

# Master Purchase Order

<b>DO NOT INVOICE TO THIS ADDRESS</b>		Master Purchase Order No.	0366A0116
<b>City &amp; County of Denver</b>		Date:	November 17, 2016
Purchasing Division		Revision No.	
201 West Colfax Avenue, Dept. 304		Payment Terms	Net 30
Denver, CO 80202		Freight Terms	DESTINATION
United States		Ship Via	BEST
Phone: 720-913-8100 Fax: 720-913-8101		Buyer:	Curtis Subia
		Phone:	303-342-2113

PS Vendor ID: 0000100301 Phone: 719-285-5155 Fax: 303-845-9609 Email: ksimpson@ntherm.com

nTherm, LLC  
3773 Cherry Creek Drive North  
Denver, CO 80209

Ship To: As Specified By Agency

Attn: Karen Simpson

Bill To: As Specified By Agency

Colorado Secretary of State ID: 20151721091

## 1. Goods/Services:

nTherm, LLC, a Colorado Limited Liability Corporation, ("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 Agreement shall run from January 1, 2017 to and including December 31, 2017.

## 5. Extension or Renewal:

It is also a specific provision of this proposal that the City and the vendor may mutually agree to renew and continue the contract or agreement consummated under this proposal for additional periods of one year at the same prices, terms and conditions. However, no more than three (3) yearly extensions shall be made to the original agreement.

## 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 Twenty Million Dollars (\$20,000,000.00). 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 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. 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 Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used and that any professional services associated with the goods, or stand alone professional services under \$10,000, shall be performed in a workmanlike and professional manner with the degree of skill and judgment normally exercised by recognized professionals performing services of the same or substantially similar nature. For any goods or services which are, or become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall at no expense to City, at City's election and to City's satisfaction, either remedy any and all defects or replace the defective goods 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: nTherm, LLC  
(Company Name)

By: Karen L Simpson  
(Authorized Signature)

Print Name: Karen L Simpson

Title: VP Operations

Date: 11/17/16

City & County of Denver, Purchasing Division

By: [Signature]

Print Name: CURTIS SUBIA

Title: SENIOR BUYER

Date: 11/17/16

Supervisor Initial [Signature]

EXHIBIT "A"

Vendor: nTherm, LLC  
Title: TRANSPORT NATURAL GAS CITYWIDE  
**Master Purchase Order No.:** 0366A0116

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**It is recommended that you use your Master Purchase Order No. – 0366A0116, in all future correspondence and/or other communications.**

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

## **A.1 OVERVIEW**

The City is seeking a contract (Master Purchase Order) for the supply of transport natural gas services for the quantity of natural gas required by the City (estimated below in Attachment 1). There will be two pricing periods: winter and summer, for Firm and Interruptible gas.

In addition, at any time the City may elect to lock in a fixed price for part or all of 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 Seller/Contractor shall provide a fixed price for the volume and term requested based upon the then prevailing market conditions. Only the Manager of General Services, or his express designee, may bind the City.

## **A.2 SPECIFICATIONS**

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

The contractor 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 contractor shall provide written authorization which shall allow the City to review all Xcel data relevant to City accounts. The contractor shall provide a signed document authorizing Xcel to honor City inquiries for any and 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 City will execute documentation to notify Xcel Energy that Contractor is the City's shipper.

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 and those contained in the master purchase order 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.

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

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

The Contractor 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.

Contractor will be required to perform usage analyses or statistical reporting to demonstrate, for example, comparisons to tariff gas, peak day accuracy, firming accuracy or capacity 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.

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

**The contractor shall “hold” the contract with Xcel Energy on the City’s behalf.**

The Contractor shall be responsible for installing and maintaining any necessary fixtures and/or facilities, including meters, up to the point of delivery. Delivery will be at the City Gate. Installation, maintenance, and payment for any required telephone lines will be the City’s responsibility. Contractor will notify the City, immediately, when telephone line installation or repair is needed.

Contractor shall be responsible for the delivery of all quantities of gas actually required by the City. Contractor shall be solely responsible for any charges, penalties and fees (including unauthorized overrun) resulting from their failure to properly administer, nominate, balance or deliver all of the gas required by the City. Should the City, for any reason, be required to purchase gas from any other source, including Xcel Energy sales gas, the Contractor shall be responsible for any penalties and the difference between the actual purchase price and the Master Purchase Order price.

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

The Contractor 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 Contractor from any obligation hereunder.

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 Contractor.

**A.3 RELATED DUTIES AND ADDITIONAL SPECIFICATIONS**

**Nominating, balancing and administration** – The contractor shall be responsible for all administrative functions necessary to successfully deliver appropriate quantities of gas into the Xcel distribution system for use by City facilities. The contractor shall be wholly liable for all penalties, charges and costs (including unauthorized overruns) attributable to inaccurate or untimely nominating, balancing or delivery of gas.

**Restricted Delivery Day and Interruption Notifications** – 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 each facility and provide complete instructions for the times and dates to begin and end the interruption.** Emergency contact call-out with telephone numbers and contact personnel will be distributed to the successful contractor. The contractor shall provide a copy of its

“call out” log to General Services as soon as practical but no later than twenty-four (24) hours after a call-out is made.

***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 back up fuel will be made separately for each facility, by the Facility Managers specific to that facility.***

**Billing Formats and Savings Analysis Requirements:** Contractor shall produce accurate monthly billings that include all of 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 (loss, transport, service and facility, and Firm capacity).

The Contractor will be required to provide a *Savings Analysis* (a comparison of the Contractor’s charges with what the charges would have been if the City had been using Xcel Energy sales gas.) *The City requires both a PDF format as well as an Excel 2013/2016 spreadsheet version with calculations (See Attachment 3).*

In addition, Contractor will be required to provide to the City billing information in ***two formats***:

- a. First, on company letterhead in the form of an invoice provided in PDF format.
- b. Second, as an electronic file, in Excel 2013/2016 format. An example, **Attachment 2**, is attached.
- c. Note: These billing formats will be required for each of the City agencies participating in the MPO.
- d. Each agency will receive copies of their own bills (both PDF and electronic). General Services will receive only their own PDF invoice, but will receive electronic copies of all other agency’s bills in a single electronic 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 capacity per facility, if applicable.
- 4) Invoice number and date.
- 5) Signature of Contractor.
- 6) Costs for all components necessary for transport natural gas (loss, transport, service, facilities and Firm capacity).
- 7) PDQ for each Firm location.

For the invoice presented electronically in Excel 2013/2016 format, please see Attachment 2 for desired information.

**Compensation and Method of Payment – Price Locking.** At any time the City may elect to lock in a fixed price for part or all of 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 Seller/Contractor 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).



#### **A.4 EMERGENCY PURCHASES:**

The City and County of Denver 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 contractor.

#### **A.5 EMERGENCY 24-HOUR SERVICES:**

Emergency twenty-four (24) hour service is to be provided by contractor at no additional cost. The name and phone number of the individual(s) to contact for emergency service shall be furnished to the City on separate company letterhead attached to this proposal.

This service requires a live telephone answering service with the capability of immediately contacting operating personnel at all times. Recorded telephone answering service is not acceptable.

#### **A.6 ESTIMATED QUANTITIES:**

The approximate quantities indicated for the material or equipment outlined herein are estimated as closely as possible. However, the City neither states nor implies any guarantee that actual purchases will equal the estimate. It is the intent of this proposal that the City will be supplied with more or less of the material or equipment according to actual needs.

#### **A.7 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 Request for Proposal that pricing offered herein to the City and County of Denver may be offered by the vendor to the City Aurora.

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 and County of Denver shall not be liable for any costs, damages incurred by any other entity.

#### **A.8 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**

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

#### **A.9 PRICING:**

All prices quoted shall be firm and fixed for the contract period.

Upon identification by the City of those proposers qualified to present pricing, the qualified proposer shall specify all prices in dekatherms (DTh). All prices shall include all charges up to the **City Gate**.

The City is exempt from tax and franchise fees.

Proposers shall provide separate pricing for winter and summer months. Winter months shall include January, February, March, November and December. Summer months shall include April, May, June, July, August, September, and October.

For each type month (winter/summer), proposer shall provide pricing for Firm and Interruptible gas as follows:

- 1) Premium/Discount from CIG first of month for Firm gas
- 2) Premium/Discount from CIG first of month for Interruptible gas
- 3) In addition, at any time the City may elect to lock in a fixed price for part or all of 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 Seller/Contractor shall provide a fixed price for the volume and term requested based upon the then prevailing market conditions. Only the Manager of General Services, or his express designee, may bind the City.

#### **A.10 PRICING**

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 \$0.04

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

Transport Gas per DTh for **winter** months \$0.04

##### **Interruptible:**

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

Transport Gas per DTh for **summer** months \$0.04

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

Transport Gas per DTh for **winter** months \$0.04