changes. Changes in Professional Services will be made in accordance with Avaya's change process defined in the SOW, and any such changes must be agreed to in writing by both parties utilizing a change management request agreement (CMRA) as is further described and process defined in the SOW.

2. ACCEPTANCE

2.1 T&M Services. T&M Services are deemed accepted upon performance.

2.2 SOW without Acceptance Procedures. Where the SOW does not contain specific acceptance criteria and procedures, Professional Services are deemed accepted upon the earlier of either: (i) Avaya providing notice of completion to Customer; or (ii) Customer signature on an acceptance certificate.

2.3 SOW with Acceptance Procedures. Where the SOW contains acceptance criteria and procedures ("Acceptance Procedures"), Professional Services or a Project Phase, as applicable, is deemed accepted upon the earlier of either: (i) the end of the acceptance period defined in the Acceptance Procedures, unless Avaya has received from Customer a rejection notice indicating in reasonable detail the material failure of the Professional Services or Project Phase, as applicable, to conform to the criteria in the Acceptance Procedures; or (ii) Customer signature on an acceptance certificate. If the Professional Services or Project Phase, as applicable, fails to conform to the criteria in the Acceptance Procedures and Avaya has received a timely rejection notice, then Avaya will re-perform the non-conforming Professional Services or a Project Phase, as applicable and re-submit Professional Services or Project Phase, as applicable, for acceptance as described above. If, after resubmission, Customer provides another rejection notice, then Customer's remedies will be either to: (a) terminate the non-conforming Professional Services or a Project Phase, as applicable, return all non-conforming Deliverables and receive a refund of fees paid under the SOW; or (b) accept the Professional Services or a Project Phase, as applicable subject to the warranties and remedies described in Section 5.

2.4 Acceptance certificate. Subject to 2.2 and 2.3, above, , Customer will sign and return an acceptance certificate without delay. Acceptance certificates may be provided by Customer to Avaya by electronic mail, at the email address provided by Avaya to Customer from time to time, or other agreed means of electronic communication.

2.5 Production Use. Unless otherwise provided for in Acceptance Procedures, production use will constitute acceptance for all purposes of this Agreement and Customer agrees to confirm its acceptance by signing an acceptance certificate promptly upon Avaya's request.

3. TRANSFER OF RISK, TITLE, LICENSE TO DELIVERABLES

3.1 Transfer of Risk. Shipping will be FOB Destination and risk of loss will pass to Customer when the Deliverable arrives on Customer's premises.

3.2 Transfer of Title. Title to hardware components of Deliverables will pass to Customer upon Acceptance as described in Section 2.

3.3 Customer's License to Deliverables. Subject to Customer's payment of fees for the Professional Services, Avaya grants Customer a non-exclusive, non-transferable, limited, non-sublicenseable license to use Deliverables created by Avaya and delivered to Customer. Software contained in Deliverables will be licensed subject to the Global Software License Terms contained in Schedule A of this Agreement.

4. INVOICING AND PAYMENT

4.1 Professional Services fees will be invoiced as follows: (i) Professional Services other than T&M Services on completion of the Services, unless otherwise provided in the SOW; and (ii) T&M Services monthly in arrears, unless otherwise provided in the SOW.

5. WARRANTY

5.1 Warranty Period. The warranty period for Professional Services and Deliverables will be 30 days beginning on the acceptance or deemed acceptance date of the Professional Services or Project Phase, as applicable (the "**Warranty Period**").

5.2 Warranty. During the Warranty Period, Avaya warrants to Customer that (i) Professional Services will be carried out in a professional and workmanlike manner by qualified personnel in conformance with generally accepted industry practices in the field for which the work is to be performed; and (ii) Deliverables will conform in all material respects to the specifications contained in the SOW. However, Avaya does not warrant that Software contained in the Deliverables will perform uninterrupted or error-free.

5.3 Remedies.

5.3.1 Professional Services. To the extent that Avaya has not performed Professional Services in accordance with the above warranty ("**Non Conformity**") and Avaya receives written notice from Customer within the Warranty Period that identifies the Non-Conformity in reasonable detail Avaya will re-perform the applicable Professional Services or Project Phase or if Avaya determines that re-performance is not commercially reasonable, either (i) refund to Customer the fees for the Non-Conforming Professional Services or the non-conforming Project Phase, as applicable; or (ii) in the case of T&M Services, Customer may cancel the affected T&M Services, subject to payment of fees for T&M Services already performed.

5.3.2 Deliverables. If Avaya receives from Customer within the Warranty Period a written notice describing in reasonable detail how the Deliverables failed to be in conformance with the above warranty, Avaya will, at its option, repair or replace the non-conforming Deliverables, or refund to Customer the applicable fees upon return of the non-conforming Deliverables.

5.3.3 Exclusive Remedies. THE REMEDIES SET FORTH IN THIS SECTION 5.3 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA WITH RESPECT TO THE NON-CONFORMANCE OF PROFESSIONAL SERVICES, ANY PROJECT PHASE AND/OR DELIVERABLES.

5.4 Disclaimer. Professional Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Avaya nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that the Professional Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

6. TERM AND TERMINATION

6.1 Term. The term of an SOW will begin on the date specified in the SOW or order if any, or on the date executed by the last party to sign the SOW. The term of the SOW will continue until the work is completed or the SOW is terminated earlier in accordance with this Section.

6.2 Termination. Unless otherwise provided in the SOW, either party may terminate Professional Services or any Project Phase that has not been accepted by Customer upon 45 days prior written notice, and Customer will pay for Professional Services performed to the date of termination and all non-refundable or non-terminable out-of-pocket expenses Avaya incurred.



STATE & LOCAL GOVERNMENT/ /EDUCATION
CUSTOMER AGREEMENT
ATTACHMENT 3

MAINTENANCE, MANAGED SERVICES AND SUBSCRIPTION SERVICES TERMS

These Maintenance, Managed Services and Subscription Services Terms (“**Services Terms**”) are part of the Customer Agreement between Avaya and Customer, which incorporates these Services Terms by reference. They apply if and to the extent Customer acquires maintenance, managed services and/or subscription services.

1. ORDER, PROVISION AND SCOPE OF SERVICES

1.1 Order and Provision of Services. In return for the payment of the applicable fees and subject to compliance with the applicable terms of this Agreement, Avaya will provide the maintenance, managed service and subscription services options for Supported Products at the location(s) covered under this Agreement (“**Supported Sites**”), “**Service Description**” means (a) the applicable Avaya services agreement supplement (“**Service Agreement Supplement**” or “**SAS**”) or service description document (“**SDD**”) then current as of the date of Avaya’s acceptance of an order for Services and available to Customer upon request; and/or (b) a statement of work (“**SOW**”) executed by the parties describing specific Services to be provided by Avaya as applicable. In the event of a conflict between the Service Description and this Agreement, this Agreement will govern.

1.2 “Supported Products” are: (i) hardware or Software Products (including Avaya supplied and non-Avaya supplied products) identified in the order or Service Description; and (ii) Added Products.(defined in Section 1.9)

1.3 Documents and Order of Precedence. Unless otherwise provided for in these Services Terms, in the event of conflict among the General Terms, these Services Terms; the various Service Description documents, and any ancillary attachments to or documents referenced in the Service Description, the order of precedence is: (i) these Services Terms; (ii) the General Terms; (iii) SOW; and (iv) SAS and/or SDD; and (v) ancillary documents, except that in relation to limitations of liability, licensing provisions, intellectual property rights and intellectual property rights indemnification, the provisions contained in the General Terms will always take priority.

1.4 Monitoring. Avaya may electronically monitor Supported Products for the following purposes: (i) remote diagnostics and corrective actions; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable Software license terms and restrictions; (iv) when providing managed Services, to assess Customer needs for additional Products or Services; (v) as otherwise provided in the Service Description.

1.5 Incident Correction. Some Services options may include correction of Incidents. An “**Incident**” means a failure of a Supported Product to conform in all material respects to the manufacturer’s specifications that were currently applicable when the Supported Product was purchased or licensed.

1.6 Help Line Support. Where the selected Services option includes help line support, Avaya will provide it in accordance with the coverage option (service hours, target response intervals, etc.) that Customer has selected.

1.7 End of Support. Periodically, Avaya or a third party manufacturer may declare “end of life,” “end of service,” “end of support,” “manufacture discontinue” or similar designation (“**End of Support**”) for certain Supported Products. Customer may access Avaya’s user support website (www.support.avaya.com) or such successor site as designated by Avaya for End of Support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Avaya. For Products subject to End of Support, Avaya will continue to provide the support described in the applicable SAS, except for the End of Support exceptions listed therein (“**Extended Support**”). If the SAS does not include Extended Support information, Avaya will make available the description of Extended Support (if available) for the Products concerned at the same time as its End of Support notification. For Products not subject to Extended Support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the order and rates will be adjusted accordingly.

1.8 Replacement Hardware. Replacement hardware provided as part of Services may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent. It will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya’s property. Title to Avaya-installed replacement hardware provided as part of Services will pass to Customer when installed. Title to all other hardware provided as part of Services will pass to Customer when it arrives at the Supported Site.

1.9 Added Products. “**Added Products**” means additional Products of the same type and manufacturer as the existing Supported Products that are acquired from Avaya and/or an Avaya authorized reseller and located by Customer with existing Supported Products at a Supported Site. Added Products will be added to the order automatically for the remainder of the term, at the applicable rate contained in this Agreement, Customer will inform Avaya without undue delay of any Added Projects not acquired from Avaya. Added Products purchased from a party other than the manufacturer or an authorized reseller may be added to or declined from being added to the Supported Products at Avaya discretion, and are subject to certification by Avaya at Avaya’s then current Services rates.

1.10 General Limitations. Unless the Service Description provides otherwise, Avaya will provide Software Services only for the unaltered current release of the Software and the prior release. The following items are included in the Services only if the Service Description specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Avaya (except for installation of standard, self-installed updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Incidents arising from causes external to the Supported Products (such as power failures or surges); and (vii) services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, or that have had their serial numbers altered, defaced or deleted.

2. INVOICING AND PAYMENT

Avaya will invoice Customer for Services in advance unless another payment option is specified in the order or as otherwise specified in the Service Description.

3. CUSTOMER RESPONSIBILITIES

3.1 General. Customer will cooperate with Avaya as reasonably necessary for Avaya’s performance of its obligations at Customer’s expense, including: (i) providing Avaya with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; and (iii) providing interface information for Supported Products and necessary third party consents and licenses to access them. If Avaya provides New Software as part of the Services, Customer will implement it promptly.

3.2 Provision of Supported Products and Systems. Except for Avaya hosted facilities identified in the Service Description Customer will provide all Supported Products and Supported Sites. Customer continuously represents and warrants that: (i) Customer is either the owner of, or is authorized to access and use, each of them; and (ii) Avaya, its suppliers, and subcontractors are authorized to do the same to the extent necessary to provide the Services in a timely manner.

3.3 Moves of Supported Products. Customer will notify Avaya in advance before moving Supported Products. Avaya may charge additional amounts to recover additional costs in providing Services as a result of such move.

3.4 Vendor Management. Where Avaya is to instruct or request products or services on Customer's behalf from third party vendors under Customer's supply contracts with the third party vendors ("**Vendor Management**"), Customer will provide Avaya upon request a letter of agency or similar document, in a form reasonably satisfactory to Avaya, permitting Avaya to perform Vendor Management. Where the third party vendor's consent is required for Avaya to be able to perform Vendor Management in a timely manner, Customer will obtain the written consent of the vendor and provide Avaya a copy of it upon request.

3.5 Third Party Hosting. In the event one or more network address(es) to be monitored by Avaya are associated with systems owned, managed, and/or hosted by a third party service provider ("**Host**"), Customer will: (i) notify Avaya of the Host prior to commencement of the Services; (ii) obtain the Host's advance written consent for Avaya to perform Services on the Host's computer systems and provide Avaya with a copy of the consent upon request; and (iii) facilitate necessary communications between Avaya and the Host in connection with the Services.

3.6 Access to Personal Data. From time to time, Customer may require Avaya to access a Supported Product containing employee, customer or other individual's personal data (collectively, "**Personal Data**"). Where Customer instructs Avaya to access any Personal Data or to provide Customer or a third party identified by Customer with access, Customer will (i) notify all relevant employees and other individuals of the fact that Avaya will have access to such Personal Data in accordance with Customer's instructions, and (ii) as permitted by local law or regulation, indemnify Avaya and its officers, directors, employees, subcontractors and Affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorney's fees and costs) arising out of Avaya accessing or providing access in accordance with Customer's instructions.

4. SOFTWARE LICENSE

Where Services include provision of patches, updates or feature upgrades for Supported Products ("**New Software**"), they will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original Software from Avaya. Where there is no existing license from Avaya, New Software will be provided subject to the manufacturer's then current license terms and restrictions for the New Software. New Software may include components provided by third party suppliers that are subject to their own end user license agreements. Customer may install and use these components in accordance with the terms and conditions of the "shrinkwrap" or "clickthrough" end user license agreement accompanying them.

5. WARRANTY AND LIMITATION OF LIABILITY

5.1 Warranty. AVAYA WARRANTS TO CUSTOMER THAT SERVICES WILL BE CARRIED OUT IN A PROFESSIONAL AND WORKMANLIKE MANNER BY QUALIFIED PERSONNEL.

5.2 Remedy. If Services are not in conformance with the above warranty and Avaya receives Customer's detailed request to cure a non-conformance within 30 days of its occurrence, Avaya will re-perform those Services. This remedy will be Customer's sole and exclusive remedy and will be in lieu of any other rights or remedies Customer may have against Avaya with respect to the non-conformance of Services.

5.3 Disclaimer. Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Avaya nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that the Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

6. TERM AND TERMINATION

6.1 Term. Unless a different term is set forth in the applicable order or Service Description, Avaya will provide Services for an initial term of one year. Unless otherwise specified in the Service Description, Customer may terminate Services in whole or in part(i) for maintenance and subscription Services (identified on the order documentation) upon 30 days written notice subject to cancellation fees equal to Service fees for 12 months or the remaining term, whichever is less.

For managed Services (or "Avaya Operations Services" or equivalent) term and termination will be identified on the order documentation or SOW which will specify the order term, renewal term (if any) and the cancellation fees which shall be mutually agreed to at the time of order placement and are also specified on the order document or SOW.

6.2. Termination Notice. Customer's written notice of termination must be sent by: (i) letter via certified mail to the following address: Avaya Inc., Customer Care Center, 14400 Hertz Quail Spring Pkwy, Oklahoma City, OK 73134 Attn: Services Termination; (ii) email to mycontract@avaya.com; or (iii) fax to 800-444-6371.

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
EDGESOFT, INC. FOR INFORMATION TECHNOLOGY
CONSULTING SERVICES FOR VARIOUS CITY INITIATIVES

NAME OF CONSULTANT: Edgesoft, Inc.

RESPONSIBLE PRINCIPAL
OF CONSULTANT: Shan Sundar, President

CONSULTANT'S ADDRESS: 6133 Bristol Parkway, Suite 301
Culver City CA 90230

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: David Schirmer
Chief Information Officer

COMMENCEMENT DATE: July 1, 2014

TERMINATION DATE: June 30, 2015

CONSIDERATION: An amount not to exceed
\$225,000.00 (includes applicable
taxes) as more fully described in
Exhibit B

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
EDGESOFT, INC. FOR INFORMATION TECHNOLOGY
CONSULTING SERVICES FOR VARIOUS CITY INITIATIVES

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "City"), and Edgesoft, Inc., (hereinafter called "Consultant").

RECITALS

A. City desires to have certain services provided as set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Services").

B. Consultant represents that it is qualified and able to perform the Services in accordance with the terms set forth herein.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

Section 1. Consultant's Services. Consultant shall provide the consulting services on an "as needed" basis or as mutually agreed to by the parties, relating to the City's web applications and as more particularly described in Exhibit A, in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Time of Performance. Consultant shall commence its services under this Agreement upon receipt of a written notice to proceed from City. Consultant shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee.

Section 3. Compensation. City agrees to compensate Consultant, and Consultant agrees to accept in full satisfaction for the services required by this Agreement the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein by this reference. Said Consideration shall constitute reimbursement of Consultant's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). City shall pay Consultant said Consideration in accordance with the schedule of payment set forth in Exhibit B.

Section 4. Independent Contractor. Consultant is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

Section 5. Assignment and Subcontracting. Consultant shall not assign or attempt to assign any portion of this Agreement, or subcontract any required performance hereunder, without the prior written approval of City. Consultant, however, shall at all times be responsible for the services performed by any subcontractors.

Section 6. Responsible Principal(s).

(a) Consultant's Responsible Principal set forth above shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. Designation of another Responsible Principle by Consultant shall not be made without prior written consent of City.

(b) City's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of City.

Section 7. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement.

Section 8. Interests of Consultant. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Consultant.

Section 9. Insurance.

(a) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Consultant.

(b) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Consultant in performing the services required by this Agreement.

(c) Consultant agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

(d) Consultant shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(e) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(f) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(g) At all times during the term of this Agreement, Consultant shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth on Exhibit C, attached hereto and incorporated herein, or satisfactory to the City Attorney and Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Consultant shall, prior

to commencement of work under this Agreement, file with the City Clerk such certificate or certificates.

(h) The policies of insurance required by this Agreement shall contain an endorsement naming the City and City's elected officials, officers and employees as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(i) The insurance provided by Consultant shall be primary to any coverage available to City, and any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation. The Consultant hereby waives all rights of subrogation against City.

(j) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Section 10. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 11. Termination.

(a) Either party may cancel this Agreement, with or without cause, at any time upon five (5) days written notice to the other party. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Consultant, Consultant shall be paid full compensation for all services performed by Consultant, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, Consultant shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Consultant for the full performance of the services required by this Agreement.

Section 12. City's Responsibility. City shall provide Consultant with all pertinent data, documents, and other requested information as is available for the proper performance of Consultant's services.

Section 13. Work Product. All products of consulting, including, without limitation, any copyrightable works, ideas, discoveries, inventions, patents, products, videos, graphics, scripts, or other information (collectively, the "Work Product") developed in whole or in part by Consultant in connection with this Agreement shall be the exclusive property of City. Upon the

request of City, Consultant shall sign all documents requested by City to confirm or perfect the exclusive ownership of City of the Work Product. Any Work Product in the possession of Consultant shall be delivered to the City at least ten (10) days prior to the termination of this Agreement. This section shall survive termination of this Agreement.

Section 14. Information and Documents. All data, information, documents and drawings prepared for City and required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the work submitted by Consultant and compensated by City pursuant to this Agreement as City deems appropriate.

Section 15. Non-Disclosure.

(a) Pursuant to the terms of this Agreement, City has provided, or will provide Consultant with certain information, and/or access to certain information including public safety information (the "Information"), which was or will be obtained by the City pursuant to a License Agreement with a third party, or which is the proprietary information of the City, or which is not publicly known. Consultant, its employees, agents, representatives, contractors and subcontractors shall hold the Information private and confidential, and shall not:

(1) Use the Information, nor cause the Information to be used for any purpose other than in performance of its duties to the City,

(2) Participate in the wrongful use, illegal use, or unauthorized disclosure of the Information, or

(3) Sell, release, free trade, assign, or provide access to the Information, directly or indirectly, to third parties. This provision survives termination of Consultant's duties to the City.

Section 16. Notice. Any notice required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth above or to such other addresses as the parties may designate in writing.

Section 17. Attorney's Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

Section 18. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Consultant.

Section 19. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 20. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this

Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

EXECUTED the _____ day of _____, 20__.

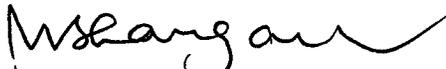
CITY OF BEVERLY HILLS
A Municipal Corporation

LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

CONSULTANT: EDGESOFT, INC.



SHAN SUNDAR
President



ANAND BELAGULY
Secretary

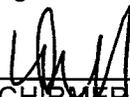
APPROVED AS TO FORM



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY C. KOLIN
City Manager



DAVID SCHIRMER
Chief Information Officer



KARL KIRKMAN
Risk Manager

EXHIBIT A
SCOPE OF SERVICES

Consultant shall provide information technology consulting services (the "Services") related to various City Initiatives such as enhancing website usability by integrating multiple new and existing eGov initiatives, which include Customer Service applications (utility billing, business tax, etc.), HR applications (training, payroll, etc.), and others for a single unified web presence, simplified user interface, uniform look and feel, and streamlined processes for City customers and employees. Consultant shall provide the Services as directed by City on an as-needed basis. The Services shall include the following:

1. Analysis of business requirements and subsequent creation of high-level technical design documents and detailed technical specifications, in accordance with City architecture standards.
2. Development of application code as necessary, using Java, WebSphere and Struts.
3. Unit and system testing of application code as well as execution of implementation activities.
4. Identification, documentation and estimation of technical tasks for projects of varying sizes and levels of complexity.
5. Analysis and identification of technical areas of improvement within existing web applications.
6. Work with internal Information Technology teams to complete project activities, such as infrastructure, architecture and database design.
7. Discovery, solutions development, systems testing, solutions presentations, training, and application support.

For all work to be completed under this Agreement, Consultant shall provide a detailed scope of work subject to the prior written approval of City, including detailed deliverables and payment milestones.

EXHIBIT B

COMPENSATION AND PAYMENT

City shall pay Consultant compensation at a blended rate of Ninety-Five (\$95.00) per hour for scheduled service during normal business hours. The total sum paid to Consultant under this Agreement shall not exceed the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00), as set forth in the purchase order issued by City for all services to be provided pursuant to this Agreement. Said Compensation shall constitute reimbursement of Consultant's fee for the services as well as the actual cost of any equipment, materials and supplies necessary to provide the services (including labor, materials, delivery, tax, assembly and installation, as applicable).

Consultant shall submit a monthly itemized statement to City for its services performed for the prior month, which shall include documentation setting forth, in detail, a description of the services rendered and the hours of service. City shall pay Consultant all undisputed amounts of such billing within thirty (30) days of receipt of the same.

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

**A.
B.
C.**

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	<u>LIMITS</u> P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days'** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____
ADDRESS: _____

Attachment 2

**City of Beverly Hills
Information Technology Department
Listing of Annual Blanket Purchase Orders 2014-15**

IT EQUIPMENT & SERVICES

AT&T Mobility II, LLC	
Wireless communications services and equipment for public safety vehicles, executives, field operations and staff, as needed.	\$53,000.00
Avaya, Inc.	
Annual support and maintenance for the City's telecommunications system.	\$130,000.00
Cloudeeva, Inc.	
Information technology consulting services related to provision of network administration services for the Beverly Hills Unified School District.	\$125,000.00
Edgesoft, Inc.	
Information technology consulting services for various City initiatives (eGov)	\$145,000.00
Integrated Media Technologies, Inc.	
Maintenance and support for the City's network infrastructure.	\$63,425.03
Innovative Interfaces, Inc.	
Hardware and software maintenance for the Library's online systems.	\$64,452.00
Neopost USA, Inc.	
Postage for citywide mailings.	\$130,000.00
Networld Solutions, Inc.	
Information technology consulting services related to provision of network administration services for the Beverly Hills Unified School District.	\$125,000.00
Sungard Public Sector	
Maintenance and support for the City's legacy financial system.	\$122,508.00
Xerox Corporation	
Lease of citywide fleet of multi-function devices, including supplies, maintenance and support services.	\$414,950.00
XO Communications	
Internet Service Provider for the City and disaster recovery location for the City's network services.	\$100,000.00
	\$1,473,335.03