

FIRST AMENDATORY AGREEMENT

This **FIRST AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **SPARK INFRASTRUCTURE SOLUTIONS, LLC**, a Delaware limited liability company whose address is 1808 Adams Mill Rd. NW, Washington, DC 20009 (the “Contractor”), jointly (“the Parties”).

RECITALS:

A. The City and Energy Link L.L.C. entered into an Agreement dated July 27, 2022 (the “Agreement”) to perform and complete all of the services and produce all the deliverables set forth on Exhibit D, the Scope of Work, to the City’s satisfaction.

B. Energy Link L.L.C. assigned its right, interests, and obligations under the Agreement to Spark Infrastructure Solutions, LLC via an assignment agreement, Exhibit I.

C. The Parties wish to amend the Agreement to update the Contractor’s name and address pursuant to the assignment agreement, update paragraph 26 - No Employment of a Worker Without Authorization to Perform Work Under the Agreement, insert paragraph 43 – Compliance with Denver Wage Laws, and update the certificate of insurance.

NOW THEREFORE, in consideration of the promises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. All references to “Energy Link L.L.C.” in the Agreement shall be amended to read: “Spark Infrastructure Solutions, LLC” as applicable. All references to “Energylink” and “doing business as Energylink” shall be removed from the Agreement.

2. Section 26 of the Agreement entitled “**NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT**” is hereby deleted in its entirety and replaced with:

“26. Reserved.”

3. Section 43 entitled “**COMPLIANCE WITH DENVER WAGE LAWS**” is hereby inserted into the Agreement and states:

“43. COMPLIANCE WITH DENVER WAGE LAWS: To the extent applicable to the Contractor’s provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding

the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

4. **Exhibit C** is hereby deleted in its entirety and replaced with **Exhibit C-1 Certificate of Insurance**, attached and incorporated by reference herein. All references in the original Agreement to Exhibit C are changed to Exhibit C-1.

5. **Exhibit I**, the Assignment, Assumption, and Consent Agreement, is attached and incorporated by reference herein.

6. As herein amended, the Agreement is affirmed and ratified in each and every particular.

7. This First Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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Contract Control Number: CASR-202475347-01_CASR-202263662-01
Contractor Name: Spark Infrastructure Solutions, LLC fka Energy Link LLC
dba Energylink

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

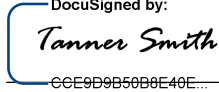
By:

By:

By:

Contract Control Number:
Contractor Name:

CASR-202475347-01_CASR-202263662-01
Spark Infrastructure Solutions, LLC fka Energy Link LLC
dba Energylink

By:  DocuSigned by:
Tanner Smith
CCE9D9B50B8E40E...

Name: Tanner Smith
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



ADDITIONAL REMARKS SCHEDULE

AGENCY Arthur J. Gallagher Risk Management Services, LLC		NAMED INSURED Spark Infrastructure Solutions, LLC 1808 Adams Mill Road NW Washington, DC 20009	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured as respects the Commercial General Liability and Business Auto policies.

EXHIBIT I

ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT

This Assignment, Assumption, and Consent Agreement (this “*Assignment Agreement*”) is made and entered into, effective as of the date set forth on the City’s signature page (“*Effective Date*”), by and between **Energy Link, LLC**, a Missouri Limited Liability Company headquartered at 200 East Southampton Suite 102, Columbia, MO 65203 (the “*Assignor*”), and **Spark Infrastructure Solutions, LLC**, a Delaware Limited Liability Company having offices at 1808 Adams Mill Road, NW, Washington, DC 20009 (“Sparkfund”) (the “*Assignee*”). Assignor and Assignee are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Assignor and the **City and County of Denver** (the “*City*”), entered into that *Master On-Call Services Agreement* dated on or about July 27, 2022, for the construction of Generating Facilities and Electric Vehicle Charging Equipment on certain City Properties; (the “*Denver Services Agreement*”), and

WHEREAS, Assignee and Assignor are entering into an Asset Purchase Agreement (the “*Asset Purchase Agreement*”), pursuant to which Assignor will sell and Assignee will purchase all interest in Assignor’s Subcontract Agreements including the *Denver Services Agreement* ; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor’s rights, interests, and obligations under the *Denver Services Agreement* as of the Effective Date, and Assignee desires to accept assignment from Assignor of Assignor’s rights, interests, and assume the obligations under the *Denver Services Agreement* as of the Effective Date; and

WHEREAS, Assignor and Assignee desire that the City’s Executive Director of the Office of Climate Action, Sustainability, and Resiliency (“**Executive Director**”) provide written consent to the assignment of the *Denver Services Agreement* in accordance with section 19 of that agreement; and

WHEREAS, the Executive Director wishes to provide written consent to the assignment of the *Denver Services Agreement*;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and City hereby agree as follows:

ASSIGNMENT, ASSUMPTION, AND CONSENT

1. **Assignment.** Assignor hereby assigns, conveys, transfers, sets over, and delivers unto Assignee all of Assignor’s rights and interests in, to, and under and pursuant to the *Denver Services Agreement* as of the Effective Date. Assignor agrees to deliver the original of the *Denver Services Agreement* to Assignee, together with any other documentation as may be reasonably necessary to effectuate such transfer.
2. **Assumption.** Assignee hereby accepts such assignment. Assignee hereby expressly assumes and agrees to perform and discharge, or cause to be performed and discharged, in a prompt and timely manner, all of the liabilities and obligations of Assignor under and pursuant to the *Denver Services Agreement* arising or accruing on or after the Effective Date. Assignor retains all liabilities and obligations related to its performance under the *Denver Services Agreement* prior to the Effective Date.
3. **Consent.** City hereby consents to the Assignment of the *Denver Services Agreement* from Assignor to Assignee. This consent does not modify, waive, or amend any of the terms, covenants, or conditions of the *Denver Services Agreement*. No further assignment of the *Denver Services Agreement* shall be made except in compliance with all terms and conditions set forth in that agreement.

REPRESENTATIONS, WARRANTIES AND COVENANTS

4. Representations and Warranties. Each Party represents and warrants to the other Party that, in all material respects:
 - a. it has all requisite power and company authority, and has taken all action necessary to execute and deliver this Assignment Agreement and to fulfill its obligations under, and consummate the transactions contemplated by, this Assignment Agreement;
 - b. this Assignment Agreement has been duly executed and delivered by it and constitutes the legal, valid, and binding obligations of it, enforceable against it in accordance with its terms; and
 - c. there are no bankruptcy, insolvency, reorganization receivership, or other legal or administrative proceedings pending with respect to, being contemplated by, or threatened against it which would reasonably be expected to have an adverse effect on such Party's ability to consummate the transactions contemplated by this Assignment Agreement.

5. Additional Representations and Warranties of Assignor. The Assignor represents and warrants to the Assignee that:
 - a. the execution, delivery and compliance with the terms hereof and the delivery of all documents or contracts required to be delivered hereunder do not and will not violate (in any material respects) any governing document, agreement, contract or understanding to which it or its assets are bound or, any laws applicable to it and to Assignor's knowledge, after reasonable inquiry, does not and will not result in the creation or imposition of any lien, charge, encumbrance, or claim of any nature whatsoever upon any of the ***Denver Services Agreement***;
 - b. no other notice, consent or approval is needed to effectuate the transfer of the ***Denver Services Agreement***;
 - c. Assignor is not in breach or default, and, to Assignor's knowledge, no other party is in breach or default, and no event or circumstance has occurred which with provision of notice or expiration of any applicable cure period would constitute a breach or default, or permit termination, modification, or acceleration of the ***Denver Services Agreement***;
 - d. no tax bulk sale notification, filing, or liability provisions are applicable to this Assignment Agreement or any of the transfers or transactions described herein;
 - e. with respect to the ***Denver Services Agreement***, and to the Assignor's knowledge, Assignor has not experienced any incident in which personal information or other sensitive data was stolen or improperly accessed, and Assignor is not aware of any breach of security or receipt of any notices or complaints from any customer or other person regarding personal information or other data in connection with the ***Denver Services Agreement***;
 - f. there is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Assignor or any of its affiliates in connection with this Assignment Agreement, and no other investment banker, broker, finder, or other intermediary is or may be entitled to any fee or commission from Assignee or any of its affiliates in connection with this Assignment Agreement.

6. Additional Representations and Warranties of Assignee. The Assignee represents and warrants to the Assignor that:
 - a. Assignee is authorized to enter into this Assignment Agreement and deliver all documents or contracts required to be delivered hereunder,
 - b. Assignee is not in violation, in any material respect, of any governing document, or agreements to which it or its assets are bound or any laws applicable to it, and
 - c. Assignee has conducted its own independent due diligence with respect to the ***Denver Services Agreement*** and accepts the terms and conditions of the ***Denver Services Agreement*** "as is".

MISCELLANEOUS

7. Counterparts. This Assignment Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one agreement. Delivery of an executed counterpart of a signature page to this Assignment Agreement by facsimile or electronic .pdf submission shall be as effective as delivery of a manually executed counterpart of this Assignment Agreement.

8. Governing Law. This Assignment Agreement, and any instrument or agreement required hereunder (to the extent not otherwise expressly provided for therein), shall be governed by, and construed under, the laws of the State of Colorado, without regard to principles of conflicts of law.

9. Further Assurances. Each of the Parties hereto covenants and agrees, without further consideration, to execute and deliver such further documents and to perform such other facts as may be reasonably necessary to affect this Assignment Agreement.

10. Amendments. No provision of this Assignment Agreement may be amended, modified, or waived except by written agreement duly executed by each of the parties and consented to by the Executive Director.

11. Headings. The section headings used in this Assignment Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand, or limit any provision hereof.

12. Effective Time. The transfer, assignment, conveyance, and delivery by Assignor to Assignee of the ***Denver Services Agreement***, all pursuant to this Assignment Agreement, shall be effective as of the date of the City's signature hereof.

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement.

Energy Link, LLC, ASSIGNOR

Please see attached signature page above

Name:
Title:
Date:

Spark Infrastructure Solutions, LLC, ASSIGNEE

Please see attached signature page above

Name:
Title:
Date:

CONSENTED AND AGREED TO BY:

City and County of Denver

Please see attached signature page above

Elizabeth Babcock
Executive Director, CASR
Date: