

Purchasing and Contracting Department
Sole Source Request and Certification Form



To: Director of Purchasing and Contracting
Cc: Select One

From: Kirby Brady, Director Performance & Analytics

Date: July 7, 2021

In alignment with the guidance provided in the San Diego Municipal Code section 22.3016, the Purchasing Agent (Director of Purchasing and Contracting) must certify that the award of a sole source contract is necessary by memorializing in writing why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

For consideration, this form must be completed and all required accompanying information must be submitted together, including any related contracts. Failure to do so will result in a delay of approval of the request.

Describe commodity or service(s) to be purchased. Include vendor contact information.

The Medallia Software-as-a-Service (SaaS) platform provides a sentiment survey platform for understanding the experiences of the City's customers, employees and residents. Medallia captures experience signals created on daily journeys in person, on calls and digital channels, over video and social media and IoT interactions and applies proprietary AI technology to reveal personalized and predictive insights that drives action for City leaders.

Piloting Medallia over the last year, the City has quickly identified ways to: Increase employee satisfaction and retention; create insights for process improvement and other policy decisions; and uncover clear, actionable feedback from our residents and customers.

Medallia provides a one-of-a-kind solution in two ways: 1) on-shore server hosting is a requirement from DoIT to keep all City data within the United States; and 2) the platform's specific functionality (see attachment for specific details). Medallia is the only vendor who can meet both of these criteria.

Medallia is the only tool with the ability to deeply analyze employee and customer/resident experiences to drive change toward specific outcomes (employee retention, resident satisfaction, improved service delivery), provide dynamic and easily understandable dashboards and reporting, and provides the statistical capability to link employee metrics to customer service levels.

It is requested that you approve this sole source for the duration of four (4) years in a NTE amount of \$872,714.00.

Medallia contact:
Aaron Nelson, Sales Director
Phone: 530.363.5565
Email: anelson@medallia.com

Justification

1. This product or service is available from only one supplier and meets at least one of the following criteria (please check all that are applicable):

- One-of-a-kind/Compatibility*
- a. Required by Warranty: the product matches existing equipment, infrastructure and is required by warranty. **(A letter from the provider which supports this claim must be provided.)**
 - b. Goods and Services:
 - i. the good has no competitive product or alternative on the market.
 - ii. the service requires a special skill, ability, or expertise linked to the current project that cannot be provided by another supplier.

(Documentation in support of either of the above claims must be provided by the requesting department.)

City Standards The product or service complies with established, existing City standards.

Replacement The product or service is the only compatible replacement component that supports a larger system. Or, the services are the only ones that can replace the existing service requirements.

2. Do any of the following situations exist?

Limited Competition Department made an attempt to find a second or multiple sources to no avail.

Emergency There is an urgent need for the item or service and time does not permit the City to solicit for competitive bids, as in the cases of emergencies as defined under SDMC section 22.3208,. (Delays in solicitation do not satisfy this criteria)

Cost/Market Analysis

Purchasing and Contracting will perform due diligence on each request. If Purchasing and Contracting can find a suitable, cost effective alternative, this request will be denied and that alternative will be pursued after your department has been contacted to discuss the revised determination.

This form does not take the place of an agreement and all sole source requests for a period of one year or longer will require the **submission of an agreement**. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting for a Purchase Order to be issued.

PCO Due Diligence (PCO to initial all that apply)

- Proof of warranty or maintenance requirement for standardized and replacement items confirmed.
- Vendor/Supplier confirmed submission of justification letter.
- Market test confirmed that there is no advantage to the City in competing this contracting opportunity to multiple vendors.
- Emergency verified with the department.
- JP Pricing agreement has been reviewed.
- Purchasing and Contracting has reviewed this request and affirms that this request for a sole source justification is appropriate.

This sole source is approved for:

- One (1) year from the signature date below.
- For the entire length of the contract, but not more than five (5) years.

The length of the contract must be consistent with the sole source approval. A sole source request must be submitted and approved by the Purchasing and Contracting Director prior to the award of each new contract and prior to each extension of an existing contract that was not contemplated in the initial contract term.

JP After reviewing the provided information and due diligence, I cannot recommend the approval of this request.

Purchasing and Contracting Director Review

I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would be therefore undesirable, impracticable or impossible. My approval is contingent on the information provided in this form.

In accordance with SDMC §22.3016, this request is approved.

Based on the information provided and due diligence recommendation of staff, this request is denied.

C. Abarca

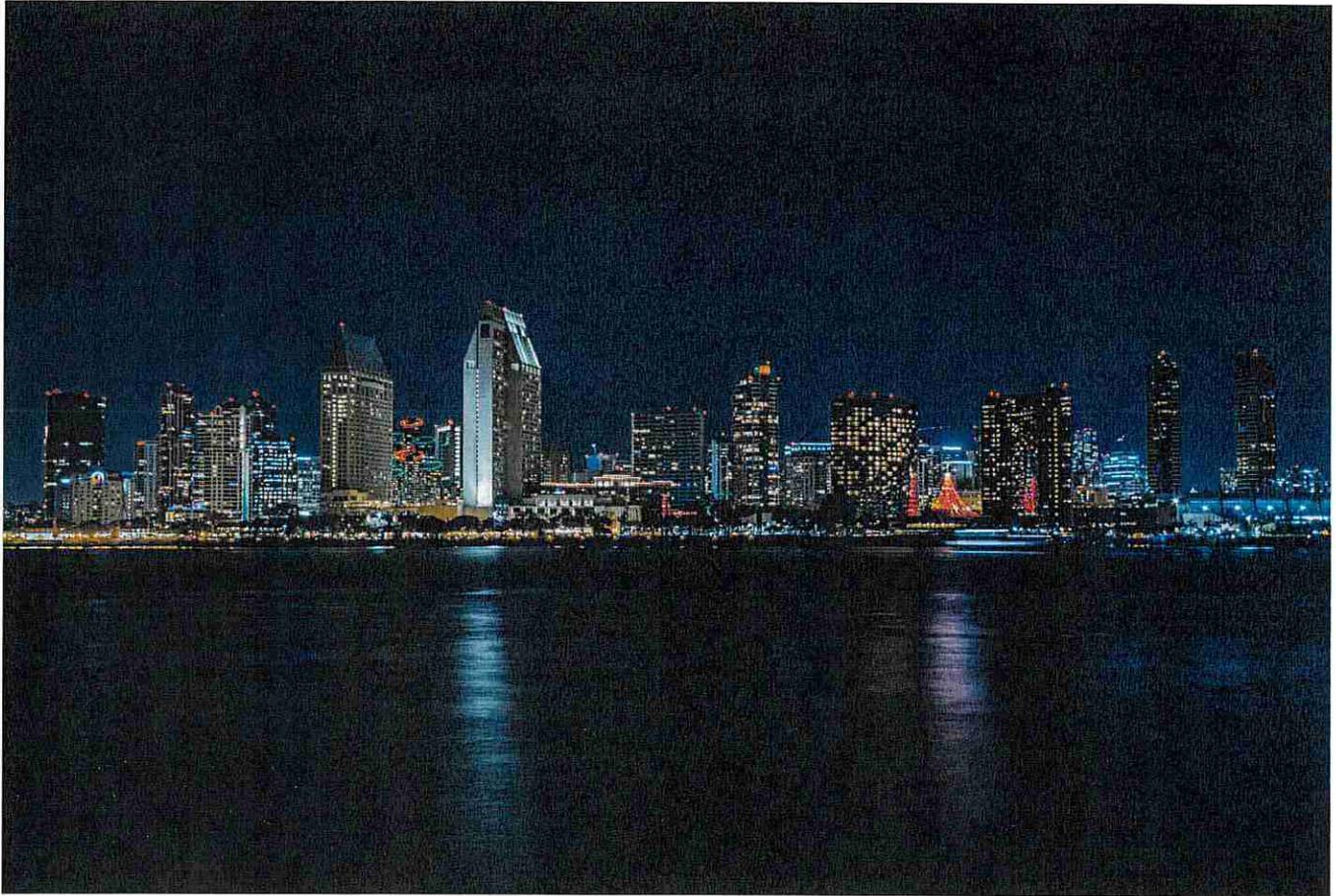
Claudia C. Abarca, ~~Interim~~ Director, Purchasing and Contracting

September 8, 2021

Date

sole source request approved based on meeting w/ Kirby Brady on 8/31 & discussion w/ DCA Eric Proch.

service is one of a kind & RFP would be unavailing. Dept understands they should exercise care with statements in future RFI's related to subsequent RFP's, ITB's, etc. and/or contracts from RFI's.



City of San Diego

Customer and Employee Experience Platform

PREPARED FOR

Jon Terwilliger
Performance Management Program Manager
Performance + Analytics Department
City of San Diego
202 C Street, 8th Floor
San Diego, CA 92106

PREPARED BY

Aaron Nelson
Sales Director
Medallia
anelson@medallia.com
530-363-5565

Medallia

Jon Terwilliger
Performance Management Program Manager
Performance + Analytics Department
JTerwilliger@sandiego.gov

Dear Mr. Terwilliger,

Medallia is the pioneer and market leader in Experience Management with over 20 years of success in both the public sector and private sector.

With our experience and leadership in enterprise Customer and Employee Experience programs and continued innovation and investment in customer engagement technologies, Medallia is the only solution for the City of San Diego to achieve and exceed your customer and employee experience needs both now and into the future.

Below is a brief overview of why Medallia's purpose-built solution is the only solution able to handle the complex and evolving customer and employee needs of the City of San Diego.

- **One-Stop Solution** - Medallia is the only experience management solution that includes services along with our innovative and proprietary software. This differentiates Medallia from other experience management platforms as Medallia does not rely on outside organizations or subcontractors to design and implement a comprehensive solution. With a world-class professional services team, along with our embedded experts, Medallia is the only experience management solution that can understand, design, implement and service the complex needs of a client and staff experience program like the one the City of San Diego is looking to install.
- **Data Privacy and Security** - Medallia is the **only** experience management system that is FedRamp High. In addition, Medallia is HIPAA, GDPR, CCPA and ISAE 3000 compliant. Medallia complies with American Disabilities Act (ADA), Section 508 regulations, and with the Web Content Accessibility Guidelines (WCAG) 2.1 AA standards and In-App Content Accessibility Guidelines (WCAG) 2.1 AA. Medallia has also received certification under the EU-U.S. Privacy Shield and the Swiss-U.S. Privacy Shield frameworks. Our controls and policies currently follow ISO 27001/27002 common security standards. We strive to be industry leaders in regulatory requirements and compliance, and as a result we are SOC 2 compliant and ISO 27001 certified at the platform level. In addition, Medallia hosts its production environment in ISO 27001 certified and SSAE 18 Type II compliant data centers in Santa Clara, CA (primary); Seattle, WA (primary); and Denver, CO (secondary).
- **Unprecedented Experience** - The perspectives and technological capabilities described herein have developed and evolved based on Medallia's close,

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collaborative partnerships with our clients in the public sector and across all major business industries and verticals. This includes clients leveraging Medallia solutions to listen to, learn from, and provide equitable service to both their customers and employees:

- The U.S. Veterans Affairs Veterans Health Administration (VHA), the largest integrated healthcare system (over 1,200 healthcare facilities) partnered with Medallia and via a journey-based experience program has increased Veteran trust in the VHA from below 55% to nearly 90%.
- Medallia partners with the Port Authority of New York and New Jersey's Aviation department to engage customers in-the-moment during their journey through New York-area airports. To date this program has captured over 100,000 unique customer feedback records and now averages over 10,000 responses per week, empowering PANYNJ to drive a continuous improvement model by identifying root-cause issues negatively impacting the customer experience.
- Establishing a world class customer experience (CX) is a key priority for the USPS Postmaster General. Under the new CX office, USPS deployed three CX programs leveraging Medallia technology.
 - Customer Care Center: this program seeks to ensure high quality analysis of data collected across four different Customer Care Centers with nearly 1,400 agents.. The
 - Targeted Customer Experience Feedback: This program uses focused surveys that will intercept a customer while they are on USPS.com for feedback.
 - Customer Experience Measurement program: this program measures feedback on the USPS Indemnity claims process.
- In June 2021, Medallia partnered with California's Department of Motor Vehicles after winning a competitive open market RFP to transform their enterprise customer experience program. The project is still in the pre-launch design and validation stages so we are unable to write about the achievements through this program. We look forward to transforming how the DMV listens to and serves the residents of California.
- **Medallia's Proprietary Software includes:**
 - Data Security
 - Multi-faceted automation
 - Survey Automation (including monitoring response rates and customer segmentation data)
 - Reporting Automation

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- Multi-level Permissions
- Different channels for survey dissemination
- Functionality to integrate client and staff experience survey data for agencies
- Health Check Functionality
- **Inherent Automation** - A critical missing link in many client and staff experience programs is the ability to drive action based on feedback insights. Effectively empowering organizations to take action is not possible unless the platform they use has **native, inherent automation driving its capabilities**.

Medallia's platform is highly automated:

- Client surveys and forms can be launched and collected in an automated fashion
- Insights are automatically visualized in pre-built dashboards
- Automated alerting functionalities based on specific triggers help users prioritize immediate action to what matters most to clients
- Reports can be automatically generated on a cadence that works best for the organization
- Reports and statistical analysis tools can be configured to automatically analyze and visualize links between employee (EX) and customer (CX) metrics and insights.
- Underlying automation ensures that users can focus their time on what matters most - understanding pain points in the client experience and working to address those, including, for example, managing reputation.
- **Text Analytics/AI Learning** - As part of a new client and staff experience survey, the City of San Diego seeks to increase the amount of actionable feedback collected while keeping the survey short to increase response rates. The key to this approach is ensuring that clients can offer open-ended text responses. When we ask clients to tell us about their experiences in their own words, the volume and depth of insight increases significantly without the need to add superfluous questions. Giving clients a voice is a critical aspect of providing equitable care.

Open-ended text response options reduce the burden on clients, improve compliance, accountability, and insights to drive the greatest mission impact and outcome. Critically, Medallia's customer and employee experience platform contains our automated proprietary Text Analytics capability to analyze this unstructured feedback collected from clients. Automation is critical from a budgetary perspective to ensure that taxpayer dollars are used economically - manual analysis of feedback is not feasible. With the volume/complexity of anticipated feedback, it is essential that these comments are analyzed in a manner that allows the City of San Diego staff to take timely, effective action. Medallia's Text Analytics identifies keywords, analyzes and visualizes client sentiment, and offers real-time reports to help direct the City of

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San Diego action on what matters most to their clients, based on what clients are telling them in their own authentic words.

- **Native Speech Analytics:** Medallia Speech is a next generation Speech AI platform designed for the contact center to transcribe & extract customer and employee feedback including sentiment, emotion and voice. With Medallia Speech, Medallia clients:
 - Derive Insights from Support/Sales Calls: understand call reason, call resolution, agent & customer sentiment, etc.
 - Enrich Programs by integrating transcriptions: consolidate all text feedback into a single view of reporting with ability to identify opportunity areas and perform ad hoc & root cause analysis across all data streams in a single hierarchy.
 - Improve Coaching/Training Workstreams: enhance insights from survey data to include feedback on call performance, agent sentiment, and customer frustrations.

Critically, Medallia Speech is native to the broader Medallia platform - meaning that client users can access critical speech insights alongside the other customer feedback signals coming into the platform.

- **Automated Access and Organizational Sync** - The City of San Diego is a large and complex organization, with a large number of departments and people serving a diverse population.
 - To ensure data security and privacy as well as a consistent customer experience program, the City of San Diego must have access to an intuitive platform that runs without interruption. Medallia's proprietary platform automates and customizes user access permissions and then updates those permissions automatically, regardless of organizational complexity, changes in user roles, or turnover. Role-based access ensures that individual City of San Diego users only see the data appropriate for their roles/responsibilities. Medallia is the only vendor that can document the unique ability to completely automate the process of mapping and maintaining alignment of a customer and employee experience platform to a complex organizational structure.
- **Client Journey Analytics** - As part of the commitment to transforming your customer and employee experience, the City of San Diego must understand the complex journeys that clients undertake with the department and partner agencies across all of their interactions, or "touchpoints." Understanding holistic client journeys will enable the City of San Diego to listen to diverse customer segments in a more meaningful way, and in turn, actions can be taken to improve experiences in a highly targeted,

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efficient manner.

Medallia's journey-based analytics, an essential capability that differentiates our customer and employee experience platform, covers the following:

- Bringing client feedback from not only surveys but other areas they might engage; for example, department/agency social media sites, QR codes, kiosks, etc., into one platform for analysis. The insights captured depend on the goals and objectives of the client's unique program - for example, clients may want to use metrics such as Likelihood to Recommend; Net Promoter Score; Overall Satisfaction with a Service, etc. Medallia is metric agnostic.
- Contextualizing client feedback by bringing any operational data that the City of San Diego has in existing client databases, client management software, or other datasets into one platform for analysis. Medallia's unique capabilities will enable the City of San Diego to perform the following:
 - Map the holistic client journeys and build granular client segments to visualize unique journeys across multiple touchpoints; visualize these journeys in intuitive dashboards featuring reports that display metrics based on specific organizational outcomes (e.g. employee retention (EX), resident satisfaction with services (CX) etc.
 - Additionally, statistical tools inherent in the platform can be leveraged to dig into what is most impacting employee and customer experience: Medallia's Data Analytics Suite covers a whole powerful suite of analytics modules that allows users to explore and further analyze data live - in the form of intuitive tabular, graphical, statistical and visual means (e.g. dynamic multi-select filtering, crosstabs, pivot tables, regression analysis, benchmarks and statistically significant testing etc.), Key capabilities are outlined below:
 - Scores, trends, benchmarks, distributions, customer columns and comparisons; the functionality is fully filterable by organizational hierarchy and all customer segments, time period and other filters; significance testing is included along with a legend. Small sample sizes can be flagged or not reported as needed.
 - Ranker ranks virtually anything in hierarchy filters or associated with individual responses. This can include locations, districts, regions, business units, brands, teams, individuals, and key accounts, for example. Ranker is fully filterable with subtabs and all results are, as you'd expect in a ranking module, one-click sortable ascending and descending.
 - Cross tabs explore frequency and co-dependence between two

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variables, which includes statistical results that signify a meaningful relationship between the attributes on the rows and columns; and pivot tables explore metrics like average scores for cells defined by the combination of two variables. The modules are fully filterable.

- Action Planner provides at-your-fingertips key driver analysis for improvement and investment prioritization. Fully filterable by hierarchy and segments, the user chooses among desired outcomes (a dependent variable to improve). A key driver analysis is immediately generated with priority along with reasonable and changeable goals by attribute with the impact shown if the goal is achieved. Clients call this part a “simulator” or “action list”. An additional view is our quadrant analysis, showing importance (Medallia defaults to linear regression as the derived importance algorithm but gives users the ability to utilize correlation if preferred) and performance to highlight priorities.
- Customer Profiler provides detailed characteristics and demographics of your respondent base, all of which is fully filterable by hierarchy and segment elements.
 - Operationalize and automate internal workflows based on a better understanding of client journeys and the needs of specific client segments
 - Medallia’s perspective on the importance of the client journey, and the unique technological capability described above, will enable the City of San Diego to meet its goal of client centricity and equity
- **Equitable Engagement & Signal Capture, Including App & Mobile Usage** - Client centricity and equity are critically important to the success of a customer and employee experience program. This means that any engagement program must meet clients in a manner that is safe, intuitive, and equitable. No assumptions can be made - for example, it cannot be assumed that all clients will have easy access to broadband internet or an email address.

Medallia’s unique capabilities enable customers to capture critical client experience data from multiple sources and analyze data through Medallia’s proprietary artificial intelligence engine, Athena.

As such, a customer and employee experience program must have the best-in-class ability to meet clients where they are. Medallia’s platform does just that. Customers are interacting with cities and organizations and brands in more channels, in more ways, at more places than ever before — online, social media, contact center, in apps, through your employees, and more. This is why the Medallia Experience Cloud continues to evolve and enable 100% coverage of those interactions - automated

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analysis of voice and speech recorded in contact centers, employee input, observed behavior, operational data, indirect feedback - as well as our direct feedback signals described above. As part of these interactions, customers are sharing data and emanating signals, leaving breadcrumbs that can tell a lot about who they are, what they are experiencing, what they care about and much more. Medallia delivers on its vision to enable our clients to capture all these signals from every human, digital and IoT interaction at scale so you can truly understand their complete experience.

Our indirect feedback capture capabilities are market leading - with nearly 50% of the total signals in our platform originating from indirect and inferred sources. Much of this data comes from proven and time-tested integrations to bring all the signal data into one place. Whether it is sales data, digital activity, contact center metrics, operational metadata, calculations such as cost per call, average revenue per customer etc. Medallia can integrate, import, store, and manipulate the data for further calculations and analysis.

Additionally, Medallia has built and maintains managed, out of the box integrations with the most used and trusted operational data platforms such as Adobe, Salesforce, ServiceNOW, and Workday, further expanding the signal types that can be brought into Medallia.

With Medallia's solution, customers can engage clients via email-to-web surveys, mobile/SMS surveys, surveys accessed via QR code, or surveys safely delivered via tablets or kiosks - to name just a few feedback channels available. This capability is unique to Medallia and part of the out-of-the-box functionality.

Further, employees are highly mobile. An 'out of the box' mobile application for iOS and Android should be available - and it is with Medallia Mobile. Medallia's mobile app empowers the City of San Diego users to access their customized dashboards and understand/act on client feedback, in real-time, from their mobile phones.

- **Automated Data Management** - Managing data export/import processes via a time-consuming manual process will add significant program inefficiencies (a cost to taxpayers) and slow down the process of feedback capture, analysis, and action to better serve clients. Medallia's proprietary technology automatically processes export and import data, saving hundreds of hours over the course of a year.

As such, it is critical that strong automated processes are in place to manage data imports and exports. Medallia's customer and employee experience platform offers the following unique and proprietary automated functionalities:

- Ingest, transform and process any type of data with built-in validation and cleansing capabilities

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- Bring in operational, financial and business data to be analyzed alongside client experience data in the platform in a completely automated manner
- **Health Check functionality** - With any customer and employee experience program, it is paramount that Medallia customers have a clear, real-time view of how internal users are logging in and engaging with the data at an individual and department level. This is especially critical as customer and employee experience programs typically show the greatest improvement in overall experience when employees are highly engaged with client feedback and leverage shared insights to drive and transform change. Currently, Medallia is the **only** platform that has been identified to make these reports available to users in real-time. Medallia's Health Check is available as an additional tab on a user's dashboard and is generally made available to program administrators.

Thank you again for the opportunity to present why Medallia is the **only** customer and employee experience platform able to handle the complex and evolving needs of the City of San Diego.

Kind regards,

Aaron Nelson
Medallia
anelson@medallia.com
530-363-5565



Medallia, Inc.
575 Market St. Suite 1850
San Francisco, CA 94105

Order Form

For: City of San Diego ("Customer")
Order #: 0060z0000245C5kAAE
Quote Expiration: 08/27/2021
Q-24914

Billing Information

City of San Diego
202 C Street, 8th Floor
San Diego, CA 92106

Order Form Effective Date: 08/17/2021
Payment Term: Net 30

Billing Email/System:
jterwilliger@sandiego.gov

Software Subscriptions

Item	Start Date	End Date	Price
Enterprise Edition Base Platform: 1 "311" Call Center Agent Units: 100 EX Employee Units: 11,000 Digital Website Property Units: 1 <ul style="list-style-type: none"> www.Sandiego.com Medallia for Salesforce Packaged Integration 100 User Tier Text Analytics 125,000 Annual Responses Medallia Speech: 50,000 Annual Hours Tier	08/17/2021	08/16/2022	USD 147,000.00
Enterprise Edition Base Platform: 1 "311" Call Center Agent Units: 100 EX Employee Units: 11,000 Digital Website Property Units: 1 <ul style="list-style-type: none"> www.Sandiego.com Medallia for Salesforce Packaged Integration 100 User Tier Text Analytics 125,000 Annual Responses Medallia Speech: 50,000 Annual Hours Tier	08/17/2022	08/16/2023	USD 203,350.00
Enterprise Edition Base Platform: 1 "311" Call Center Agent Units: 100 EX Employee Units: 11,000 Digital Website Property Units: 1 <ul style="list-style-type: none"> www.Sandiego.com Medallia for Salesforce Packaged Integration 100 User Tier Text Analytics 125,000 Annual Responses Medallia Speech: 50,000 Annual Hours Tier	08/17/2023	08/16/2024	USD 214,568.00
Enterprise Edition Base Platform: 1 "311" Call Center Agent Units: 100 EX Employee Units: 11,000 Digital Website Property Units: 1 <ul style="list-style-type: none"> www.Sandiego.com Medallia for Salesforce Packaged Integration 100 User Tier Text Analytics 125,000 Annual Responses Medallia Speech: 50,000 Annual Hours Tier	08/17/2024	08/16/2025	USD 225,296.00

Services Subscriptions

Item	Start Date	End Date	Price
Enterprise Managed Services Hours: 200	08/17/2021	08/16/2022	USD 30,000.00

Implementation Fixed Fee

Item	Price
Enterprise Implementation (See Implementation Scope Attachment)	USD 52,500.00*

* It has been agreed that the customer will begin to implement and pay for implementation of Speech by 08/17/2022.

Rate Card

Customer may purchase additional servicing hours according to the rate card below. Such expansion must be documented through a mutual written agreement between the parties.

Type	Additional Item	Additional Price	Expiration Date
Services	Additional One-Time Managed Services Hour: 1	USD 150.00 Per Hour	08/16/2025

Invoice Summary Table

Invoice Date	Invoice Amount	Payment Due Date
Upon Order Form Execution	USD 177,000.00	Net 30
07/18/2022	USD 255,850.00*	08/17/2022
07/18/2023	USD 214,568.00	08/17/2023
07/18/2024	USD 225,296.00	08/17/2024

Terms and Conditions

This Order Form is governed by the master subscription agreement between the parties with an Effective Date of August 20, 2020 (the "Agreement"), except as otherwise explicitly stated in this Order Form. The terms and conditions of this Order Form and the Agreement will prevail over any conflicting terms and conditions in a purchase order or payment portal agreement.

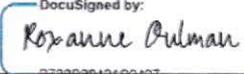
Overviews of and additional terms regarding the Medallia Speech subscriptions listed above are provided at https://www.medallia.com/wp-content/uploads/pdf/description/Medallia_Speech-Product_Description_June-2020.pdf

Overviews of the Medallia Experience Cloud subscriptions listed above are provided at https://www.medallia.com/wp-content/uploads/pdf/description/Medallia_Experience_Cloud_Product_Description-March_2021.pdf

After the initial term, subscriptions will automatically renew for successive one year subscription terms at a 5% annual fee increase, unless either party provides written notice of non-renewal delivered no fewer than 90 days before the end of the term.

Overviews of Implementation, Managed Services, and Education Services offerings listed above are provided at https://www.medallia.com/wp-content/uploads/pdf/description/Implementation_and_Managed_Services_Description_-_October_2020.pdf. Notwithstanding anything the contrary in the Implementation, Managed Services, and Education Services offering description linked above, Customer is entitled to an unlimited Navigator licenses for administrators and experience best practice professionals.

Medallia, Inc.

Signature: 
 Printed: Roxanne Oulman
 Title: CFO
 Date: 9/13/2021

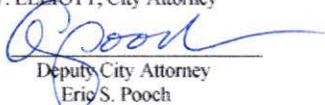
City of San Diego

Signature: 
 Printed: Claudia C. Abarca
 Title: Director, Purchasing & Contracting
 Date: September 13, 2021

Attachment A: Implementation Scope

Approved as to form this 14th day of September, 2021.

MARA W. ELLIOTT, City Attorney

By: 
 Deputy City Attorney
 Eric S. Pooch

Medallia will deliver the implementation according to the scope described in this attachment.

Implementation Methodology	Enterprise
Base Platform	Existing: https://sandiego.medallia.com/sandiego
Implementation Waves	1

Project Management & Timelines:

Program Manager	Customer will assign a dedicated Project Manager to coordinate and manage the implementation.
Timeline	Medallia will provide a detailed timeline at project kick-off. Customer will review and sign-off on the timeline. Any project delays caused by Customer that impacts project duration will require a conversation to assess impact to scope and may result in additional costs.
Sign-off	Medallia will ask Customer to sign-off on design specifications. Once Customer signs-off on specifications, any additional change requests will be new scope.
Change Management	Any modifications to this detailed scope including additional items, changes to assumptions used to define the parameters for the in-scope items, additional Customer requested onsite events, or Customer-driven delays or events impacting the Medallia team in completing the contracted scope will be managed through a change order.
Translation Services	Human translations of survey, reporting, invitation emails, etc. are not included. Customer can provide translations or Medallia can use a third party to provide translations and pass through at cost.

Contact Center: Speech Package

Description	Measure, analyze and act on Contact Center experiences, including speech analytics, post-interaction surveys, and close loop workflows	
Intended Trigger	Post contact center interaction with an agent.	
Hierarchy Unit	Contact Center Agent	
Transcription	Transcription customization	
Audio Language	English	
Available Pre-Configured Translations	Reporting	English
Reporting Roles	2	QA Supervisor, QA Specialist
Text Analytics	Speech Topic Set - English	
Template Data Integrations	API integration for audio to speech processing, API or SFTP integration for speech metadata, API integration for Medallia Media File Transfer, Reporting Hierarchy feed, User Feed, Single Sign-On IdP	
Automated Batch Exports	2	Record-level, Opt-out



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MASTER SUBSCRIPTION AGREEMENT

This Medallia Master Subscription Agreement (the “**Agreement**”) is effective as of the last day of signature below (the “**Effective Date**”) and is between The City of San Diego, a municipal corporation (“**Customer**”) and Medallia, Inc. and its subsidiaries and affiliated group companies (“**Medallia**”). Medallia provides experience management products (the “**Medallia Products**”). This Agreement establishes the terms and conditions for the purchase and provision of subscriptions to Medallia Products and related professional services provided by Medallia (“**Professional Services**”).

1. ORDERS

a. General

This Agreement does not itself obligate the parties to purchase or provide subscriptions to Medallia Products or Professional Services. Such obligations will be documented in ordering documents that describe the relevant Medallia Products or Professional Services scope and the related fees (an “**Order**”). An explicit conflict between these agreements will be resolved according to the following order of precedence: (1) an Order; and (2) this Agreement.

2. PROVISION OF MEDALLIA PRODUCTS

Medallia will make Medallia Products available to Customer through the web browsers and mobile applications specified on the Order and will maintain the hardware and software necessary to do so. Medallia’s service level agreements will be as set forth in the applicable product and services descriptions (the “**Documentation**”). Medallia will provide Customer with access to every product improvement consistent with the scope established in the Order, when and if generally available.

3. MEDALLIA PRODUCTS AND PROFESSIONAL SERVICES WARRANTY

a. Express Warranties

Medallia Products will perform in a manner consistent with the Documentation, this Agreement and Order(s) (the “**Solution Warranty**”). Professional Services will be provided in a true and workmanlike manner,

consistent with this Agreement and the Order (the “**Services Warranty**”).

b. Remedy for Failure of the Solution Warranty

Upon receipt of written notice of a Solution Warranty breach, Medallia will provide a correction at no charge. If Medallia cannot correct the breach within forty-five days from receipt of the warranty notice, then Customer may terminate the affected Order at any time within the next thirty days and receive: (i) if the breach notice was received fewer than ninety days after the Effective Date, a refund of all subscription fees paid; or (ii) if the notice was received at any other time, a prorated refund of subscription fees from the date of the warranty notice. This is Customer’s sole and exclusive remedy for a breach of the Solution Warranty.

c. Remedy for Failure of the Professional Services Warranty

Upon receipt of written notice of a Services Warranty breach, Medallia will re-perform the Professional Services as necessary to correct the breach. If Medallia cannot correct the breach within forty-five days from receipt of the warranty notice, then Customer may terminate the affected portion of the Order at any time within the next thirty days and receive a refund of Professional Services fees paid for nonconforming or unperformed Professional Services. This is Customer’s sole and exclusive remedy for a breach of the Professional Services Warranty.

d. Disclaimer of Other Warranties

EXCEPT AS EXPRESSLY PROVIDED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MEDALLIA PROVIDES MEDALLIA PRODUCTS AND PROFESSIONAL SERVICES “AS IS,” MAKES NO WARRANTY OF ANY KIND EXPRESS OR IMPLIED WITH REGARD TO MEDALLIA PRODUCTS OR PROFESSIONAL SERVICES, AND DISCLAIMS ALL OTHER WARRANTIES, SUCH AS: (i) WITHOUT PREJUDICE TO CUSTOMER’S RIGHT TO SERVICE CREDITS FOR A FAILURE TO MEET MEDALLIA’S UPTIME COMMITMENTS, ANY WARRANTY THAT MEDALLIA PRODUCTS AND PROFESSIONAL SERVICES WILL BE ERROR FREE OR UNINTERRUPTED; AND (ii) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

e. Beta Services

From time to time, Customer may have the option to participate in early access programs to use alpha or beta services, products, features and documentation (“**Beta Services**”) offered by Medallia. These Beta Services are not generally available and may contain bugs, errors, or defects. Accordingly, Medallia provides the Beta Services to Customer “as is” and makes no warranties of any kind with respect to the Beta Services, nor does any Medallia service level agreement apply to the Beta Services. Medallia may discontinue Beta Services at any time in its sole discretion and may never make them generally available.

4. USE OF MEDALLIA PRODUCTS

a. General Obligations

Other than using Medallia Products and its functionalities under an Order, Customer may not copy, modify, distribute, sell, or lease any part of Medallia Products or included software, or reverse engineer or attempt to extract the source code of that software, unless laws prohibit those restrictions. Customer may not use Medallia Products functionality to infringe upon the intellectual property rights of others, or to commit an unlawful activity.

b. Compliance Obligations

Customer will access Medallia Products only for

government purposes and will use industry standard practices to restrict the unauthorized use of Medallia Products credentials. If Customer delivers data to Medallia (e.g., names and contact information for consumers), Customer will be responsible for ensuring that such use is allowed under applicable laws, regulations, and agreements. This responsibility includes for example: (i) ensuring that Customer’s privacy policy allows for the delivery of such data to Medallia and its use as disclosed to Customer by Medallia; (ii) securing and maintaining any required consents; (iii) ensuring the validity of any customer contact information provided to Medallia; and (iv) timely informing Medallia of opt out requests received after delivery of the data. Customer shall not configure Medallia Products to collect bank account numbers, payment card or credit card information, bank transaction information, government identification numbers including (but not limited to) social security numbers, state identification numbers, and passport numbers, and sensitive personal information including (but not limited to) religious beliefs, health, sexual orientation, race, and union membership and Medallia will not be liable for non-compliance under laws and regulations that applies to the processing of the foregoing categories of data.

c. Third Party Services

If Customer integrates, or directs Medallia to integrate, Medallia Products with any third party service (e.g., another Customer-managed software solution) Customer acknowledges that such third party service might access or use Customer Data and Customer permits the third party service provider to access or use Customer Data. Customer is solely responsible for the use of such third party services and any data loss or other losses it may suffer as a result of using any such services. If Customer uses any third party service in connection with Medallia Products or uses Medallia Products to link or direct online traffic to third-party websites, Customer shall ensure that such use complies with the terms of use of those third party services.

5. OWNERSHIP AND USE RIGHTS

a. Customer Data

Customer owns all data delivered to Medallia by Customer or collected by Medallia on behalf of Customer (the “**Customer Data**”), including any personal data as defined by applicable data privacy laws (“**Personal Data**”). Customer grants Medallia a non-exclusive, worldwide, limited license to the Customer Data for the purposes of: (i) providing and improving Medallia Products and Professional Services, as long as such improvements are not derived from the use of Personal Data; and (ii) developing and publishing broadly applicable experience management insights (such as industry experience management benchmarks, if applicable, provided that only aggregated or de-identified Customer Data is used).

b. Medallia Products

Medallia owns Medallia Products, including all features, functionalities, configurations, designs, templates, and other proprietary elements contained therein and all modifications, improvements, and derivative works thereof. Medallia will provide Customer with access to Medallia Products as described in the Order during the term of an Order for its internal business purposes. If Customer uses a Medallia API or software developer kit (“**SDK**”), Medallia grants Customer a non-exclusive, worldwide, limited license for use of such API or SDK for the purpose of enabling Customer to use Medallia Products. Customer will not remove, obscure, or alter Medallia’s copyright notice, or other proprietary rights notices affixed to or contained within Medallia Products or any related documentation. Customer grants Medallia a worldwide, perpetual, irrevocable, royalty-free license to use feedback provided by Customer to Medallia related to the Medallia Products.

c. Documentation

Medallia owns the Documentation and all derivative works thereof. Medallia grants Customer a non-exclusive, worldwide limited license to use, copy, and make derivative works

of the Documentation for internal business purposes during the term of an Order.

d. Trademarks

Customer grants Medallia a limited, non-exclusive license to mark Customer surveys and reports and Customer’s instance of Medallia Products with Customer’s trademarks, when requested by Customer and subject to Customer approval for consistency with its branding guidelines.

e. Reserved Rights

Customer and Medallia each reserve all intellectual property rights not explicitly granted herein.

6. PAYMENTS

a. Invoicing

Fees due for Medallia Products and Professional Services will be stated on the Order. Fees are non-cancelable and non-refundable other than as explicitly stated in this Agreement.

b. Taxes

Medallia shall be responsible for its own tax obligations. Upon request, Customer shall provide Medallia with a valid tax exemption certificate.

7. TERM AND TERMINATION

a. Term

The term of this Agreement is from the Effective Date through the last to expire Order.

b. Termination for Cause

Either party may terminate this Agreement or Order within thirty days upon the occurrence of either of the following: (a) in the event the other party fails to cure any material breach of this Agreement or the relevant Order within thirty (30) days after receipt of written notice; or (b) if the other party files or has filed against it any bankruptcy or similar proceeding or enters into any form of arrangement with its creditors that is not removed within 60 days of filing.

c. Transfer of Customer Data Upon Termination

Upon termination of this Agreement or an Order, Medallia will make customer feedback collected through and, at the time of termination, stored within Medallia Products available for secure download by Customer in a standard flat file format for at least thirty (30) days (the “**Data Transfer Period**”). Within sixty (60) days of the end of the Data Transfer Period, Medallia will remove all Customer Data from Medallia Products.

8. INSURANCE

Medallia will maintain insurance policies providing at least the following coverage and will provide a certificate of insurance upon request:

- (i) Technology Errors & Omissions / Professional liability with a limit of at least \$5 Million;
- (ii) Cyber/Network and Information Security liability with a limit of at least \$5 Million;
- (iii) Commercial General liability with a limit of at least \$1 Million;
- (iv) Automobile liability with a limit of at least \$1 Million;
- (v) Workers Compensation and Employer’s liability with a limit of at least \$1 Million;
- (vi) Umbrella liability with a limit of at least \$10 million.

9. PRIVACY, SECURITY, AND AUDITS

a. Compliance with Data Protection Laws

In processing Personal Data in the Medallia Products and through the Professional Services to Customer, Medallia shall comply with applicable legal requirements for privacy, data protection and confidentiality of communications. Such applicable legal requirements include the Standards for the Protection of Personal Information of Residents

of the Commonwealth of Massachusetts (201 CMR 17.00), the California Consumer Privacy Act of 2018 (the “**CCPA**”), and other applicable United States data protection laws at the state level, and implementing national legislation, and Regulation 2016/679 (also known as GDPR), if applicable. Medallia shall not (i) sell Personal Data as defined under the CCPA, or (ii) retain, use, or disclose Personal Data for any purpose other than for the specific purpose of providing the Medallia Products and performing the Services. Medallia is certified under the Privacy Shield to cover the transfer of data collected in the European Economic Area and Switzerland to the United States.

b. Data Protection Agreement

Medallia offers a data processing agreement that defines Medallia’s and Customer’s obligations under GDPR, and includes the EU’s approved Standard Contractual Clauses for the handling of data collected in the European Economic Area and Switzerland outside of those areas. If Customer has a need for this agreement, Customer should please request it from Customer’s Medallia account representative.

c. Security Obligations

Medallia shall implement and maintain appropriate technical and organizational security measures to protect Customer Data from Security Incidents and to preserve the security and confidentiality of Customer Data, in accordance with Medallia’s security standards described in the Security Measures addendum

d. Security Incident Response

Medallia shall respond to Security Incidents as described in the Security Measures addendum

e. General Performance Audits

Customer may, no more than once per year, audit Medallia’s performance under this Agreement and each Order, and Medallia will maintain records sufficient for such audits, including service hours provided, uptime, and the results of security and disaster recovery

tests.

f. Security Audits

Certain Medallia Products are regularly audited by independent third parties and/or internal auditors. Upon request, Medallia shall supply (on a confidential basis) a summary copy of its audit report(s), if applicable, as well as written responses (on a confidential basis), not more than once per year, to all reasonable security and audit questionnaires that are necessary to confirm Medallia's compliance with this Agreement. Medallia shall permit Customer (or its appointed third party auditors) to carry out an audit of Medallia's processing of Customer Data under this Agreement following: (i) a Security Incident or (ii) upon the instruction of a data protection authority.

g. Audit Procedure

Each audit requires at least thirty days' prior notice, except in the event of a Security Incident or upon instruction of a data protection authority. Audits will take place on a mutually agreed date during Medallia's normal business hours, and Customer will cause its representative or agent to employ such reasonable procedures and methods as are necessary and appropriate in the circumstances to minimize interference with Medallia's normal business operations. Onsite audits are limited to two business days.

h. Data Collection

Medallia Products enable Customer to import and collect a wide range of information about Customer's customers or end users. The types of data that are imported and collected in Medallia Products will be within Customer's control, and will be specified during implementation and use of each product. Unless approved by Medallia's data protection attorneys, Customer shall not configure the Medallia Products to collect bank account numbers, payment card or credit card information, bank transaction information, government identification numbers including (but not limited to) social security numbers, state identification numbers, and passport

numbers, and sensitive personal information including (but not limited to) religious beliefs, health, sexual orientation, race, and union membership and Medallia will not be liable for non-compliance under laws and regulations that applies to the processing of the foregoing categories of data. This provision shall not apply to Protected Health Information as defined by HIPAA, as long as Customer has signed a Business Associate Agreement with Medallia.

10. CONFIDENTIALITY

a. Controlling Statement of Obligations

The terms of this Confidentiality provision supersede any non-disclosure or confidentiality agreement entered into by the parties prior to the Effective Date of this Agreement.

b. Confidential Information

Confidential Information means all information provided by a disclosing party to a receiving party that a reasonable industry participant would deem to be confidential, including for example: (i) all information that is marked confidential; (ii) the terms of this Agreement and each Order; (iii) features and functionality of Medallia Products and related documentation; and (iv) Customer Data.

Confidential Information does not include information that is independently developed, that becomes public knowledge through no fault of the receiving party, or that is received from a third party under circumstances that do not create a reasonable suspicion that it has been misappropriated or improperly disclosed.

c. Use and Disclosure Restrictions

A receiving party will use commercially reasonable efforts to protect Confidential Information it receives and will use Confidential Information only as necessary to perform its obligations and exercise its rights under this Agreement and each Order. A receiving party will not disclose Confidential Information to third parties other than as permitted under this Agreement or as compelled by a court or

regulator of competent authority (and then while taking all reasonable steps to inform the disclosing party prior to disclosure and to limit the scope of the disclosure).

11. INDEMNIFICATION

a. Intellectual Property Indemnification by Medallia

Medallia will defend Customer against claims, causes of action, and investigations by third parties or government agencies and will pay the resulting judgments, fines, settlements, court costs, and attorneys fees (to “**Indemnify**”) for third party claims alleging that Medallia Products infringe a third-party patent, copyright, or trademark or misappropriate a third-party trade secret, subject to the following limitations: (i) if the alleged infringement arises from a modification by Customer or the unauthorized use of Medallia Products; (ii) if the alleged infringement arises from a violation of Customer’s obligations under Section 4 (“Use of Medallia Products”); or (iii) if the alleged infringement arises from the combination of Medallia Products with any product or process not provided by Medallia, and if Medallia would not be liable for inducement or contribution for such infringement, then Medallia will have no obligation to Indemnify. If Customer establishes a reasonable belief that use of Medallia Products will be enjoined, then Medallia will use commercially reasonable efforts to substitute the affected functionality with a non-infringing alternative or to procure a license to allow for the continued use of the affected functionality. If use of Medallia Products is enjoined and if Medallia has not provided a non-infringing alternative, then Customer may, within 30 days of the date of the injunction, terminate the affected Order immediately upon written notice and receive a refund of the unused portion of prepaid fees.

b. Data Breach Indemnification by Medallia

Medallia will Indemnify Customer for third party claims arising from the improper access, use, or disclosure of personally identifiable Customer

Data caused by: (i) Medallia’s breach of its obligations under this Agreement; or (ii) the willful misconduct or gross negligence of Medallia personnel or any third party under Medallia’s control.

c. Indemnification by Customer

[omitted]

d. Indemnification Requirements and Procedure

The party seeking indemnification (the “**Indemnified Party**”) will provide timely notice to the party from which it seeks indemnification (the “**Indemnifying Party**”) (although untimely notice will relieve the Indemnifying Party of its indemnification obligations only commensurate with actual prejudice suffered as a result) and will provide reasonable assistance to Indemnifying Party at the Indemnifying Party’s expense. The Indemnifying Party will have sole control over the defense, but the Indemnified Party will have the right to participate at its own cost.

12. LIMITATION OF DAMAGES AND LIABILITY

a. Limitation of Damages

NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES OR FOR LOST PROFITS, LOST REVENUES, HARM TO GOODWILL, OR THE COSTS OF PROCURING REPLACEMENT SERVICES, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE. THIS LIMITATION WILL APPLY TO ALL CLAIMS UNDER ALL THEORIES OF LAW AND EQUITY, EXCEPT WHERE PROHIBITED BY LAW.

b. Limitation of Liability

EXCEPT IN THE EVENT OF GROSS NEGLIGENCE; WILLFUL MISCONDUCT; CLAIMS FOR INDEMNIFICATION UNDER THIS AGREEMENT; FOR FEES OWED IN EXCESS OF THE BELOW LIMIT; AND WHERE PROHIBITED BY LAW, THE CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER WILL BE LIMITED TO:

(i) TWO TIMES THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT FOR THE 12 MONTHS PRECEDING THE FILING OF THE CLAIM, FOR CLAIMS ARISING FROM A BREACH OF

THE CONFIDENTIALITY AND PRIVACY AND SECURITY PROVISIONS OF THIS AGREEMENT; AND

(ii) THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT FOR THE 12 MONTHS PRECEDING THE FILING OF THE CLAIM, FOR ALL OTHER CLAIMS.

13. MARKETING

Medallia may include Customer's name and logo on Medallia's public customer list. Customer agrees to partner with Medallia on co-marketing and public relations activities to demonstrate the launch and success of Customer's program (e.g., press release, case study, testimonial, video). Customer grants Medallia a limited, non-exclusive, worldwide license to use its trademark for these purposes.

14. GENERAL TERMS

a. Authority

Each party warrants that it has the authority to enter into this Agreement and each Order.

b. Assignment

Neither this Agreement nor any Order may be assigned without written consent (such consent not to be unreasonably withheld) and any such attempted assignment will be void.

c. Survival

All terms that must survive termination in order to have their customary effect, including terms related to confidentiality, indemnification, limitation of damages and liability, and post-termination data transfer will survive termination or expiration of this Agreement.

d. Force Majeure

No party will be deemed to have breached this Agreement or any Order if its failure to perform was caused by events beyond that party's reasonable control, such as mass failure of internet infrastructure, civil unrest, and natural disasters.

e. Independent Contractors

The parties are independent contractors. Neither party has the right to bind the other, and neither party will make any contrary

representation to a third party.

f. Export Compliance

Customer will comply with the export control and economic sanctions laws and regulations of the United States and other applicable jurisdictions. Consistent with that obligation, Customer will not make Medallia Products available to any person or entity that is: (i) located in a country that is subject to a U.S. government embargo, (ii) on a U.S. government list of prohibited or restricted parties, or (iii) engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

g. Arbitration, Governing Law and Forum

Disputes arising from this Agreement will be settled by arbitration administered in San Mateo, California by the American Arbitration Association under its procedural Commercial Arbitration Rules and the substantive law of the United States of America and the State of California, and judgment on the award rendered by the arbitrator may be entered in any court with jurisdiction. This provision will not impair either party's ability to receive injunctive or other equitable relief from any court with jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

h. No Waiver

The failure of a party to timely enforce an obligation under this Agreement or Order will only be construed as a waiver if given in writing and will not act to waive any other obligation, including any future occurrence of the waived obligation.

i. Complete Agreement

This Agreement, including Attachment A, "Security Measures" and Attachment B "Customer's Additional Terms", each incorporated herein by reference, and each Order including relevant Documentation contains the full agreement of the parties (superseding all prior or contemporaneous

agreements) and may only be amended by a writing signed by both parties. Terms or conditions stated in Customer order documentation (e.g., a Customer purchase order) will be null and void. Neither party enters into this Agreement or Orders based on representations not stated in these documents, and there will be no presumption against either party as the drafter thereof.

j. Subcontractors

Medallia may utilize the subcontractors as described at medallia.com/subprocessors to provide services, provided that: (i) Medallia has bound the subcontractor to agreements requiring it to conform to law, regulation, industry standards, and the quality, confidentiality, and privacy standards reflected in this Agreement; and (ii) Medallia remains responsible for delivery of the scope established in the Order. If Customer subscribes to updates through the site listed at medallia.com/subprocessors, Medallia shall

provide notification of new subprocessors at least fifteen (15) days prior to any such changes. Customer may object to Medallia's appointment of a new technology provider by sending an email to privacy@medallia.com within ten (10) calendar days of such notice, provided that such objection is based on reasonable grounds relating to data protection. In such event, the parties will discuss such concerns in good faith aimed at achieving resolution.

k. Notices

Notifications required under this Agreement or an Order in relation to breach, disputed payments, audit, or indemnification will be provided in writing to the legal departments of the parties to the addresses identified in an order. Other notifications can be submitted via email. Notifications will be effective as of the date of delivery.

So agreed by each party through its authorized signatory:

Medallia, Inc.

**Purchasing & Contracting Department
for the City of San Diego**

Signature: DocuSigned by:
Roxanne Oulman
B732B39421C0427...
Name: Roxanne Oulman
Title: CFO
Date: 8/7/2020

Signature: Angela Errico
Name: ANGELA ERRICO
Title: INTERIM DEPUTY DIRECTOR
PURCHASING & CONTRACTING
Date: 8/20/2020

Approved as to form this 21st day of August, 2020.

MARA W. ELLIOTT, City Attorney

By: 
Deputy City Attorney

Print Name: ERIC S. POOCH

ATTACHMENT A

Security Measures

Medallia maintains and manages a comprehensive written security program designed to protect: (a) the security and integrity of Customer Data; (b) against threats and hazards that may negatively impact Customer Data; and (c) against unauthorized access to Customer Data. Medallia's security program includes the following:

1. Risk Management

- a. Conducting an annual risk assessment designed to identify threats and vulnerabilities in the administrative, physical, legal, regulatory, and technical safeguards used in the Medallia Products.
- b. Maintaining a documented risk remediation process to assign ownership of identified risks, establish remediation plans and timeframes, and provide for periodic monitoring of progress.

2. Information Security Program

- a. Maintaining a documented comprehensive information security program. This program will include policies and procedures aligning with industry best practices, such as ISO 27001/27002.
- b. Such information security program shall include, as applicable: (i) adequate physical security of all premises in which Customer Data will be processed and/or stored; (ii) reasonable precautions taken with respect to Medallia personnel employment; and (iii) an appropriate network security program.
- c. These policies will be reviewed and updated by Medallia management annually.

3. Organization of Information Security

- a. Assigning security responsibilities to appropriate Medallia individuals or

groups to facilitate protection of the Medallia Products environment and associated assets.

- b. Establishing information security goals to be met.

4. Human Resources Security

- a. Medallia employees undergo comprehensive screening during the hiring process. Background checks and reference validation will be performed to determine whether candidate qualifications are appropriate for the proposed position. Subject to any restrictions imposed by applicable law and based on jurisdiction, these background checks include criminal background checks, employment validation, and education verification as applicable.
- b. Ensuring all Medallia employees are subject to confidentiality and non-disclosure commitments before access is provisioned to Medallia Products and/or Customer Data.
- c. Ensuring applicable Medallia employees receive security and privacy awareness training designed to provide such employees with information security knowledge to provide for the security, availability, and confidentiality of Customer Data.
- d. Upon Medallia employee separation or change in roles, Medallia shall ensure any Medallia employee access is revoked in a timely manner and all Medallia assets, both information and physical, are returned.

5. Asset Management

- a. Maintaining asset and information management policies and procedures. This includes ownership of assets, an inventory of assets, classification guidelines, and handling standards pertaining to Medallia assets.
- b. Maintaining media handling procedures to ensure media containing Customer Data is encrypted and stored in a secure location subject to strict physical access controls.
- c. When a storage device has reached the end of its useful life, procedures include a decommissioning process that is designed to prevent Customer Data from being exposed to unauthorized individuals using the techniques recommended by NIST to destroy data as part of the decommissioning process.
- d. If a hardware device is unable to be decommissioned using these procedures, the device will be virtually shredded, degaussed, purged/wiped, or physically destroyed in accordance with industry-standard practices. Devices used in the administration of the Medallia Products that have been decommissioned will be subjected to these or equally effective standards.

6. Access Controls

- a. Maintaining a logical access policy and corresponding procedures. The logical access procedures will define the request, approval and access provisioning process for Medallia personnel. The logical access process will restrict Medallia user (local and remote) access based on the principle of least privilege for applications and databases. Medallia user access recertification to determine access and privileges will be performed periodically.

Procedures for onboarding and off-boarding Medallia personnel users in a timely manner will be documented. Procedures for Medallia personnel user inactivity threshold leading to account suspension and removal threshold will be documented.

- b. Limiting access to Customer Data to its personnel who have a need to access Customer Data as a condition to Medallia's performance of the services under this Agreement. Medallia shall utilize the principle of "least privilege" and the concept of "minimum necessary" when determining the level of access for all Medallia users to Customer Data. Medallia shall require strong passwords subject to complexity requirements and periodic rotation.

7. System Boundaries

- a. The systems that compose a functioning Medallia cloud platform for the Products are limited to shared components such as network devices, servers, and software that are physically installed and operating within Medallia's Internet-enabled network infrastructure. This system boundary also includes the network connectivity, power, physical security, and environmental services provided by the third-party provider that owns and operates the data centers in which this network infrastructure is collocated.
- b. Medallia is not responsible for any system components that are not within this system boundary, including network devices, network connectivity, workstations, servers, and software owned and operated by the Customer or other third parties. Medallia may provide support for these components at its reasonable discretion.

8. Encryption

- a. Customer maintains ownership of the encryption all Customer Data uploaded to their Products through the full lifecycle period. Customer Data may be uploaded via SFTP, TLS/SSL, or through an Medallia services API over a TLS/SSL connection to the Medallia cloud platform. Medallia will configure TLS and/or SSL certificates.
- b. Customer Data shall be encrypted at rest at the storage-level.

9. Physical and Environment Security

- a. Medallia products and customer data are hosted at providers who have demonstrated compliance with one or more of the following standards (or a reasonable equivalent): International Organization for Standardization (“ISO”) 27001 and/or American Institute of Certified Public Accountants (“AICPA”) Service Organization Controls (“SOC”) Reports for Services Organizations. These providers provide Internet connectivity, physical security, power, and environmental systems and services for the Medallia cloud platform used for the Products.
- b. An N-tiered architecture is used to support presentation, application, processing, and data services. For enhanced security in the Medallia cloud platform, technologies such as firewalls, intrusion detection and prevention, and vulnerability management are used.

10. Operations Security

- a. Maintaining documented Medallia cloud operating procedures.
- b. Maintaining change and release management controls to ensure changes to products production systems made by Medallia are properly authorized and reviewed prior to implementation.

- c. Monitoring usage, security events, and capacity levels within the Medallia cloud to manage availability and proactively plan for future capacity requirements.
- d. Utilizing virus and malware protection software a, which are configured to meet common industry standards designed to protect Medallia systems and Customer Data from virus infections or similar malicious payloads.
- e. Implementing disaster recovery and business continuity procedures. These will include periodic replication of Customer Data to a secondary data center in a geographically disparate location from the primary data center.
- f. Maintaining a system and security logging process to capture critical system logs. These logs shall be maintained for at least six months and reviewed on a periodic basis.
- g. Ensuring systems processing and storing customer data are appropriately configured and hardened.
- h. Ensuring servers, operating systems, and supporting software used in the Medallia cloud for Products receive Critical and High security patches within a timely manner, In the event any such security patch would materially adversely affect the Products, then Medallia will use commercially reasonable efforts to implement compensating controls until a security patch is available that would not materially adversely affect the Products.
- i. Conducting third-party external application penetration tests periodically.

11. Supplier Relationships

- a. Maintaining a Vendor Management Program to evaluate and mitigate risks for any third-parties that host or process customer data.

12. Security Incident

- a. Employing incident response standards that are based upon applicable industry standards, such as ISO 27001:2013 and National Institute for Standards and Technology (“NIST”), or equivalent in order to maintain the information security components of the Products environment.
- b. Responses to these incidents follow the Medallia documented incident response sequence. This sequence includes the incident trigger phase, evaluation phase, escalation phase, response phase, recovery phase, de-escalation phase, and post-incident review phase.
- c. Medallia will notify Customer of a Security Incident as required pursuant

to applicable law but in no event later than 72 hour after a Security Incident. A “**Security Incident**” means a determination by Medallia of an actual disclosure of unencrypted Customer Data to an unauthorized person or entity.

13. Information Security Aspects of Business Continuity Management

- a. Maintaining a business continuity and disaster recovery plan.
- b. Reviewing and testing this plan annually.

ATTACHMENT B

Customer's Additional Terms

1. **Compliance with Customer's Equal Opportunity Contracting Program (EOCP).** Medallia shall comply with Customer's EOCP Requirements. Medallia shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Medallia shall provide equal opportunity in all employment practices and shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold Medallia liable for any discriminatory practice of its subcontractors.
2. **Non-Discrimination Ordinance.** Medallia shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Medallia shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Medallia understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between Medallia and any subcontractors or suppliers shall contain this language.
3. **ADA Certification.** Medallia shall comply with Customer's Americans with Disabilities Act Compliance/City Contracts requirements as set forth in [Council Policy 100-04](#), which is incorporated into this Agreement by reference.
4. **Equal Benefits Ordinance Certification.** Unless an exception applies, Medallia shall comply with the Equal Benefits Ordinance codified in the San Diego Municipal Code §§ 22.4301-22.4308. Failure to maintain equal benefits is a material breach of the Agreement.
5. **Records Retention and Examination.** Medallia shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Agreement, but not including any Customer Content, for five (5) years after receipt of final payment by Customer under this Agreement. Medallia shall, no more than once per year, make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of Customer, including the Purchasing Agent or designee. Medallia shall make available all requested data and records at reasonable locations within the City or County of San Diego at any time during normal business hours, and as often as Customer deems necessary. If records are not made available within the City or County of San Diego, Medallia shall pay Customer's reasonable travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Agreement. Medallia must include this provision in all subcontracts made in connection with this Agreement.
6. **Business Tax Certificate.** If requested by the City, Medallia will apply for a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City.
7. **Product Endorsement.** Notwithstanding the MEDALLIA MASTER SERVICE AGREEMENT, section 13 "Marketing", Medallia shall comply with [Council Policy 000-41](#) which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

8. Conflict of Interest Laws. Medallia is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the San Diego Municipal Code. Customer may determine that Medallia must complete one or more statements of economic interest disclosing relevant financial interests. Upon Customer's request, Medallia shall submit the necessary documents to City.



Medallia

Medallia, Inc.
575 Market St. Suite 1850
San Francisco, CA 94105

Order Form
For: City of San Diego ("Customer")
Order #: 0060z000022UK8ZAAW
Quote Expiration: 08/17/2020

Billing Information

City of San Diego
202 C Street, 8th Floor
San Diego CA 92106
Billing Email/System: jterwilliger@sandiego.gov

Order Form Effective Date: 08/17/2020
Payment Term: Net 30
Instance URL: sandiego.medallia.com/sandiego

Software Subscriptions

Item	Start Date	End Date	Price
Enterprise Edition Base Platform: 1 311 Call Center Agent Units: 100 EX Employee Units: 11,000 Medallia for Salesforce Packaged Integration 100 Text Analytics: 125,000 Annual Responses Tier Digital Website Property Units: 1 ● www. Sandiego.gov	08/17/2020	08/16/2021	USD 140,000.00

Invoice Summary Table

Invoice Date	Invoice Amount	Payment Due Date
Upon Order Form Execution	USD 140,000.00	Net 30

Terms and Conditions

This Order Form is governed by the master subscription agreement between the parties (the "Agreement"), except as otherwise explicitly stated in this Order Form. The terms and conditions of this Order Form and the Agreement will prevail over any conflicting terms and conditions in a purchase order or payment portal agreement.

Invoices will be delivered to, and will be paid by, the corporate entity listed in the billing information section above. Medallia will not be responsible for subdividing individual invoices (e.g., across separate payees). Fees shown on this Order Form do not include taxes, which, if applicable, will be stated on the invoice.

Notwithstanding anything in the Agreement, Customer agrees that Medallia may issue a press release following (1) the execution of this Order Form by Customer in the following format: https://www.medallia.com/wp-content/uploads/pdf/Press_Release.pdf; and (2) Customer's successful "go-live" in a format to be determined by the parties. Subject to written pre-approval in each case, Medallia shall invoice for any pass-through costs incurred (e.g., human survey translation).

Subject to written pre-approval in each case, Medallia shall invoice for reasonable, out-of-pocket expenses, in accordance with Medallia's travel and expense policy, as documented <https://www.medallia.com/medallia-travel-expense-guidelines>

Overviews of the Medallia Experience Cloud subscriptions listed above are provided at https://www.medallia.com/wp-content/uploads/pdf/description/Medallia_Experience_Cloud_Product_Description-May_2020.pdf

After the initial term, subscriptions will automatically renew for successive one year subscription terms at a 5% annual fee increase, unless either party provides written notice of non-renewal delivered no fewer than 90 days before the end of the term.

Medallia may utilize subcontractors to provide services, provided that: (i) Medallia has bound the subcontractor to agreements requiring it to conform to applicable law, regulation, industry standards, and the quality, confidentiality, and privacy standards reflected in the Agreement; and (ii) Medallia remains responsible for delivery of the scope established in the Order Form.

Medallia, Inc.

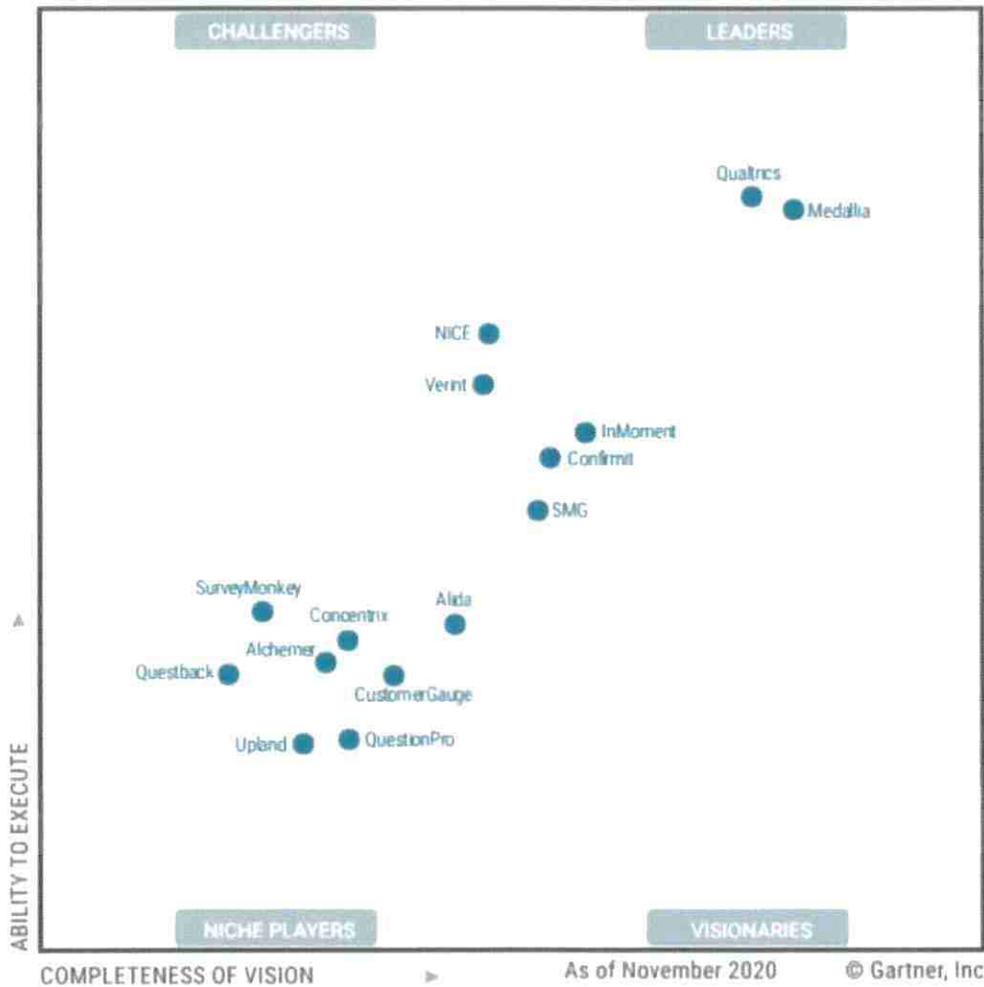
DocuSigned by:
Roxanne Oulman
Signature: Roxanne Oulman
Printed: Roxanne Oulman
Title: CFO
Date: 8/7/2020

Purchasing & Contracting
Department for the City
of San Diego

Signature: *Angela Erico*
Printed: ANGELA ERICO
Title: INTERIM DEPUTY DIRECTOR
Date: 8/20/2020

Sole Source Certification: Vendor Comparison Documentation

The only vendor with proven capabilities at an enterprise scale comparable to Medallia is Qualtrics. Gartner, an independent third party, developed the comparison chart below ¹:



Source: Gartner (November 2020)

The purpose of purchasing this tool is to learn from City employees, customers, and residents—and then use those insights to produce actionable changes, as measured by predetermined performance metrics. Medallia is the only tool with the ability to **deeply analyze** employee and customer/resident experiences to drive change toward specific outcomes (employee retention, resident satisfaction, improved service delivery), provide dynamic and easily understandable dashboards and reporting, and provides the statistical capability to link employee metrics to customer service levels.

Medallia and Qualtrics are both software designed to engage with customers and gauge their thoughts through surveys. Medallia is a **customer and employee experience management software, capturing customer and employee experience in a single platform for a holistic customer and employee solution**, that provides survey features, as well as in-app feedback and review features. Qualtrics is a survey & form building tool designed to help businesses collect and analyze data with highly customizable surveys, using distinct and separate EX and CX systems, making it difficult and costly to link insights.

Qualtrics offers dedicated survey making features, but it doesn't include **support for review and reputation management** (i.e. 'Likelihood to Recommend' scoring and analysis). Additionally, Qualtrics doesn't include **detailed analytics features outside of individual survey reports**. Qualtrics supports businesses looking to create surveys, but Medallia is better suited for organizations seeking a complete customer and employee experience management solution.

Medallia and Qualtrics both offer survey creation capabilities, but Medallia has a few standout features that sets it apart. Medallia provides form and survey generation, but it also offers review and reputation management. In addition to collecting data about customer (and in the City's case, employee and resident) experience, Medallia also provides analytics features so the City can see what is impacting the employee and customer experience. Medallia offers a complete platform for monitoring employee and customer experience.

Vendor Feature Comparison:

Required Features:	Vendors					
	Medallia	Qualtrics	InMoment	Confirmit	NICE	Peakon
Single platform for unified employee <i>and</i> customer analytics	Yes	No	No	No	No	
Native SAP, Salesforce, and Amazon Connect integrations	Yes		No			
Servers hosted in the USA	Yes					No
Unlimited Customer and Employee surveys	Yes	No				
Free user support groups	Yes	No	No	No	No	No
Detailed analytics features outside of individual survey reports	Yes	No	No	No	No	
Enterprise solution capable of supporting 11K+ employees and millions of customers across all City services without cost escalation	Yes	No	No	No	No	No
Support for review and reputation management	Yes	No	No	No	No	No

	Medallia	Qualtrics
Modern feedback collection for the most comprehensive understanding of the customer experience	Able to natively capture feedback from the most diverse user base - voice, video, chat, and ideas - and analyze in a single platform	Relies heavily on surveys for feedback and 3rd party technology to supplement shortcomings
Built for action for any sized organization, any type of user	1,000+ users per program on average with the most diverse user base — everyone from the frontline to C-Suite	Average less than 100 users per program, with a majority of the user base among small research teams
In-house experts to help you get the most out of your program	In-house professional services and experts on hand -- no hidden costs	In-house tech support. Professional services primarily provided by external partners
Transparent and reliable pricing	Full and transparent line of site into program costs on day 1 — no surprises	Costs increase as your program grows -- for users, survey volume, and support services. Unpredictable internal costs to self-service.
Proven success deploying CX platform	100% implementation rate with 20 years experience deploying Medallia Experience Cloud	Unknown implementation rate with 5 years of experience deploying XM Platform
Customer and employee experience in a single platform	Single platform for a truly holistic customer and employee solution	Distinct and separate EX and CX systems, making it difficult and costly to link insights
Highest industry recognition	Consistently named a leader by Forrester, Gartner, IDC, G2	Scores lower on offering and strategy according to Forrester

RFI Respondent Comparison (RFI#10089593-20-J):

In September 2019, Performance and Analytics launched an RFI to gather insight into new, more advanced options for gathering employee and resident sentiment. Previous employee and resident sentiment surveys had been conducted using online forms and/or mail-in responses and did not include dashboards, SAP, Salesforce or phone system integration, or the opportunity for 'pulse' (rapid and ad hoc) surveys. Performance & Analytics was interested in learning about more dynamic and modern solutions.

None of the vendors who responded to the RFI proposed the combination of software and service that Medallia and the vendors compared in the first table can provide. Based on the results of the RFI, Performance & Analytics decided to pursue vendors that were capable of providing both survey software and analysis. Below are the RFI vendors and their ability to meet our requirements:

Required Features:	Vendors			
	ComEngage	Gallup Inc	RD Niehaus	USC
Single platform for unified employee <i>and</i> customer analytics	no	no	no	no
Native SAP, Salesforce, and Amazon Connect integrations	no	no	no	no
Servers hosted in the USA	Not stated	No server usage	Not stated	No server usage
Unlimited Customer and Employee surveys	Not stated	Not stated	Not stated	Not stated
Free user support groups	no	no	no	no
Detailed analytics features outside of individual survey reports	yes	yes	yes	yes
Enterprise solution capable of supporting 11K+ employees and millions of customers across all City services without cost escalation	Not stated	no	Not stated	no
Support for review and reputation management	Not stated	Not stated	Not stated	Not stated

ⁱ <https://doctorcx.org/2020/12/05/gartner-magic-quadrant-for-voc-november-2020/>



ORDER NO. 4000123828

Issued on Thursday, September 16, 2021 PDT
Created on Thursday, September 16, 2021 PDT by Tristan Lewis

SUPPLIER:

Medallia Inc
575 Market Street
San Francisco, CA 94105
United States

TOTAL AMOUNT
\$177,000.00 USD

SHIP TO:

PERFORMANCE & ANALYTICS
202 C STREET 8TH FLOOR
San Diego, CA 92101-4806
United States

BILL TO:

PERFORMANCE & ANALYTICS
202 C STREET
SAN DIEGO, CA 92101
United States

ATTENTION OF:

Jon Terwilliger
Asset Class:

Payment Terms:

Payment Terms: Net 30 Days

Payment Terms:

Requester: Tristan Lewis
PR No.: PR174890

LINE ITEM DETAILS (1 LINE ITEM)

NO.	DESCRIPTION	PART NUMBER	QTY	NEED-BY DATE	UNIT PRICE	DISCOUNT	NET AMOUNT	CHARGES	TAXES	AMOUNT
1	Medallia Services	Order #: 0060z0000245C5kAAE	177,000 each	Wednesday, September 22, 2021 PDT	\$1.00 USD		\$177,000.00 USD		\$0.00 USD	\$177,000.00 USD

Full Description: Medallia Services

TAX CODE	TAXES	RATE	TAX AMOUNT	AMOUNT
I0	City of San Diego Non Taxable	0.0%	\$0.00 USD	\$0.00 USD

Req. Line No.: 1

TOTAL AMOUNT
\$177,000.00 USD

ATTACHMENTS

- ATTACHMENT by **Tristan Lewis** on *Wednesday, September 15, 2021 at 11:04 AM*
Countersigned Medallia order form.pdf (995414 bytes)
- ATTACHMENT by **Tristan Lewis** on *Thursday, September 16, 2021 at 2:19 PM*
Sole Source #4255_Medallia_approved.pdf (4204805 bytes)

TERMS AND CONDITIONS OF PURCHASE

City's Terms and Provisions Related to Its Prevailing Wage and Living Wage Ordinances

Purchase Orders Executed on or After January 1, 2015

By performing the services detailed in this purchase order, Contractor is entering into a contract with the City. Contractor certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

A. **PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Contractor must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, Contractor and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

2. **Penalties for Violations.** Contractor and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.

3. **Payroll Records.** Contractor and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City. Contractor and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. **Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. **Working Hours.** Contractor and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1 1/2 times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. **Required Provisions for Subcontracts.** Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. **Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

8. **Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. **Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A Contract entered into with any Contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a Contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, Contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

10. **Stop Order.** For Contractor or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Contractor or unregistered subcontractor(s) on ALL public works until the unregistered Contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. **List of all Subcontractors.** The City may ask Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this contract at any time during performance of this contract, and Contractor shall provide the list within ten (10) working days of the City's request. Additionally, Contractor shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Contractor until at least 30 days after this information is provided to the City.

12. **Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. **Registration.** The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. **Certified Payroll Records.** The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. **List of all Subcontractors.** The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

B. **Living Wages.** This Contract is subject to the City's Living Wage Ordinance (LWO), codified in San Diego Municipal Code Chapter 2, Article 2, Division 42. Contractor agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

1. **Payment of Living Wages.** Pursuant to San Diego Municipal Code section 22.4220(a), Contractor and its subcontractors shall ensure that all workers who perform work

under this Contract are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies.

1.1 Copies of such living wage rates are available on the City website at <https://www.sandiego.gov/purchasing/programs/livingwage/>. Contractor and its subcontractors shall post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with San Diego Municipal Code section 22.4225(e).

1.2 LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.

2. Compensated Leave. Pursuant to San Diego Municipal Code section 22.4220(c), Contractor and its subcontractors shall provide a minimum of eighty (80) hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

3. Uncompensated Leave. Contractor and its subcontractors must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be used for the illness of the worker or a member of his or her immediate family when the worker has exhausted all accrued compensated leave.

4. Enforcement and Remedies. City will take any one or more of the actions listed in San Diego Municipal Code section 22.4230 should Contractor or its subcontractors are found to be in violation of any of the provisions of the LWO.

5. Payroll Records. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.

5.1 For contracts subject to both living wage and prevailing wage requirements, only one submittal will be required. Submittals by a Contractor and all subcontractors must comply with both ordinance requirements.

6. Certification of Compliance. San Diego Municipal Code section 22.4225 requires each Contractor to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of Award of the Contract.

7. Annual Compliance Report. Contractor and its subcontractors must file an annual report documenting compliance with the LWO pursuant to San Diego Municipal Code section 22.4225(d). Records documenting compliance must be maintained for a minimum of three (3) years after the City's final payment on the service contract or agreement.

8. Exemption from Living Wage Ordinance. Pursuant to San Diego Municipal Code section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.

C. Highest Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies."

LEGAL TERMS AND CONDITIONS OF PURCHASE

<https://www.sandiego.gov/purchasing/vendor>