

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
Pagerduty, Inc.
 (“Contractor”)
for
Page Duty Subscription
MA 5600 NA190000056**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the requirements below and enters into the following Contract.

This Contract is between Pageduty, Inc. having offices at 600 Townsend St #200, San Francisco, CA 94103 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

The Customer accepts the Company’s Offer (as referenced in Section 1.2.3 Exhibit B) and enters into the following Contract.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 Exhibit A, Terms and conditions;
- 1.1.3 Exhibit B, Pagerduty’s Offer; and
- 1.1.4 Exhibit C, Non-Discrimination Certification

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This document
- 1.2.2 Exhibit A, terms and Conditions
- 1.2.3 Exhibit B, Pagerduty’s Offer

1.3 Term of Contract.

1.3.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 48 months (“Initial Term”).

1.3.1.1 Upon expiration of the Initial Term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under the Contract (not to exceed 120 calendar days unless mutually agreed to in writing).

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$179,995.36 for the Initial Term.

Year 1 \$37,435.36

Year 2	\$47,520.00
Year 3	\$47,520.00
Year 4	\$47,520.00

- 1.5 **Non-Appropriation.** The Company acknowledges that the Customer has provided notice that the Customer's payment obligations to the Company are payable only from funds appropriated or available for the purpose of this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available. The Customer shall provide the Company written notice of the failure of the Customer to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the Customer to pay its obligations under the Contract. In the event of non- or inadequate appropriation of funds, there will be no penalty or removal fees charged to the Customer.
- 1.6 **City's Limitations on Liability.** The Company acknowledges that Customer's liability limitations as stated herein. To the extent allowed by Texas Law, and to the exclusion of any such responsibility of the Company, the Customer's liability is limited to its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Contract and as determined by a court of competent jurisdiction, provided that the execution of this Contract will not be deemed a negligent act.
- 1.7 **Outside Terms and Conditions.** The Parties agree that this Contract is not governed by other terms and conditions which maybe found the Company's website which was not incorporated into Exhibit A and expressly agreed to by the Customer.
- 1.8 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

PAGERDUTY, INC.

CITY OF AUSTIN

Mitra Rezvan

Printed Name of Authorized Person

DocuSigned by:

Mitra Rezvan

5502681D*AC44EF...
Signature

VP of Finance and Controller

Title:

12/18/2018

Date:

—DS
pD

Exhibit Listing

Exhibit A

Exhibit B

Exhibit C

Terms and Conditions

Pagerduty, Inc. Offer

Non Discrimination Certification

Sai Rogell

Printed Name of Authorized Person



Signature

Procurement Specialist IV

Title:

12/19/2018

Date:

Exhibit A Terms and Conditions

1. Definitions

- 1.1. “**Compensation**” means the total amount of the Contract entered into by the Parties, which shall not exceed \$179,995.36, including all fees and expenses.
- 1.2. “**Company Intellectual Property**” means Company’s proprietary technology, including the Service and Documentation, websites, software tools, hardware designs, algorithms, software, user interface designs, architecture, documentation, network designs, know-how, and trade secrets, and all intellectual property rights therein and thereto throughout the world (whether owned by Company or licensed to Company by a third party).
- 1.3. “**Confidential Information**” means all non-public information disclosed by one Party to the other Party that has been designated and marked as “Confidential”.
- 1.4. “**Contact Information**” means the names, email addresses, telephone numbers, and other required information of the Contact Persons that Customer or Users instruct the Service to alert in the event of an Incident, along with any ancillary information such Customer information and alert priorities.
- 1.1. “**Contact Person**” means a Customer employee, consultant, or other designated agent who will receive notifications from the Service and who has provided Customer consent to receive such notifications from the Service.
- 1.2. “**Contract**” shall mean and refer to the agreement identified as MA 5600 NA190000056, entered into by the Parties.
- 1.3. “**Documentation**” means the then current version of the readme and help files, knowledge base, and other documentation made available at <https://www.pagerduty.com/support/>.
- 1.4. “**Incident**” means an event that triggers the Service to alert Contact Persons using the Contact Information. Customer and Users must configure the Service and supply the Contact Information in accordance with the instructions found on the Service dashboard to recognize and respond to Incidents.
- 1.5. “**Order Form**” means a subscription order form document entered into by the Parties that sets forth the specifics for Company to provide Customer with the Service. Customer and Company may enter into multiple Order Forms, if appropriate. The Order Form is attached hereto as Exhibit B. Capitalized terms used herein but not defined shall have the meaning set forth in the Order Form.
- 1.6. “**Personal Data**” means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport), financial account information, including account number, credit or debit card numbers, or protected health information (PHI) relating to a person.
- 1.7. “**Protected Health Information**” (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records DocuSign Envelope ID: CED4A1FF-71DE-49CD-9553-89FAFC138196 described at 20 U.S.C. 1232g(a)(4)(B)(iv), and employment records held by a covered entity in its role as employer.
- 1.8. “**Service(s)**” refers to all services identified in Company’s Offer, including Company’s cloud based applications and platform for IT on-call management, alerting, incident tracking, and incident and alert analytics.
- 1.9. “**SLA**” means the service level agreement describing the Service performance and availability metrics and the remedies if the Service fails to meet those metrics attached hereto as Attachment 1.
- 1.10. “**Term**” means the duration of the Contract. The Contract shall commence upon execution, unless otherwise specified,

and shall remain in effect for an initial term of 48 months (“Initial Term”).

- 1.11. “**Users**” means individuals that Client authorizes to use the Service by purchasing subscriptions to the Service, which users will maintain the Contact Information in the Service, configure the Service for handling Incidents, receive reports from the Service, and may contact Company for support.

2. Scope of the Agreement.

2.1. **Company’s Obligations.** The Company shall fully and timely provide all Services described in the SLA and the Company’s Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable federal, state, and local laws, rules, and regulations.

2.2. **Access to the Service.** In consideration of payment of the Compensation, subject to the terms and conditions of the Contract, Company grants to Customer and the Users that Customer designates for the Term, a world-wide, non-exclusive, royalty-free, non-transferable, nonsublicensable right to use the Service only in accordance with the Documentation, solely for Customer’s internal purposes.

2.3. **License Restrictions.** Customer agrees that it shall not permit any third-party, including without limitation any Users, to: (i) alter, modify or create any derivative works of the Service, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization; (ii) rent, lease, license, sublicense, encumber, sell, offer for sale, or otherwise transfer rights to the Service or Documentation, including for timesharing or as a service bureau; (iii) port, reverse compile, reverse assemble, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Service; (iv) copy, distribute, link, frame, mirror or otherwise make available any portion of the Service to any third party; (v) remove or alter any logos, trademarks, links, copyright or other notices, legends or markings from the Service or Documentation; (vi) attempt to bypass or tamper with the security, operation of the Service; (vii) attempt to access the accounts or data of any other customer or user; or (viii) use the Service for benchmarking purposes or otherwise to analyze its workings and features for any competitive purposes or in a manner that imposes unusual demands on the service outside of normal functions and operations.

2.4. **User Subscriptions.** Customer shall purchase subscriptions to the Service for each User as set forth in the Order Form. Unless otherwise specified in an Order Form the Service may be accessed by no more than the specified number of Users. Any additional Users over the original purchased amount must be co-terminous and prorated to the end of the term in the Order Form. To add Users Customer will need to contact the account manager. User subscriptions may not be shared or used by more than one User without Company’s prior consent, but may be reassigned to new Users replacing persons who no longer require User access to the Service. Customer is solely responsible for selecting secure User passwords, changing passwords frequently, and maintaining the confidentiality of User logons and passwords. Company shall not be liable for any losses arising from unauthorized access to the Service and Customer’s account due to Customer’s or any User’s failure to protect its account through proper maintenance of User logons and passwords. These rights are limited by the Customer’s rights as set forth in State law and as reflected in the Contract. Additionally, they are limited, to the extent funds are required to pay any obligation to the extent of annual appropriations.

2.5. **Usage Limits.** The Service may be subject to limitations on the number of email alerts, phone call alerts, SMS alerts and any other types of alerts, as specified in the Order Form. The Service may be subject to other limitations, including, but not limited to, limits on disk storage space, the rate of incoming email requests, and the number of calls permitted to the Service integrations within a specified period of time, as set forth in the Documentation. Customer acknowledges that failure to comply with such limits may cause the Service to malfunction, may accrue additional usage fees, or may result in suspension of the Service until compliance has occurred.

2.6. **Notifications to Contact Persons.** Customer shall (i) receive and will maintain consents from each Contact Person to receive messages from the Service, including without limitation SMS messages ("Messaging"), (ii) maintain procedures for each Contact Person to opt out of participating in Messaging, and once opted out, Customer will not re-subscribe Contact Person to Messaging until Customer has obtained renewed consent from Contact Person to receive Messaging through the Service, and (iii) comply with all applicable law relating to Messaging in its use of the Service, including without limitation, the Telephone Consumer Protection Act and CAN-SPAM. Customer shall be responsible for compliance with Messaging laws.

3. Support, Security and Privacy.

3.1. **"Data Ownership".** The Customer will own all right, title and interest in its data that is related to the Services provided by the Contract. The Company shall not access Customer user accounts or Customer data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of the Contract, or (4) at the Customer's written request.

3.2. **Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of Customer information at any time. To this end, the Company shall safeguard the confidentiality, integrity and availability of Customer's information and comply with the following conditions:

(i) The Company shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

Statistical Data. Customer acknowledges and permits Company to compile and use statistical or aggregate, non-personally identifiable information about Customer's, Users' and Contact Persons' use of the Service, including, without limitation, the types and number of Incidents, number of alerts, and other metadata, for promotional purposes and to improve the Service; provided, however, that such use will not in any manner include Contact Information or otherwise identify the Customer or any Users.

(ii) All data obtained by the Company in the performance of the Contract shall become and remain property of the Customer. DocuSign Envelope ID: CED4A1FF-71DE-49CD-9553-89FAFC138196

(iii) All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Company is responsible for encryption of the

Personal Data.

(iv) Unless otherwise stipulated, the Company shall encrypt all non-public data at rest and in transit. The Customer shall identify data it deems as non-public data to the Company.

(v) At no time shall any data or processes – that either belong to or are intended for the use of a Customer or its officers, agents or employees – be copied, disclosed or retained by the Company or any party related to the Company for subsequent use in any transaction that does not include the Customer.

3.3. *Compliance with Accessibility Standards.* The Company shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, to the extent applicable.

3.4. *Security.* The Company shall disclose its non-proprietary security processes and technical limitations to the Customer such that adequate protection and flexibility can be attained between the Customer and the Company. For example: virus checking and port sniffing – the Customer and the Company shall understand each other's roles and responsibilities.

3.5. *Security in Compliance with Chapter 521 of the Texas Business and Commerce Code.* To the extent applicable, Company shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The Services shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

3.6. *Security Incident or Data Breach Notification.* The Company shall inform the Customer of any security incident or data breach as follows.

(i) **Incident Response:** The Company may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the Customer should be handled on an urgent as-needed basis, as part of Company's communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

(ii) **Security Incident Reporting Requirements:** The Company shall report a security incident to the appropriate Customer identified contact once a full investigation into the nature of the breach has been conducted and concluded and sufficient steps to remediate or correct the breach have occurred to ensure that all customer data is secure and would not be further jeopardized by such notification and resolve the breach and recover any data disclosed as a result thereof, but under no circumstance is the Company to take longer than 72 hours to notify the Customer of a security breach.

(iii) **Breach Reporting Requirements:** If the Company has actual knowledge of a confirmed data breach that affects the security of any Customer content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate Customer identified contact within 72 hours or sooner, unless shorter time is

required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

3.7. **Data Location.** The Company shall provide its Service to the Customer and its Users solely from U.S. data centers. The Company shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Company shall permit its personnel and contractors to access Customer data remotely only as required to provide technical support. The Company shall provide technical user support as set forth in Attachment 1.

3.8. **Import and Export of Data.** The Customer shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Company. This includes the ability for the Customer to import or export data to/from other service providers.

4. Ownership.

4.1. **As between Customer and Company, Company shall retain all right, title and interest in and to the Company Intellectual Property, and any changes, derivatives, corrections, developments, bug fixes, enhancements, updates and other modifications thereto, and as between the Parties all such rights shall vest in and be assigned to Company. Nothing in this Agreement will confer on Customer any right of ownership or interest in the any Company Intellectual Property, other than the limited license set forth in Section 2.**

5. Fees and Payment Terms.

5.1. Customer will pay Company the fees as set forth on the Order Form ("Fees"). Customer further agrees to the Payment Terms for the Fees set forth in the Order Form. Fees are firm and fixed during the duration of the Contract. Company acknowledges that the Customer has provided notice that the Customer's payment obligations to Company, including all Fees and expenses, are payable only from funds appropriated or available for the purposes of the Contract.

6. Publicity.

6.1. The Company shall not advertise or publish, without the Customer's prior consent, the fact that the Customer has entered into the Contract, except to the extent required by law.

7. Confidentiality

7.1. Company may require access to certain of Customer's or User's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which Customer or its Users consider confidential) ("Confidential Information") to provide the Services to the Customer. Company acknowledges and agrees that the Confidential Information is the valuable property of the Customer and its Users and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure Customer and its Users. Company (including its employees, subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of Customer, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order

of a court or other governmental authority with proper jurisdiction. In all cases, Company agrees to promptly notify the Customer before disclosing Confidential Information to permit the Customer reasonable time to seek an appropriate protective order. Company agrees to use protective measures no less stringent than Company's uses in its business to protect its own most valuable information. In all circumstances, Company's DocuSign Envelope ID: CED4A1FF-71DE-49CD-9553-89FAFC138196 protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.2. The Customer acknowledges that it may receive from the Company Confidential Information. The Customer agrees to maintain the Confidential Information and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information in a manner not expressly permitted under this Agreement without the prior written consent of the Company, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction. The Company acknowledges that the Customer's obligations pursuant to this paragraph is subject to its requirement to comply with Chapter 552 of the Texas Government Code ("Public Information Act" or "Act"). Under the Public Information Act, this Agreement, and documents related to this Agreement, which are in the Customer's possession, or to which Customer has access, are presumed to be public and the Customer may be required to release these records to the public unless an exception described in the Act applies. Accordingly, Company acknowledges its sole responsibility to appropriately mark as "Confidential" any information the Company deems to be Confidential Information. Company further acknowledges and understands that if the Customer is required to disclose Company's Confidential Information by law or by an order of any court or other governmental authority, that the Customer with promptly notify Company before disclosing such information, but that it is the Company's sole responsibility to seek an appropriate protective order or ruling.

8. Indemnification

8.1. Definitions:

(i) "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

- Damage to or loss of the property to any person (including, but not limited to the Customer, the Company, their respective agents, officers, employees and subcontractors; the officers agents, and employees of such subcontractors; and third parties);
- Death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the Customer, the Company, the Company's subcontractors, and third parties); and/or
- Infringement or misappropriation claims related to the Services provided by the Company.

(ii) “Fault” shall include the sale of defective or non-conforming Services, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

8.2. The Company shall defend (at the option of the Customer), indemnify, and hold the Customer, its successors, assigns, officers, employees, and elected officials harmless from and against all Indemnified Claims directly arising out of, incident to, concerning, or resulting from the Fault of the Company, or the Company’s agents, employees or subcontractors, in the performance of the Company’s obligations under the Contract. Nothing herein shall be deemed to limit the rights of the Parties (including, but not limited to, the right to seek contribution) against any third party who may be liable for an indemnified claim.

9. Warranties; Disclaimers.

9.1. Performance. Company represents and warrants that (a) Services provided under the Contract shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under the Contract; and (c) any Services provided by Provider shall operate in conformance with the terms of the Contract; provided, however, that the remedy for a breach of this warranty shall be the service level credits set forth in Attachment 1. Nothing contained herein shall be construed as prohibiting the Customer from pursuing any other remedies available to it by law or in equity, including actual damages, costs, losses and expenses, which arises out of or in connection with the Contract.

9.2. Authority. Company warrants that it has all authority necessary to provide for Customer’s access and use of the Services and the purposes set forth in the Contract. Company further represents and warrants that sale, licensing or use of any of the Services furnished under this Contract does not and shall not infringe, misappropriate or otherwise violate any Third party’s intellectual property rights.

9.3. Undisclosed Illicit Code. Company warrants that, unless authorized in writing by Customer, any Service passed through to Customer from Third Parties under the Contract or provided to Customer by Company for use by Company or Customer shall:

- (i) Not contain any hidden file;
- (ii) Not replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;
- (iii) Not alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;
- (iv) Not contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any Services provided under the Contract, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;
- (v) Not contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Company;
- (vi) Not use electronic self-help, including but not limited to preventing electronically Customer’s further or continued use of and/or access to the Services or any software or other portion thereof;

(vii) Notwithstanding any provision in the Contract to the contrary, if any Service has any of the foregoing attributes (collectively "Illicit Code"), Provider shall be in default of the Contract, and no cure period shall apply unless approved by the Customer in writing. At the request of and at no cost to Customer, Company shall remove any such Illicit Code from the licensed software as promptly as possible; and

(viii) Company agrees that in the event of any dispute with Customer regarding an alleged breach of the Contract, Company shall not use any type of electronic means to prevent or interfere with Customer's use of any portion of the Services. Company understands that a breach of this provision could foreseeably cause substantial harm to Customer and to numerous Third Parties having business relationships with Customer.

9.4 Contingent Fees. The Company warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Company for purposes of securing business. For breach or violation of this warranty, the Customer shall have the right, in addition to any other remedy available, to terminate the Contract without liability and to deduct from any amounts owed to the Company, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

9.5 EXCEPT FOR THE FOREGOING, COMPANY PROVIDES THE SERVICE "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. COMPANY HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY, ACCURACY OR ACHIEVEMENT OF RESULTS.

10. Limitation of Liability.

10.1. NEITHER PARTY SHALL BE LIABLE HEREUNDER TO THE OTHER UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH A BREACH OF THE CONTRACT.

10.2. EXCEPT FOR THIRD PARTY CLAIMS AND ANY INSURANCE RECOVERIES, OR WHERE OTHERWISE EXPLICITLY INDICATED IN THIS CONTRACT OR WRITTEN AMENDMENT SIGNED BY BOTH PARTIES, LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID TO COMPANY BY CUSTOMER HEREUNDER IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

10.3. WITHOUT LIMITING THE FOREGOING, COMPANY SHALL HAVE NO LIABILITY FOR ANY FAILURE OF THE SERVICE ARISING FROM OR RELATED TO (i) CUSTOMER'S OR ITS USERS' FAILURE TO CONFIGURE THE SERVICE IN CONFORMANCE WITH THE DOCUMENTATION, PROVIDED THAT SUCH DOCUMENTATION WAS PROVIDED TO CUSTOMER IN AN ADEQUATE TIME; (ii) CUSTOMER'S OR ITS USERS' FAILURE TO PROVIDE ACCURATE CONTACT INFORMATION TO THE SERVICE, OR (iii) ANY MESSAGING LAWS.

11. Term.

11.1. *Term of Contract.* The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 48 months (“Initial Term”).

11.2. *Holdover.* Upon the expiration of the Term of the Contract, the Company agrees to hold over under the terms and conditions of the Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

12. Termination

12.1. *Default.* The Company shall be in default under the Contract if the Company (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Section 17.17 (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Company’s Offer, or any report or deliverable required to be submitted by the Company to the Customer.

12.2. *Termination for Cause.* In the event of a default by a Party, the other Party shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless cured within such thirty (30) day period.

12.3. *Fraud.* Fraudulent statements by the Company to the Customer shall be grounds for the termination of the Contract for cause by the Customer and may result in legal action.

12.4. *Non-Appropriation.* If the Customer is unable to make adequate appropriation for any fiscal year to pay the amounts due under the Contract, or a reduction of any appropriation to an amount insufficient to permit the Customer to pay its obligations under the Contract, shall be grounds for the termination of the Contract for cause by the Customer, provided, however that in such event any monies paid by the Customer to the Company prior to termination shall not be refunded.

12.5. *Assignment.* An assignment of the Contract which is not agreed to in writing by the Customer pursuant to Section 17.4 shall be grounds for the termination of the Contract for cause by the Customer, provided, however that in such event any monies paid by the Customer to the Company prior to termination shall not be refunded.

12.6. *Events on Termination.* Upon termination of this Contract for any reason: (i) each Party will promptly cease all use and return or destroy the other's Confidential Information (at the disclosing Party's discretion), (ii) Company shall implement an orderly return of Customer data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer data, (iii) the Company shall not take any action to intentionally erase and Customer data for a period of sixty (60) days after the effective date of termination, (iv) the Customer shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established by written agreement by the Parties, (v) the Company shall securely dispose of all requested data in all of its forms, such as disk, CDDVD, backup tape or paper, when requested by the Customer. Certificates of destruction shall be provided to the Customer.

12.7. *Final Payment.* Customer shall pay Company any outstanding balance owed, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

12.8. AUDITS and RECORDS:

(i) The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, provided thirty (30) days written notice is made to the Contractor prior to any such audit or investigation. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The parties agree to work together in good faith to ensure that any audit's conducted by the City are narrowly tailored to minimize the disruption to the Contractor's business operations.

(ii) Records Retention:

- Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

- All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City

- The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

13. Insurance.

13.1. [Reserved for Risk Management].

14. Designation of Contract Managers. The Company's Contract Manager for this engagement shall be David Sutphin, Phone: (415) 508-4570, Email: dsutphin@pagerduty.com. The Customer's Contract Manager for the engagement shall be Tony Williams, Phone: (512) 974-0977, Email: Tony.Williams@austintexas.gov.

15. Invoices. Invoices shall be mailed to the below address:

City of Austin

Department: Communication Technology Management (CTM)

Attention: Accounts Payable

Email Address: CTMAPIInvoices@austintexas.gov

16. Subcontractors.

16.1. The parties agree that the Company will not subcontract any portion of this Contract. Notwithstanding anything to the contrary herein, for all purposes of this Contract, "subcontract" shall refer to a third party or an agreement with such third party, if any and as applicable, engaged by the Company to specifically aid in the performance of its obligations under this contract, but shall not include any third party engaged by Company, from time to time, in the performance of certain operational, technological, incidental, or back office functions that assist Company in its performance of services or maintenance of its technical infrastructure, such as server and data hosts and telecommunications providers, on a common basis, for all or most of its customers utilizing such services, such latter category of third parties being referred to as Third Party Services Providers. Contractor will obtain prior consent of the Customer to its use of any "subcontractors" in the performance of services, to the extent and in the manner required under this Contract, but shall not be required to notify or obtain written consent from the Customer or any other party to its engagement of Third Party Service Providers.

16.2. The Company shall be fully responsible to the Customer for all acts and omissions of the Subcontractors just as the Company is responsible for the Company's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the Customer and any such Subcontractor, nor shall it create any obligation on the part of the Customer to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

17. Miscellaneous

17.1. **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

17.2. **Governing Law.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply to substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the Customer to seek and secure injunctive relief from any competent authority as contemplated herein.

17.3. **Arbitration.** If a controversy or claim arises out of or relates to the Contract, or the breach thereof, which the Parties are unable to resolve through good faith negotiations, the parties agree that the dispute will be submitted for non-binding mediation before any suit is filed. If the mediation does not successfully resolve the dispute, each party is free to pursue other remedies available to them. Nothing in this Section shall be deemed as preventing the Parties from seeking injunctive or other equitable relief.

17.4. **Assignment.** The Contract shall be binding upon and ensure to the benefit of the Customer and the Company and their respective successors and assigns, provided, however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Parties without prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign this Agreement to an entity merging with, consolidating with, or purchasing substantially all its assets or stock, provided that the assignee shall assume all rights and obligations under this Agreement and sixty (60) days written notice is provided to the Customer prior to the effective date of the Assignment. Any attempted assignment or delegation of the Contract shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

17.5. **Force Majeure.** Except for payment obligations, if either Party is prevented from performing or is unable to perform any of its obligations under the Contract due to causes beyond the reasonable control of the Party invoking this provision, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes, such Party's performance shall be excused and the time for performance shall be extended accordingly provided that the Party immediately takes all reasonably necessary steps to resume full performance.

17.6. **No Third-Party Beneficiaries.** The Contract shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

17.7. **Severability.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

17.8. **Modification.** No amendment, modification, supplement or other purported alteration of the Contract shall be binding upon the Parties unless it is in writing and is signed on behalf of the Parties' authorized representatives.

17.9. **Waiver.** The failure of either Party to enforce any of the provisions of the Contract shall not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

17.10. **Export Control.** Customer shall only use the Service in compliance with local laws and regulations, and will not export or re-export the Service in violation of any United States or other applicable export laws and regulations.

17.11. **Relationship of Parties.** The Parties to the Contract are independent contractors and no agency, partnership, joint venture, employment or similar relationship exists between them. Neither Party has the authority to bind the other or to incur any obligation on its behalf.

17.12. **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

17.13. **Construction.** The Parties have participated jointly in the negotiation and drafting of the Contract. In the event an ambiguity or question of intent or interpretation arises, the Contract shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of the Contract. Any reference to any federal, state, local, or non-U.S. statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word including shall mean including without limitation. Any of the terms defined in the Contract may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

17.14. **Counterparts.** The Contract may be executed in one or more counterparts (including by means of facsimile), each of which shall be deemed an original but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of the Contract by facsimile or in electronic format (i.e., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of the Contract.

17.15. **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile, or other commercially accepted means. Notices to the Company shall be sent to the address specified in the Company's Offer, or at such other address as a party may notify the other in writing. Notices to the Customer shall be addressed to the Customer at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator. Non-legal notices may also be delivered by email.

17.16. **Travel Expenses.** Travel expenses are not authorized under this Contract.

17.17. **Right to Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand in made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

17.18. **Claims.** If any claim, demand, suit, or other action is asserted against the Company which arises under or concerns the Contract, or which could have a material adverse effect on the Company's ability to perform thereunder, the Company shall give written notice thereof to the Customer within ten (10) calendar days after receipt of notice by the Company. Such notice to the Customer shall state the date of notification of any such claim, demand, suit or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the Customer and to its City Attorney.

Personal delivery to the Customer's City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

17.19. **Gratuities.** The Customer may, by written notice to the Company, cancel the Contract without liability if it is determined by the Customer that gratuities were offered or given by the Company or any agent or representative of the Company to any officer or employee of the Customer with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the Customer pursuant to this provision, the Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Company in providing such gratuities.

17.20. **Non-Suspension or Debarment Certification.** By entering into this Contract with Customer, Company shall agree to the Non-Suspension or Debarment Certification in Section 1.8 of the Agreement.

17.21. **Equal Employment Opportunity.** Company (including its employees, subcontractors, agents, or representatives) shall not engage in any discriminatory practice against individuals with disabilities as defined in Chapter 5-4 of the Austin City Code. No Offer submitted to the Customer shall be considered, nor any Purchase Form/Order Form issued, or any Contract awarded by the Customer unless the Company has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Company shall sign and return the Non-Discrimination Certification attached to the Contract as Exhibit C. Non-compliance with Chapter 5-4 of the Austin City Code may result in sanctions, including termination of the Contract and the Company's suspension or debarment from participation on future Customer Contracts until deemed compliant with Chapter 5-4. Any subcontractors used in the performance of this Contract and paid with Customer funds must comply with the same non-discrimination requirements as Company.

17.22. **Americans with Disabilities Act (ADA) Compliance.** Company (including its employees, subcontractors, agents or representatives) shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the Americans with Disabilities Act.

Attachment 1 Service Level Agreement

1. Definitions.

"Availability Outage" means that the Service is not available to Customer for thirty (30) or more consecutive minutes, measured by PagerDuty's server logs.

"Contact Information" means the names, email addresses, and telephone numbers of the Responders.

"Customer Responsibilities" means Customer's obligations to (i) configure and use the Service correctly in accordance with the Documentation; (ii) follow proper procedure in communicating the Incident to PagerDuty; (iii) maintain and update all Contact Information.

"Delivery Failure" means (A) an Availability Outage or (B) a Delivery Period that exceeds five (5) minutes from receipt of the triggering event notification from Customer due to or caused by reasons within PagerDuty's control, excluding specifically (but not exclusively) failures caused by: (i) Customer's own telecommunications, Internet service providers, or Email domain server

availability; (ii) a Force Majeure Event; (iii) any systemic Internet failures; (iv) a properly noticed Maintenance Outage; (v) a Delivery Failure which occurs during a time period when Customer's alert volume for any 15 minute period during which at least one (1) Incident occurs exceeds 1000% over the median of 15 minute periods during which that Customer triggered Incidents in the previous six (6) months; (vi) any failure of Customer Responsibilities or (vii) if the Deliver Service is push notification, any failure in the service provider of a push notification channel.

"Delivery Period" means the time it takes the Service to deliver a First Responder Alert in accordance with the Service configuration and Contact Information limited to an address or device registered and located in the United States of America or Canada as shown by PagerDuty's logs. For clarity, the Delivery Period is measured from the time that PagerDuty receives the trigger event notification from Customer to the time the logs show that the Successful Alert or Successful Attempt was delivered, less the delay time (if any) specified in the Service configuration. The logs used to measure the Delivery Period depend on the type of Delivery Service:

Type of Delivery Service	Log used to measure Delivery Period
Telephone	API call to the service provider
Push notification	Report of push attempt from service provider
SMS	Report SMS sent by service provider
Email	Report email sent by email provider

"Delivery Service" means a third party service provider indicated in the Contact Information used to send an alert to a Responder such as a telephone service (e.g., Verizon, AT&T), push notification provider (e.g., Google, Apple), SMS provider, or email provider.

"Documentation" means any documentation for the Service that Company provides to Customer, or that it posts on its website at <https://www.pagerduty.com> and <https://www.pagerduty.com/support/>.

"First Responder" means the Responder assigned to receive the initial alert for a new Incident.

"First Responder Alert" means a High Urgency Alert notification to a First Responder

"Force Majeure Event" means (i) compliance with any act, order, demand or request of any government or governmental authority, agency or instrumentality; (ii) labor disputes, difficulties or work stoppages or slowdowns of any kind; (iii) hurricane, earthquake, flood and other natural disasters or fires; (iv) war, rebellion, act of terrorism, or civil disorder; (v) act or omission of any telecommunication or services provider; (vi) any other cause beyond PagerDuty's reasonable control.

"High Urgency Alert" means an alert that Customer has designated using the Service as having high urgency.

"Hours of Operation" shall be twenty-four (24) hours per day, three hundred sixty-five (365) days per year, excluding any time for Maintenance Outages.

"Incident" means an event that triggers the Service to alert a Responder using the Contact Information. Customer must configure the Service and supply the Contact Information in accordance with the Documentation to recognize and respond to Incidents.

"Maintenance Outage" means a planned or unplanned maintenance period, including, without limitation, any maintenance downtime or maintenance outage, not to exceed an aggregate of ten (10) hours in any calendar month.

"Responders" mean Customer IT personnel that the Customer wants the Service to alert in the event of an Incident, along with any ancillary information such as alert priorities.

"Service" means PagerDuty's hosted Incident tracking and alerting solution.

"Successful Alert" means a First Responder Alert notification that was sent by a Delivery Service that has reported successful delivery through available means such as delivery receipt callbacks or polled status endpoints as defined in Delivery Period below.

"Successful Attempt" means the Service has made the attempt to send the First Responder Alert using the designated Delivery

Services, but not actual receipt or acknowledgement of delivery, which depends on Customer behavior that is outside of PagerDuty's control.

2. Delivery Failure Credits. For each properly documented Delivery Failure, PagerDuty will credit to Customer ten percent (10%) of the fees paid during the month in which the Delivery Failure occurred against future fees, up to a maximum of thirty percent (30%) of total fees for that month. Credits are not cumulative, that is, there shall only be a single credit given for all Delivery Failures with a single cause. Customer must report the Delivery Failure at the time it occurs, and must claim any credits by presenting documented evidence of the Remedy Amount within fifteen (15) days of occurrence of the relevant Delivery Failure. Customer will permit PagerDuty or an independent third party to audit its records to verify the Remedy Amount if requested. **THIS SERVICE LEVEL AGREEMENT SETS FORTH CUSTOMER'S SOLE REMEDY FOR ANY FAILURE OF SERVICE AVAILABILITY OR FAILURE TO CONTACT THE DESIGNATED PERSONNEL.**

3. Maintenance Outages. PagerDuty will provide Customer with notification via e-mail for each planned Maintenance Outage outside of the normal maintenance hours at least one (1) business day in advance. Customer acknowledges that Service Outages and emergency circumstances may require Maintenance Outages under conditions where such notice is not practicable.

EXHIBIT B PAGERDUTY, INC.'S OFFER



Customer Order Form

Customer: City of Austin
 Account: atxps-163496
 Quote Number: Q-11050
 Offer Valid Through: December 13, 2018
 Proposed by: Geoff

Bill To: City of Austin - Tony Williams 5010 Old Manor Rd. Austin Texas, 78723 United States	Sold To: City of Austin - Tony Williams 5010 Old Manor Rd. Austin Texas, 78723 United States
Contract Term Length: 48 months with a Start Date at Execution of Order Payment Term: Net 30	

Services

Product and Rate Plan	Term	Quantity	Unit Price	Total Price
Enterprise- Full User Fee	12/21/2018 – 12/21/2019	50	\$950.40	\$47,520.00
Standard - Full User Fee		(40)	\$39.20	(\$9,460.27)
Tax Credit				(\$624.37)
Total - Year 1				\$37,435.36
Product and Rate Plan	Term	Quantity	Unit Price	Total Price
Enterprise- Full User Fee	12/21/2019 – 12/21/2020	50	\$950.40	\$47,520.00
				\$0.00
Total - Year 2				\$47,520.00
Product and Rate Plan	Term	Quantity	Unit Price	Total Price
Enterprise- Full User Fee	12/21/2020 – 12/21/2021	50	\$950.40	\$47,520.00
				\$0.00
Total - Year 3				\$47,520.00
Product and Rate Plan	Term	Quantity	Unit Price	Total Price
Enterprise- Full User Fee	12/21/2021 – 12/21/2022	50	\$950.40	\$47,520.00
				\$0.00
Total - Year 4				\$47,520.00

Subtotal	\$180,619.73
Tax	\$-624.37
Total Subscription Fee	\$179,995.36

EXHIBIT C

City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 12/18/2018 day of _____, _____

CONTRACTOR
Authorized
Signature

DocuSigned by:

Mitra Resman

5502681D1AC44EF... 2-13-2017



Title

VP of Finance and Controller
