

# Master Purchase Order

<b>DO NOT INVOICE TO THIS ADDRESS</b>			Workday™ Supplier Contract No.		SC-00009482		
<b>City &amp; County of Denver</b>			Date:	9/5/2024	Revision No.		
Purchasing Division			Payment Terms		Net 30	Resolution (as applicable):	
201 West Colfax Avenue, Dept. 304			Freight Terms		FOB DESTINATION		
Denver, CO 80202			Ship Via		Vendor Best Way		
United States			Analyst:		Leann Rush		
Phone: 720-913-8100 Fax: 720-913-8101			Phone/Email:		(303) 342-2298/leann.rush@flydenver.com		



Workday Supplier ID: DENVR0000057002

Phone: (303) 881-3136

Email: tromero@zivaro.com

Zivaro, Inc.  
3900 East Mexico Ave., Suite 1000  
Denver, CO 80210-3945  
Attn: Theresa Romero

Ship To: Denver International Airport (DEN)  
8500 Pena Blvd.  
Denver, CO 80249

Colorado Secretary of State ID: 19981225209  
U.S. Federal SAM Registry Verification Date: 08/20/2024

Bill To: As Specified By Agency

## 1. Goods/Services:

Zivaro, Inc., a Colorado company, ("Vendor") shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A and B**, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order.

## 2. Ordering:

The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Master Purchase Order for purposes of such Order only.

## 3. Pricing:

The pricing/rates for the goods/services is contained on **Exhibit A and B** and shall be held firm for the term of this Master Purchase Order.

## 4. Term/Renewal:

The term of this Master Purchase Order shall be from date of City signature to and including 09/30/2026. The City and the vendor may mutually agree to renew and continue this Master Purchase Order for additional periods at the same pricing structure, terms and conditions. However, no renewal shall surpass 09/30/2029.

## 5. Non-Exclusive:

This Master Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein.

## 6. Inspection and Acceptance:

Vendor shall perform any services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services. City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Purchase Order.

## 7. Shipping, Taxes and Other Credits and Charges:

All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges, or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The

price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

**8. Risk of Loss:**

Vendor shall bear the risk of loss, injury, or destruction of goods prior to delivery to City. Loss, injury, or destruction shall not release Vendor from any obligation hereunder.

**9. Invoice:**

Each invoice shall include: (i) the Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

**10. Payment:**

Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et-seq., after City accepts the goods/services. Any other provision of this Master Purchase Order notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of fifteen million, five hundred thousand dollars (\$15,500,000.00). Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A and B** are performed at Vendor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may setoff against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.

**11. Amendments/Changes:**

Only the Executive Director of General Services or his/her delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. Vendor has no authority to bind City on any contractual matters.

**12. Warranty:**

Vendor warrants and guarantees to City that all goods furnished under this Master Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Master Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third-party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

**13. Indemnification/Limitation of Liability:**

Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Master Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Master Purchase Order up to the total Master Purchase Order Amount. Notwithstanding anything contained in this Master Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, *et seq.*

**14. Termination:**

City may terminate this Master Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.

**15. Interference:**

Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

**16. Venue, Choice of Law and Disputes:**

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.

**17. Assignment/No Third Party Beneficiary:**

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third-party beneficiaries.

**18. Notice:**

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

**19. Compliance With Laws:**

Vendor shall observe and comply with all federal, state, county, city, and other laws, codes, ordinances, rules, regulations, and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, pleads nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

**20. Insurance:**

Vendor agrees to secure, at or before the time of execution of this Master Purchase Order, the following insurance covering all operations, goods or services provided pursuant to this Master Purchase Order. Vendor shall keep the required insurance coverage in force at all times during the term of the Master Purchase Order, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Master Purchase Order. Such notice shall reference the Master Purchase Order listed on the signature page of this Master Purchase Order. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's Master Purchase Order. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Master Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of the Vendor. Vendor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Master Purchase Order.

Vendor may not commence services or work relating to this Master Purchase Order prior to placement of coverages required under this Master Purchase Order. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Master Purchase Order shall not act as a waiver of Vendor's

breach of this Master Purchase Order or of any of the City's rights or remedies under this Master Purchase Order. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. For Commercial General Liability, Auto Liability, and Excess Liability/Umbrella (if required), Vendor and sub-contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured. For all coverages required under this Master Purchase Order, Vendor's insurer shall waive subrogation rights against the City. Vendor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Master Purchase Order) procure and maintain coverage as approved by Vendor and appropriate to their respective primary business risks considering the nature and scope of services provided. Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. Vendor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Master Purchase Order.

**21. Severability:**

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

**22. Survival:**

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty, and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period.

**23. No Construction Against Drafting Party:**

No provision of this Master Purchase Order shall be construed against the drafter.

**24. Status of Vendor/Ownership of Work Product:**

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use materials. Software licenses terms may be incorporated herein by an End User License Agreement signed by the Director of Purchasing. Any 'click-wrap' electronic acceptance or other terms and conditions not agreed to in writing by the Director of Purchasing are of no force and effect.

**25. Examination of Records and Audits:**

Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Vendor's performance pursuant to this Master Purchase Order, provision of any goods or services to the City, and any other transactions related to this Master Purchase Order. Vendor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Master Purchase Order or expiration of the applicable statute of limitations. When conducting an audit of this Master Purchase Order, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Vendor to make disclosures in violation of state or federal privacy laws. Vendor shall at all times comply with D.R.M.C. 20-276.

**26. Remedies/Waiver:**

No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

**27. No Discrimination in Employment:**

In connection with the performance of work under the Master Purchase Order, the Vendor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Vendor shall insert the foregoing provision in all subcontracts.

**28. Use, Possession or Sale of Alcohol or Drugs:**

Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

**29. Conflict of Interest:**

No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**30. Advertising and Public Disclosure:**

Vendor shall not include any reference to the Master Purchase Order or to services performed or goods purchased pursuant to the Master Purchase Order in any of Vendor's advertising or public relations materials without first obtaining the written approval of the Director of Purchasing.

**31. Intellectual Property:**

Any research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by Vendor in performance of its obligations under this Master Purchase Order shall be the exclusive property of City. Ownership rights shall include, but not be limited to the right to copy, publish, display, transfer, prepare derivative works, or otherwise use materials. Software license terms may be incorporated herein by an End User License Agreement signed by the Director of Purchasing. Any 'click-wrap' agreement, terms of use, electronic acceptance or other terms and conditions not agreed to in writing by the Director of Purchasing are of no force and effect.

Purchase pursuant to 3.26(e)-This Master Purchase Order is contingent on City Council approval and is void without such action.

This Master Purchase Order is acknowledged and agreed to by:

**City & County of Denver, Purchasing Division**

**Vendor  
Name:**

Zivaro, Inc.

(Company Name)

**By:**



(Authorized Signature)

**By:**



**Print Name:**

Thomas De Angelis

**Print**

**Name:**

Leann Rush

**Title:**

Chief Revenue Officer

**Title:**

Senior Procurement Analyst

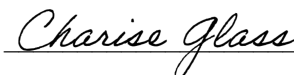
**Date:**

11 / 01 / 2024

**Date:**

11/4/2024

Procurement Manager:



**RENEWALS:**

Upon renewal, City procurements shall be made via Purchase Order (PO) under the pricing, terms and conditions of this MPO.

Invoicing must contain the individual PO number that corresponds with the order.

General inquiries, not specific to an individual order, shall reference the SC number.

**Renewal No. 1** \_\_\_\_\_

The contract made and entered into by your company and the City and County of Denver pursuant to the above referenced Master Purchase Order (MPO) expires on \_\_\_\_\_.

Should you desire to extend this contract to and including \_\_\_\_\_ and revise the aggregate amount to \$ \_\_\_\_\_, please return this page with your signature.

**City & County of Denver, Purchasing Division****Vendor****Name:** \_\_\_\_\_

(Company Name)

By: \_\_\_\_\_

(Authorized Signature)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Note(s)/ amendment(s):

**Renewal No. 2** \_\_\_\_\_

The contract made and entered into by your company and the City and County of Denver pursuant to the above referenced Master Purchase Order (MPO) expires on \_\_\_\_\_.

Should you desire to extend this contract to and including \_\_\_\_\_ and revise the aggregate amount to \$ \_\_\_\_\_, please return this page with your signature.

**City & County of Denver, Purchasing Division****Vendor  
Name:**\_\_\_\_\_  
(Company Name)

By:

\_\_\_\_\_  
(Authorized Signature)

By:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

Date:

\_\_\_\_\_

Note(s)/ amendment(s):

**Renewal No. 3** \_\_\_\_\_

The contract made and entered into by your company and the City and County of Denver pursuant to the above referenced Master Purchase Order (MPO) expires on \_\_\_\_\_.

Should you desire to extend this contract to and including \_\_\_\_\_ and revise the aggregate amount to \$ \_\_\_\_\_, please return this page with your signature.

**City & County of Denver, Purchasing Division****Vendor  
Name:**\_\_\_\_\_  
(Company Name)

By:

\_\_\_\_\_  
(Authorized Signature)

By:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

Date:

\_\_\_\_\_

Note(s)/ amendment(s):

## EXHIBIT "A"

Vendor: Zivaro, Inc.  
Solicitation/ Award Title: DELL/VMWare/Nutanix/Rubrik Hardware and  
Software with Support  
Solicitation No. /Internal File Reference Location: 10989

**It is recommended that you use your Supplier Contract No. SC-00009482, in all future correspondence and/or other communications.**

Description of the goods, and services related thereto, being purchased and pricing:

Vendor to provide all required hardware and software, including technical support for VBLOCK (VCE) products awarded in detail in the pricing section of Exhibit B. Additional hardware/software may be purchased that is not listed and will be priced by a discount from list price.

**ESTIMATED QUANTITIES:**

Quantities listed are the City and County of Denver's best estimate and do not obligate the Analyst to order or accept more than City and County of Denver's actual requirements during the period of this contract, as determined by actual needs and availability of appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement of the materials specified in this IFB for the contract period.

**F.O.B. POINT:**

All prices quoted must be quoted at a firm price F.O.B. Denver International Airport, 8500 Peña Boulevard, Denver CO 80249.

**WARRANTY GUARANTEE:**

Vendor shall be fully responsible for any and all warranty work, regardless of whether or not manufacturers of equipment, and/or its component parts, provide the actual warranty coverage. In addition, vendor shall have or establish a single, local source that will accomplish or coordinate any necessary warranty work. Vendor shall respond to requests for warranty assistance within twenty-four (24) hours.

**AIRPORT SECURITY:**

It is a material requirement of this Contract that the Vendor shall comply with all rules, regulations, safety, operational, or security measures required as well as written policies and authorized directives from the City and/or the Transportation Security Administration (TSA) with respect to Airport security.

The Vendor shall obtain the proper access authorizations for all of its employees, subcontractors, and vendors who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of the Vendor or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

Currently it is anticipated that goods delivered to Denver International Airport will be delivered to Materials Management (MatMan), which is co-located with Fleet at the Maintenance Center and is an auxiliary landside building. Special credentials (i.e. an airport security badge) are not required to do so. This is always subject to change based upon any additional security measures instituted by the City and/or TSA.

The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Contract, the Vendor shall take immediate steps to comply with security modifications which occur as a result of the changed status. The Vendor may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Vendor's operations at the Airport.

#### **LAWS, REGULATIONS, TAXES AND PERMITS:**

The Vendor shall procure all permits and licenses, pay all charges, taxes and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. All costs thereof shall be deemed to be included in the prices proposed for the work.

The Vendor, at all times, shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules and regulations in any manner affecting the conduct of the work.

Without limiting the foregoing, the Vendor shall establish appropriate procedures and controls so that services under this Contract will not be performed by using any alien who is not legally eligible for such employment under United States Immigration laws. Failure to comply with this condition satisfactorily may cause the City to terminate this Contract.

#### **EMERGENCY PURCHASES:**

The City and County of Denver reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the vendor.

#### **PATENTS:**

Seller agrees to defend the City and County of Denver at seller's own expense, in all suits, actions or proceedings in which the City and County of Denver is made a defendant for actual or alleged infringement of any United States of America or foreign letters patent resulting from the City and County of Denver's use of the goods purchased as a result of this Invitation for Bid. Seller further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against the City and County of Denver.

Seller agrees to indemnify and hold harmless the City and County of Denver from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City and County of Denver's purchase and use of goods supplied by the seller.

It is expressly agreed by seller that these covenants are irrevocable and perpetual.

#### **VENDOR PERFORMANCE MANAGEMENT:**

Awarded vendors may be required to furnish a performance report to the buyer on an annual basis, no later than the anniversary date of the applicable Master Purchase Order or City Contract, providing at a minimum the following information

#### **FOR GOODS AND RELATED SERVICES (if applicable)**

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency
- Percentage of items shipped from local stock
- Percentage of items backordered
- Average delivery time for stock material
- Average delivery time for backorders

Supplier may also be required to provide additional specific reporting/data as required.

**COOPERATIVE PURCHASING:**

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this master purchase order that pricing offered herein to the City and County of Denver may be offered by the vendor to any other governmental jurisdiction purchasing the same products.

Vendor(s) must contract directly with any interested governmental agency concerning the matters within this MPO.

**PRICING/ DISCOUNTS:**

All pricing shall remain firm and fixed through the Annual Renewal End Dates as proposed in IFB 10989A2024 DELL/VMWare/Nutanix/Rubrik Hardware and Software with Support for Denver International Airport EXHIBIT 1 as referenced in Exhibit B.

All percentage discounts referenced in Exhibit B shall be firm and fixed through the term of the agreement and any extensions.

**DISCOUNTS (FROM PUBLISHED PRICE LISTS):**

Manufacturer's Published Price List(s) must be common to, and accepted by the industry in general. The lists must be printed, properly identified, and dated as to issuance and effectiveness.

Revised Prices will not become effective until revised list(s) are submitted annually to the City under vendor cover letter identifying the applicable master purchase order number. Vendor cover letter and pricing lists must be dated, signed and submitted to Denver Purchasing annually at the time of renewal.

The following may be provided to City and County of Denver Procurement:

- Website Link

**ANNUAL PRICING UPDATES:**

Due Dates for Annual Pricing Updates.

**PRICING UPDATE DUE DATE**

August 15<sup>th</sup>

**PRICING PERIOD**

October 1<sup>st</sup> through September 30<sup>th</sup>

Pricing updates must be based upon documented manufacturer's price increases and must be verifiable (e.g. letter from the manufacturer(s), market indexes, and etcetera. Discount percentages quoted must remain constant.

The vendor must provide a complete template that includes both items with price changes as well as items where changes are not requested. Items with price increases must be clearly identified.

If the 15<sup>th</sup> of the month falls on a Holiday or Weekend, pricing update is due the next business day.

If the pricing update is not submitted by the 15<sup>th</sup>, pricing will remain unchanged for the following year.

**CATALOG AND PRICE LISTS:**

Vendor must provide with the bid a copy of the current manufacturer's price list and catalog that will be in effect at the commencement of the contract and from which the discounts offered will be evaluated.

Upon request, the vendor shall provide additional sets of manufacturer's product catalogs and parts price lists.

#### **ADDITIONAL PRODUCTS OR SERVICES:**

The City acknowledge that the Awarded Contractors will continue to enhance and/or modify its existing products or services. To use those enhanced products or services, the City shall be entitled to order those offerings at any time throughout the duration of the agreement. Once agreed upon by the Parties, additional products or services shall be subject to the same terms and conditions as contained herein upon signature of a Statement of Work or other purchasing documentation as agreed to by both parties, and any order placed by the City shall not create any additional binding conditions on the City and shall not act as an amendment of the terms and conditions. When additional products or services are requested by the City, the Parties shall follow the agreed upon order process. Additional licenses shall be prorated and co-termed with current licensing.

#### **PROCUREMENT CARDS: PAYMENT CONDITIONS:**

Awarded contractors are asked to have the capability of accepting the City's authorized Procurement Card as a method of payment. No price changes or additional fee(s) may be assessed when accepting the Procurement Card as a form of payment. Vendors unable to comply with this requirement are asked to indicate such exception on vendor letterhead. This exception will be taken into consideration during the evaluation of the received bids.

#### **VENDOR PERFORMANCE MANAGEMENT:**

Awarded vendors may be required to furnish a performance report to the buyer on an annual basis, no later than the anniversary date of the applicable Master Purchase Order or City Contract, providing at a minimum the following information.

#### FOR GOODS AND RELATED SERVICES (if applicable)

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency
- Percentage of items shipped from local stock
- Percentage of items backordered
- Average delivery time for stock material
- Average delivery time for backorders

Supplier may also be required to provide additional specific reporting/data as required.

## EXHIBIT “B” Initial Term Pricing

IFB 10989A2024												
DELL/VMware/Nutanix/Rubrik Hardware and Software with Support for Denver International Airport												
EXHIBIT 1												
Respondent Company name												
Group	Bid Item	Brand Name Only/ No Substitute	Part Number	Description	Annual Quantity	Annual Renewal Start Date	Annual Renewal End Date	Initial Annual List Price Per Each	Fixed Percentage % Discount Off List Price (enter a negative number to indicate discount e.g. -5%; enter 0 for net price (no discount))	Annual Discounted Cost per Each License	Annual Discounted Total Extended Cost	
2	13	VMWare	VSP-PL-TD-TL-1P-C- 491	VMware vSphere Foundation - 1-Year Commit - Per Core	2432	7/10/2025	7/9/2026	\$135.00	-14%	\$ 116.10	\$ 282,355.20	
2	14	VMWare	FUS13-PRO-C	VMware Fusion 13 Pro, ESD	10	7/10/2025	7/9/2026	\$199.00	-51%	\$ 97.51	\$ 975.10	
2	15	VMWare	FUS-PRO-P-SSS-C- 491	Production Support/Subscription for Vmware Fusion Pro for 1 year	10	7/10/2025	7/9/2026	Price Included in above	Price Included in above	#VALUE!	#VALUE!	
2	16	VMWare	W17-PRO-C	VMware Workstation 17 Pro for Linux and Windows, ESD	43	7/10/2025	7/9/2026	\$199.00	-48%	\$ 103.48	\$ 4,449.64	
2	17	VMWare	5 WS-PRO-P-SSS-C	Production Support/Subscription for Vmware Workstation Pro for 1 year	43	7/10/2025	7/9/2026	Price Included in above	Price Included in above	#VALUE!	#VALUE!	
GROUP 2 TOTAL										#VALUE!		
4	76	Nutanix	SW-NCP-NCI-ULT-PR-1YR	Subscription, (included in NCP) Nutanix Cloud Infrastructure (NCI) Ultimate Software License & Production Software Support Service for 1 CPU Core, 1 Year(NASPO SKU)-Actual Vendor SKU Provided:SW-NCP-NCI-ULT-PR-Also Includes:SW-NCP ULT-PR	2560	TBD	TBD	\$ 519.67	-10%	\$ 470.15	\$ 1,203,572.35	
4	77	Nutanix	SW-NCP-NCM-ULT-PR-1YR	Subscription, (included in NCP) Nutanix Cloud Management (NCM) Ultimate Software License & Production Software Support Service for 1 CPU Core, 1 Year(NASPO SKU)-Actual Vendor SKU Provided:SW-NCP-NCM-ULT-PR-Also Includes:SW-NCP-ULT-PR	2560	TBD	TBD	\$ 203.33	-20%	\$ 162.50	\$ 416,003.42	
4	78	Nutanix	S-HW-PRD-T4	24/7 Production Level HW Support for Nutanix appliance - For Tier 4 product(NASPO SKU)-Actual Vendor SKU Provided:S-HW-PRD-Also Includes:SW-NCP-ULT-PR	40	TBD	TBD	\$ 5,000.00	-70%	\$ 1,479.50	\$ 59,180.00	
4	79	Nutanix	NTX-NX-HCI-SOLUTION-4-CTO	Nutanix Enterprise Hyperconverged Platform with Nutanix Acropolis- Tier 4(NASPO SKU)-Actual Vendor SKU Provided:NX-8150-G9-8462Y+-CM-Also Includes:Platform Integration Fee	40	TBD	TBD	\$ 50,000.00	-1%	\$ 49,275.00	\$ 1,971,000.00	
GROUP 4 TOTAL										\$	3,649,755.77	
EXHIBIT 1.A GENERAL DISCOUNTS												
Group	Bid Item	Brand Name Only/ No Substitute	Part Number	Description	Annual Quantity	Annual Renewal Start Date	Annual Renewal End Date		Fixed Percentage % Discount Off List Price (enter a negative number to indicate discount e.g. -5%; enter 0 for net price (no discount))			
1	80	RUBRIK HARDWARE	Other	Annual Percent % Discount Off List Pricing for PURESTORAGE Hardware with Support	TBD	TBD	TBD		-78%			
1	81	RUBRIK SOFTWARE	Other	Annual Percent % Discount Off List Pricing for PURESTORAGE Software with Support	TBD	TBD	TBD		-78%			
3	82	DELL SOFTWARE	Other	Annual Percent % Discount Off List Pricing for RUBRIK Hardware with Support	TBD	TBD	TBD		0%			
3	83	DELL HARDWARE	Other	Annual Percent % Discount Off List Pricing for RUBRIK Software with Support	TBD	TBD	TBD		0%			
3	84	CISCO HARDWARE	Other	Annual Percent % Discount Off List Pricing for DELL Software with Support	TBD	TBD	TBD		-5%			
3	85	VCE	Other	Annual Percent % Discount Off List Pricing for DELL Hardware with Support	TBD	TBD	TBD		-8%			
3	86	EMC SOFTWARE	Other	Annual Percent % Discount Off List Pricing for CISCO Hardware with Support	TBD	TBD	TBD		0%			
3	87	EMC HARDWARE	Other	Annual Percent % Discount Off List Pricing for VCE Hardware and Software with Support	TBD	TBD	TBD		0%			
4	88	NUTANIX	Other	Annual Percent % Discount Off List Pricing for EMC Software with Support	TBD	TBD	TBD		-40%			
5	89	PURESTORAGE HARDWARE	Other	Annual Percent % Discount Off List Pricing for EMC Hardware with Support	TBD	TBD	TBD		-65%			
5	90	PURESTORAGE SOFTWARE	Other	Annual Percent % Discount Off List Pricing for NUTANIX Hardware and Software with Support	TBD	TBD	TBD		-17%			