

ORDINANCE/RESOLUTION REQUEST

Please email requests to the Mayor's Legislative Team

at MileHighOrdinance@DenverGov.org by **3:00pm on Monday**. Contact the Mayor's Legislative team with questions

Date of Request: 9/3/2021

Please mark one: ☐ Bill Request or ☒ Resolution Request

1. Type of Request:

- ☒ Contract/Grant Agreement ☐ Intergovernmental Agreement (IGA) ☐ Rezoning/Text Amendment
☐ Dedication/Vacation ☐ Appropriation/Supplemental ☐ DRMC Change
☐ Other:

2. Title: (Start with *approves*, *amends*, *dedicates*, etc., include name of company or contractor and indicate the type of request: grant acceptance, contract execution, contract amendment, municipal code change, supplemental request, etc.)

Amends a contract with Exterro, Inc. by adding \$1,348,459.35 and extending the term by three years for continual use and support of the Exterro Fusion software for Legal Hold Management supporting the City Attorney's Office

3. Requesting Agency: Technology Services

4. Contact Person:

Contact person with knowledge of proposed ordinance/resolution	Contact person to present item at Mayor-Council and Council
Name: Geoff Klingsporn	Name: Joe Saporito
Email: Geoffrey.klingsporn@denvergov.org	Email: joseph.saporito@denvergov.org

5. General description or background of proposed request. Attach executive summary if more space needed:

The City Attorney's Office (CAO) currently uses the Exterro Fusion software platform for legal holds, data preservation, and electronic discovery ("eDiscovery.") This contract amendment will allow for the continual use of this platform with vendor support, including continued software maintenance and professional services.

The Exterro platform is critical to the City Attorney's Office, as every case filed against or by the City imposes legal obligations to identify, preserve, and eventually disclose potentially relevant information to outside parties in the discovery phase of a lawsuit. The failure to preserve and produce relevant information can lead to costly court-imposed sanctions against the City and/or its employees. In short, the CAO could not meet its discovery obligations without eDiscovery software.

As part of the City's use of the Exterro software, the City pays an annual fee for software support and maintenance. Software maintenance and support services include remote troubleshooting and support provided via the telephone and online channels, as well as installation assistance and basic usability assistance. Software support services may also include new product installation services, installation of product updates, migrations for major releases of software and other types of proactive or reactive on-site services, future minor versions or future major releases of software. These support services are employed to ensure the application is functioning at its maximum capacity.

This contract amendment also includes additional active legal holds, increased cloud storage capacity, the EDDM and in-place preservation (IPP) connectors for Teams, Data Source Discovery, and O365 Explorer. As will be explained in more detail below, these additional products and capacity are necessary due to the ever-increasing volume of electronic data being created by the City, and the City's shift to Microsoft's O365 cloud-based applications.

Increased Capacity: Since first implementing Exterro, the CAO has discovered that the original capacity for legal holds and cloud storage is insufficient to meet its needs. Because legal holds are often issued at the claims stage and remain in place either until the statute of limitations has run, or the duration of a case and appeal, legal holds are often active for two or more years. Similarly, the original storage amount has proven insufficient for the CAO's discovery collection and production requirements, with more records being created and stored electronically.

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Revised 03/02/18

Teams: The EDDM and IPP connectors for Teams will allow the CAO to preserve, search, and collect data from Teams, similar to the current connectors for Exchange Online and OneDrive. Teams has exploded in usage since the pandemic and shift to remote work, and as detailed above, the CAO must be able to meet its preservation and discovery obligations in order to effectively represent the City in litigation.

Data Source Discovery: Since Exterro was first implemented, the City's data sources have shifted tremendously. When first implemented, nearly all data sources were on-premises (i.e., network drives.) Over the past several years, the City has gradually shifted to cloud-based applications, with email and employee home drives now migrated to O365 (Exchange Online and OneDrive.) The shift from on-premises shared drives to Sharepoint is also on the City's roadmap, and as mentioned previously, the pandemic has caused a seismic shift in employee work to Teams, so many records are already being stored on SharePoint. With the shift to O365's cloud-based applications; however, the CAO's current data source catalog in Exterro has become relatively obsolete. Previously, employee home drive locations and on-premises email were stored in Active Directory and uploaded to Exterro via a nightly feed. However, these data sources have become obsolete, and Technology Services is unable to provide a similar feed for O365 data sources. Simply put, without knowing where the data resides, the CAO cannot preserve, search, and collect it. Exterro's Data Source Discovery eliminates these issues by automatically discovering O365 data sources, updating the data source catalog in the Exterro application, and associating the data sources to employees who have data stored within them. Following the initial implementation, the CAO will be able to identify O365 data sources for every City employee without having to rely upon Technology Services.

O365 Explorer: Finally, many eDiscovery platforms require a user to collect records first, then review the collected records in order to locate potentially relevant documents. This inevitably leads to wasted time and resources, as collecting the records takes time to process (the application must search the data sources, copy the record to the Exterro cloud, build an index, and perform de-duplication.) Moreover, this leads to over-preservation beyond what is required by case needs or the General Records Retention Schedule and use of valuable storage space. Exterro's O365 Explorer tool will allow the CAO to assess data stored in Office 365 without having to collect it first. Using O365 Explorer, the CAO will have the capability to search across the data sources prior to collecting, then create narrow, targeted preservation and collection plans. This will significantly reduce the amount of CAO time and resources necessary for document review, and reduce City storage use by scoping preservation and collection to the specific needs of the case.

Term exceeding 3 - 5 years per Executive Order 8.

Per Executive Order 8: "*Agencies should limit the duration of contracts to three to five years at which time a new solicitation should be initiated absent special circumstances.*" For most software applications, technology best practices would advise against decommissioning and replacing applications every three to five years; therefore, there will be several special circumstances that would provide for a justification to deviate from this policy. For this request, the information below provides examples of special circumstances directly related to the Exterro contract amendment request.

The special circumstances that justify a contract term that exceeds three to five years are listed below:

- Situations where standardization of equipment or continuity of service is required;
- Situations where competition does not exist;
- Situations where economic factors make it unfavorable for the City to re-bid a contract.

Continuity of Service:

The Exterro application has been configured for the City to integrate with multiple systems. For instance, Exterro has been integrated with the City's Human Resources employee database, which automatically populates employee information in Exterro on a daily basis to reflect new hires and update current employee information. This integration allows the CAO to seamlessly issue legal holds to employees, and also allows customized notifications to the CAO when employee information changes. Exterro has also built connectors with on-premise data sources (i.e, home and shared network drives) to allow the CAO to search and collect documents from those data sources, without the need for custodian self-collection or assistance from Technology Services.

Finally, since our initial implementation, Exterro has developed new features that integrate with O365's eDiscovery tools. For instance, putting someone on a legal hold in Exterro automatically changes the status of their Outlook mailbox and OneDrive, preserving that data without requiring any additional action by Technology Services or the employee. This is extremely important for meeting our preservation obligations, and this type of in-place preservation has been regarded as the "gold standard" for data preservation by the courts. When a claim progresses to the investigation and document-disclosure stages, Exterro gives CAO the capability (again, without any intervention by TS) to scan and search an employee's data for anything relevant to the case; to create a copy of relevant data; and to review, redact, and collect that data for disclosure.

In summary, the CAO, Technology Services, and Exterro have invested significant time and resources into these integrations. To restart an RFP process, rebuild configurations with a new software, and retrain employees would leave a significant gap in the CAO's ability

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to issue legal holds and identify, preserve, and produce records in litigation. This gap could cause data loss and an inability for the City to comply with discovery requirements.

Competition does not exist:

As the City has already purchased, implemented, has been trained on and intends on using the Exterro software application for the foreseeable future, continual support from Exterro is needed to ensure the application is functioning at its maximum performance. This is a service that should come from the software's manufacturer, Exterro, so an opportunity for competition does not necessarily exist.

Economic factors make it unfavorable for the City to re-bid a contract:

The City and Exterro underwent a very time and resource-consuming process which included multiple phases from the time of purchase to having a fully implemented system. The City would incur these costs every time a new system is implemented. As detailed above, the City and Exterro have devoted significant time and resources to connecting and configuring numerous systems, including an HR database, on-premise data sources, and several cloud-based applications in O365. Moreover, these systems are continually evolving, so an established, ongoing relationship with our vendor has proven critical to keep the application functioning as needed. Exterro has established relationships with Microsoft, so they are continually upgrading and updating the application to function with Microsoft's catalog.

This is a substantial investment by the City and it would result in an unnecessary negative financial impact on the citizens of Denver if this type of system was replaced every three to five years. The process includes conducting an RFP process, Technology Services review of vendor's security protocols as well as technical architecture to ensure they align with Technology Services' requirements, negotiating a Statement of Work, negotiating a contract, analysis of the City's current state, planning for the new system, designing the new system to meet the City's objectives, migrating from the old system, implementing the new system, configuring (fine tuning) the new system, testing the new system and training employees on the new system. This process took approximately a year and half to complete. For the City to re-bid this every three to five years would mean the opportunity for any type of return on the City's investment would be minimalized and the City would be in a perpetual cycle of bidding, implementing, retraining and decommissioning of previous applications.

6. **City Attorney assigned to this request (if applicable):** Steve Hahn

7. **City Council District:** N/A - Citywide

8. ****For all contracts, fill out and submit accompanying Key Contract Terms worksheet****

Key Contract Terms

Type of Contract: (e.g. Professional Services > \$500K; IGA/Grant Agreement, Sale or Lease of Real Property):

Standard Expenditure contract exceeding \$500,000

Vendor/Contractor Name: Exterro, Inc.

Contract control number: TECHS-202159893

Location: Citywide

Is this a new contract? ☐ Yes ☒ No **Is this an Amendment?** ☒ Yes ☐ No **If yes, how many?** Third

Contract Term/Duration (for amended contracts, include existing term dates and amended dates):

Current Term: 11/1/2015 - 10/31/2021 Proposed term: 11/1/2015 - 10/31/2024 Duration: 9 years

Contract Amount (indicate existing amount, amended amount and new contract total):

<i>Current Contract Amount</i>	<i>Additional Funds</i>	<i>Total Contract Amount</i>
(A)	(B)	(A+B)
\$1,980,417.84	\$1,348,459.35	\$3,328,877.19

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<i>Current Contract Term</i>	<i>Added Time</i>	<i>New Ending Date</i>
11/1/2015 - 10/31/2021	3 Years	10/31/2024

Scope of work:

Vendor will continue to support the Exterro Fusion Platform

Was this contractor selected by competitive process? Yes **If not, why not?**

Has this contractor provided these services to the City before? ☒ Yes ☐ No

Source of funds: Technology Services Operational Funds

Is this contract subject to: ☐ W/MBE ☐ DBE ☐ SBE ☐ XO101 ☐ ACDBE ☒ N/A

WBE/MBE/DBE commitments (construction, design, Airport concession contracts): N/A

Who are the subcontractors to this contract? N/A

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