



Amendment No. 1  
to  
Contract No. NA190000115  
For  
Public Safety Cameras and Related Hardware,  
Software, Installation, Maintenance and Support  
Between  
Hitachi Vantara Corporation  
and the  
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
<b>Vendor Name</b>	Hitachi Vantara Corporation FKA Hitachi Data Systems Corp dba Hitachi Vantara	Hitachi Global Digital Holdings Corporation Dba Hitachi Vantara, LLC (FEIN 84-3098448)
<b>Vendor Code</b>	HIT6001500	V00000969182
<b>FEIN</b>		

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

**BY THE SIGNATURE** affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Linell Goodin-Brown Digitally signed by Linell Goodin-Brown  
Date: 2020.07.10 11:53:48 -05'00'

Linell Goodin-Brown  
Procurement Supervisor  
City of Austin, Purchasing Office

Date

**CONTRACT BETWEEN THE CITY OF AUSTIN AND  
Hitachi Vantara Corporation  
For**

**Public Safety Cameras and Related Hardware, Software, Installation, Maintenance and Support**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Hitachi Vantara Corporation ("Contractor" or "Hitachi Vantara"), having offices at 8834 N. Capital of Texas Hwy, Suite 125, Austin, TX 78759

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Chuck Reeves, Phone: (469) 343-3521, Email Address: chuck.reeves@hitachivantara.com. The City's Contract Manager for the engagement shall be Enjole Armstrong, Phone: (512) 974-5082, Email Address: enjole.armstrong@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

### SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of each Phase of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$1,136,109.15 for all fees and expenses.

	Year 1	Year 2	Year 3	Year 4	Year 5
	Dec 1, 2019 to Nov 30, 2020 FY 2019	Dec 1, 2020 to Nov 30, 2021 FY 2020	Dec 1, 2021 to Nov 30, 2022 FY 2021	Dec 1, 2022 to Nov 30, 2023 FY 2022	Dec 1, 2023 to Nov 30, 2024 FY 2023
HALO Phases 1, 2 and 3 Maintenance and Support:	\$66,555.14	\$66,555.14	\$66,555.14	\$66,555.14	\$66,555.14
HALO Phase 4 Maintenance and Support:	\$14,075.79	\$14,075.79	\$14,075.79	\$14,075.79	\$14,075.79
HALO Phase 5 Maintenance and Support:	\$4,590.00	\$4,590.90	\$4,590.90	\$4,590.90	\$4,590.90
<b>Total Maintenance and Support by Fiscal Year:</b> These amounts are due each year and will be invoiced by Hitachi Vantara at the beginning of each Fiscal Year.	<b>\$85,220.93</b>	<b>\$85,221.83</b>	<b>\$85,221.83</b>	<b>\$85,221.83</b>	<b>\$85,221.83</b>
<b>Repairs, Parts, Components and Expansion Projects:</b> Procurement and purchase of these amounts are discretionary by the City, with no obligation and are described herein for budgetary purposes.	\$230,000.00	\$195,000.00	\$95,000.00	\$95,000.00	\$95,000.00
<b>Total by Year:</b>	<b>\$315,220.93</b>	<b>\$280,221.83</b>	<b>\$180,221.83</b>	<b>\$180,221.83</b>	<b>\$180,221.83</b>

\$ 1,136,108.25

### 3.2 **Invoices.**

3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name (as set forth below), and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Financial Management
Address	P.O. Box 1629
City, State, Zip Code	Austin, TX 78767

3.2.2 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the

Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims, subject to Section 12 of Exhibit A of this Agreement;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage arising directly from Contractor's actions to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to

the Contractor. Upon execution of this Contract by the City, the City represents and warrants that the funds Appropriated for this Contract are equal to or exceed the first year Contract amount set forth in Section 3.1 above. In the event of non-Appropriation for all or any part of the Contract amount for any subsequent year, the City shall provide the Contractor written notice at least thirty (30) days prior to the start of that year (December 1) of the failure of the City to make an adequate Appropriation to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract, and Contractor shall have no further obligation to deliver applicable services under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Reimbursable Expenses.** Travel expenses are not authorized under this contract.

3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing no later than fifteen (15) days after final inspection, (3) arising from failure of the Contractor to materially comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 60 months.

4.1.1 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract and subject to then-current fees to be applied on a pro-rated basis for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 This is a 60 month Contract.

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

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City. The City shall be in default under the Contract if the City (a) fails to pay the Contractor the amounts due under the Contract or (b) fails to provide the Contractor or Subcontractor access to locations required to perform Contractors obligations under the Contract.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum

lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

In the event of a default by the City, the Contractor shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the City, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the Contractor's reasonable satisfaction that such default does not, in fact, exist.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof. Contractor shall have no obligation to return or refund any payments made by the City prior to the date of termination.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance:** The following insurance requirements apply.

### **5.1.1 General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the

City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments as agreed upon with the Contractor to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract. Contractor will be responsible for providing to City immediate notice of its receipt of a notice of cancellation, termination, material change, or non-renewal relating to any insurance policy required herein. This requirement may be satisfied by providing a copy of the notice received by the Contractor to the City within two business days or by endorsement of the policy to require notice to the City to be provided by the insurer.

5.1.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.13 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.5 **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of a negligent act, error, omission, or breach of security (including but not limited to confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract

5.1.2.6 **Cyber Liability Insurance:** coverage of not less than \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link

Service Contract



to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

#### **5.4 Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by thirty (30) calendar days written notice to the Contractor if the City deems it is in its best interest. Such delay will not exceed sixty (60) calendar days. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 **Publications.** All published material and written reports submitted under the Contract must be (i) originally developed material or (ii) material Contractor is licensed or otherwise permitted to provide unless otherwise specifically provided in the Contract.

### **SECTION 6. WARRANTIES**

6.1 **Warranty – Services.** The Contractor warrants to the City that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.1.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.1.2 The warranty period shall be at least one year from the acceptance date or in accordance with Contractor's applicable published specifications for products stated as valid at the time of acceptance of the Order. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty.

### **SECTION 7. MISCELLANEOUS**

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract.

#### **7.2 Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods

or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

## 7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

## 7.5.2 Records Retention:

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

7.5.2.2 All Records are the property of the Contractor; however, the City shall have access to such Records in accordance with the Texas Public Information Act, Tex. Govt. Code 552. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at a reasonable cost when requested by the City. The City is subject to the Texas Public Information Act, Tex. Govt. Code 552. In the event that the City receives a request for Contractor's Records pursuant to the Act, the City shall promptly notify Contractor and Contractor will cooperate in good faith with the City to review in a timely manner the requested Records to facilitate the City's identification of such Records that are covered by an exception to the Act and that are to be redacted and/or withheld in responding to such request.

7.5.3 The Contractor shall include and make available pursuant to sections 7.5.1 and 7.5.2 above relevant records pertaining to all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

## 7.7 **Indemnity.**

### 7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all third party claims, including all reasonable costs and expenses of litigation, mediation or other alternate mutually agreed dispute resolution mechanism, including reasonable attorney and other professional fees awarded for:

7.7.1.1.1 tangible property damage of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death and bodily injury (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

"Fault" shall include, bodily injury death and tangible property damage arising from Hitachi Vantara's negligence, or willful misconduct and subject to Exhibit A, Section 12 (Limitation of Liability). If Hitachi Vantara fails to perform, or delays in the performance of, any Service or other obligation required of Hitachi Vantara under this Agreement, Hitachi Vantara will not be liable to the City for the failure or non-performance, to the extent that such failure or non-performance is caused by the City's act or omission, or the act or omission of the City's personnel or any other person acting on the City's behalf. In any event, the City agrees to take all steps and measures available to the City in order to mitigate and minimize the losses, costs and damages arising from such failure or non-performance, irrespective of the nature and extent of the City's contribution.

### 7.7.1.2

THE CONTRACTOR SHALL DEFEND INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT UPON CONTRACTOR'S TIMELY RECEIPT OF WRITTEN NOTICE OF A CLAIM BY THE CITY, CONTRACTOR'S SOLE CONTROL OF THE DEFENSE OR SETTLEMENT, AND REASONABLE COOPERATION (AT HITACHI VANTARA'S EXPENSE) FROM THE CITY. NOTICE OF A CLAIM SHALL BE CONSIDERED TIMELY SO LONG AS IT IS PROVIDED SUFFICIENTLY IN ADVANCE THAT IT DOES NOT PREJUDICE CONTRACTOR'S RIGHTS UNDER THIS SECTION 7.

7.7.2 NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN

## INDEMNIFIED CLAIM.

### 7.7.3 Intellectual Property Claims

Subject to Section 7.7.3.1 herein below and Exhibit A Section 12.1 (Proportional Liability), if a third party makes a claim against the City that any Deliverable that Hitachi Vantara has supplied to the City under this Contract infringes that party's patent rights, trademark, or copyright ("**IP Claim**"), Hitachi Vantara will provide the City with the following recourse (which comprises, to the extent permitted by applicable law, The City sole and exclusive remedy against Hitachi Vantara, and Hitachi Vantara's sole and exclusive liability to the City for, the IP Claim):

(a) Hitachi Vantara will fully indemnify the City against any such IP Claim, and defend or settle the IP Claim at Hitachi Vantara's option and cost, and pay to the City the amount of damages, losses and costs finally awarded against the City or settled by the City (with Hitachi Vantara's written consent), provided that the City: (i) promptly notify Hitachi Vantara of the IP Claim; (ii) allow Hitachi Vantara to solely manage the defense and settlement of the IP Claim; (iii) co-operate with and assist Hitachi Vantara as Hitachi Vantara reasonably requires (and Hitachi Vantara will pay the City costs of doing so); and (iv) the City are not in material breach of the Contract Hitachi Vantara will not agree to any settlement of an IP Claim, without the City prior written consent that shall not be unreasonably withheld, that creates an obligation, no matter the basis, on the City behalf or that assigns any liability or blame to the City.

(b) Hitachi Vantara will, at Hitachi Vantara's option and cost, do any of the following in relation to a Deliverable which is, or which Hitachi Vantara considers is likely to be, the subject of an IP Claim ("**Infringing Item**"): (i) secure the rights for the City to continue to use the Infringing Item without infringement; or (ii) modify the Infringing Item so that it is not infringing, or (iii) replace it with something that has similar functionality to the Infringing Item. If Hitachi Vantara considers that none of these options are reasonably possible, Hitachi Vantara will provide the City with a Refund, provided that the City promptly return the Infringing Item to Hitachi Vantara.

#### 7.7.3.1 Exceptions

Hitachi Vantara will not be liable to provide any of the remedies in Section 7.7.3 with respect to: (a) any third party products which are not included on Hitachi Vantara's standard price list at the time of the IP Claim; (b) any third party related OSS; or (c) to any Deliverable that the City has, or any person on the City's behalf has: (i) modified or combined with any third party product not authorized or approved by Hitachi Vantara if the IP Claim would not have arisen absent such modification or combination with any third party product; (ii) used outside Hitachi Vantara's stated standard operating environment for the Deliverable, or for a purpose not authorized by Hitachi Vantara; (iii) failed to use a more recent version of the Deliverable that was available to the City and that would have avoided the infringement; or (iv) where the IP Claim arises due to any material or item that the City owns or has sourced from a third party.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Hitachi Vantara Corporation

ATTN: General Counsel

2535 Augustine Drive

Santa Clara, CA 95054

7.10 **Confidentiality.** In order to provide the deliverables to the City, the parties may require access to certain of the other party's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the disclosing party or its licensors consider confidential) (collectively, "Confidential Information"). Both parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing party and/or its licensors and any Service Contract

unauthorized use, disclosure, dissemination, or other release of the Confidential Information may substantially injure the disclosing party and/or its licensors. Each party (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information received in confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the disclosing party or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the receiving party promptly notifies the disclosing party before disclosing such information so as to permit the disclosing party reasonable time to seek an appropriate protective order. Each party agrees to use protective measures no less stringent than it uses within its own business to protect its own most valuable information of substantially similar nature, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

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

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

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, City order or other document of either party shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the

terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

## **7.20 Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

## **7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

**7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor must use commercially reasonable efforts to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

## **7.22 Subcontractors.**

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan

has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

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

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

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May

Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

7.27 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available in Exhibit F.

7.29 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 This contract;

7.29.2 Exhibit A, Hitachi Vantara Corporation's Maintenance Agreement;

7.29.3 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Hitachi Vantara Corporation

By: K. L. Barnes  
Signature

Name: K. L. Barnes  
Printed Name

Title: Division Sales Controller

Date: November 13, 2019

CITY OF AUSTIN

By: [Signature]  
Signature

Name: JAMES T. HOWARD  
Printed Name

Title: IT Procurement Mgr.

Date: 11/14/19



## List of Exhibits

Exhibit A	Hitachi Vantara Corporation Maintenance Agreement
Exhibit B	Pricing Agreement
Exhibit C	Non Discrimination Certification, Section 0800
Exhibit D	Certificate of Interested Parties – Form 1295
Exhibit E	Contract Between the City of Austin and Hitachi Vantara Corporation - Remote Access
Exhibit F	Standard Purchase Definitions, Section 0100

## Exhibit A - MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT is made effective as of **December 1, 2019** (this "Agreement") between City of Austin and Hitachi Vantara or its subcontractor(s) ("Hitachi Vantara").

This Agreement reflects a five-year Complete Solution Maintenance and Support Agreement, whereby the City of Austin owns Hitachi Vantara provided products and equipment, and whereby Hitachi Vantara will provide complete service, maintenance, break/fix and or replacement of all Hitachi Vantara provided products and equipment, during the duration of this Agreement.

This maintenance agreement is in effect for the period December 1, 2019 – November 30, 2024 (the "Maintenance Term"). For a period of five (5) years from the date the deliverables are accepted as defined in this Support Agreement, Hitachi Vantara will supply the services described below ("Services") to the CUSTOMER with respect to the products described in Section 4 below ("Products").

Please see attached Exhibit B for cost of the 5-year maintenance.

NOW THEREFORE, in consideration of the terms of this Agreement, the parties agree as follows:

### 1.0 INCLUDED SERVICE

All (i) equipment, (ii) components, (iii) hardware and (iv) software and (v) peripherals added to system initially by Hitachi Vantara during the period of time Hitachi Vantara was involved in the installation ("Hitachi Vantara Supplied Products") will be warranted against material defect for time period covered by this Agreement.

**1.1** Subject to the limitations and exclusions provided herein, all onsite support (service maintenance), including all Hitachi Vantara Supplied Products, personnel, engineering and technical resources and labor and travel expenses are included during the Maintenance Term.

**1.2** Hitachi Vantara shall provide to the City a "Live Person" answered 24x7 phone number by which the City authorized personnel may request either phone support or on-site service. When calling this number for phone support or service, the person taking the call shall have the skill-set to answer the City's technical questions or have authority to contact a qualified service technician and have him or her return the requestor's call within 4 hours of the initial service request. The person answering the trouble-call shall have the authority to dispatch an on-site service technician to the City at the City's request. Service issues that are unable to be resolved by phone during the initial phone call, or by a technician returning a call, shall be dispatched according to the following defined "Severity" levels. The City shall authorize Hitachi Vantara to have "Remote Access" to the System. Hitachi Vantara repairs will be handled remotely if the problem can be resolved remotely.

**1.3** Ability to use telephone, e-mail, chat and screen sharing technology for all support incidents including end-user support. In most cases the representative will be the city of Austin.

Phone : 1-877-899-9334

E-Mail : [videosupport@hitachivantara.com](mailto:videosupport@hitachivantara.com)

**1.4** The following severity levels (SLA) shall be met:

a. Severity Level -1 will be assigned at the City's discretion 24X7X365. This request will be approved by police management only. This requires that Hitachi Vantara when called by the City authorized personnel requesting service be on- site at an agreed upon location in the City within 4 hours of the City's initial request for service. Onsite service will only be scheduled during normal working hours M-F (8AM to 5PM EST). The City shall authorize Hitachi Vantara to have "Remote Access" to the System. Hitachi Vantara repairs will be handled remotely if the problem can be resolved remotely. Severity Level 1 is defined as more than 10% of the System's cameras being non-operational. Technicians working on the system will contact City authorized representative on arrival and when work is completed.

b. Severity Level -2 requires that Hitachi Vantara when called by City authorized personnel requesting service, be on- site at an agreed upon location excluding weekends and City observed holidays, the next business day Monday - Friday. Except when a request for service is received after 10 AM, service will be on-site the same business day. The City shall

authorize Hitachi Vantara to have "Remote Access" to the System. Hitachi Vantara repairs will be handled remotely if the problem can be resolved remotely. Severity Level 2 is defined as one or more of the System's cameras being non-operational.

c. Severity Level -3 requires that Hitachi Vantara when called by City authorized personnel requesting service, have a service technician on-site at an agreed upon location Monday - Friday excluding weekends and City observed holidays within 3 business days of the City requesting service. The City shall authorize Hitachi Vantara to have "Remote Access" to the System. Hitachi Vantara repairs will be handled remotely if the problem can be resolved remotely. Severity Level 3 is defined as all non-video streaming and/or PTZ control issues with the System.

**1.5** Remote management for the System.

**1.6** Reporting on all issues, repairs and service tickets.

**1.7** A five-year full-service on-site service maintenance shall include all Hitachi Vantara Supplied Products, personnel, engineering and technical resources, labor, and all travel expenses. With respect to defective Hitachi Vantara Supplied Products and workmanship, Hitachi Vantara obligations will be limited to, at its sole option, repairing or replacing such product.

**1.8** All onsite scheduling of repair work is dependent upon weather, daylight and other factors.

**1.9** Pursuant to the terms of this Agreement, Hitachi shall provide 24X7X365 Help Desk Support. Help Desk Support Calls and Incidents are unlimited, with a 4-Hour Response Time by Hitachi.

**1.10** Pursuant to the terms of this Agreement, Hitachi shall provide onsite support, as outlined in 1.4 of this Agreement.

**1.11** Pursuant to the terms of this Agreement, all Parts and Labor are included for all Hitachi supplied materials, equipment and solutions. A list of covered materials, equipment and solutions are maintained by Hitachi and provided to the City upon request.

**1.12** Pursuant to the terms of this Agreement, remote diagnostics shall be included as outlined in Section 1.4 of this Agreement.

**1.13** Pursuant to the terms of this Agreement, Hitachi Maintenance includes routine maintenance and cleaning of camera lenses and domes.

**1.14** Pursuant to the terms of this Agreement, All Hitachi supplied equipment is covered for replacement in the event of failure. Any device or equipment reaching end-of-life, upon failure, will be replaced with equipment of similar specifications and capabilities. End-of life equipment, which is working as designed, per specifications, will not be replaced until a failure or impending failure is identified.

**1.15** Yearly preventive maintenance on supported cameras. Camera cleaning as needed can be requested by creating a support ticket.

**1.16** Network Monitoring System Tool

## **2.0 HITACHI VANTARA RESPONSIBILITIES**

During the Maintenance Term and in accordance with and subject to Hitachi Vantara's Warranty and Maintenance and Support Terms Version 7 dated September 2017 and provided to the City:

**2.1** Hitachi Vantara will use commercially reasonable efforts to assist the City to resolve problems in its use of the System as described in Section 1.

**2.2** Hitachi Vantara will provide access on its web site and/or FTP site to all maintenance updates for software and firmware that is part of the System to the City as soon as practical in the ordinary course of business after commercial release of the same.

**2.3** Hitachi Vantara will provide the City with maintenance updates, which, in Hitachi Vantara sole determination, correct application problems that are reasonably likely to prevent substantially full utilization of Hitachi Vantara Supplied Product(s).

**2.4** Hitachi Vantara will offer services for the then current release of Hitachi Vantara Supplied Products. Hitachi Vantara will also offer services for the release of Hitachi Vantara Supplied Products immediately preceding the then-current release for not less than twelve (12) months from the date of such release.

**2.5** Hitachi Vantara will ensure that all cameras that are serviced at the site of the cameras have the dome cleaned with an appropriate cleaning agent.

### **3.0 CITY RESPONSIBILITIES**

**3.1** The City is responsible to provide an accurate list of current inventory for all hardware used for the System that is either: (i) spare parts or (ii) hardware in working order but not currently installed.

**3.2** The City is responsible for any changes in hardware, operating systems, network setup, network maintenance and setup and use of any file access control systems.

**3.3** The City is responsible for providing Hitachi Vantara with remote access to the System. The remote access will be setup such that, the City must approve the access on a per incident basis.

**3.4** The City is responsible for ensuring that its personnel have sufficient training to attain and maintain competence in the operation of the System software.

**3.5** The City will make available personnel to Hitachi Vantara for training on camera operations and software and storage management system (as appropriate for their role).

**3.6** The City shall provide its personnel access to, and require its personnel to review, the System software user guide before calls are made to Hitachi Vantara telephone support.

**3.7** If Hitachi Vantara determines, in its sole discretion, in responding to the City's request for telephone support, that the solution is provided in the user guide, Hitachi Vantara may direct City personnel to the guide for the solution to the problem.

**3.8** The City is responsible for requesting any maintenance term extension. In the event that the City does not request and pay for a maintenance term extension, Hitachi Vantara makes no guarantee that services will be supplied.

### **4.0 PRODUCTS COVERED IN AGREEMENT**

The list of equipment used in the System and that is to be covered under the equipment maintenance provisions of this Agreement is set forth in Section 14 of this Exhibit A (the "Equipment"), which Equipment list will indicate the Equipment that provided by Hitachi Vantara as part of the Hitachi Vantara Supplied Products ("Hitachi Vantara Equipment") and all other Equipment ("Existing Equipment").

### **5.0 EQUIPMENT MAINTENANCE**

Subject to the limitations and exclusions herein, Hitachi Vantara agrees, during the Maintenance Term, subject to the other terms of this Agreement, to keep the Equipment in satisfactory operation and to make all repairs and adjustments to Equipment, and to supply such parts as may be required which are incidental to the maintenance of the Equipment. Such maintenance shall be provided to the City under the terms of the Agreement at such Equipment's location. During the Maintenance Term, Hitachi Vantara shall on the City's behalf, use commercially reasonable efforts to pass on the benefits of a manufacturer's warranty with regard to Equipment that is in excess of the Maintenance Term but still under the manufacturer warranty.

### **6.0 EXCLUSIONS FROM COVERED MAINTENANCE**

The following labor and services shall be expressly excluded from the Equipment maintenance provisions of Section 5 of this Agreement and shall be subject to Hitachi Vantara normal rates for service and labor:

**6.1** Services required due to change or alterations subsequent to the date hereof in Equipment specifications not performed by Hitachi Vantara personnel.

- 6.2** Installation, moving, or removing subsequent to the date hereof of the Equipment, options, attachments or cables.
- 6.3** Replacement of parts, repair of damage or increase in service time to Equipment resulting from fire, lightning, flood, wind, accident, theft, abuse, neglect, misuse, natural disaster, or any causes other than ordinary use for which the Equipment was intended.
- 6.4** Electrical work external to the Equipment or maintenance of accessories, attachments or other devices not listed on the Equipment list.
- 6.5** Service or repair due to failure of electrical power, air conditioning or humidity control.
- 6.6** Refinishing of Equipment.
- 6.7** Specific requests by the City for maintenance, which is in addition to included Equipment maintenance services.

## **7.0 SOFTWARE RELATED PROBLEMS**

Hitachi Vantara is responsible to provide support for all software related problems that relate to software included in the Hitachi Vantara Supplied Products. Upon a determination by a Hitachi Vantara engineer that a problem is related to software not related to Hitachi Vantara Supplied Products, and thereby excluded from the covered maintenance provisions of this Agreement, the engineer will immediately notify the City will be subject to Hitachi Vantara normal rates for service and labor.

## **8.0 CITY OBLIGATION**

The City shall:

- 8.1** As soon as possible notify Hitachi Vantara of any Equipment malfunction requiring maintenance hereunder. Notification should be made through the Hitachi Vantara Help Desk referenced in Section 1.3 of this Agreement.
- 8.2** Only use attachments and supplies which are compatible and suitable for use with the Equipment.
- 8.3** Per City policies, access to Equipment in order to allow Hitachi Vantara to provide maintenance will be prescheduled in advance and only with authorized personnel.
- 8.4** Have a City representative present while the Equipment is being serviced.
- 8.5** The City is, and will remain at all times, the data controller for any personal data the city provides to Hitachi Vantara. The City is responsible for compliance with the City's obligations as the data controller under applicable data protection laws. The City will provide adequate safeguards to, routinely back up, and ensure the integrity and security of the City's personal data. The City is responsible for any unauthorized access, acquisition, use, disclosure, modification or destruction to the City's personal data caused by the acts or omissions of the City, City's Personnel, Affiliates, agents, vendors, and contractors. The City will only provide Hitachi Vantara with personal Data that the city has the legal right to collect, process, use, and transfer, and only to the extent that is necessary or required under any transaction agreed to by the parties pursuant to this Agreement. The City will not disclose any personal data about Hitachi Vantara personnel without the prior written consent of Hitachi Vantara.

## **9.0 CHARGES TO THE CITY**

The City, upon prior approval, shall be subject to the following charges:

- 9.1** Labor and service charges for labor and service performed which is outside the included services covered in Section 1 above.
- 9.2** Equipment and maintenance not covered by the covered maintenance provisions of Section 5, such as replacement of non-Hitachi Vantara Equipment.
- 9.3** All maintenance charges are exclusive of applicable federal, state or local, Federal excise taxes, State taxes, or the City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

**9.4** Hitachi Vantara shall pay for all supplies and consumables, except media, utilized by in the maintenance of the Equipment.

## **10.0 UNAUTHORIZED SERVICE OF EQUIPMENT**

The repair of the Equipment by anyone other than an authorized engineer of Hitachi Vantara will, at Hitachi Vantara's option, because to void this Agreement. If such unauthorized repair occurs and Hitachi Vantara chooses to void this Agreement, then all payments made by the City pursuant to this Agreement shall be forfeited by the City as liquidated damages.

## **11.0 DISCLAIMER OF WARRANTY**

INTENTIONALLY OMITTED

## **12.0 LIMITATION OF LIABILITY**

### **12.1 Proportional Liability**

To the extent allowed by Texas law, both parties agree that each party is responsible to the exclusion of any such responsibility of the other party for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.

### **12.2 Limits and Exclusions of Liability**

Subject to Section 7.7.1.2 (Fault) of the Contract and Section 12.1 (Proportional Liability), and except for insurance claims under Section 5.1 (Insurance) which shall be governed by the limits set forth in Section 5.1, and Hitachi Vantara's indemnity obligations in Section 7.7 (Indemnity) of the Contract, and to the extent not prohibited by applicable law:

- (a) Each party's maximum aggregate liability for all claims made against it will be limited to the Fees paid by the City to Hitachi Vantara under the Order for the relevant Products and/or Service(s) that is or are the subject matter of the claim, up to a maximum of: (i) the Fees paid by the City to Hitachi Vantara over the twelve (12) month period immediately prior to the first event giving rise to the claim, where the Order contains only Software and/or Services; and (ii) two million US Dollars (\$US2,000,000), in all other cases; and
- (b) neither party will be liable for: (i) any indirect, punitive, special, incidental or consequential damages in connection with this Agreement; or (ii) whether direct or indirect, for loss of actual or anticipated business, revenue, profits, goodwill, loss of use, lost or corrupted data, electronically transmitted orders, or loss of other economic advantage.

The limitations and exclusions of liability in Sub-sections (a) and (b) above, apply whether such liabilities or claims arise under contract, in equity, common law, statute or otherwise, including breach of contract, breach of warranty or in tort (including negligence), anticipatory breach or repudiation, and even if the liable party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive remedy provided for in this Agreement fails of its essential purpose. Any Cause of Action arising out of or related to this Agreement shall be brought no later than two (2) years after it has accrued.

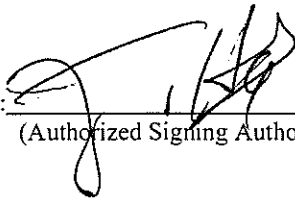
## **13.0 FORCE MAJEURE**

Hitachi Vantara shall not be liable to the City for any delay or failure by Hitachi Vantara to perform its obligations under this Agreement if such delay or failure arises from any cause(s) beyond the reasonable control of Hitachi Vantara, including but not limited to third party labor disputes, third party strikes, other third party labor or industrial disturbances, act of God, floods, lightning, earthquakes, shortages of materials, rationing, utility or communication failures, casualty, war, acts of public enemy, riots, insurrections, embargoes, blockages, actions, restrictions, new or changed regulations or orders of any governmental agency or subdivision thereof, or temporary unavailability of four (4) hours or less of qualified service personnel at Hitachi Vantara office due to service call(s) received before the City's call.


**IN WITNESS WHEREOF** each of the parties has executed this Agreement on the date first shown above.

City of Austin

Hitachi Vantara Corporation

Signature: \_\_\_\_\_  
(Authorized Signing Authority)

Acknowledged and Agreed:

Signature: \_\_\_\_\_  
(Authorized Signing Authority)  
IT Procurement Mgr.

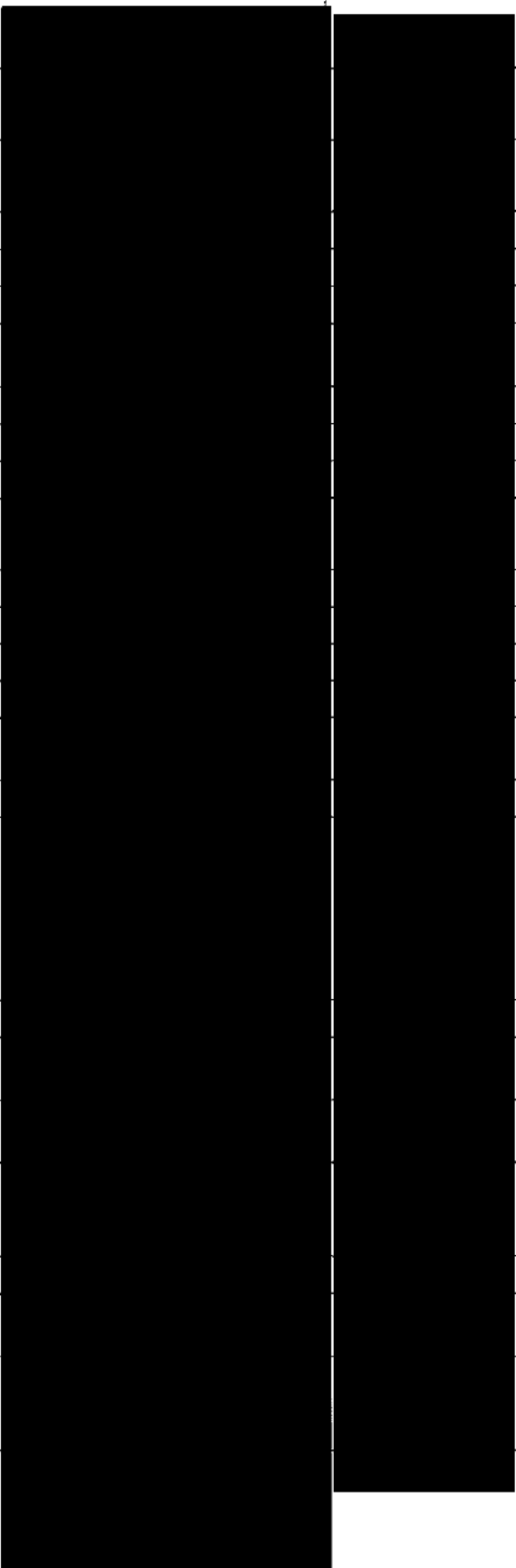

Signature: K. L. Barnes  
(Authorized Signing Authority)

K. L. Barnes  
Division Sales Controller  
November 13, 2019

## 14.0 EQUIPMENT LIST

Location	Radio Model(s)	Radio SN #	Camera SN #
CTECC	Motorola PTP 54600		
Rundburg Tower	Motorola PTP 54600		
APD Head Quarters	Bridgewave GE60 (PTP)		
Hilton Rooftop	Bridgewave GE60 (PTP)		
Hilton Rooftop	LNx-1002GN		
APD Head Quarters	HotPort 7202		
Hilton Rooftop	HotPort 7202		
Rundburg Tower	HotPort 7202		
W Hotel Sect 1N	HotPort 7202		
Arch 1W	HotPort 7201		
Municiple Court	HotPort 7101		
600 Blk IH35 WF	HotPort 7101		
Communitcy Court 6/WF	HotPort 7101		
5th /WF	NBE-M5-16		
5th and Sabine	HotPort 7102 Ubiquiti NBE-M5-16 Ubiquiti NBE-M5-16		
5th and Red River	Ubiquiti NBE-M5-16		
Red River South Alley	HotPort 7101		
6th and Red River	HotPort 7101		
Red River North Alley	HotPort 7101		
7th and Red River	HotPort 7101		
P-lot of Arch Salvation Army	HotPort 7101 Ubiquiti NBE-M5-16		
7th and Neches	HotPort 7101		
Neches North Alley	HotPort 7101		
	HotPort 7102		
400 Blk East 6th Back of Building	HotPort 7101		
5th and Neches	HotPort 7102		
300 Blk of East 6th South Alley	HotPort 7101		
Trinity North Alley	HotPort 7101		
7th and Trinity	HotPort 7101		



7th and San Jacinto	HotPort 7101 Ubiquiti NBE-M5-16		
222 East 6th Street	Ubiquiti NBE-M5-16 Ubiquiti NBE-M5-16		
5th and San Jacinto	HotPort 7101 Ubiquiti NBE-M5-16		
6th and Brazos	HotPort 7101		
6th and Congress	Ubiquiti NBE-M5-16		
4th and Sabine	HotPort 7101		
6th and Trinity Old School Bar	HotPort 7101		
4th and Colorado	HotPort 7101		
5th and Colorado	Ubiquiti NBE-M5-16		
4th and Lavaca	HotPort 7101		
5th and Lavaca	HotPort 7101 Ubiquiti NBE-M5-16		
Traffic Light	HotPort 7101		
Budget	HotPort 7101		
Middle Lane	HotPort 7101		
Middle Fiskeville	HotPort 7101		
E.Rundberg Ln IH35 E Frontage	HotPort 7011		
8200 Sam Rayburn	HotPort 7011		
E 8th Street & Neches NW	Firetide Mesh		
8th & Trinity NW	Firetide Mesh		
8th & Red River SE	Firetide Mesh		
8th & West IH35 Frontage NW	Firetide Mesh		
6th & Brushy Encore roof SW	Firetide Mesh		
E 7th & IH35 Frontage NW	Firetide Mesh		
4th Street Relay	Firetide Mesh		
700 Blk W 6th (J Blacks)	Firetide Mesh		
5th & Rio Grande	Firetide Mesh		

# **EXHIBIT B**

## **Hitachi Vantara Corporation Quote**

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>HALO Maintenance and Support Five-Year Master Agreement</b>	Dec 1, 2019 to Nov 30, 2020 FY 2020	Dec 1, 2020 to Nov 30, 2021 FY 2021	Dec 1, 2021 to Nov 30, 2022 FY 2022	Dec 1, 2022 to Nov 30, 2023 FY 2023	Dec 1, 2023 to Nov 30, 2024 FY 2024
HALO Phases 1, 2 and 3 Maintenance and Support:	\$ 66,555.14	\$ 66,555.14	\$ 66,555.14	\$ 66,555.14	\$ 66,555.14
HALO Phase 4 Maintenance and Support:	\$ 14,075.79	\$ 14,075.79	\$ 14,075.79	\$ 14,075.79	\$ 14,075.79
HALO Phase 5 Maintenance and Support:	\$ 4,590.00	\$ 4,590.90	\$ 4,590.90	\$ 4,590.90	\$ 4,590.90
<b>Total Maintenance and Support by Fiscal Year:</b> These amounts are due each year and will be invoiced by Hitachi Vantara at the beginning of each Fiscal Year.	<b>\$ 85,220.93</b>	<b>\$ 85,221.83</b>	<b>\$ 85,221.83</b>	<b>\$ 85,221.83</b>	<b>\$ 85,221.83</b>
<b>Repairs, Parts, Components and Expansion Projects:</b> Procurement and purchase of these amounts are discretionary by the City, with no obligation and are described herein for budgetary purposes.	\$ 230,000.00	\$ 195,000.00	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
<b>Total by Year:</b>	<b>\$ 315,220.93</b>	<b>\$ 280,221.83</b>	<b>\$ 180,221.83</b>	<b>\$ 180,221.83</b>	<b>\$ 180,221.83</b>

**Total Authorization \$ 1,136,108.25**

**EXHIBIT C**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

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

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

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

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

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

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

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

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

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

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

**Sanctions:**

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

**Term:**

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

Dated this 13th day of November, 2019

CONTRACTOR	<u>Hitachi Vantara Corporation</u>
Authorized Signature	<u>K. L. Barnes</u>
Title	<u>Division Sales Controller</u>

Exhibit E  
**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Hitachi Vantara  
Corporation**

**Remote Access**

- 1.1 Remote Access.** The City shall authorize Contractor to have "Remote Access" to the System. Contractor repairs will be handled remotely if the problem can be resolved remotely. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor shall periodically access the City of Austin HALO System for diagnostic and support services contracted by the City. Remote Access capabilities shall remain in effect through the lifetime of this agreement.
- 1.2 Authorized Personnel Only.** Only authorized support technicians and personnel authorized by Hitachi, shall access the HALO System, whether remote or by way of on-site access.
- 1.3 Remote Access Procedure.**
- a) Upon receiving a request for support from the City of Austin, the authorized support technician will connect to the Austin HALO System, via VPN IP SEC Tunnel, VPN 5.0.07.0440 and / or TeamViewer 10.
  - b) The Milestone Video Management System (VMS) will be accessed to determine status of the system, as well as status of cameras. Upon triage of the VMS and cameras, the authorized support technician will triage the point-to-point radio network.
  - c) Upon identification of the problem, issue or outage, the authorized support technician will make repairs remotely, if the problem can be resolved remotely.
  - d) Problems, issues or outages that cannot be repaired remotely will require a field technician to be dispatched, based on severity levels identified in the Master Support Agreement.
  - e) Upon conclusion of the Remote Access session, the authorized support technician will close and disconnect the VPN IP SEC Tunnel and report the status of the issue to the City of Austin.



## City of Austin Purchasing Office

### Sole Source Certificate of Exemption

DATE: 07/15/19

DEPT: Police

TO: Purchasing Officer or Designee

FROM: Enjole' Armstrong

PURCHASING POC:

PHONE: 512-974-5082

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
  - This request is for the continued maintenance, repair and replacement of existing High Activity Location Observation (HALO) systems and the purchase of additional hardware and software to expand the system to other locations.
- What is the municipal purpose that this procurement addresses or furthers?
  - The HALO systems are strategically positioned in locations throughout Austin and are used by the Police Department to effectively fight crime, monitor the areas and detect criminal activity.
- Why is the procurement a sole source?
  - Hitachi Vantara is the original equipment manufacturer and the only vendor that can provide factory-supported, factory trained, factory authorized, and factory certified service for repair and replacement of camera pods, associated hardware, and network communications components of currently installed equipment. The current system was designed and installed by Avrio RMS, now Hitachi Vantara with proprietary knowledge of the system interactions for delivering video to the Real-Time Crime Center.
- Has this procurement or a similar procurement been competitively solicited in the past?
  - No, the prior contract was procured as a sole source.
- Why is the vendor the only viable solution?
  - Hitachi Vantara is the only provider with the necessary training, support, certification, and authorization to work on the equipment and its associated hardware and software. Due to the essential need for the city's HALO system to function optimally, it must be maintained by a provider who possesses certain proprietary technical information. Hitachi Vantara does not share such information with outside entities and therefore remains the sole qualified provider of parts and service.
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
  - Due to the essential need for the city's HALO system to function optimally, it must be maintained by a provider who possesses certain proprietary technical information. Hitachi Vantara does not share such information with outside entities and therefore remains the sole qualified provider of parts and service.
- Is there a concern regarding warranty, compatibility, and/or routine safety?
  - Yes, current HALO equipment positioned in locations throughout Austin were provided by Avrio RMS now Hitachi Vantara. Compatibility with current equipment is important to maintaining operations and ensuring failure rate remains low.
- Are there territorial or geographic restrictions for the product distribution and sale?
  - There are no territorial or geographic restrictions.
- Are there other resellers, distributors, or dealers in the market?
  - There are no resellers, distributors, or dealers currently in the market.
- What other suppliers or products/services were considered?
  - No other suppliers or products were considered.
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
  - The product is designed to be compatible with in use surveillance cameras and a video management system deployed in various phases as follows: HALO I - deployed in September 2010, HALO II – deployed in March 2011, HALO III – deployed in July 2013, HALO IV – deployed in February 2019 and HALO V – deployed in May 2019. Electronic components used in the HALO system are generally expected to perform for a period of five to seven years before replacement. These time frames can vary and may be impacted by environmental conditions and other factors. The total investment to date for camera hardware, network infrastructure, video management solution and software is approximately \$1,023,285.
- Is there a way to retrofit another brand? What is this estimated associated cost?
  - There is not a way to retrofit another brand.
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?

- o Yes, the specialized training required is specific to Hitachi Vantara.
- Prices were determined to be reasonable based on the following (select all that apply):

- ☒ Prices are the same or similar to current City contract.  
Notes: Pricing is similar to MA 6400 13070200023 which was executed in 2013 and expires 09/30/19.
- ☐ Prices are the same or similar to current contract with another government.  
Notes: At a minimum, note the contract number, title and government that created the contract.
- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.  
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
- ☐ Prices are established by law or regulation.  
Notes: At a minimum, note the legal or regulatory reference that established the prices.
- ☐ Other means of determining Price Reasonableness.  
Notes: Describe any other source that was used to establish Price Reasonableness.

\* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

This contract is for the purchase of additional public safety cameras and related hardware, software, services, and maintenance to aid the Police Department in deterring, detecting, and investigating crime in the downtown business district and other areas of the City.

This contract is for the continued maintenance and support of Phases I, II, III, IV and V as well as the purchase of additional cameras to expand the program to crime hot spot locations identified by APD, the purchase of parts and the repair and replacement of existing equipment. The current system was designed and installed by the Hitachi Data Systems Insight Group (Avrio RMS), now Hitachi Vantara, with proprietary knowledge of the system interactions for delivering video to the City of Austin Real-Time Crime Center. If we bid this out, the responding vendor may not have access to this proprietary knowledge of the existing system.

Along with the current planned purchases, APD requests additional contractual spending authority in anticipation of HALO system expansion using other non-general funding sources and generally budget funds that may become available.



3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

☐ Scope of Work or Statement of Work or Vendor Proposal

☒ Vendor's Quote

☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule

☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): Hitachi Vantara Corporation for

(Description of Procurement): Public Safety Cameras and Related Hardware, Software, Services and Maintenance

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

☐ This is a one-time request for \$ \_\_\_\_\_

☒ This is a multi-term contract request for 12 (# months for base term) in the amount of \$ 315,221 with four 12 month (# of renewal options) for \$ 280,222, \$180,222, \$180,222 and \$180,222 each for a total contract amount of \$ 1,136,109

Recommended  
Certification

Originator

7/15/19  
Date

Approved  
Certification

Department Director or designee

7/17/19  
Date

Assistant City Manager / General Manager  
(procurements requiring Council approval)

7/19/2019  
Date

Purchasing Office  
Review

Authorized Purchasing Office Staff

8/2/19  
Date

Purchasing Office  
Management Review

Purchasing Officer or designee  
(procurements requiring Council approval)

8/2/19  
Date

June 11, 2019

Manju Dasari, OCP, PMP  
City of Austin  
Wireless Communication Services Division  
C/O Austin Police Department  
715 E 8th Street  
Austin, TX 78701

Dear Ms. Dasari:

For your records and information, as the original equipment manufacturer (OEM), Hitachi Vantara, formerly Hitachi Data Systems, is the only provider of factory-supported, factory trained, factory authorized, and factory certified service for repair and replacement of the Hitachi HVP-600 wireless camera pods, Hitachi Visualization Suite and associated hardware, software and network communications components.

We do not provide proprietary technical information to non-qualified entities. The current system was designed and installed by the Hitachi Data Systems Insight Group (Avrio RMS), now Hitachi Vantara with proprietary knowledge of the system interactions for delivering video to the City of Austin Real-Time Crime Center.

Should you have further questions, or need further assistance of any kind, please do not hesitate to contact me. Thank you for your business and for this opportunity to be of service.

Authorized Signature:



Chuck Reeves, Regional Sales Director, SME  
Smart Spaces and Video Intelligence  
South Central U.S.  
Hitachi Vantara  
Office / Mobile: 469-343-3521  
Email: [chuck\\_reeves@hitachivantara.com](mailto:chuck_reeves@hitachivantara.com)

**Hitachi Vantara**

2845 Lafayette Street, Santa Clara, CA 95050 2639

Tel: +1 855 374 5822

[www.HitachiVantara.com](http://www.HitachiVantara.com)

**GOAL DETERMINATION REQUEST FORM**

<b>Buyer Name/Phone</b>	Sai Purcell/4-3058	<b>PM Name/Phone</b>	Manju Dasari/(512) 974-2288
<b>Sponsor/User Dept.</b>	APD	<b>Sponsor Name/Phone</b>	Enjole Armstrong/(512) 974-5082
<b>Solicitation No</b>	eCapris 127271/sole source	<b>Project Name</b>	Halo Maintenance and Support
<b>Contract Amount</b>	\$1,140,000.00/60 months	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input checked="" type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
This request is for the continued maintenance, repair and replacement of existing High Activity Location Observation (HALO) systems and the purchase of additional hardware and software to expand the system to other locations.			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
Sole Source - 2013, no goals.			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
84084 - 30%, 92003 - 5%, 92045 - 40%, 9282747 - 25%			
Sai Purcell		12/27/2018	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	12/28/2018	<b>Date Assigned to BDC</b>	12/28/2018
<b>In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input checked="" type="checkbox"/> Exempt from MBE/WBE Procurement Program		No Goals	

## GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- |  |  |
|--|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input type="checkbox"/> No availability of M/WBEs               |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities         |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input checked="" type="checkbox"/> Sole Source                    | <input type="checkbox"/> Other                                   |

If Other was selected, provide reasoning:

**MBE/WBE/DBE Availability**

N/A

**Subcontracting Opportunities Identified**

N/A

Tracy Burkhalter

**SMBR Staff**

**Signature/ Date**

*Tracy Burkhalter*

12-28-18

**SMBR Director or Designee**

Date 12-31-18

Returned to/ Date: