

# Master Purchase Order

<b>DO NOT INVOICE TO THIS ADDRESS</b>			Master Purchase Order No.		0181A0416		
City & County of Denver			Date:	February 29, 2016	Revision No.	0	
Purchasing Division			Payment Terms	NET 30	Ordinance (as applicable):	TBD	
201 West Colfax Avenue, Dept. 304			Freight Terms	DESTINATION			
Denver, CO 80202			Ship Via	Vendor's Choice			
United States			Buyer:	JD Allred			
Phone: 720-913-8100 Fax: 720-913-8101			Email:	<a href="mailto:john.allred@denvergov.org">john.allred@denvergov.org</a>			

PS Vendor ID: 0000000020 Phone: 303-262-4493 Email: [Melissa.Pierce@usfoods.com](mailto:Melissa.Pierce@usfoods.com)

US Foods, Inc.  
11955 East Peakview Avenue  
Centennial, CO 80111

Ship To: Multiple Locations  
  
Bill To: Accounts Payable  
201 West Colfax Department 908  
Denver, Colorado 80202  
[invoices@denvergov.org](mailto:invoices@denvergov.org)  
or  
As Specified By Agency

Attn: John Szurek ([john.szurek@usfoods.com](mailto:john.szurek@usfoods.com))  
Colorado Secretary of State ID: 20011035839  
U.S. Federal SAM Registry Verification Date: 02/29/2016

**1. Goods/Services:**

US Foods, Inc., a Corporation in the State of Colorado, (“Vendor”) shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A**, 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 Agreement for purposes of such Order only.

**3. Pricing:**

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

**4. Term:**

The term of this Master Purchase Order shall run from date of City signature to and including March 15, 2017.

**5. Extension or Renewal:**

The City and County of Denver reserves the right to renew and extend the Master Purchase Order, upon mutual agreement between the City and County of Denver and the vendor for additional one (1) year periods but not to exceed four (4) additional years.

**6. Non-Exclusive:**

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

**7. Inspection and Acceptance:**

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 Master Purchase Order. Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services.

**8. 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.

**9. 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.

**10. 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.

**11. 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 Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of **four million dollars (\$4,000,000.00)**. The Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A** are performed at Contractor'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.

**12. Amendments/Changes:**

Only the Manager of General Services or his 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. The Vendor has no authority to bind City on any contractual matters.

**13. 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.

**14. 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. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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

**19. 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.

**20. 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, plead 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.

**21. Insurance:**

Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Master Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Master Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring 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 Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. 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, contractor 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 contract number. If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. 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 Vendor. Risk Management reserves the right to require additional policies and/or limits based on agreement scope of work. Vendor shall provide a copy of this Master Purchase Order to its insurance agent or broker. Vendor may not commence services or work relating to the Master Purchase Order prior to placement of coverage. Contractor certifies that the attached certificate of insurance attached to the Master Purchase Order documents, preferably an ACORD certificate, complies with all insurance requirements of this Master Purchase Order. 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 any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. Vendor's insurer shall name as Additional Insured to its Commercial General Liability and Business Auto Liability policies the City and County of Denver, its elected and appointed officials, employees and volunteers. Vendor's insurer shall waive subrogation rights against the City. All sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods/services required by this Master Purchase Order) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Worker's Compensation Insurance, 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 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Master Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain Commercial General Liability coverage with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Vendor shall maintain Business Auto Liability coverage with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-hired vehicles used in performing services under this Master Purchase Order. For Commercial General Liability coverage, the policy must provide the following: (i) That this Master Purchase Order is an Insured Contract under the policy; (ii) Defense costs in excess of policy limits; (iii) A severability of interests, separation of insureds or cross liability provision; and (iv) A provision that coverage is non-contributory with other coverage or self-insurance provided by City. For claims-made coverage, the retroactive date must be on or before the first date when any goods or services were provided to City. Vendor must advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**22. 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.

**23. 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. Bonds shall survive as long as any warranty period.

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

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

**25. 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, software, 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.

**26. Records and Audits:**

Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Master Purchase Order, and City shall have the right to inspect and copy the same.

**27. 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.

**28. No Discrimination in Employment:**

Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.

**29. 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.

**30. 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.

**31. Advertising and Public Disclosure:**

The 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 the Vendor's advertising or public relations materials without first obtaining the written approval of the Director of Purchasing.

**32. No Employment of Illegal Aliens to Perform Work Under The Agreement:**

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Contractor certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or

subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6)

It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

This Master Purchase Order is acknowledged and agreed to by:

Vendor Name: US Foods  
(Company Name)

City & County of Denver, Purchasing Division

By: [Signature]  
(Authorized Signature)

By: [Signature]

Print Name: John Szurek

Print Name: JD Allred

Title: AREA President

Title: Associate Buyer

Date: 3/15/16

Date: 3/16/16

Buyer Supervisor Signature: \_\_\_\_\_

Deputy Director Signature: \_\_\_\_\_

Director Signature: \_\_\_\_\_

City Internal Use Only  
3.26(E) Charter Resolution Required: **YES** NO  
Agency Responsible for Resolution: \_\_\_\_\_  
Agency Representative facilitating Resolution: \_\_\_\_\_

EXHIBIT "A"

Vendor: US Foods, Inc.

Title: Groceries

Master Purchase Order No.: 0181A0416

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**It is recommended that you use your Master Purchase Order No. - 0181A0416, as well as individually issued Purchase Orders in all future correspondence and/or other communications.**

Description of the goods, and services related thereto, being purchased and pricing for the City and County of Denver, hereinafter referred to as the City:

**SCOPE:**

For the purchase of Grocery items for the Denver Sheriff and Human Services Departments.

**VENDOR PERFORMANCE MANAGEMENT:**

The vendor is required to furnish a performance report to the buyer on an annual basis or as requested by the City throughout the term of the contractual agreement. The annual report shall be provided to the City by the supplier no later than the anniversary date of the applicable Master Purchase Order. Reports shall provide at a minimum the following information:

**FOR GOODS**

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency
- Percentage of items backordered
- Average delivery time for stock material
- Average delivery time for backorders
- Supplier Unit Cost
  - The annual report(s) shall reflect an average of the Supplier Unit Cost (unless specified in writing).
  - Any other report(s) requested by the City shall reflect the Supplier Unit Cost for a specific date (unless specified in writing).
- Total dollar value of purchases grown or produced by local sources
  - An example of the City's reporting expectation(s) was provided by the City and agreed upon by the Vendor in the Vendor's proposal response. The Excel Workbook containing the reporting expectation(s) can be requested by the vendor at any time.

**PRICING:**

With regards to distribution services, upon becoming a participating member of Premier Purchasing Partners, L.P., the City will have the right to purchase food and food related products from US Foods, Inc. under the Premier Foodservice Agreement between US Foods and Premier, effective as of July 1, 2010 (as amended, supplemented, restated or otherwise modified from time to time, the Premier Agreement).

With respect to any all pricing terms, including but not limited to the City's Terms & Conditions, the following clarifications apply:

Cost will be as defined below unless otherwise defined by Premier Contracted Manufacturer Agreement(s) (CMAs).

- i. US Foods Branded and Exclusive Products. Cost for products which are not covered by a CMA may be based on various nationally or regionally published price lists, plus inbound freight (where applicable). US Foods Branded and Exclusive Products include products marketed under trademarks owned by US Foods, including but not limited to products for which US Foods has exclusive marketing and/or sales authority,

- property rights in a proprietary products formula, or has supplied raw materials or packaging for the finished products. Nationally and regionally published price lists are distributed to various market segments and customers and are subject to competitive market pressures. Nationally and regionally published price lists do not include documents only used internally and shall not include any Premier-only pricing. In the alternative, the Cost for US Foods Branded and Exclusive Products may be calculated as set forth in subparagraph (ii) below (All Other Products). The alternative used to calculate Cost may change from time to time. At Premier's request, US Foods shall disclose which method is being used at that time.
- ii. All Other Products (except produce). Cost is defined as the manufacturer's (supplier, packer or any other vendor) delivered cost or f.o.b. unit price plus standard freight (as hereinafter defined to US Foods' distribution center, less off-invoice discounts or off-invoice allowances (such off-invoice discounts or off-invoice allowances to mean manufacturer generated discounts or allowances on particular items for set periods of time and which are specifically reflected on the invoice). Cost shall not be adjusted for, and the District shall not be entitled to, promotional allowances, cash discounts, prompt pay discounts, growth programs or any other supplier incentives received by US Foods. Cost may include a fee for US Foods' procurement activities, which provide procurement leverage, order consolidation and administration, product marketing and quality assurance ("National Procurement Fees"). National Procurement Fees may include: (x) label expenses (including amortized cost of label redesign and obsolescence); (y) applicable storage, handling and finance charges, which shall generally reflect US Foods' actual expense for these costs; and (z) an allocation of the approximate direct salary and benefits and other expenses of US Foods' employees, agents and equipment that manage and support the procurement activity related to National Procurement Fees. Such national procurement activities are intended to provide value to the District. National Procurement Fees are intended to cover US Foods' costs of creating said value.
  - iii. US Foods may, at its option, select the invoice cost to be used for determining Cost from among all invoices for product currently available for sale, or from confirmed purchase orders for product to be received by the third day of the pricing cycle. Forward purchases (including forward warehouse purchases and the District consigned products) may include applicable storage and finance charges and/or other service fees, which shall generally reflect US Foods' costs associated with such products (collectively, "Fees") or shall be based on local market replacement cost, as may be determined by US Foods from time to time; provided, however, that in no event shall the Cost be higher than local market replacement cost solely by reason of the addition of the Fees. Local market replacement cost means the cost the individual US Foods distribution center would have been required to pay for the purchase of its normal quantity requirements of such products.
  - iv. Produce: Cost for produce shall be based on total market cost plus freight (where applicable). Total market cost is set by the respective US Foods distribution center and is intended to reflect the replacement or current market average cost of procured product.
  - v. Freight. The Premier contracting team negotiates freight for most of their category contracts. Unless inbound freight is included in vendor's delivered pricing, freight charges will be added to the cost of product. Freight will be based on market conditions and will not exceed the freight rate normally payable by the US Foods distribution center for inbound shipments of regular quantity requirements of such products. Freight charges may include common or contract carrier charges by the product vendor or a carrier, and/or charges billed by US Foods for its freight management service. It is expressly acknowledged and agreed that US Foods may utilize its internal logistic or branch generated back-haul program provided freight cost charged to the District does not exceed standard freight. US Foods retains sole responsibility for all inbound logistics activity. In all cases, auditable documentation for freight rates will be maintained by each of US Foods' distribution centers.

With respect to firm pricing, US Foods, Inc. is able to provide firm pricing on some but not all the products requested for the term of this Agreement. All products purchased, CMA or non-CMA have a nationally negotiated mark-up structure that is part of the national distribution program with US Foods. This ensures that members (the City) realize savings at a local level on all products purchased. Center of the plate (COP) categories have a cents per pound mark-

up structure that can be modified based on market conditions annually. Overall, contracts are written to ensure the same percent savings to list price for the term of the agreement, typically 36 months.

**PROCUREMENT CARDS - PAYMENT CONDITIONS:**

The vendor is 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.

**QUALITY:**

The City requires all items provided under the subsequent contracts to be of first quality, meeting all nutritional industry standards. Seconds are NOT acceptable. Short dated items are NOT acceptable. The City reserves the right to reject any orders found to be unacceptable not meeting the quality required of the requesting agency.

US Foods follows specific policies and procedures for returned products to ensure product quality and safety. The City has 48 hours, or 2 business days, from the time of delivery to notify US Foods about (i) any concealed product damage or other products it seeks to reject, or (ii) with respect to products not jointly checked in, any shortages, damages, or other products it seeks to reject. US Foods shall be reasonable in responding to request by the City for pick-up and credit, including but not limited to:

- (a) US Foods shall pick up all items for return within seven (7) days from notification by the City, provided product is in the original case and individual units are unopened and in resalable condition. Pick-up will be made on a regularly scheduled delivery day.
- (b) Request for pick-up and credit made for reasons of overstocks, order error, delivery error, or other non-quality/non-condition reasons and discovered less than 48 hours, or two (2) business days, after delivery, will receive credit provided product is in its original case, condition is good and product is salable.
- (c) Return requests made more than 48 hours, or two (2) business days, after deliveries, which involve quality or condition will be evaluated on a situation-by-situation basis by US Foods will be reasonable in accepting or rejecting such requests.
- (d) Requests for pick-up for concealed damage must be made within seven (7) days or if otherwise, will be evaluated on a case-by-case basis. US Foods will be reasonable in accepting or rejecting such requests.
- (e) Applicable credits shall be issued to the City within five (5) working days from US Foods’ receipt of returned merchandise or from discovery of any pricing discrepancies.
- (f) The City may also refuse product at the time of delivery thus avoiding the need for future pick-up.
- (g) For Product whose shelf life is normally less than six (6) weeks, the return and pick-up policy will be negotiated between US Foods and the City.
- (h) US Foods is not responsible for return of products drop shipped from the manufacturer.
- (i) Refrigerated ready to eat (“RRE”) products are not returnable once they have been delivered to the City (or any other member of US Foods). RRE products delivered in error, damaged or otherwise made unusable by US Foods will be credited in full; disposal or use of such products will be at the discretion of the City. RRE Products will be so designated within US Foods’ electronic order entry systems, and in the systems supporting US Foods’ member service department.

**F.O.B. POINTS:**

F.O.B. Destination and delivered, unloaded, and stacked to the following points:

Denver County Jail  
10500 E. Smith Rd.  
Denver, CO 80239

Denver Detention Center  
490 West Colfax Ave  
Denver, CO 80204

Denver Human Services  
2929 W. 10<sup>th</sup> Avenue  
Denver, CO 80203

**SAMPLES:**

Upon request, vendors are required to furnish a sample of the goods to be supplied at no cost to the City and County of Denver. Any sample submitted shall create an express warranty that the whole of the goods shall conform to the sample submitted. All samples become the property of the City.

**SHELF LIFE LABELING:**

Vendor shall affix a label to each individual carton and/or container to indicate "Use Before" date by month/year to be determined from the manufactured date based upon an industry standard shelf life at room temperature.

**MINIMUM ORDERS:**

US Foods has a \$350 minimum delivery requirement. The City may use another vendor of its choosing if this requirement is imposed upon the City.

**EMERGENCY PURCHASES:**

The City 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.

**SUBSTITUTIONS AND SHORTAGES:**

US Foods shall not substitute an item without prior City approval. US Foods follows the following policy when a product is out of stock:

- The City is notified at time of order on [Foodservice Direct Order \(FSDO\)](#) that inventory is not available. The City can choose their own substitution at the time of order.
- The City can create a preapproved list based on specific criteria or rely on the US Foods Procurement Team to identify the closest comparable product.
- The City may refuse or return, at no charge, any substitutions that were not previously approved.

The substitute product will be priced in accordance with the pricing formula contained in this contractual agreement.

**PALLET CHARGE:**

All pallets supplied shall be non-returnable, no deposit. The City is willing to exchange pallets, but the City will not be bound to a pallet exchange or replacement cost in the event a pallet is misplaced.

**INVOICES:**

All orders must be accompanied by an itemized invoice, to include product name, unit cost, extension, piece count and total charges and the agency Blanket Purchase Order Number, for receiving purposes. A duplicate invoice must be sent to the Centralized Accounts Payable office for Payment purposes at [invoices@denvergov.org](mailto:invoices@denvergov.org).

**FELONY DISQUALIFICATION:**

The vendor shall not employ, retain, hire or use any individual that has been convicted of any felony charges as the same is defined under the laws of the State of Colorado in the performance of the services to be rendered and materials to be provided to the City pursuant to this contractual agreement unless the vendor receives prior written permission from the Director of Purchasing. The Director of Purchasing may require that a fidelity bond, or such other assurance

in such amount as deemed appropriate, be provided to the City and County of Denver as a condition precedent to the grant of such permission.

### **COOPERATIVE PURCHASING:**

The City 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 supports such cooperative activities. Further, it is a specific requirement of this contractual agreement that pricing offered herein to the City may be offered by the vendor to any other governmental jurisdiction purchasing the same products.

The vendor(s) must deal directly with any governmental agency concerning the placement of purchase orders, freight charges for destinations outside of the Denver Metro area, contractual disputes, invoicing, and payment. The City shall not be liable for any costs, damages incurred by any other entity.

Premier with U.S. Communities and US Foods understand and will comply. Further and for clarification, US Foods is offering the program outlined in this contractual agreement to any City agency. For agencies outside the City, as members of Premier with U.S. Communities, they will be eligible to utilize the Premier food contract. Each member would be eligible for all aspects of the program and value based on individual participation and purchasing performance.

### **LOCAL FOOD SOURCING:**

The City has set a goal to acquire at least 25 percent of food purchased through its supply chain from sources that are grown or processed entirely within Colorado, by 2020. Vendors supplying food to the City will be expected to achieve and demonstrate compliance with the following standards:

- Ten percent of the value of food sold to the City in 2016 shall consist of food grown or processed entirely within Colorado.
- Fifteen percent of the value of food sold to the City in 2017 shall consist of food grown or processed entirely within Colorado.
- Twenty percent of the value of food sold to the City in 2018 shall consist of food grown or processed entirely within Colorado.
- Twenty-five percent of the value of food sold to the City in 2019 and thereafter shall consist of food grown or processed entirely within Colorado.

As guidance for calculating and preparing a bid for food sale that will comply with these standards, please note the following:

- “Food” as used here includes both food and beverages, e.g. milk, juice, soda, etc.
- Compliance will be based on the total dollar value of all locally grown or processed food that Vendor sells to the City in a given year as a percentage of the total dollar value of all food that Vendor sells to the City in a given year. For Vendors with more than one contract with the City to supply food, the Vendor may do the annual compliance calculation on a contract-by-contract basis, or aggregate food sold under all contracts into a single calculation.
- Food is deemed “grown” in Colorado if the farm, ranch or orchard on which the food is grown is located in Colorado.
- Food is deemed “processed” in Colorado if the plant at which processing takes place is located in Colorado. “Processing” refers to the work done to convert raw agricultural products into the form in which the food is delivered to the City. Processing includes, by way of example (and not limitation), salting, smoking, pickling, preserving, freeze drying, canning, bottling, distilling, brewing, grinding, roasting, malting, baking, cooking, pasteurizing, homogenizing, etc. Food that goes through any such process in Colorado is deemed processed in Colorado regardless of whether any of the ingredients in the final product were grown in Colorado. Again by way of example, and not limitation:

- If coffee beans are imported into Colorado and then ground and/or roasted in Colorado, the resulting coffee product is deemed to be processed in Colorado.
- If cabbage is imported into Colorado and then converted to coleslaw or sauerkraut in Colorado, the resulting product is deemed to be processed in Colorado.
- If milk is imported into Colorado and then converted to cheese or ice cream in Colorado, the resulting product is deemed to be processed in Colorado.
- So long as a food product is grown OR processed in Colorado, it meets these standards.

Distribution of food is not the same as growing or processing it. The addresses of a food distributor, its warehouses and its business offices are irrelevant. Compliance is based on the address of the location at which a given food product is grown or processed.

**ACCOUNT REPRESENTATIVE:**

The Vendor shall assign an outside account representative to the City who will gain familiarity with this account. A local phone number or an 800 number is required. This *Account Representative* shall assist City agencies with all matters to establish ordering, market basket items, supply schedules, pricing, and delivery schedules. Indicate contact person by name, phone number, and email address:

The Vendors shall also assign an in-house contact person who will gain familiarity with the City's contractual agreement. This person shall be available to handle routine communication from the City pertaining to orders.

Indicate contact persons by name, phone number, and email address:

**Account Management Representative**

**Name:** Melissa Pierce - Healthcare & Education Sales Manager

**Phone:** 303-262-4493

**Email:** [Melissa.Pierce@usfoods.com](mailto:Melissa.Pierce@usfoods.com)

**DISCOUNTS (PAYMENT):**

Vendor offers a prompt payment discount of **0.35 % ten (10)** days to apply after receipt of invoice or final acceptance of the products, whichever is later. Notwithstanding the fact that a blank is provided for a cash discount, discounts offered for payments within less than thirty (30) calendar days *or payments thirty (30) calendar days or more* will not be considered in evaluating offers for award ***unless the same if specifically set forth in the Specific or Additional Conditions of this proposal.*** Discounts of less than thirty (30) days will be taken if payment is made within the discount period even though not considered in evaluation of the proposal. The term "prox" is not considered to meet the requirements of 30-day criteria as noted above.



**CATEGORY LIST OF PROPOSAL ITEMS:****GROCERY**

<b>Category</b>	<b>Description</b>	<b>Markup</b>	<b>Primary/Secondary Vendor Award Status</b>
<b>1</b>	<b>Meat</b>		<b>N/A</b>
<b>2</b>	<b>Poultry</b>		<b>N/A</b>
<b>3</b>	<b>Fish and Seafood</b>	➤ <b>\$0.1927</b>	<b>SECONDARY</b>
<b>4</b>	<b>Eggs</b>		<b>N/A</b>
<b>5</b>	<b>Produce</b>		<b>N/A</b>
<b>6</b>	<b>Frozen Foods</b>	➤ <b>9.3% (vegetable, potato, eggs)</b> ➤ <b>8.05% (flour tortilla)</b>	<b>SECONDARY</b>
<b>7</b>	<b>Canned and Dry Goods</b>	➤ <b>8.05%</b>	<b>PRIMARY</b>
<b>8</b>	<b>Bakery, Bulk &amp; Prepared</b>		<b>N/A</b>
<b>9</b>	<b>Sauces, Condiments, Dressings &amp; Oils</b>	➤ <b>\$0.75 (mustard, sugar, dressing)</b> ➤ <b>8.05% (salad oil)</b>	<b>PRIMARY</b>
<b>10</b>	<b>Spices &amp; Flavorings</b>		<b>N/A</b>
<b>11</b>	<b>Beverages, Juices, Coffee &amp; Tea</b>	➤ <b>9.05% (coffee and tea)</b> ➤ <b>8.05% (beverage and juice)</b>	<b>SECONDARY</b>

**Note:** Your award is noted as primary/secondary but the City reserves the right to use the pricing available for other categories if it is in the City's best interest.