SUBJECT: Award of Contract for Google Apps for Government Email and Calendaring Services (F1109-14)

BACKGROUND
Approval is requested for the award of a contract in the amount of $106,505, to SADA Systems, Inc. of North Hollywood, a Google reseller. This award to SADA is for provisioning, installing and maintaining citywide “Google Apps for Government” email and calendaring services. Approval is also requested for a 10% contract contingency in the amount of $10,651 to cover any unforeseen conditions encountered during the installation/migration.

DISCUSSION
The City currently uses the Novell Groupwise e-mail and office collaboration system originally purchased in 1995 and upgraded once in 2007. The Groupwise product was an early offering in this area and offered excellent features and service for a number of years. However, the product is not well integrated with other products and services that have become industry standards over the years such as current generation desktop computer software, mobile computers and smart-phones. The system runs on an old server and operating system which is declining in usage. Due to the age of the current system, performance has become slow and unreliable resulting in lost productivity.

As Groupwise performance declined over time, staff examined two general options:

- Replacement of Groupwise with an internal Microsoft Exchange e-mail system
- Outsource e-mail service to one of a number of possible “Software-as-a-Service” (Cloud-based) e-mail service providers

In evaluating the Microsoft Exchange option, it was estimated that the cost of acquiring new servers and software would be approximately $210,000, plus staff costs to implement and maintain the system. Conversely the cost to implement the Google solution is $106,505. The ongoing maintenance and support costs for the Google outsourced solution are higher than with Microsoft Exchange, but with the latter solution more internal staff time would be required to maintain the system. From a life-cycle cost perspective, the expenses for either system are essentially the same. Costs being relatively equal, there were several deciding factors in moving to an outsourced email and calendaring solution:

- Less staff time associated with system maintenance
• Robust system functionality
• Built-in redundancy for disaster recovery
• Data housed in secure environment certified by the Federal Government.

Specifications for the outsourced email and calendaring service were developed by the Department of Information Technology and Request for Proposals (RFP) No. F1109-14 was released and posted on the Onvia Demandstar public procurement network. Eleven (11) firms requested proposal documents. Sealed proposals were publicly received on January 11, 2012. Two responsive proposals were submitted as follows: SADA Systems, Inc. (Google Apps for Government) and Insight Public Sector (MicroSoft Online Services Office 365).

The evaluation committee included representatives from the Department of Finance Purchasing Division, Department of Information Technology, City Attorney, Public Safety and NOVA. Staff evaluated the proposals based on adequacy of solutions, soundness of approach, capabilities of organization and personnel, project schedule, ease of implementation, and price. Both proposers were invited for interviews with the evaluation team. As a result of the interview process, SADA Systems, Inc. was selected as the highest ranking proposer.

**FISCAL IMPACT**

Total cost to the City for the initial one year contract will be $106,505. Budgeted funds are available in the Information Technology Department’s Software Replacement Account 021601. Ongoing licensing, maintenance and support costs will be covered by the Information Technology Department’s operating budget beginning in FY 2013/2014 when the initial first year support warranty expires.

Project costs are as follows (includes the first year maintenance and support):

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>License Fee for 1,200 E-Mail Accounts</td>
<td>$52,500</td>
</tr>
<tr>
<td>Archiving and Discovery (Records Retention)</td>
<td>$11,700</td>
</tr>
<tr>
<td>Data Migration/Implementation/Training</td>
<td>$42,305</td>
</tr>
<tr>
<td><strong>Total One-time Cost</strong></td>
<td><strong>$106,505</strong></td>
</tr>
</tbody>
</table>

A separate purchase order will be issued under the City Manager’s award authority for ongoing licensing, maintenance and support beginning after the one year anniversary of the installation of the email system. Ongoing costs will include:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>License Fee for 1,200 E-Mail Accounts</td>
<td>$52,500</td>
</tr>
<tr>
<td>Archiving and Discovery (Records Retention)</td>
<td>$11,700</td>
</tr>
<tr>
<td>Support Warranty</td>
<td>$5,000</td>
</tr>
<tr>
<td></td>
<td><strong>$70,200</strong>*</td>
</tr>
</tbody>
</table>

*SADA has agreed to hold this pricing for years 2-5 of the contract period. As is typical with these types of contracts, pricing is prepaid annually. SADA has also agreed to reduce its annual licensing, archiving and support fees at any time during...
the contract period if it provides lower pricing to any jurisdiction of similar size and scope.

PUBLIC CONTACT
Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION
It is recommended that Council:

1. Award a contract for a Google Apps for Government Email and Calendaring System in substantially the same form as the attached draft contract and in the amount of $106,505, to SADA Systems Inc.;
2. Approve a 10% contingency in the amount of $10,651; and
3. Authorize the City Manager to approve the purchase of additional individual Google Access and Use licenses if necessary.

Reviewed by:

Grace Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

David Jensen
Director, Information Technology

Approved by:

Gary M. Luebbers
City Manager

Attachments

A. Draft Services Agreement Between the City and SADA Systems, Inc. to Provide and Install a Google Apps for Government Email System, and Associated Attachments

B. Draft SADA Systems, Inc. Google Apps for Government Customer Agreement, and Associated Exhibits
ATTACHMENT A
DRAFT
SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND SADA SYSTEMS, INC.
TO PROVIDE AND INSTALL A GOOGLE APPS FOR GOVERNMENT EMAIL SYSTEM

THIS AGREEMENT, dated ____________________, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SADA SYSTEMS, Inc. ("CONTRACTOR").

WHEREAS, on November 29, 2011, CITY issued Request for Proposals No. F1109-14; and

WHEREAS, CONTRACTOR has submitted a proposal in response to this Request for Proposals; and

WHEREAS, CITY has selected CONTRACTOR to implement the Google Apps for Government email system (SYSTEM) in accordance with CITY requirements; and

WHEREAS, CONTRACTOR is a Google Apps for Government Authorized Reseller, and has been granted written authority by Google to provide and implement SYSTEM; and

WHEREAS, CONTRACTOR has warranted that it is providing the lowest possible market pricing for licensing the Google SYSTEM and CITY has determined that SYSTEM offers the best value to CITY;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Contract Documents
The complete Contract consists of the following documents:

a. Services Agreement between the City of Sunnyvale and SADA Systems, Inc. to Provide and Install a Google Apps for Government Email System;

b. Request for Proposal No. F1109-14, consisting of a Notice Inviting Proposals, Instructions to Proposers, Specifications, Terms and Conditions (excluding those terms and conditions superseded by this Agreement and the SADA Systems, Inc. Google Apps for Government Customer Agreement), and four Addenda (RFP);

c. SADA Systems, Inc. RFP Response;

d. SADA Systems, Inc. Google Apps for Government Customer Agreement ("Customer Agreement" and incorporated exhibits, including the duly executed Google Apps for Government Via Reseller Terms of Service ("Terms of Service"); and

e. SADA Systems, Inc. Single Sign-on Maintenance and Support Agreement.
These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the CITY and the CONTRACTOR are fully set forth and described herein and therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

In the event of any conflict among the Contract Documents, CITY’s Services Agreement shall take precedence, followed by the RFP and its requirements, SADA’s written response to the RFP and the Single Sign-on Maintenance and Support Agreement; provided that if there is any conflict among the Contract Documents regarding the CITY’s rights and obligations with respect to the Google Apps for Government services, the Customer Agreement and Terms of Service will take precedence.

2. Relationship of the Parties

CONTRACTOR, in furnishing the implementation services contemplated by this Agreement and as an authorized reseller of Google, is acting as an independent contractor. SADA is not an agent of CITY, nor is it an agent of Google, and has no authority to represent CITY or Google as to any matters, except (with respect to CITY only) as expressly authorized in this Agreement.

3. Time for Performance

The term of this Agreement shall be one year, commencing on date of execution, unless otherwise terminated. Agreement may be renewed for additional one-year periods provided pricing and services are acceptable to the CITY.

4. Termination of Contract

If the CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to the CONTRACTOR if the failure is not remedied by CONTRACTOR within 30 days after written notice of such default or breach. If CITY fails to pay the CONTRACTOR, the CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by City within thirty (30) days after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon thirty (30) days’ written notice to the CONTRACTOR. In the event of such termination, the CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of termination. The CONTRACTOR shall present CITY with any work product completed at that point in time. In addition, if CITY terminates this Agreement without cause or CONTRACTOR terminates this Agreement for CITY’s failure to pay, CONTRACTOR will be entitled to reimbursement for any obligations CONTRACTOR has entered into for the purpose of performing services under this Agreement that cannot be cancelled.
Upon the termination of this Agreement with the CITY and upon CITY's written request, the CONTRACTOR shall return to the CITY all documents, records and property of the CITY, including but not necessarily limited to: drawings, blueprints, reports, manuals, contact lists, computer hardware and/or software, or any other CITY owned or CITY provided materials, documentation, and records, whether they be hard copy, electronic, or some contained in some other format or media, and all copies thereof relating in any way to the CITY's business, CONTRACTOR participation in that business, or in any way obtained by CONTRACTOR during the course of the contract by any means and through any party, either directly or indirectly; provided, however, that CONTRACTOR will not be required to search for or purge any such documentation, records, or correspondence from its archived electronic back-up files of its computer systems; provided further that any such retained information will remain subject to the obligations and restrictions contemplated by this Agreement and be maintained in accordance with CONTRACTOR's document retention policies and procedures. Subject to the exception in the preceding sentence, CONTRACTOR further agrees that CONTRACTOR shall not retain copies, notes, working memoranda, drafts, prior versions, prior compositions, or any abstracts of the foregoing. In the event of any prepayment made by the CITY, the CONTRACTOR shall reimburse the CITY in proportion to the percentage of services received by the CITY; provided that no reimbursement will be provided to CITY for pre-paid licenses for which CONTRACTOR cannot obtain reimbursement.

5. Information Security Requirements and Disclosure

CONTRACTOR shall not, without the CITY's written consent, use or disclose any City Data, other than in the performance of its obligations under this Agreement.

CONTRACTOR shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of City Data, protect against unauthorized access to or use of City Data that could result in substantial harm or inconvenience to CITY or any CITY end users; and ensure the proper disposal of City Data upon termination to this Agreement.

CONTRACTOR shall take appropriate action to address any incident of unauthorized access to City Data, including addressing and/or remediying the issue that resulted in such unauthorized access, notifying CITY as soon as possible of any incident of unauthorized access to City Data, or any other breach in CONTRACTOR's security that materially affects City or CITY's end users; and be responsible for ensuring compliance by CONTRACTOR's officers, employees, agents, and subcontractors with the confidentiality provisions hereof.

Should City Data be divulged to unauthorized third parties, CONTRACTOR shall comply with all applicable federal and state laws and notice regulations. CONTRACTOR shall not charge the CITY for any expenses associated with CONTRACTOR's compliance with the obligations set forth in this section.
6. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE HELD LIABLE UNDER THIS AGREEMENT OR ANY CONTRACT DOCUMENT FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA, BUSINESS INTERRUPTION OR LOST PROFITS), WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, OR OTHERWISE, EVEN IF SUCH PARTY IS AWARE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

CONTRACTOR’s liability for damages to the CITY for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to twice the aggregate amount actually paid to CONTRACTOR by CITY under this Agreement; provided that the foregoing limitation of liability contained in this sentence shall not apply to (i) CONTRACTOR’s indemnity obligations set forth in this Agreement, or (ii) CONTRACTOR’s willful conduct, gross negligence, or fraud.

The CITY’s liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the Purchase Price. Nothing herein shall be construed to waive or limit the CITY’s sovereign immunity or any other immunity from suit provided by law.

7. Security Features

Security features shall be embedded, enabled and active upon delivery to CITY, including baseline security configurations for all deliverables and a defined process to discover and report to CITY areas within the deliverables that are vulnerable to security breaches.

8. Duties of CITY

CITY understands that CONTRACTOR’s performance is dependent on CITY’s timely and effective cooperation, and that the quality of CONTRACTOR’s services are dependent on CITY providing timely and accurate information to CONTRACTOR and access to the required CITY resources in accordance with the objectives of this Agreement. Accordingly, any delay or nonperformance by CONTRACTOR will be excused if and to the extent that such nonperformance results from CITY’s failure to perform its responsibilities, so long as CONTRACTOR uses commercially reasonable efforts to perform notwithstanding CITY’s failure (provided that CONTRACTOR will have no obligation to incur additional costs in to so perform).

CITY shall supply any documents or information available to CITY required by CONTRACTOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work in accordance with the provisions of Section 4.
9. **Compensation**

CITY agrees to pay CONTRACTOR upon SYSTEM acceptance and in accordance with payment guidelines and timeframes established herein, a total not to exceed amount of one hundred six thousand five hundred five and no/100 dollars ($106,505.00), inclusive of fees paid pursuant to Exhibit A of the SADA Services Google Apps for Government Customer Agreement, and including applicable taxes (this represents the total first year pricing per Attachment A of this Agreement). Pricing for years two through five for the Google Apps for Government services, Google Message Services and annual support and maintenance shall be consistent with the amounts contained in Attachment A, subject to other provisions of this section.

CITY agrees to prepay annual licensing, maintenance and support costs for subsequent years, unless this Agreement is terminated earlier.

During the term of this AGREEMENT and subsequent renewal periods, in the event CONTRACTOR provides lower market pricing to any entity of similar size and scope for annual licensing, maintenance and support for Google Apps for Government or its successor system, such pricing shall immediately be provided to CITY.

CONTRACTOR shall submit invoices to CITY to be paid within thirty (30) days upon receipt of an accurate, itemized invoice by CITY'S Accounts Payable Unit. CITY agrees to notify CONTRACTOR within ten business days of its receipt of an invoice from CONTRACTOR, if CITY disputes any amount or time in such invoice in good faith. Notwithstanding any dispute, CITY will pay the undisputed portion of an invoice when due and payable. If CITY withholds any amount associated with disputed amounts pursuant to this Section, CITY will provide CONTRACTOR with a description of the basis for such withholding. Upon resolution of a dispute involving any withheld amounts, CITY will pay CONTRACTOR such portion, if any, of the disputed amount agreed or determined to be owing to CONTRACTOR.

10. **Force Majeure**

Neither party to this Agreement shall be held responsible for delay or default caused, directly or indirectly, by fire, riot, acts of God, war, acts of terrorism, or any other similar cause which is beyond that party's reasonable control. CITY may terminate the contract upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement.

11. **Audits, Inspection and Right of Enforcement**

Within ten (10) days of a written request by CITY, CONTRACTOR shall allow CITY to conduct a reasonable inspection of CONTRACTOR's facilities, systems books, records, agreements, policies and procedures relating to the use or disclosure of City Data; provided, however, that CONTRACTOR and CITY mutually agree in advance upon the scope, timing and location of such an inspection.
City shall have the right to review CONTRACTOR’s information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the performance of the Services, on an ongoing basis from time to time and with reasonable notice, City, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of CONTRACTOR’s information security program.

CONTRACTOR shall implement any commercially reasonable safeguards identified by CITY as a result of its information security program audits.

12. Intellectual Property Rights and Indemnity

As between CONTRACTOR and CITY, all right, title and interest in and to CONTRACTOR IP (as defined below) will remain the exclusive property of CONTRACTOR. Except to the extent that the parties enter into separate license agreements with respect to any products to be provided by CONTRACTOR (in which case such products will be governed by the terms of those license agreements), to the extent necessary to receive or use the services or any deliverable, CONTRACTOR hereby grants to CITY a perpetual, non-exclusive, worldwide, fully paid-up and royalty-free license to access and use (and to allow third parties to access and use solely for the benefit of CITY) the CONTRACTOR IP, for no additional consideration. Notwithstanding the foregoing, if any services and deliverables are to be provided to CITY on a trial or pilot basis, CITY’s license to access and use any CONTRACTOR IP necessary to receive or use the services or deliverables provided as part of such trial or pilot will not be perpetual, but will be limited to the period of such trial or pilot phase.

Nothing in this Section will be construed to grant CITY any right to separate CONTRACTOR IP from the deliverable into which it is incorporated and CITY will not (and will not knowingly allow any third party to) adapt, modify, translate, reverse engineer, decompile, disassemble or attempt to decode or disassemble any source code or underlying ideas or algorithms of any CONTRACTOR IP or part thereof. CITY will not sell, rent, lease, sublease, license, lend, market or commercially exploit such CONTRACTOR IP or use CONTRACTOR IP for the benefit of any affiliate, organization or other third party not contemplated by this Agreement, or assign or transfer any rights with respect to CONTRACTOR IP under this Agreement.

For purposes of this Agreement, “CONTRACTOR IP” will mean: (A) software and tools, (B) processes, procedures and methodologies, (C) formulas, templates and formats, and (D) documents and other written materials, whether proprietary to CONTRACTOR or licensed to CONTRACTOR from third parties that are used to provide the services, together, in each case, with any modifications or enhancements thereto and derivative works based thereon. CITY acknowledges and agrees that with respect to CONTRACTOR IP licensed to CONTRACTOR from third parties, any rights granted to CITY will be subject to all restrictions set forth in the applicable third party agreements.

CONTRACTOR shall defend, indemnify and hold the CITY harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorneys fees) by a third party alleging the deliverables and/or services provided by CONTRACTOR infringe upon any intellectual property rights of third party.
Notwithstanding the foregoing, in no event will CONTRACTOR have any obligations or liability under this Section arising from: (i) use of any service or deliverable in a modified form or in combination with materials not furnished or approved by CONTRACTOR; (ii) use by CITY or its agents of such item in a manner not reasonably consistent with the applicable specifications, requirements or instructions for such item; or (iii) any content, information or data provided by CITY or other third parties.

If the services or any deliverable or item used by CONTRACTOR to provide the services or any deliverable becomes, or in CONTRACTOR’s reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, CONTRACTOR will, at its expense: (1) secure the right to continue using the services, deliverable or item; (2) replace or modify the services, deliverable or item to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component; or (3) if CONTRACTOR cannot accomplish either of the foregoing using commercially reasonable efforts, and only in such event, CONTRACTOR will discontinue providing the services or remove the deliverable or item and the charges will be equitably adjusted to reflect such removal.

13. Severability

In case any one or more of the provisions contained in this Agreement, for any reason, is held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

14. Subcontracting

The performance of the work under this Agreement may not be delegated or subcontracted except upon the written consent of the CITY. Consent will not be given to any proposed subcontract or delegation, which would relieve CONTRACTOR of its responsibilities under the contract.

15. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

16. Confidential Information

Each party shall maintain in confidence and at no time use, except to the extent required to perform its obligations and exercise its rights hereunder, any and all proprietary or confidential information of the other party of which the receiving party may become aware in the performance of the services.
17. Compliance with Laws

(a) CONTRACTOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.

(b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals applicable to its performance of this Agreement.

18. Independent Contractor

CONTRACTOR is acting as an independent contractor in performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

19. Indemnity

CONTRACTOR shall indemnify, defend, and hold harmless the CITY and its officers, agents, and employees from any claim, liability, loss, injury or damage to persons or property arising out of, or in connection with, performance of the services contemplated by this Agreement by CONTRACTOR and/or its agents, employees or sub-contractors, excepting any loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the CITY. CITY will promptly notify CONTRACTOR of any claim for which it is seeking indemnification and cooperate with CONTRACTOR in defending the claim. CONTRACTOR will have full control and authority over the defense, provided that: (A) any settlement requiring the CITY to admit liability or pay any money will require the CITY’s prior written consent, such consent not to be unreasonably withheld or delayed; and (B) the CITY may join in the defense of a claim with its own counsel at its own expense.

20. Insurance

CONTRACTOR shall take out and maintain during the term of this Agreement policies of insurance as specified in Attachment "A" which is attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Attachment "B."

21. CITY Representative

Eddie Soliven, Department of Information Technology, as the CITY’s authorized representative, shall represent CITY in all matters pertaining to the services to be rendered
under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

22. CONTRACTOR Representative

Michael Higby, Regional Sales Director shall represent CONTRACTOR in all matters pertaining to the services and deliverables to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

23. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to CITY's Accounts Payable Division, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Eddie Soliven, IT Manager
Department of Information Technology
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: Michael Higby, Regional Sales Director
SADA Systems Inc.
5250 Lankershim Blvd, Suite 620
North Hollywood, CA 91601

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

24. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.
25. **Entire Agreement; Amendment**

The Contract Documents constitute the entire agreement between the parties relating to the services to be performed and materials to be furnished to CITY by CONTRACTOR. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by both parties.

26. **Miscellaneous**

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver by such party of its right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

**ATTEST:**

CITY OF SUNNYVALE ("CITY")

By ____________________________

City Clerk

By ____________________________

City Manager

**APPROVED AS TO FORM:**

SADA SYSTEMS, INC.

("CONTRACTOR")

By ____________________________

City Attorney

By ____________________________

Title and Date

By ____________________________

Title and Date
Agreement Attachment A

Under the terms of the Agreements of which this Attachment is a party, SADA will provide the following Google products to Customer in the indicated quantity and at the indicated pricing:

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Price Per Item</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Google Apps for Government</td>
<td>1200</td>
<td>$43.75</td>
<td>$52,500.00</td>
</tr>
<tr>
<td>Google Message Discovery 1-Year</td>
<td>1200</td>
<td>$9.75</td>
<td>$11,700.00</td>
</tr>
<tr>
<td>Data Migration – Calendar and Contacts</td>
<td></td>
<td></td>
<td>$5,250.00</td>
</tr>
<tr>
<td>Implementation</td>
<td></td>
<td></td>
<td>$19,355.00</td>
</tr>
<tr>
<td>Support Warranty</td>
<td></td>
<td></td>
<td>$6,000.00</td>
</tr>
<tr>
<td>Training</td>
<td></td>
<td></td>
<td>$11,700.00</td>
</tr>
<tr>
<td><strong>Total First Year Cost</strong></td>
<td></td>
<td></td>
<td><strong>$106,505.00</strong></td>
</tr>
<tr>
<td>Annual Licensing, Maintenance and Support beginning in year two through year five.</td>
<td></td>
<td></td>
<td>$70,200.00 Per year</td>
</tr>
</tbody>
</table>

The Initial Term of this Agreement will be 12 months.

CITY shall pay for the Services on an annual prepaid basis.

**Overage Charge**

CITY shall notify SADA in the event that CITY exceeds the number of mailboxes/units set forth above for any Email Processing Service product (Postini, message encryption or message security), such notice to be provided to SADA within 10 days of the occurrence of such overage. Upon becoming aware of any such overage (whether from CITY or otherwise), SADA will charge CITY an “Overage Charge” for each month during which an overage exists. Such Overage Charge will be equal to the product of (A) the number of excess mailboxes and (B) 1/12 of the annual charge per mailbox, which Overage Charge will be invoiced to CITY by SADA monthly in arrears.
Notices
Any notices under this Agreement, other than invoices for payment which shall be sent directly to CITY'S Accounts Payable Division, will be directed, if to SADA, at:

Annie Safoian, Chief Financial Officer
SADA Systems, Inc.
5250 Lankershim Blvd., Suite 620
North Hollywood, CA 91601
Email: annie.safoian@sadasystems.com
Fax: 818-766-0090

and if to Customer, at:

Eddie Soliven, IT Manager
Department of Information Technology
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707
Email: esoliven@ci.sunnyvale.ca.us
Agreement Attachment B
CITY OF SUNNYVALE
INSURANCE REQUIREMENTS

CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the CONTRACTOR, its agents, representatives, or employees.

Minimum Scope and Limits of Insurance CONTRACTOR shall maintain limits no less than:

1. **Commercial General Liability**: $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.

2. **Workers' Compensation**: Statutory Limits and **Employer's Liability**: $1,000,000 per accident for bodily injury or disease.

3. **Errors and Omissions** Liability Insurance appropriate to the CONTRACTOR's business: $1,000,000 per occurrence and $2,000,000 aggregate.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. CONTRACTOR shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.

2. For any claims related to this project, the CONTRACTOR's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.

4. The CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

CONTRACTOR shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.
This GOOGLE APPS FOR GOVERNMENT CUSTOMER AGREEMENT (this "Agreement"), is made and entered into as of [EFFECTIVE DATE] (the "Effective Date"), between SADA Systems Inc., a corporation organized under the laws of the state of California, with offices at 5250 Lankershim Blvd., Suite 620, North Hollywood, CA 91601 ("Contractor"), and City of Sunnyvale, a municipal corporation organized under the laws of the State of California with an address at 456 West Olive Avenue, Sunnyvale, California ("Customer").

1. SERVICES AND TERMS OF SERVICE

1.1 Service. This Agreement establishes the terms under which Contractor, as an authorized reseller of Google, Inc. ("Google"), will provide Customer with access to the Google hosted services set forth in Exhibit A (the "Services"). If the services set forth in Exhibit A include any services designed to process, filter and deliver email, including Google Message Discovery or GMD ("Email Processing Services"), the terms of Exhibit C shall apply to such products and are incorporated into this Agreement by reference.

1.2 Support. Customer will respond to questions and complaints from the individuals Customer permits to use the Services (such individuals, "End Users") or third parties relating to Customer's or End Users' use of the Services. Contractor will provide front-line technical support directly to Customer's technology administrators with respect to questions, complaints and other support issues that Customer cannot resolve, and Contractor is hereby authorized by Customer to submit Customer support issues to Google on behalf of Customer. Customer may also contact Google with respect to technical support issues in accordance with Google's technical support guidelines (the "TSSG"), as defined in the Terms of Service.

1.3 Google Apps for Government Terms of Service. Customer understands and agrees that Customer will be required to agree to the Google Apps for Government via Reseller Agreement, also referred to as Terms of Service, in order to obtain access to the Services, which Terms of Service are attached to this Agreement as Exhibit B (the "Terms of Service"). The Terms of Service govern Customer's access to and use of the Services and will be effective as of the date signed by Google.

1.4 Service Levels. The Google Apps Covered Services (as defined in the Google SLA) will meet the requirements set forth in the Google Apps Service Level Agreement found at http://www.google.com/apps/intl/en/terms/sla.html (the "Google SLA"). In the event of a breach of such service levels, as Customer's sole and exclusive remedy, Customer will be provided the remedies set forth in the Google SLA.

2. CUSTOMER REPRESENTATIONS AND OBLIGATIONS

2.1 Customer Eligibility. Customer represents and warrants that it is a state, city or federal government entity: (A) with a budget supported by public funds; (B) that represents, is comprised of, or whose function is to support a municipal corporation, city, county, state or nation in the United States; and (C) whose representation or support referenced in clause (B) is exercised by virtue of power delegated to it for that purpose by the general government of the state or nation.

2.2 Compliance with Law; Compliance with Agreement. Customer will comply with all laws, rules and regulations applicable to its use of the Services. Customer acknowledges and agrees that Contractor and Google are merely serving as a data processor and their responsibilities and liability do not extend to the internal management or administration of the Services for Customer. Customer is responsible for ensuring that it and its End Users use the Services in accordance with the Terms of Service and Acceptable Use Policy, as set forth in Section 1.4 and Section 2.6.
2.3 Customer Administration of the Services. Customer is responsible for: (A) maintaining the confidentiality of the password and administrative account provided to Customer by Google for the purpose of administering End User accounts; (B) designating those of Customer's employees and Contractor's employees who are authorized to access the administrative account; and (C) ensuring that all activities that occur in connection with Customer's administrative account comply with the Terms of Service.

2.4 Privacy. Customer agrees to protect the privacy rights of its End Users in accordance with all applicable laws and regulations.

2.5 Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Customer will promptly notify Contractor or Google of any unauthorized use of, or access to, the Services of which it becomes aware.

2.6 Acceptable Use Policy. Customer agrees that its use of the Services is subject to its compliance with Google's Acceptable Use Policy, which is available at http://www.google.com/apps/intllenlterms/use_policy.html (or such URL as Google may provide) and which may be updated from time to time.

2.7 Intended Use; Email Accounts. The Services are for use with normal business messaging traffic only, and may not be used for any other purpose, including use of the message encryption services (if applicable) with machine generated message encryption and delivery. For each End User for which Customer will be routing email and/or archiving email, if any, through the Services, Customer shall establish an email account in Google's identity management systems. Failure to abide by the terms of this Section may be considered a material breach of this Agreement and, if not cured by Customer following notice by Contractor, may result in a suspension of Services until such failure is remedied.

2.8 No Resale. Customer agrees that it shall not resell the Services or create or offer derivative versions of the Services, either directly or through a third party.

3. CHARGES AND PAYMENT

3.1 Fees. Customer will pay Contractor the fee(s) set forth on Exhibit A to this Agreement for the Services and any Email Processing Services in accordance with Section 3.3. At the end of the initial 12-month subscription period as set forth on Exhibit A, the same pricing will be maintained for years two through five. Following the sixth anniversary of this Agreement, Contractor will have the right to change the annual fee once each year, effective with the next renewal date; provided that Contractor notify Customer of any fee increase at least 45 days prior to the expiration of the then-current term. Throughout the term of this Agreement or any subsequent amendments or renewals, if Contractor provides lower market pricing to any entity of similar size and scope, such pricing shall immediately be provided to Customer.

3.2 Support Charges. Any support to be provided by Contractor under Section 1.3 of this Agreement will be performed on business days between the hours of 9:00 a.m. to 6:00 p.m. Pacific Time, at no additional cost. Any support services requested by Customer outside these hours will be billed to Customer at an hourly rate of $292.50.

3.3 Payment Options. Customer will pay for the Services and any Email Processing Services on a full prepaid basis for the Initial Term (as defined in Section 4.1) of this Agreement and each succeeding 12-month renewal term, to the extent applicable.

3.4 Payment Methods. Fees for prepaid orders where Contractor issues an invoice are due upon Customer's receipt of the invoice, and are considered delinquent 30 days after the date of the applicable invoice except in the case of a good faith dispute, in which case Customer agrees to notify Contractor of any points of dispute within ten business days of its receipt of an invoice from Contractor. Notwithstanding any dispute, Customer will pay the undisputed portion of an invoice when due and payable.

SADA Google Apps for Government Customer Agreement
3.5 Currency. Customer will make all payments in U.S. dollars.

3.6 Taxes. Customer is responsible for any taxes and Customer will pay Contractor without any reduction for such amounts. If Contractor is obligated to collect or pay taxes, the taxes will be invoiced to Customer (in the case of invoiced fees) or added to Customer's credit card charges (in the case of credit card payments), unless Customer provides Contractor with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any taxes from its payments to Contractor, Customer must provide Contractor with an official tax receipt or other appropriate documentation to support such payments.

3.7 Delinquent Payments. Customer is responsible for all reasonable expenses (including attorneys' fees) incurred by Contractor in collecting unpaid or delinquent amounts, except where these unpaid or delinquent amounts are due to billing inaccuracies attributable to Contractor.

4. TERM, TERMINATION AND ADDITIONAL END USER ACCOUNTS

4.1 Term. The term of this Agreement will begin on the Effective Date and will continue for an initial period as set forth in Exhibit A (such period, the "Initial Term"). At the end of the Initial Term, this Agreement will be renewed automatically for consecutive renewal terms of 12 months (each, a "Renewal Term"), unless terminated by either party (effective as of the end of the then-current term) by providing the other party written notice in accordance with Section 4.2 below. All terms and conditions of this Agreement shall apply during each Renewal Term, except for the fees. The fee for each Renewal Term will be the rates then in effect as described in Section 3.1.

4.2 Termination. This Agreement will terminate: (A) immediately upon termination or expiration of Customer's right to use the Services as a result of a termination of the Terms of Service by Google or Customer; (B) upon expiration of the then-current term if Customer has provided at least 30 days' advance written notice of termination to Contractor; or (C) upon expiration of the then-current term if Contractor has provided at least 60 days' advance written notice of termination to Customer.

4.3 Termination for Non-Payment. If Customer is delinquent in its payments under this Agreement for more than 60 days and Customer fails to bring its payments up to date within 30 days of receiving written notice from Contractor of its delinquency, Contractor may terminate this Agreement and terminate Customer's access to the Services.

4.4 Effects of Termination. If this Agreement terminates, then the rights granted hereunder by any party to the other will cease immediately and Customer's access to the Services and any Email Processing Services will cease.

4.5 Additional End User Accounts. Customer may alter the number of End User Accounts per Customer domain at any time. For End User Accounts added during the Initial Term or any Renewal Term, the initial term for such End User Accounts will be pro-rated, beginning on the date of the applicable order and ending on the expiration of the applicable term. Customer may request End User Accounts by notifying its designated Contractor account manager. For each purchase of End User Accounts, Contractor will issue a quote to Customer. End User Accounts automatically renew in accordance with the terms of this Agreement, unless terminated by either party in accordance with the terms of this Agreement. Contractor cannot transfer End User Accounts from one Customer domain name to another.
5. CUSTOMER DATA AND CONFIDENTIAL INFORMATION

5.1 Customer Data. Contractor will treat all Customer Data in accordance with local laws and regulations applicable to the data and will implement policies and procedures with respect to the Customer Data no less protective of the rights of Customer or its End Users as those found in Google's Privacy Policy (located at http://www.google.com/ intl/en/privacy/privacy-policy.html). Changes to the Privacy Policy and Privacy Notice will be made as stated in the applicable policy. For purposes of this Agreement, "Customer Data" means all data and information provided by Customer's End Users via the sign up process for the Services, as well as data, including electronic messages and any attachments provided, generated, transmitted or displayed via the Services by Customer or its End Users.

5.2 Confidential Information. Each party will: (A) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care; and (B) not disclose the other party's Confidential Information, except to affiliates, employees, agents and professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. Each party (and any affiliates, employees and agents to whom the Confidential Information was disclosed) may use such Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its affiliates, employees and agents in violation of this Section. For purposes of this Agreement, "Confidential Information" is information disclosed by one party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. In particular, Customer Data is Confidential Information.

5.3 Exceptions. Confidential Information does not include information that: (A) is or subsequently becomes published or available to the public through no fault of the recipient, (B) is received by the recipient from a third party without a duty of confidentiality; (C) is independently developed by recipient, or (D) was in the recipient's possession or was known to the recipient before it was disclosed to the recipient by the disclosing party.

5.4 Required Disclosure. Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (A) uses commercially reasonable efforts to notify the other party; and (B) gives the other party the chance to challenge the disclosure.

6. INTELLECTUAL PROPERTY RIGHTS. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data. The parties acknowledge and agree that Google owns all Intellectual Property Rights in the Services. For purposes of this Agreement, "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law and other similar rights.

7. DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN EXHIBIT C (IF APPLICABLE), TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AND GOOGLE MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR NONINFRINGEMENT. CONTRACTOR AND GOOGLE MAKE NO REPRESENTATION ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICE. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

8. LIMITATION OF LIABILITY. IN NO EVENT, WHETHER IN CONTRACT, TORT OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, PRODUCT LIABILITY, AND STRICT LIABILITY IN TORT), WILL EITHER PARTY BE HELD LIABLE UNDER THIS AGREEMENT
FOR INDIRECT OR CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OF DATA), EVEN IF SUCH PARTY IS AWARE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. IN NO EVENT WILL EITHER PARTY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO CONTRACTOR FOR THE SERVICES DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. IN NO EVENT WILL GOOGLE BE HELD LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL, ARISING FROM CONTRACTOR’S DISTRIBUTION AND RESALE OF THE SERVICES. THESE LIMITATIONS OF LIABILITY DO NOT APPLY TO A PARTY’S INDEMNIFICATION OBLIGATIONS.

9. GENERAL PROVISIONS

9.1 Notices. All notices, requests, consents, approvals, acknowledgements and waivers under this Agreement will be in writing and delivered to the applicable party, addressed to the designee for notification purposes set forth in Exhibit A. Notice will be deemed given: (A) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt, or (B) when verified by automated receipt or electronic logs if sent by facsimile or email. A party may change its address, facsimile number or designee for notification purposes by giving the other party written notice of the new address, facsimile number or designee and the date upon which it will become effective.

9.2 Governing Law. Customer is a municipal corporation and the terms of this Agreement will be governed by and construed in accordance with the laws of the State of California. For any dispute arising out of or relating to this Agreement, Contractor and Customer consent to personal jurisdiction in and venue of the courts in Santa Clara County, California.

9.3 Binding Nature and Assignment. This Agreement will be binding on the parties and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other, except that Contractor may assign its rights and obligations under this Agreement without Customer’s approval to an entity that acquires control of Contractor.

9.4 Conflict of Interest. No officer or employee of Contractor shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof (apart from such officer or employee’s normal compensation arrangements with Contractor). During the term of this Agreement Contractor shall not accept employment or an obligation which is inconsistent or incompatible with Contractor’s obligations under this Agreement.

9.5 Independent Contractor. Contractor is acting as an independent contractor in performing the work required by this Agreement and is not an agent, servant or employee of Customer or of Google. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Customer and Contractor.

9.6 Publicity. Customer hereby consents to Contractor’s inclusion of Customer’s name (together with any identifying Customer Brand Feature) in a customer list, but only if Customer is not the only customer appearing on the list. Other than this, neither party may make any public statement regarding the relationships contemplated by this Agreement without the consent of the applicable party.

9.7 Third Party Beneficiary. The parties agree that Google is a third party beneficiary of this Agreement. There are no other third party beneficiaries to this Agreement.

9.8 Waiver of Default. No delay or omission by either party to exercise any right or power under this Agreement will be construed to be a waiver thereof. A waiver by either party of any breach or covenant will not be construed to be a waiver of any succeeding breach thereof or of any other covenant.
9.9 Survival. The provisions of Section 3.6, Article 5, Article 6, Article 7, Article 8, and this Article, as well as any other provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement will survive expiration or termination of this Agreement and continue in full force and effect for the period set forth therein, or if no period is set forth therein, indefinitely.

9.10 Force Majeure. Neither Contractor nor Google shall be liable for inadequate performance to the extent caused by a circumstance beyond its reasonable control, including, without limitation, domain name server issues outside its direct control, labor strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortage.

9.11 Severability. If any provision of this Agreement is found to be illegal or otherwise unenforceable in any respect, that provision will be deemed to be restated to reflect as nearly as possible the original intent of the parties in accordance with applicable law. The remainder of this Agreement will remain in full force and effect.

9.12 Entire Agreement; Amendment and Waiver. This Agreement and the exhibits referred to herein, each of which is incorporated herein for all purposes, constitutes the entire agreement of the parties with respect to the subject matter hereof. No change, waiver or discharge hereof will be valid unless made in writing and signed by an authorized representative of the party against which such change, waiver of discharge is sought to be enforced.

9.13 Counterparts. The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

9.14 Miscellaneous. Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE LEGALLY BOUND BY IT.

IN WITNESS WHEREOF, this Agreement has been executed by the parties through their duly authorized officers as of the date set forth above.

SADA Systems, Inc. City of Sunnyvale

Print name: ______________________ Print Name: Gary Luebbers
Print title: ______________________ Print Title: City Manager
Approved as to form: 
By _____________________________ By: _____________________________
City Attorney Attest:

City Clerk

SADA Google Apps for Government Customer Agreement
EXHIBIT A

Under the terms of the Agreement of which this Exhibit is a party, SADA will provide the following Google products to Customer in the indicated quantity and at the indicated pricing:

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Annual Price Per Item</th>
<th>Annual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Google Apps for Government End User Accounts</td>
<td>1200</td>
<td>$43.74</td>
<td>$52,500.00</td>
</tr>
<tr>
<td>Google Message Discovery 1-Year</td>
<td>1200</td>
<td>$9.75</td>
<td>$11,700.00</td>
</tr>
</tbody>
</table>

The Initial Term of this Agreement will be 12 months.

Customer shall pay for the Services on a prepaid basis.

**Overage Charge**

Customer shall notify SADA in the event that Customer exceeds the number of mailboxes/units set forth above for any Email Processing Service product (Postini, message encryption or message security), such notice to be provided to SADA within 10 days of the occurrence of such overage. Upon becoming aware of any such overage (whether from Customer or otherwise), SADA will charge Customer an "Overage Charge" for each month during which an overage exists. Such Overage Charge will be equal to the product of (A) the number of excess mailboxes and (B) 1/12 of the annual charge per mailbox, which Overage Charge will be invoiced to Customer by SADA monthly in arrears.

**Notices**

Any notices under this Agreement, other than invoices for payment which shall be sent directly to Customer's Accounts Payable Division, will be directed, if to SADA, at:

Annie Safoian, Chief Financial Officer  
SADA Systems, Inc.  
5250 Lankershim Blvd., Suite 620  
North Hollywood, CA 91601  
Email: annie.safouan@sadasystems.com  
Fax: 818-766-0090

and if to Customer, at:

Eddie Soliven, IT Manager  
Department of Information Technology  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707  
Email: esoliven@ci.sunnyvale.ca.us
Exhibit B

Google Apps for Government via Reseller Agreement

This Google Apps for Government via Reseller Agreement (the "Agreement") is entered into by and between Google Inc., a Delaware corporation, with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google") and the City of Sunnyvale, a city formed under the laws of California with an address at 456 W. Olive Avenue Sunnyvale, CA 94086 ("Customer"). This Agreement will be effective as of the date signed by Google below (the "Effective Date"). This Agreement governs Customer's access to and use of the Service.

1. Services.

1.1 Facilities. All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Google stores and processes its own information of a similar type. Google has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access to or use of Customer Data.

1.2 Data Storage. As part of providing the Services Google will store the following Core Content, while permanently at rest, in the regions as described below, and as further detailed in Google's FISMA security authorization package, which is referenced in Section 1.3.

   a. United States: Core Content for Gmail, Google Docs, Google Talk, and Google Calendar. Core Content for Gmail, Google Docs, Google Talk, and Google Calendar will be stored: (a) in servers dedicated to the Google Apps for Government Services; and (b) stored on encrypted drives using full disk encryption.

   b. United States and the European Union: Core Content for Google Contacts, Google Groups, Google Sites, and Google Video.

1.3 Federal Information Security Management Act (FISMA). The Google Apps Core Services received a FISMA "Authorization to Operate" for a Moderate impact system. Google will continue to maintain a System Security Plan (SSP) for the Google Apps Core Services, based on NIST 800-53 Rev. 3, or a similarly applicable standard. If Google does not maintain this SSP as stated, Customer's sole and exclusive remedy, and Google's entire liability, will be Customer's ability to terminate the Agreement upon thirty days prior written notice.

1.4 Modifications.

   a. To the Services. Google may make commercially reasonable changes to the Services, from time to time. If Google makes a material change to the Services, Google will inform Customer, provided that Customer has subscribed with Google to be informed about such change.

   b. To URL Terms. Google may make commercially reasonable changes to the URL Terms from time to time. If Google makes a material change to the URL Terms, Google will Inform Customer by either sending an email to the Notification Email Address or alerting Customer via the Admin Console, or will alert Reseller. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Google via the Help Center within thirty days after receiving notice of the change. If Customer notifies Google as required, or Reseller notifies Google on Customer's behalf, then Customer will remain governed by the terms in effect immediately prior to the change until the end of the then-current term for the affected Services. If the affected Services are renewed, they will be renewed under Google's then current URL Terms.

1.5 Customer Domain Name Ownership. Prior to providing the Services, Google or Reseller may verify that Customer owns or controls the Customer Domain Names. If Customer does not own, or control, the Customer Domain Names, then Google will have no obligation to provide Customer with the Services.

1.6 Ads.

   a. Default Setting. The default setting for the Services is one that does not allow Google to serve Ads. Customer or Reseller may change this setting in the Admin Console, which constitutes Customer's authorization for Google to serve Ads. If Customer or Reseller enables the serving of Ads, it may revert to the default setting at any time and Google will cease serving Ads.

   b. Generally. Ads will comply with the AdWords Guidelines. Except as stated otherwise under this Agreement, Google will neither contact the End Users directly through email, nor authorize a third party to contact the End Users directly by email, for advertising purposes. If Google is authorized to serve Ads, any revenue generated from the display of Ads will be retained by Google and will not be subject to any revenue sharing.

2. Customer Obligations.

2.1 Compliance. Customer will use the Services in accordance with the Acceptable Use Policy. Google may make new applications, features or functionality available from time to time through the Services, the use of which may be contingent upon Customer's agreement directly or through Reseller to additional terms. In addition, Google will make other Non-Google...
Apps Products, separate from the Services, available to Customer and its End Users in accordance with the Non-Google Apps Product Terms and the applicable product-specific Google terms of service. Customer can enable or disable the Non-Google Apps Products at any time through the Admin Console. Customer agrees that its use of the Domain Service is subject to its compliance with the Domain Service Terms.

2.2 Aliases. Customer or Reseller is solely responsible for monitoring, responding to, and otherwise processing emails sent to the “abuse” and “postmaster” aliases for Customer Domain Names but Google may monitor emails sent to these aliases for Customer Domain Names to allow Google to identify Services abuse.

2.3 Customer Administration of the Services. Customer may specify one or more Administrators through the Admin Console who will have the right to access Admin Account(s) and to administer the End User Accounts. Customer and Reseller are responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. Customer agrees that Google’s responsibilities do not extend to the internal management or administration of the Services for Customer and that Google is merely a data-processor.

2.4 End User Consent. Customer’s Administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. Customer will obtain and maintain all required consents from End Users to allow: (i) Customer’s access, monitoring, use and disclosure of this data and Google providing Customer with the ability to do so, and (ii) Google to provide the Services.

2.5 Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Customer or Reseller will promptly notify Google of any unauthorized use of, or access to, the Services of which it becomes aware.

3. Requesting End User Accounts; Services Term. Requesting End User Accounts, as well as initial and renewal terms for the Services, are to be decided upon between Customer and Reseller.

4. Payment. Customer will pay Reseller for the Services. As a result, all payment terms are to be decided upon between Customer and Reseller.


5.1 By Customer. Customer or Reseller will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer’s or End Users’ use of the Services. Customer or Reseller will use commercially reasonable efforts to resolve support issues before escalating them to Google.

5.2 By Google. If Customer or Reseller cannot resolve a support issue consistent with the above, then Customer or Reseller (as applicable based on the agreement between Google and Reseller) may escalate the issue to Google in accordance with the TSS Guidelines. Google will provide TSS to Customer or Reseller (as applicable) in accordance with the TSS Guidelines.

6. Suspension.

6.1 Of End User Accounts by Google. If Google becomes aware of an End User’s violation of the Agreement, then Google may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with Google’s request to Suspend an End User Account, then Google may do so. The duration of any Suspension by Google will be until the applicable End User has cured the breach which caused the Suspension.

6.2 Emergency Security Issues. Notwithstanding the foregoing, if there is an Emergency Security Issue, then Google may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If Google Suspends an End User Account for any reason without prior notice to Customer, at Customer’s request, Google will provide Customer the reason for the Suspension as soon as is reasonably possible.

7. Confidential Information.

7.1 Obligations. Each party will: (a) protect the other party’s Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates, employees and agents in violation of this Section.

7.2 Exceptions. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.
7.3 Required Disclosure. Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

7.4 Third Party Requests. Customer is responsible for responding to Third Party Requests. Google will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request in a manner permitted by law; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first use the Admin Tool to access the required information, and will contact Google only if it is insufficient for Customer's needs.

8. Intellectual Property Rights; Brand Features.

8.1 Intellectual Property Rights. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and Google owns all Intellectual Property Rights in the Services.

8.2 Display of Brand Features. Google may display only those Customer Brand Features authorized by Customer (such authorization is provided by Customer uploading its Brand Features into the Services), and only within designated areas of the Service Pages. Customer may specify the nature of this use using the Admin Console. Google may also display Google Brand Features on the Service Pages to indicate that the Services are provided by Google. Neither party may display or use the other party's Brand Features beyond what is allowed in this Agreement without the other party's prior written consent.

8.3 Brand Features Limitation. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in those Brand Features. A party may revoke the other party's right to use its Brand Features pursuant to this Agreement with written notice to the other and a reasonable period to stop the use.

9. Restrictions on Use. Unless Google specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services for High Risk Activities; or (e) use the Services to store or transfer any Customer Data that is controlled for export under Export Control Laws. Customer is solely responsible for any applicable compliance with HIPAA.

10. Publicity. Customer agrees that Google may include Customer's name or Brand Features in a list of Google customers. Customer also agrees that Google may verbally reference Customer as a customer of the Google products or services that are the subject of this Agreement. This section is subject to Section 8.3.

11. Government Purposes. The Services were developed solely at private expense and are commercial computer software and related documentation within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Services is an agency, department, employee, or other entity of the United States Government, under FAR 12.212 and DFARS 227.7202, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, including technical data or manuals, is governed by the terms and conditions contained in this Agreement, which is Google's standard commercial license agreement.

12. Representations, Warranties and Disclaimers.

12.1 Representations and Warranties. Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable (including applicable security breach notification law). Customer represents and warrants that it is a state, city, or federal government entity.

12.2 Disclaimers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY SERVICES CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

13. Term and Termination.

13.1 Term. The term for the Services will be as decided upon between Roseller and Customer. This Agreement will remain in effect for the Term.

13.2 Termination for Breach. Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed.
within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

13.3 Effects of Termination. If this Agreement terminates, then: (i) the rights granted by one party to the other will cease immediately (except as set forth in this Section); (ii) Google will provide Customer or Reseller access to, and the ability to export, the Customer Data for a commercially reasonable period of time at Google’s then-current rates for the applicable Services; (iii) after a commercially reasonable period of time, Google will delete Customer Data by removing pointers to it on Google’s active servers and overwriting it over time; and (iv) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party.


14.1 By Customer. Unless prohibited by applicable law and without waiving sovereign immunity, Customer will indemnify, defend, and hold harmless Google from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim: (i) regarding Customer Data or Customer Domain Names; (ii) that Customer Brand Features infringe or misappropriate any patent, copyright, trade secret or trademark of a third party; or (iii) regarding Customer’s use of the Services in violation of the Acceptable Use Policy.

14.2 By Google. Google will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim that Google’s technology used to provide the Services or any Google Brand Feature infringe or misappropriate any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall Google have any obligations or liability under this Section arising from: (i) use of any Services or Google Brand Features in a modified form or in combination with materials not furnished by Google, and (ii) any content, information or data provided by Customer, End Users or other third parties.

14.3 Possible Infringement.

a. Repair, Replace, or Modify. If Google reasonably believes the Services infringe a third party’s Intellectual Property Rights, then Google will: (a) obtain the right for Customer, at Google’s expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.

b. Suspension or Termination. If Google does not believe the foregoing options are commercially reasonable, then Google may suspend or terminate Customer’s use of the impacted Services. If Google terminates the impacted Services, then Google will notify Customer or Reseller, or both.

14.4 General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party’s prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE A PARTY’S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS.

15. Limitation of Liability.

15.1 Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

15.2 Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO RESELLER FOR THE SERVICES DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

15.3 Exceptions to Limitations. These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party’s Intellectual Property Rights by the other party, or indemnification obligations.


16.1 Notices. Unless specified otherwise herein, (a) all notices must be in writing and addressed to the attention of the other party’s legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

16.2 Assignment. Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.
16.3 Change of Control. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).

16.4 Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

16.5 No Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.

16.6 Severability. If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

16.7 No Agency. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

16.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

16.9 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

16.10 Governing Law.

   a. For State and City Government Entities. If Customer is a city or state government entity, then the parties agree to remain silent regarding governing law and venue.

   b. For Federal Government Entities. If Customer is a federal government entity then the following applies: This Agreement will be governed by and interpreted and enforced in accordance with the laws of the United States of America without reference to conflict of laws. Solely to the extent permitted by federal law: (i) the laws of the State of California (excluding California’s choice of law rules) will apply in the absence of applicable federal law; and (ii) FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

   c. For All other Entities. If Customer is any entity not set forth in Section 16.10(a) or (b) then the following applies: This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

16.11 Amendments. Any amendment must be in writing and expressly state that it is amending this Agreement.

16.12 Survival. The following sections will survive expiration or termination of this Agreement: Section 7, 8.1, 13, 14, 15 and 16.

16.13 Entire Agreement. This Agreement, and all documents referenced herein, is the parties’ entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. If Customer is presented with a similar agreement on the same subject matter upon its log in to use the Services, this Agreement supersedes and replaces that agreement. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.

16.14 Interpretation of Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, and the terms located at any URL.

16.15 Counterparts. The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

17. Definitions.

"Acceptable Use Policy" means the acceptable use policy for the Services available at http://www.google.com/a/help/intl/en/admins/use_policy.html or such other URL as Google may provide.

"Admin Account(s)" means the administrative account(s) provided to Customer by Google, or to Reseller by Customer, for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which Google will provide to Customer or Reseller.

"Admin Console" means the online tool provided by Google to Customer for use in reporting and certain other administration functions.

"Administrators" mean the Customer-designated technical personnel who administer the Services to End Users on Customer's behalf.
“Ads” means online advertisements displayed by Google to End Users.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

“Brand Features” means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

“Confidential Information” means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer’s Confidential Information.

“Core Content” means the following subsets of Customer Data with respect to these individual components of the Services:
- Gmail: messages and attachments;
- Google Calendar: events and descriptions of events;
- Google Contacts: content of the address book;
- Google Docs: content authored by the owner or collaborators of the doc, not including content hosted on (i) other Google products not referenced in Core Content or (ii) other third party websites;
- Google Groups: message and message search archive;
- Google Sites: content authored by the owners or collaborators of the site; not including content hosted on (i) other Google products not referenced in Core Content or (ii) other third party websites;
- Google Talk: archived “on the record” Talk conversations;
- Google Video: all copies and formats of video content, in addition to thumbnails, titles, descriptions and captions.

“Customer Data” means data, including email, provided, generated, transmitted or displayed via the Services by Customer, or Reseller on behalf of Customer.

“Customer Domain Names” mean the domain names owned or controlled by Customer, which will be used in connection with the Services.

“Domain Service” means a service provided by Google to Customer purely for Customer’s convenience, where Customer may, through a Google-provided interface, register domain names through, or transfer domain names to, Registrar Partners (as defined in the Domain Service Terms).

“Domain Service Terms” means the terms at: http://www.google.com/a/help/intl/en/admins/domein_service_terms.html, or other such URL as may be provided by Google.

“Emergency Security Issue” means either: (a) Customer’s use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customers’ use of the Services; or (iii) the Google network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

“End Users” means the individuals Customer permits to use the Services.

“End User Account” means a Google-hosted account established by Customer through the Services for an End User.

“Export Control Laws” means all applicable export and reexport control laws and regulations, including the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“ITAR”) maintained by the Department of State.

“Google Apps Core Services” means the following components of the Services: Gmail, Google Calendar, Google Docs, Google Talk, Google Sites, Google Video, as well as the supporting general support system.

“Help Center” means the Google help center accessible at http://www.google.com/support/ or other such URL as Google may provide.

“High Risk Activities” means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and any regulations issued thereunder.

“Intellectual Property Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

“Non-Google Apps Products” means Google products which are not part of the Services, but which may be accessed by End Users using their End User Account login and password. The Non-Google Apps Products are set forth at the following URL: http://www.google.com/support/a/bin/answer.py?hl=en&answer=181865, or such other URL as Google may provide.
"Non-Google Apps Product Terms" means the terms found at the following URL:
http://www.google.com/apps/intl/en/terms/additional_services.html, or such other URL as Google may provide from time to time.

"Notification Email Address" means the email address designated by Customer to receive email notifications from Google. Customer may provide a Reseller email address for this purpose if it so chooses. Customer may change this email address through the Admin Console.

"Reseller" means the Google Apps reseller Customer is paying to provide access to and use of the Services.

"SDN List" is the US Treasury Department's List of Specially Designated Nationals.

"Service Pages" mean the web pages displaying the Services to End Users.

"Services" means the Google Apps for Government Services provided by Google and used by Customer under this Agreement. The Services are as described here: http://www.google.com/a/help/intl/en/users/user_features.html, or other such URL as Google may provide.

"SLA" means the Service Level Agreement located here: http://www.google.com/apps/intl/en/terms/reseller_sla.html, or such other URL as Google may provide from time to time.

"Suspend" means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

"Term" means the term of the Agreement, which will begin on the Effective Date and continue for as long as Customer is receiving Services from Google, unless terminated earlier pursuant to the Agreement, or pursuant to Customer's agreement with Reseller.

"Third Party Request" means a request from a third party for records relating to an End User's use of the Services. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure.

"TSS" means the technical support services provided by Google to the Administrators during the Term pursuant to the TSS Guidelines.

"TSS Guidelines" means Google's technical support services guidelines then in effect for the Services. TSS Guidelines are at the following URL: http://www.google.com/a/help/intl/en/admins/tsg.html or such other URL as Google may provide.

"URL Terms" means the Acceptable Use Policy, the SLA and the TSS Guidelines.

IN WITNESS WHEREOF, the parties have executed this Agreement by persons duly authorized as of the date signed by Google below.

Google Inc.

By: ________________
   (Authorized Signature)
   (Print Name)
   Title: __________________________
   Date: __________________________

Customer: City of Sunnyvale

By: ________________
   (Authorized Signature)
   (Print Name)
   Title: __________________________
   Date: __________________________
EXHIBIT C

Email Processing Services Terms and Conditions

1. SUPPORT. Contractor will provide front-line technical support with respect to the Email Processing Services directly to Customer's technology administrators with respect to the activation and set up of the Email Processing Services, as well as with respect to questions, complaints and other support issues that Customer cannot resolve, and Contractor is hereby authorized by Customer to submit Customer support issues to Google on behalf of Customer.

2. CUSTOMER REPRESENTATIONS AND OBLIGATIONS

2.1 Compliance with Law. Customer is and will remain solely responsible for complying with all laws, rules and regulations regarding the management and administration of its electronic messaging system. Customer acknowledges and agrees that Contractor and Google are merely serving as a data processor and their responsibilities and liability do not extend to the internal management or administration of Customer’s electronic messaging system or messages.

2.2 Acceptable Use Policy. Customer agrees to comply with the terms and conditions of the Acceptable Use Policy, as published or posted on the website at http://www.google.com/a/help/intl/en/admins/use_policy.html and as may be periodically amended by Google.

2.3 No Resale. Customer agrees that it shall not resell the Email Processing Services or create or offer derivative versions of the Email Processing Services, either directly or through a third party.

2.4 Use of Email Processing Services. The Email Processing Services are for use with normal business messaging traffic only, and may not be used for any other purpose, including use of the message encryption services (if applicable) with machine generated message encryption and delivery. For each end user for which Customer will be routing email and/or archiving email, if any, through the Email Processing Services, Customer shall establish an email account in Google’s identity management systems.

2.5 Failure to Comply. If Customer fails to comply with the obligations set forth in this Article 2, SADA shall inform Customer thereof and reserves the right to suspend the Email Processing Services until such failure is remedied. Notwithstanding the foregoing, Customer’s failure to comply with the obligations set forth in this Article 2 may be deemed a material breach.

3. WARRANTY. Contractor warrants that the Email Processing Services will meet the requirements set forth in the Service Availability Commitment set forth below. In the event of a breach of the foregoing warranty, as Customer’s sole and exclusive remedy, Contractor will provide the remedy set forth in this Article.

3.1 Service Availability Commitment. The Email Processing Services shall be operational at least 99.999% of the time in any given month during the term of the Agreement. The "Operational Percentage" means the percentage of the total time during any given month that the Email Processing Services are not subject to an Outage. An outage ("Outage") means that Google fails to apply filtering in accordance with Customer’s configuration selection. Outage does not include services suspension (A) for reasons outside of Google’s sphere of control (as described in Section 3.4 of this Exhibit C) or (B) during times of maintenance (as described in Section 3.5 of this Exhibit C). If a dispute arises about whether or not an Outage occurred, Google shall make a determination in good faith based on its system logs, monitoring reports and configuration records, which Google shall make available for auditing by Customer at Customer’s request. The "Outage Percentage" means the total duration of an Outage during a given month, divided by the total time during such month.
3.2 Outage Reporting Process. Customer must inform Contractor in writing or by email within 10 business days of the time it first notices an outage or first believes that there has been an Outage. Failure to comply with this requirement will forfeit Customer's right to receive a remedy for the Outage as described in Section 3.3 of this Exhibit C.

3.3 Remedy. If the Operational Percentage is less than 99.999%, and if Customer has fulfilled all of its obligations under the Agreement and none of the exceptions in Section 3.4 of this Exhibit C applies, Customer shall have the following sole and exclusive remedy: SADA will provide Customer with a pro-rata credit on Customer’s Email Processing Services fee for the month during which the Outage occurred. The pro-rata credit shall be calculated by multiplying the Outage Percentage with Customer’s total monthly Email Processing Services fee in the month during which the Outage occurred. Furthermore, if Customer experiences one or more Outage(s) in each of three consecutive calendar months and/or three or more Outages in any period of 30 consecutive days, Customer can terminate the applicable Email Processing Services for cause upon 30 days’ prior written notice.

3.4 Exceptions. Customer shall not have any remedies under the Agreement, including this Article, in connection with any circumstances addressed in Section 9.10 (Force Majeure) of the Agreement.

3.5 Maintenance. To ensure optimal performance of the Email Processing Services, Google reserves the right to perform unscheduled emergency maintenance at any time. Additionally, Google reserves the right to perform scheduled maintenance that is designed not to impact the Email Processing Services at any time. Google will make all reasonable attempts to schedule maintenance events that are expected to have an impact on the Email Processing Services between 10:00 p.m. Pacific Time on Fridays and 12:00 p.m. Pacific Time on Sundays.

3.6 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 3 OF THIS EXHIBIT C, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THE EMAIL PROCESSING SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR NONINFRINGEMENT.

4. INTELLECTUAL PROPERTY RIGHTS. The Email Processing Services and all intellectual property rights relating to the Email Processing Services are and shall remain the exclusive property of Google.

5. INDEMNIFICATION.

5.1 Indemnification by Contractor. Contractor will indemnify, defend and hold harmless Customer against any losses, costs and damages arising from a third party claim against Customer that the Email Processing Services, or any part thereof, infringe any U.S. intellectual property or proprietary rights of such third party or misappropriates any protected trade secret of such third party. Notwithstanding the foregoing, Contractor will have no liability for a claim under this Section to the extent that it results from the combination, operation or use of the Email Processing Services with equipment, devices, software or data not supplied by Contractor, if a claim would not have occurred but for such combination, operation or use. If Contractor's right to provide the Email Processing Services is enjoined or in Contractor's reasonable opinion is likely to be enjoined, Contractor may, at its expense, obtain the right to continue providing the Email Processing Services, replace or modify the Email Processing Services so that they become non-infringing but remain functionally equivalent, or if such remedies are not reasonable available, terminate this Agreement without liability to Customer.

5.2 Indemnification by Customer. Customer will indemnify, defend and hold harmless Contractor from and against all losses, costs and damages arising from a third party claim against Contractor based upon or otherwise arising out of the contents of electronic messages of Customer that are subject to the Email Processing Services ("Customer Messages").
5.3 **Indemnification Procedures.** Each party’s obligations under this Article are subject to the party seeking indemnification providing the other party with (A) prompt written notice of the claim, (B) sole control over the defense or settlement, and (C) reasonable support and cooperation with regard to the defense. Notwithstanding the foregoing, any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party’s prior written consent, such consent not to be unreasonably withheld or delayed; and the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS.

6. **LIMITATION OF LIABILITY.** IN NO EVENT, WHETHER IN CONTRACT, TORT OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, PRODUCT LIABILITY AND STRICT LIABILITY IN TORT), WILL EITHER PARTY BE HELD LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL), EVEN IF SUCH PARTY IS AWARE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. EXCEPT REGARDING THE PARTIES’ INDEMNITY OBLIGATIONS UNDER ARTICLE 5 OF THIS EXHIBIT C, IN NO EVENT WILL EITHER PARTY BE HELD LIABLE UNDER THIS EXHIBIT C FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO CONTRACTOR FOR THE EMAIL PROCESSING SERVICES DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

7. **ARCHIVED MESSAGES.** If the Email Processing Services include archiving functionality, Customer messages will be retained for up to the period set forth in Exhibit A (in the Email Processing Services name), provided that Customer renews the applicable Email Processing Services with Contractor for each year of such retention period. The retention period will apply to all data archived under the Email Processing Services. Failure to renew the applicable Email Processing Services during the retention period will terminate Contractor’s and Google’s obligation to retain any of Customer’s data or indexes.