

FOURTH AMENDATORY AGREEMENT

THIS FOURTH AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the “City”), and **HITACHI VANTARA, LLC**, a Delaware company, with a principal place of business as 2535 Augustine Drive, Santa Clara, CA 95054 (“Contractor”), and collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated December 19, 2014, an Amendatory Agreement dated March 29, 2018, a Second Amendatory Agreement on September 25, 2018, and a Third Amendatory Agreement on March 10, 2020 to perform maintenance, repair, service and support to the Denver Police High Activity Location Observation (HALO) Video and Surveillance System (“Agreement”); and

WHEREAS, the Parties desire to increase compensation to the contractor, to extend the term, and to amend the Examination of Records.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Article 3. A. of the Agreement entitled “**COMPENSATION AND PAYMENT**,”

“Maximum Contract Amount” is hereby amended as follows:

“**3. COMPENSATION AND PAYMENT**: A. Maximum Contract Amount: The Maximum Contract Amount to be paid by the City to the Contractor for the performance of the work set out in Exhibit A shall in no event exceed the sum of **TWO MILLION FOUR HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED SIXTY NINE DOLLARS AND ZERO CENTS (\$2,447,569.00)**, unless this Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement.”

2. Article 2 of the Agreement entitled “**TERM**” is hereby amended as follows:

“**2. TERM**: The term of the Agreement is from **October 1, 2014** until **December 31, 2021**, or until the Maximum Contract Amount specified in sub-section 3.A, below is expended and all of the Services specified in Exhibit A has been satisfactorily performed, whichever is sooner, unless this Agreement is terminated earlier as provided in this Agreement or is extended as provided in separate amendment to this Agreement (“Term”). Subject to the City Representative’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of this Agreement will extend until the work is completed or earlier terminated by the City Representative.”

3. Article 11 of the Agreement entitled “**EXAMINATION OF RECORDS**” is hereby amended as follows:

“**11. EXAMINATION OF RECORDS:** No more than once annually, upon no less than thirty (30) calendar days’ written notice and subject to restrictions as required by Contractor, any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, at City’s election in paper or electronic form, any directly relevant books, documents, papers and records related to Contractor’s invoicing and receipt of payments for: (i) Contractor’s performance pursuant to this agreement, (ii) Contractor’s provision of any goods or services to the City, and (iii) any other transactions related to this Agreement. The notice will contain an explanation of the reason for the audit and the scope (i.e. time period for records), and the audit will be conducted in a manner to minimize any adverse impact on Contractor’s normal business operations. Contractor shall reasonably cooperate with City representatives and City representatives shall be granted access to the forgoing documents and information during reasonable business hours, on mutually agreed upon dates and at mutually agreed upon locations, and until three (3) years after the final payment under the Agreement. When conducting an audit of this Agreement, the City and its authorized agents shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit, and shall comply with all of Contractor’s standard safety, security, and confidentiality procedures, which will be provided in writing to the City. No records will be removed from Contractor’s premises, but copies may be made of a discrepancy, if any, in the invoicing process. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws or in violation of any confidentiality obligations of Contractor to its customers, suppliers, subcontractors, or other third parties. Contractor shall at all time comply with D.R.M.C. 20-276.

4. Except as amended here, the Agreement is affirmed and ratified in each and every particular.

5. This Fourth Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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[SIGNATURE PAGES FOLLOW]

Contract Control Number: POLIC-202057090-04
POLIC-201951565-04 / ALF 201417115-04

Contractor Name: Hitachi Vantara, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number: POLIC-202057090-04
POLIC-201951565-04 / ALF 201417115-04

Contractor Name: Hitachi Vantara, LLC

DocuSigned by:
By: Henry Chen
773B49083BB445B...

Name: Henry Chen
(please print)

Title: Division Sales Controller
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Bill To: City of Denver

End User: City of Denver

Renewal Id: 0061663

Quote Expiration Date: 3/2/2021

Contract Expiration Date: Thursday, December 31, 2020

MAINTENANCE RENEWAL QUOTATION

December 2, 2020

Hitachi Vantara LLC
 2535 Augustine Drive
 Santa Clara California 95054-3003
 United States
 Phone: 3038842845
 Fax:

Product Name	Product Description	Serial Number	Solution Serial Number	Quantity	Service Level	Install Site ID	Start Date	End Date	Subscription Term (if of months)	Net Monthly Maintenance Cost	List Total	Total Discount (%)	Net Total	End of Service Life (EOL) Date		
OTHER-SW-SUPPORT.P	Other Software Support	Avrio-12	Avrio	1	Remote	478295	1/1/2021	12/31/2021	12				140000.00			
													Grand Total	140,000.00	USD	
														Reinstatement Fee (see T&C)	0.00	USD
														Third Party Reinstatement Fee (see T&C)	0.00	USD
														Total due if PO received after contract expiration	144,200.00	USD

Terms

This Quotation is valid 90 days from date of issue.

All prices quoted are in the currency of USD.

The maintenance contract is considered prepaid, non-refundable and non-cancelable.

This Quotation is issued based on the terms and conditions of Customer Agreement Hitachi Vantara T&C.

This quote is subject to a system inspection report from Partner (or Hitachi Vantara for Direct Support) confirming whether the equipment is in good working condition (only applicable if there are any non-coverage periods). Hitachi Vantara reserves the right to cancel this agreement in the event that hardware product inspections fail and hardware units are considered non-operational. Additional fees may apply in order to repair hardware which may include travel and repair time as well as costs for replacement parts.

This quote is prepared based on the best knowledge of Hitachi Vantara. In order for the Customer to have complete maintenance coverage for their equipment and SW licenses, Customer will be responsible for reviewing the completeness and accuracy of this renewal quote and advise Hitachi Vantara Renewal/Account Manager whether additions or deletions of equipment or software licenses to/from this renewal quote are required. The total quote value will be subject to change accordingly.

In the event of any conflict between the terms of this Quotation and the Customer Agreement, the terms of the Quotation shall take precedence.

Only the terms and conditions of the Master Contract mentioned above along with this note section shall be applicable to this Quotation and any other subsequent term and conditions in relation to this Quotation shall be deemed inapplicable unless mutually agreed upon by both parties in writing.

The pricing information contained herein is considered proprietary information by Hitachi Vantara, and is furnished solely for Customer's use. The pricing information shall not be distributed or made available to others without written consent of Hitachi Vantara.

Invoicing terms:

- Maintenance Service charge will be invoiced upon receipt of the customer's purchase order and/or signed equipment schedule.
- Customer agrees to pay the invoice amount per their existing payment terms. Hitachi Vantara may charge interest or suspend delivery of Services if payments are overdue.
- Customer must also pay for any Taxes arising from the transaction under these Terms whether or not these taxes are included in our invoices.
- All prices herein are exclusive of government or sales tax.

Acceptance of this quote will also imply the acceptance of the Hitachi Vantara Maintenance Support terms, which can be viewed at <https://www.hitachivantara.com/en-us/pdf/legal/hds-warranty-and-maintenance-and-support-terms-global.pdf>

In the event any of the Hitachi Vantara hardware units included above are traded in for a newer generation product during the renewal period, Hitachi Vantara will credit any unused maintenance of the traded-in asset towards the maintenance of the new generation product. The credit balance will be added to the purchase quote for the new product purchase and will not be issued as a separate credit and/or refund.

A renewal reinstatement fee totaling 3% of the quote value will apply if a purchase order is not received by Hitachi Vantara on or before the expiration date of the contract (Contract Expiration).

Additional Reinstatement fees may be applied for any third party maintenance not renewed before the expiration date of the contract.

EOL - Best Effort Terms

There is a very limited supply of spare parts and there is no guarantee that spare parts will be available. Since these products are no longer manufactured there are no new spares available.

Terms Additional Language