

# Master Purchase Order

<b>DO NOT INVOICE TO THIS ADDRESS</b>			Workday™ Supplier Contract No.		SC-00009764	
City & County of Denver			Date:	November 5, 2024	Revision No.	
Purchasing Division			Payment Terms	Net 30	Resolution <small>(as applicable)</small> :	
201 West Colfax Avenue, Dept. 304			Freight Terms	FOB DESTINATION		
Denver, CO 80202			Ship Via			
United States			Analyst:	Tim Marquez		
Phone: 720-913-8100 Fax: 720-913-8101			Phone:	720-913-8114		

Workday SUP-00019720 Phone: 785-623-0125  
Supplier ID:

Email: ksimpson@sparkenergy.com

Spark Energy Gas, LLC  
12140 Wickchester Lane  
Suite 100  
Houston, TX 77079  
Attn: Karen Simpson  
Colorado Secretary of State ID: 20071382939

Ship To: Various City Locations

Bill To: As Specified By Agency

**1. Goods/Services:**

Spark Energy Gas, LLC, a Colorado Limited Liability Company, 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 Master Purchase Order 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/Renewal:**

The term of this Agreement shall be from City Signature to and including December 31, 2025. The City and the vendor may mutually agree to renew and continue this agreement for additional periods at the same pricing structure terms and conditions. However, no more than one (1) yearly renewal shall be made or surpass 12/31/2026.

**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/service 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 Twenty-three million five hundred thousand dollar (\$23,500,000.00). Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A** 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, condition 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 damage 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, Automobile 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 a 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/expiry shall 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 1 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 license 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.

**32. Federal Provisions:**

Where the source of the funds, directly or indirectly for this Purchase Order is the Federal Government, Vendor agrees to the applicable provisions set out below. Vendor shall be responsible for determining which terms are applicable to its products and/or services.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** Vendor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60).

**DAVIS-BACON ACT COMPLIANCE** Vendor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3148 to 3148) as supplemented by Department of Labor regulations (29 CFR part 5). **ANTI-KICKBACK ACT COMPLIANCE** Vendor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulation: (29 CFR Part 3).

**CONTRACT WORK HOURS AND SAFETY STANDARDS** Vendor agrees to comply with Section 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5)

**RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT** Vendor agrees to comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**CLEAN AIR AND WATER REQUIREMENTS** Vendor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.), and the Clean Water Act (33 U.S.C. 125 et. seq.). Vendor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to the appropriate EPA regional office.

**ENERGY CONSERVATION REQUIREMENTS** Vendor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201)

**NO SUSPENSION OR DEBARMENT** Vendor certifies that neither it nor its Principals or any of its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency.

**BYRD ANTI-LOBBYING.** If the Maximum Contract Amount exceeds \$100,000, Vendor must complete and submit to the City a required certification form provided by the City certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal

contract grant of any other award covered by 31 U.S.C. 1352. Vendor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

This master purchase order SC-00009764 cancels and supersedes master purchase order SC-00006430 with Encore Energy Services Inc., dated November 10, 2021, as assigned to United Energy Trading, LLC, pursuant to that certain Assignment Consent Form among the City, Encore Energy, and United Energy Trading executed by the City on 8/16/2022.

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: SPARK ENERGY GAS, LLC  
(Company Name)

By: Mike Barajas  
(Authorized Signature)

Print Name: MIKE BARAJAS

Title: CFO

Date: 11/12/24

By: Tim Marquez

Print Name: Tim Marquez

Title: Senior Procurement Analyst

Date: 11/12/2024

Procurement Manager:

Bruski, Ruth - GS  
Purchasing  
Manager -  
Digitally signed by Bruski, Ruth - GS Purchasing Manager -  
Date: 2024.11.12 10:15:07 -07'00'



RENEWALS: (OPTIONAL)

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: SPARK ENERGY GAS, LLC  
(Company Name)

By: Mike Barajas  
(Authorized Signature)

Print Name: MIKE BARAJAS

Title: CFO

Date: 11/12/24

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

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

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

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

Note(s)/ amendment(s):

## EXHIBIT "A"

Supplier: Spark Energy Gas, LLC  
 Solicitation/ Award Title: TRANSPORT NATURAL GAS CITYWIDE  
 Solicitation No. /Internal File Reference Location: IFB 0366A/SC-00009764

**It is recommended that you use your Supplier Contract No. SC-00009764, in all future correspondence and/or other communications.**

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

## RELATED SERVICES, TERMS AND CONDITIONS

**Definitions:**

Additional OFO (Operational Flow Order) Gas – During the period of an OFO, shall mean the difference between the Total Actual Natural Gas used at an Interruptible Facility and the Initial Nomination for that Interruptible Facility.

Interruptible Facilities – Shall mean the City's facilities that receive transport natural gas under the current Utility's Interruptible Transport (IT) Service tariff.

OFO – Operational Flow Order (OFO) shall have the meaning set forth in the Utility's rules and regulations on file with The Public Utilities Commission, as follows: "An order issued by Transporter [the Utility] as allowed by this tariff to alleviate conditions that threaten or could threaten the safe operation or integrity of Transporter's System or to maintain operations required to provide efficient and reliable Firm Gas Transportation Service, which is issued for all or a specific portion of a Gas Day(s) and covering either a designated Operational Area, or a designated Shipper or group of Shippers within an Operational Area, that Transporter reasonably believes are causing the condition necessitating the OFO."

Restricted Delivery Day – Shall mean a mandatory period of curtailment or interruption of natural gas usage ordered by the Utility under the Utility's Interruptible Transport Service tariff and subject to the current Utility's rules and regulations on file with The Public Utilities Commission.

The Utility – Shall mean Xcel Energy.

Unauthorized Overrun Gas – Shall have the meaning set forth in the Utility's rules and regulations on file with The Public Utilities Commission, for all facilities on the Interruptible Industrial (IT) Transport Rate, as follows: "If, on any day when curtailment or interruption of gas usage has been ordered by Company, customer fails to curtail or shut off the use of gas when and as directed by Company and/or the total quantity of On-Peak gas taken by customer exceeds the amount contracted for, then all such gas taken after customer is directed by Company to curtail use of gas and until such time customer is authorized by Company to resume full use of gas shall constitute Unauthorized Overrun Gas. Customer shall pay \$25.00 per DTh for all such Unauthorized Overrun Gas in addition to the Commodity Charge."

**Vendor Requirements:**

The Vendor shall be required to meet all local, state, and federal regulations regarding the supply of natural gas. The Vendor shall meet the specific natural gas quality and heat content requirements of the local distributor (Xcel Energy).



The Vendor shall be obligated to deliver the gas required by the City. The City will purchase the quantities of gas it requires. There shall be no "take or pay" provisions.

The Vendor may be required to assist the City in negotiations and relations with Xcel Energy, CIG, suppliers and/or other entities, to ensure smooth, reliable, and cost-effective delivery of natural gas to City facilities.

The Vendor shall provide written authorization which shall allow the City to review all Xcel Energy data relevant to City accounts. The Vendor shall provide a signed document authorizing Xcel Energy to honor City inquiries for all information relevant to natural gas transportation to City facilities. There shall be no charge to the City for this authorization or for any exercise of it.

The Vendor shall supply a sequence of interconnecting pipelines from origin, and descriptions of levels of service (Firm/Interruptible) or any reserved capacities.

The City will execute documentation, prepared by the Vendor, to notify Xcel Energy that the Vendor is the City's Shipper.

The Vendor shall provide all documentation demonstrating any reserved Vendor they have rights to on Xcel Energy and CIG lines. Vendor shall indicate and guarantee the highest priority to the City facilities of this Vendor compared to Vendor's other customers. Vendor shall further guarantee that the City will have highest priority to Vendor's gas reserves.

Vendor will be required to perform usage analyses or statistical reporting to demonstrate, for example, comparisons to tariff gas, peak day accuracy, firming accuracy, or Vendor availability. Additional analyses for the City contract, such as a savings analysis, regarding transport gas versus tariff gas, will be required to provide a full and complete understanding of the transport natural gas activity within the City.

The Vendor shall "hold" the contract with Xcel Energy on the City's behalf.

Xcel Energy shall be responsible for installing and maintaining any necessary fixtures and/or facilities, including meters, up to the point of delivery. Installation, maintenance, and payment for any required telephone lines will be the City's responsibility. If the telephone lines are not repaired by Xcel Energy's deadline, in the notice provided by Vendor, then the City will pay Backup Supply rates until the telephone lines are repaired. Vendor will notify the City, immediately, when telephone line installation or repair is needed.

Delivery will be at the City Gate.

Because the Vendor is wholly responsible for the provisioning of all the gas the City actually requires, the City will not contract for any Firm Backup Supply.

The Vendor shall provide the supply of transport natural gas services for the quantity of natural gas required by the City. (Please note the consumption history in *Attachment 1*).

There will be two pricing periods: winter and summer, for both Firm and Interruptible gas.

The Vendor shall be responsible for the delivery of all quantities of gas actually required by the City. Should the City, for any reason, be required to purchase gas from any other source including Xcel Energy tariff gas, and if it is the fault of the Vendor, that the Vendor fails to provide the natural gas the City requires, then the Vendor shall be responsible for any penalties, and the difference between the actual purchase price, between the new source of natural gas, and the transport natural gas contract price.

The Vendor agrees to bear all risk of loss, injury or destruction of goods and materials ordered as a result of this contract which occur prior to delivery to the City and County of Denver, by Xcel Energy or another delivery agent, and such loss, injury or destruction shall not release the Vendor from any obligation hereunder.

## RELATED DUTIES AND ADDITIONAL SPECIFICATIONS

### **Nominating, Balancing and Administration:**

The Vendor shall be responsible for all administrative functions necessary to successfully deliver appropriate quantities of gas into the Xcel Energy distribution system for use by City facilities.

The Vendor shall be wholly liable for all penalties, charges, and costs (including unauthorized overruns) attributable to inaccurate or untimely nominating, balancing or delivery of gas.

The City shall provide Vendor with three (3) years of historical usage and shall notify Vendor of any known physical changes in City's facilities that impact natural gas demand.

### **Restricted Delivery Day and Interruption Notifications - (Requested by The Utility, for Interruptible Facilities):**

Upon proper notice, the City can and will shift its Interruptible Facilities to alternate fuels to accommodate restricted situations.

For any interruption or restricted delivery day notification, Vendor shall call AND email each Interruptible Facility and provide complete instructions for the times and dates to begin and end the interruption.

*The Vendor shall provide a copy of its "call out" log to General Services Energy Office as soon as practical but no later than twenty-four (24) hours after a call-out is made.*

Emergency call-out telephone numbers and contact personnel will be provided upon execution of the MPO/Contract.

If a curtailment or interruption of gas usage has been ordered by The Utility, subject to the terms and conditions set forth in the Utility's rules and regulations on file with The Public Utilities Commission, and the City's Interruptible Facilities fail to curtail or shut off the use of gas, when and as directed by The Utility, City shall be responsible for any Unauthorized Overrun Penalties on this Unauthorized Overrun Gas.

### **Operational Flow Orders (OFOs) – (Requested by The Utility, for the Vendor):**

During an OFO, the City may elect to interrupt natural gas supply at its Interruptible Facilities and go to back-up fuel or continue to burn natural gas.

Upon being notified by Xcel Energy of an OFO, Vendor shall communicate the OFO notices to the City, along with what the anticipated cost of Additional OFO Gas will be for the period of the OFO.

The decision to switch to back-up fuel will be made solely by the City and may be made separately for each Interruptible Facility.

The parties shall work together and use commercially reasonable efforts to minimize the cost impact of OFOs. During an OFO, all gas purchased for or consumed by a City Facility above its First-of-the-Month Nomination (including both Interruptible and Firm Facilities) will be billed to such facility, at a rate per DTH equal to the daily posted price, as published in Gas Daily's "Daily Price Survey" for deliveries to CIG, Rockies, for the time period in which the OFO was in effect, plus all other normally applicable charges.

In the case where Additional OFO Gas is purchased for or consumed by a City Facility, the Vendor's PDF invoices and Excel billing spreadsheet shall reflect the First-of-the-Month Nomination quantity, the quantity of Additional OFO Gas purchased or consumed, the cost for such natural gas supplies, as well as all other applicable charges.

**City Reserves the Right to Burn Backup Fuel in Non-Restricted Situations:**

Under mutually agreeable conditions, the City is willing to interrupt gas supply and go to back-up fuel during non-restricted situations. The decision to go to backup fuel will be made separately by each Interruptible Facility.

The Vendor is advised that the City, when it is necessary to keep stock fresh, reserves the right to burn backup fuel in lieu of natural gas.

**Emergency Purchases:**

The City reserves the right to purchase transport natural gas, which is required, on an emergency basis, from any source whatsoever, AND if the City's needs cannot be provided immediately by the Vendor.

If the City is caused to involuntarily leave transport gas by actions or inactions of the supplier, the supplier shall be wholly responsible for the difference in charges the City would pay for having to leave transport, and those contained in the transport natural gas contract, for the period (up to one year) the City would be required to remain off transport, even if the period exceeds the normal term of this contract.

**Billing Formats and Savings Analysis Requirements:**

The Vendor shall produce accurate monthly billing statements that include all the charges associated with the transport of natural gas to City facilities. This billing will also include those components for which the City has financial responsibility (e.g. loss, transport, service and facility, firm Vendor, etc.).

*The City requires both a PDF format and a monthly Excel spreadsheet with calculations, for each individually billed participant in the contract (See Attachment 2).*

The Vendor will be required to provide a Quarterly Savings Analysis to General Services Energy Office. This is a comparison of the Vendor's contracted charges, with what the charges would have been, if the City had been using Xcel Energy tariff gas (See Attachment 3).

Vendor will be required to provide the City monthly billing information in *two formats*:

1. First, on company letterhead in the form of an invoice provided in PDF format.
2. Second, as an electronic file, in Excel spreadsheet format. (For an example of the required billingspreadsheet see *Attachment 2*).
3. Note: The PDF and Excel spreadsheet billing formats will be required for each of the Cityagencies participating in the MPO/Contract.
4. The Vendor will provide each independently paying agency copies of their own bills (bothPDF and electronic).
5. General Services Energy Office will receive their own PDF invoices and Excel spreadsheet.
6. In addition, General Services Energy Office will receive electronic copies of all other

agency's monthly bills, in a single Excel Summary spreadsheet. Each participant agency's monthly billing will be combined into this Summary spreadsheet so that all the meters/accounts on the contract are documented in this single spreadsheet. (See *Attachment 2*).

For the invoice on company letterhead presented in PDF format, separate invoices will be submitted for Interruptible and Firm service. Each invoice shall contain the following information:

- 1) Whether the invoice is for Interruptible or Firm service.
- 2) DTh's of natural gas consumed per facility.
- 3) DTh's of natural gas backup supply and Vendor per facility, if applicable.
- 4) Invoice number and date.
- 5) Signature of Vendor.
- 6) Costs for all components necessary for transport natural gas (e.g. loss, transport, service, facilities, firm Vendor, etc.).
- 7) PDQ for each firm location.

**Compensation and Method of Payment – Price Locking:**

At any time, the City may elect to lock in a fixed price for part or all the City's natural gas needs. Upon such request, which may be made and accepted via telephone (or other method agreed to by the Parties), the Vendor shall provide a fixed price for the volume and term requested based upon the then prevailing market conditions. Only the Manager, or his express designee, may bind the City Pursuant to this Section IV(A)(v).

**COOPERATIVE PURCHASING**

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions. 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 Proposal that pricing offered herein to the City and County of Denver may be offered by the vendor to the City Aurora. The City of Aurora estimates their annual usage at 55,000 DTh, with a PDQ of 517, for 9 locations.

**VENDOR PERFORMANCE MANAGEMENT:**

Awarded vendors are 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**

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency

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

EXHIBIT "B"

Supplier: Spark Energy Gas, LLC  
Solicitation/ Award Title: TRANSPORT NATURAL GAS CITYWIDE  
Solicitation No. /Internal File Reference Location: IFB 0366A/SC-00009764

C.2 PRICE SUBMITTAL

Winter months: January, February, March, November, December

Summer months: April through October

One (1) year Proposal Pricing:

Firm:

1A Index: Premium/Discount from CIG First of Month for Firm

Transport Gas per DTh for summer months \$ 0.10 (Estimate to be used for evaluation purposes is 113,560 DTh)

1B Index: Premium/Discount from CIG First of Month for Firm

Transport Gas per DTh for winter months \$ 0.24 (Estimate to be used for evaluation purposes is 256.259 DTh)

Interruptible:

1C Index: Premium/Discount from CIG First of Month for Interruptible

Transport Gas per DTh for summer months \$ 0.10 (Estimate to be used for evaluation purposes is 230,924 DTh)

1D Index: Premium/Discount from CIG First of Month for Interruptible

Transport Gas per DTh for winter months \$ 0.24 (Estimate to be used for evaluation purposes is 333,746 DTh)

Formula

One year option:

Proposal Item 1A x 113,560 + Proposal Item 1B x 256,259 + Proposal Item 1C x 230,924 + Proposal Item 1D x 333,746 = \$176,049.60 Total One Year Price

Do you offer a "Locking"  YES

Contract? Do you offer a  YES

"Collar" option?