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# Request for Proposal

TAC 517C

Addendum #2

Professional Services for  
3<sup>rd</sup> Party Natural Gas Service

NIGP Commodity Code(s):  
405-13 & 962-61

Addendum #2 is published to provide answers to questions submitted by the deadline. See Q&A on pages 22-23.

Addendum #1 is published solely to change the due date to: March 14, 2018

**Submit proposals  
(sealed) to:**  
Deputy City Clerk  
City of Tulsa  
175 E. 2<sup>ND</sup> St.  
Suite 260



## **I. STATEMENT OF PURPOSE:**

With this Request for Proposal (RFP), we are searching to secure professional services for 3<sup>rd</sup> Party Natural Gas Supply and related services

We enthusiastically look forward to receiving your proposal.

## **II. INSTRUCTIONS FOR SUBMITTING A PROPOSAL:**

### **A. General Requirements**

1. Proposals must be received **by 5:00 p.m. on Wednesday, March 14, 2018, Central Time. Please** place proposals in a sealed envelope or box clearly labeled: **RFP TAC 517C-3<sup>rd</sup> Party Natural Gas Supply.**

**Proposals received late will be returned unopened.**

2. Proposals shall be delivered sealed to:

Deputy City Clerk  
City of Tulsa  
175 E. 2<sup>nd</sup> St.  
Suite 260  
Tulsa, OK 74103

3. All interested Respondents (also referred herein as Bidders or Sellers) are required to register with the Buyer in order to receive updates, addenda or any additional information required. The City is not responsible for any failure to register.
4. Inquiries to the Buyer requesting clarification regarding the Request for Proposal or the content therein must be made via e-mail and must be received prior to the end of the business day on **February 15, 2018.**

**Patricia Cummings, CPPB, Senior Buyer**  
**Email: [pcummings@cityoftulsa.org](mailto:pcummings@cityoftulsa.org)**  
**Phone: 918-596-7233**

Any questions regarding this RFP will be handled as promptly and as directly as possible. If a question requires only clarification of instructions or specifications, it will be handled via e-mail. If any question results in a substantive change or addition to the RFP, the change or addition will be forwarded to all registered Respondents as quickly as possible by addendum.

5. Respondents shall designate a contact person, with appropriate contact information, to address any questions concerning a proposal. The Respondents shall also state the name and title of individuals who will make final decisions regarding contractual commitments and have legal authority to execute the contract on the Respondent's behalf.
6. Proposals will be opened on the morning after the due date, at 8:30am, at the:

**Standards, Specifications, and Awards Committee Meeting**  
**175 East 2<sup>nd</sup> Street, 2<sup>nd</sup> Floor**  
**City Council Chamber**

### **III. GENERAL NOTIFICATIONS**

1. The City of Tulsa notifies all possible Respondents that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, sex, age, ethnicity, or on any other basis prohibited by law.
2. All Respondents shall comply with all applicable laws regarding equal employment opportunity and nondiscrimination.
3. Seller shall be responsible for complying with all applicable federal, state and local laws, regulations and standards. Seller is responsible for any costs of such compliance. Seller certifies that it and all of its subcontractors to be used in the performance of this Purchase Agreement are in compliance with 25 O.S. Sec. 1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. Sec. 1312 and includes but is not limited to the free Employee Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify)
4. The City of Tulsa also notifies all Respondents that the City has the right to modify the RFP and the requirements herein, to request modified proposals from Respondents, and to negotiate with the selected Respondent on price and other contract terms, as necessary to meet the City's objectives.
5. Although it is the City's intent to choose only the most qualified Respondents, the City reserves the right to choose any number of qualified finalists for interview and/or for final selection. At the discretion of the City, one or more Respondents may be invited to be interviewed for purposes of clarification or discussion of the proposal.
6. This Request for Proposal does not commit the City of Tulsa to pay any costs incurred in the preparation of proposals, or in submission of a proposal, or the costs incurred in making necessary studies and designs for preparation thereof, or to contract for services or supplies necessary to respond. Any expenses incurred by the Respondent(s) in appearing for an interview or in any way in providing additional information as part of the response to this Request for Proposals are solely the responsibility of the Respondent. The City of Tulsa is not liable for any costs incurred by Respondents for any work performed by the Respondent prior to the approval of an executed contract by the City of Tulsa.

### **IV. SCOPE OF WORK**

The City of Tulsa intends to purchase natural gas for certain of its qualifying facilities located in Tulsa, Oklahoma. The city of Tulsa wishes to obtain proposals from qualified contractors currently engaged in the natural gas transportation business in Oklahoma to provide natural gas service at the lowest possible cost with the highest level of reliability, service and safety. Proposals will be accepted from qualified, licensed, natural gas producers, brokers, or marketers for firm natural gas supplies for the City of Tulsa's current approximately 40 qualifying meters. Other locations throughout the City of Tulsa are to be added to the agreement when they become eligible for third party deliveries. The natural gas Bidder will be expected to deliver the daily needs of the facilities in accordance with the Technical Specifications. The Bidder shall base its price on deliveries to Oklahoma Natural Gas (ONG).

V. **TECHNICAL SPECIFICATIONS:**

- A. **Facility Locations:** Tulsa, Oklahoma
- B. **Pipeline:** ONG
- C. **Quality Specifications:** All natural gas delivered shall meet the quality specifications of the connecting pipeline.
- D. **Volume:** Total annual volume at the time of this RFP is **approximately 98,479 dth**, which includes approximately forty **(40) meters** across the City of Tulsa. Estimated volumes based on historical deliveries into ONG by meter are in **Appendix A** attached. Seller shall provide 100% of the City's natural gas requirement for these forty (40) meters on a firm basis. Further deliveries may be required if additional meters become eligible for third-party delivery.
- E. **Price:** All pricing information shall be submitted on the Price Summary Sheet. The price shall be quoted in dekatherms (dth) of natural gas delivered to ONG. All charges associated with delivering gas to ONG shall be paid by the Seller and included in the Seller's price. The City plans to consider a one-year fixed price, a one-year basis price and an index-based price. If you believe that some alternative pricing structure would be of benefit to the City, you **MUST** notify us in writing at least ten (10) days before bids are due. As the City will also be evaluating the use of risk management tools in conjunction with this pricing structure, please include any services and alternatives your company offers in this regard as well as any recommendations you may have.
- F. **Services and Performance:** The Seller shall be responsible for nominations, scheduling, imbalances, risk management services, etc. The proposal shall address the Seller's guarantees of performance, if any, including provisions to provide reimbursements for natural gas replacement cost and penalties incurred should Seller fail to perform. Bidder will also address acting as the City's agent in managing imbalances on ONG.
- G. **Term:** The City intends to begin service under this proposal as soon as possible for a period of one year. Four (4) annual renewal options thereafter may be considered.
- H. **Special Provisions:** The city requires that Seller guarantee firm deliveries of natural gas to ONG. Seller understands that the continuing purchase by City of the goods and/or services set forth in this RFP is subject to City's needs and to City's annual appropriation of sufficient funds in City's fiscal year (July 1st to June 30th) in which such goods and/or services are purchased. In the event City does not appropriate or budget sufficient funds to perform any resulting Agreement, the Agreement shall be null and void without further action by City. The City understands that other special provisions, which would become part of the base contract (NAESB Standard 6.3.1) with a Seller may need to be negotiated with the successful Seller.
- I. **Transportation Agreement(s) and Nominations:** Currently approximately 40 meters are served under ONG's Tariff Rate Schedules. Seller will administer the City of Tulsa's transportation agreement(s) with Oklahoma Natural Gas. Seller will provide nomination and balancing services and will be responsible for placing all nominations with the Transporter(s). Seller will use the monthly volumes in

Appendix A for nominations unless the City of Tulsa and/or its designee/agent submit changes by the 23rd calendar day of the preceding month.

- J. Invoices:** The Seller shall invoice each meter separately with monthly invoices sent electronically to each meter location and to a central office to be designated by the City. Additionally, a consolidated statement showing each meter's total volumes and total cost for each month shall be provided electronically to a central office. A copy of the monthly consolidated invoice statement must also be sent simultaneously by e-mail to the City of Tulsa's designated agent. Invoiced charges for each meter shall be identified individually including line items for each tier of fixed price gas, base load gas and swing gas. All fixed price volumes will be allocated pro-rata to each meter based on each meter's monthly usage compared to the total monthly usage of all meters.
- K. The City of Tulsa's Designee/Agent:** The City of Tulsa may designate a company or individual to act as its designee/agent in the areas of nominations, risk management orders, invoice review, etc. Seller will work with the City of Tulsa's agent and provide information and accept directives as if from the City of Tulsa itself although only the City of Tulsa can enter into contractual arrangements and sign contract documents.

## **VI. RESPONDENT AND PROPOSAL REQUIREMENTS**

To be considered, interested Respondents should submit or address the following:

- A.** One (1) unbound original and five (5) bound copies of the proposal plus one (1) electronic copy.
- B.** A description of the Respondent's qualifications and experience and that of key personnel assigned to this project (and that of each Respondent proposed as part of the team). It is noted that equipment, material and staff shall be provided by the Respondent.
- C.** The City may make investigations as are deemed necessary to determine the ability of the bidder to perform and the bidder shall furnish the City all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by or investigation of such supplier fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the RFP and to complete the work contemplated therein.

## **VII. EVALUATION OF PROPOSALS:**

A panel consisting of not less than three City of Tulsa employees will evaluate proposals. Final selection shall be the sole determination of the City, and if a selection is made it will be to the Respondent whose proposal is determined to be in the best interests of the City. The approval of the selected Respondent will be subject to the final determination of the City and will be contingent on the successful completion of a contract between the City and the selected Respondent(s).

**Method of Award:** THE BID SHALL BE AWARDED TO THE FIRM WHOSE BID IS RESPONSIVE TO THE RFP AND IS DEEMED MOST ADVANTAGEOUS TO THE CITY, CONSIDERING THE FACTORS IDENTIFIED HEREIN AND SECTION 406E OF TITLE 6, THE PURCHASING ORDINANCE.

The following evaluation criteria will be utilized on this bid:

Cost	45 points
Bidder Capabilities	25 points
References/Experience	15 points
Dependability of Supply	15 points
TOTAL POSSIBLE	100 points

### **VIII. AWARD OF PROPOSALS:**

Per Tulsa Revised Ordinances (TRO) Title 6, Chapter 4, in addition to Price, these factors may be considered in the evaluation and award of proposals:

1. The ability, capacity and skill of the Respondent to perform the contract or provide the service required,
2. Whether the Respondent can perform the contract or provide the service promptly or within the time specified, without delay or interference,
3. The character, integrity, reputation, judgment, experience and efficiency of the Respondent,
4. The quality of performance by Respondent of previous contracts or services,
5. The previous and existing compliance by the Respondent with laws and ordinances relating to the contract or service,
6. The sufficiency of the financial resources and ability of the Respondent to perform the contract or provide the service,
7. The quality, availability and adaptability of the Supplies, Services, and Information Technology Systems offered by Respondent to the particular use required,
8. The ability of the Respondent to provide future maintenance, support and service related to Respondent's offer,
9. Where an earlier delivery date would be of great benefit to the Using Department, the date and terms of delivery may be considered in the Proposal award,
10. The degree to which the Proposal submitted is complete, clear, and addresses the requirements in the Proposal specifications,
11. If a point system has been utilized in the Proposal specifications, the number of points earned by the Respondent.
12. The total cost of ownership, including the costs of supplies, materials, maintenance, and support necessary to perform the item's intended function.
13. If an evaluation committee performs the evaluation, the recommendation of such committee.

14. All Bidders will be notified of the City's intent to award this bid at a specific Standards, Specifications and Awards committee meeting. All Bidders will be invited to attend this public meeting at least 48 hours prior to the meeting date/time.

- IX. References:** The Bidder shall provide the names of at least five (5) firms or institutions to which Bidder is presently supplying or has supplied natural gas in accordance with the type of agreement being contemplated by the City. The name, address and telephone number of the person(s) to contact for reference information must be included.
- X. Warranty:** The Seller must warrant that it has access to sufficient natural gas to discharge its contractual obligation. This warranty is a fundamental consideration for the arrangement contemplated. The City of Tulsa is particularly concerned for the security of supply. The Seller must be able to demonstrate its capability to perform.
- XI. Quality of Gas:** The natural gas delivered to the City of Tulsa shall meet all interstate gas pipeline and distribution line standard specifications.
- XII. Proposed Gas Sales Agreement:** A NAESB contract shall be used with special provisions prepared by the City and attached thereto. Any special provisions desired by the Seller must be communicated in writing to the City at least one week before bids are due. The City reserves the right to accept or reject any special provisions requested.

**XIII. MISCELLANEOUS**

- A.** The City expects to enter into a written Agreement (the "Agreement") with the chosen Seller that shall incorporate this RFP and your proposal. Further, Seller will be bound to comply with the provisions set forth in this RFP. In addition to any terms and conditions included in this RFP, the City may include in the Agreement other terms and conditions as deemed necessary. Your response to this RFP will be considered part of the Agreement, if one is awarded to you.
- B.** All data included in this RFP, as well as any attachments, are proprietary to the City of Tulsa.
- C.** The use of the City of Tulsa's name in any way as a potential customer is strictly prohibited except as authorized in writing by the City of Tulsa.
- D.** Your proposal must clearly indicate the name of the responding organization, including the Respondent's e-mail address and web site information, if applicable, as well as the name, address, telephone number and e-mail address of the organization's primary contact for this proposal. Your proposal must include the name, address, telephone number and e-mail address of the Respondent and/or team of Respondents assigned to the City account.
- E.** The City assumes no responsibility or liability for any costs you may incur in responding to this RFP, including attending meetings or contract negotiations.
- F.** The City is bound to comply with Oklahoma's Open Records Act, and information submitted with your proposal, with few exceptions, is a matter of public record. For specifics on the Oklahoma Open Records Act, see the link below:

<https://libraries.ok.gov/law-legislative-reference/library-laws/statutes-open-records/>

- G.** The City shall not infringe upon any intellectual property right of any Respondent, but specifically reserves the right to use any concept or methods contained in the proposal. Any desired restrictions on the use of information contained in the proposal should be clearly stated. Responses containing your proprietary data shall be safeguarded with the same degree of protection as the City's own proprietary data. All such proprietary data contained in your proposal must be clearly identified. The City shall not be under any obligation to return any materials submitted in response to this RFP.

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# NON-COLLUSION AFFIDAVIT

(Required by Oklahoma law, 74 O.S. §85.22-85.25)

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, of lawful age, being first duly sworn, state that:  
**(Seller's Authorized Agent)**

1. I am the authorized agent of Seller herein for the purposes of certifying facts pertaining to the existence of collusion between and among Respondents and municipal officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the proposal to which this statement is attached.
2. I am fully aware of the facts and circumstances surrounding the making of Seller's Proposal to which this statement is attached, and I have been personally and directly involved in the proceedings leading to the submission of such proposal; and
3. Neither the Seller nor anyone subject to the Seller's direction or control has been a party:
  - a. to any collusion among Respondents in restraint of freedom of competition by agreement to respond at a fixed price or to refrain from responding,
  - b. to any collusion with any municipal official or employee as to quantity, quality, or price in the prospective contract, or as to any other terms of such prospective contract, nor
  - c. in any discussions between Respondents and any municipal official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Notary Commission Number: \_\_\_\_\_

**The Affidavit must be signed by an authorized agent and notarized**

**INTEREST AFFIDAVIT**

STATE OF \_\_\_\_\_ )

)ss.

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, of lawful age, being first duly sworn, state that I am the agent authorized by Seller to submit the attached Proposal. Affiant further states that no officer or employee of the City of Tulsa either directly or indirectly owns a five percent (5%) interest or more in the Respondent's business or such a percentage that constitutes a controlling interest. Affiant further states that the following officers and/or employees of the City of Tulsa own an interest in the Respondent's business which is less than a controlling interest, either direct or indirect.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Notary Commission Number: \_\_\_\_\_

County & State Where Notarized: \_\_\_\_\_

**The Affidavit must be signed by an authorized agent and notarized**

## AFFIDAVIT OF CLAIMANT

STATE OF \_\_\_\_\_ )  
 )ss.  
 COUNTY OF \_\_\_\_\_ )

The undersigned person, of lawful age, being first duly sworn on oath, says that all invoices to be submitted pursuant to this agreement with the City of Tulsa will be true and correct. Affiant further states that the work, services or material furnished will be completed or supplied in accordance with the plans, specifications, orders, requests or contract furnished or executed by the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the City of Tulsa or of any public trust where the City of Tulsa is a beneficiary, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is submitted. Affiant further certifies that (s)he has complied with all applicable laws regarding equal employment opportunity.

Company: \_\_\_\_\_

Remit to Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Name (print): \_\_\_\_\_

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

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
 My commission number: \_\_\_\_\_

**The Affidavit must be signed by an authorized agent and notarized**

## RESPONDENT INFORMATION SHEET

**Respondent's Legal Name:** \_\_\_\_\_

(Must be Respondent's company name exactly as reflected on its organizational documents, filed with the state in which Respondent is organized; not simply a DBA.)

**State of Organization:** \_\_\_\_\_

**Respondent's Type of Legal Entity: (check one)**

Sole Proprietorship

Limited Liability Company

Partnership

Limited Liability Partnership

Corporation

Limited Partnership

Other: \_\_\_\_\_

**Address:** \_\_\_\_\_  
Street City State Zip

**Website Address:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

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**Sales Contact:**

**Legal or Alternate Sales Contact:**

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

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

Street: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

State: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

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## City of Tulsa General Contract Terms

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It is anticipated that the City of Tulsa will enter into an Agreement (contract) with the selected Respondent for an initial term ending one (1) year from the date of its execution by the City's Mayor, with four (4) one-year renewals available at the option of the City. Contracts entered into by the City of Tulsa generally include, but are not limited to, the following terms:

- 1. Renewals.** Seller understands and acknowledges that any future contracts or renewals are neither automatic nor implied by this Agreement. The continuing purchase by City of the services set forth in this Agreement is subject to City's needs and to City's annual appropriation of sufficient funds in City's fiscal year (July 1<sup>st</sup> to June 30<sup>th</sup>) in which such services are purchased. In the event City does not appropriate or budget sufficient funds to perform this Agreement, this Agreement shall be null and void without further action by City.
- 2. No Indemnification or Arbitration by City.** Seller understands and acknowledges that City is a municipal corporation that is funded by its taxpayers to operate for the benefit of its citizens. Accordingly, and pursuant to Oklahoma law, City shall not indemnify nor hold Seller harmless for loss, damage, expense or liability arising from or related to this Agreement, including any attorneys' fees and costs. In addition, Seller shall not limit its liability to City for actual loss or direct damages for any claim based on a breach of this Agreement and the documents incorporated herein. City reserves the right to pursue all legal and equitable remedies to which it may be entitled. City will not agree to binding arbitration of any disputes.
- 3. Intellectual Property Indemnification by Contractor.** Seller agrees to indemnify, defend, and save harmless City and its officers, employees and agents from all suits and actions of every nature brought against them due to the use of patented, trademarked or copyright-protected appliances, products, materials or processes provided by Seller hereunder. Seller shall pay all royalties and charges incident to such patents, trademarks or copyrights.
- 4. General Liability.** Seller shall hold City harmless from any loss, damage or claims arising from or related to the performance of the Agreement herein. Seller must exercise all reasonable and customary precaution to prevent any harm or loss to all persons and property related to this Agreement.
- 5. Liens.** Pursuant to City's Charter (Art. XII, §5), no lien of any kind shall exist against any property of City. Seller agrees to indemnify and hold the City harmless from all claims, demands, causes of action or suits of whatever nature arising out of the services, labor, and material furnished by Seller or Seller's subcontractors under the scope of this Agreement.
- 6. No Confidentiality.** Seller understands and acknowledges that City is subject to the Oklahoma Open Records Act (51 O.S. §24A.1 *et seq.*) and therefore cannot assure the confidentiality of contract terms or other information provided by Seller pursuant to this Agreement that would be inconsistent with City's compliance with its statutory requirements there under.
- 7. Compliance with Laws.** Seller shall be responsible for complying with all applicable federal, state and local laws. Seller is responsible for any costs of such compliance. Seller shall take the necessary actions to ensure its operations in performance of this Agreement and employment practices are in compliance with the requirements of the Americans with Disabilities Act. Seller certifies that it and all of its subcontractors to be used in the performance of this Agreement are in compliance with 25 O.S. Sec. 1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. Sec. 1313 and includes, but is not limited to, the free Employee Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).
- 8. Right to Audit.** The parties agree that books, records, documents, accounting procedures, practices, price lists or any other items related to the Services provided hereunder are subject to inspection, examination, and copying by City or its designees. Seller shall retain all records related to this Agreement for the duration of the contract term and a period of three years following completion and/or termination of the contract. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.
- 9. Governing Law and Venue.** This Agreement is executed in and shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to its choice of law principles, which shall

be the forum for any lawsuits arising under this Agreement or incident thereto. The parties stipulate that venue is proper in a court of competent jurisdiction in Tulsa County, Oklahoma and each party waives any objection to such venue.

10. **No Waiver.** A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.
11. **Entire Agreement/No Assignment.** This Agreement and any documents incorporated herein constitute the entire agreement of the parties and supersede any and all prior agreements, oral or otherwise, relating to the subject matter of this Agreement. This Agreement may only be modified or amended in writing and signed by both parties. Notwithstanding anything to the contrary herein, the City does not agree to the terms of any future agreements, revisions or modifications that may be required under this Agreement unless such terms, revisions or modifications have been reduced to writing and signed by both parties. Seller may not assign this Agreement or use subcontractors to provide the Goods and/or Services without City's prior written consent. Seller shall not be entitled to any claim for extras of any kind or nature.
12. **Equal Employment Opportunity.** Seller shall comply with all applicable laws regarding equal employment opportunity and nondiscrimination.

**The City of Tulsa expects to use the Base Contract for Sale and Purchase of Natural Gas (NAESB) as one part of the Agreement with the Seller. The inclusion of the NAESB in the RFP must not be interpreted as the City of Tulsa's acceptance of the terms and conditions contained therein. The City of Tulsa reserves the right to amend certain provisions of the NAESB as necessary. Those amended provisions will be attached to and made a part of the NAESB, and will include, without limitation, the following:**

If the terms of these Special Provisions and the other terms of the Base Contract conflict, the terms of these Special Provisions shall govern. Any definitions used in the Base Contract, unless otherwise defined in these Special Provisions, shall have the same meaning in these Special Provisions. Any reference to a Section in these Special Provisions refers to the same Section of the General Terms and Conditions to the Base Contract.

#### **SECTION 1. PURPOSE AND PROCEDURES**

Section 1.2. Written Transaction Procedure shall be amended by adding "Electronically Exchanged Communication," and deleting "ED/ transmission" in the second sentence.

Section 1.3. shall be amended by deleting "EDI" and replacing it with "Electronically Exchanged Communication".

Section 1.4 shall be deleted in its entirety and replaced with the following:  
Either party may monitor its telephones with recording equipment. Each of the parties hereby consents to the recording of telephone conversations. Any resulting recordings may be introduced to prove any agreement between the parties. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

#### **SECTION 2. DEFINITIONS**

Section 2.9. shall be amended by replacing "EDItransmission" with "Electronically Exchanged

Communication". Section 2.17. shall be deleted in its entirety and replaced with the following Section

2.17:

2.17. "Electronically Exchanged Communication" shall mean an electronically conveyed message and shall include email messages.

Section 2.35 shall be amended by adding the following sentence after the last sentence of the Section: The "Local Distribution Company" will be specified in the Transaction Confirmation.

### SECTION 3. PERFORMANCE OBLIGATION

The last sentence of Section 3.2 shall be deleted and replaced with the following:

The amount of such unfavorable difference shall be payable twenty (20) Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

### SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

Section 4.1 shall be amended by adding the following sentence after the last sentence of the Section:

Buyer will pay all transportation charges, taxes, fees, and assessments attributable to the gas and any other costs charged by the Local Distribution Company at or after the Delivery Point(s).

Section 4.3 shall be amended by adding the following sentence after the last sentence of the Section:

Buyer shall be responsible or liable for any costs including, but not limited to, imbalance, penalties, or cash-out charges which are the result of measurement corrections by the Local Distribution Company.

### SECTION 6. TAXES

The following sentence shall be added to Section 6 (TAXES):

*City of Tulsa* is exempt from federal excise and state sales taxes and such taxes shall not be included in the bid prices.

### SECTION 7. BILLING, PAYMENT, AND AUDIT

Section 7.1 shall be deleted in its entirety and replaced with the following Section 7.1 and subsection 7.1a:

7.1 Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. Buyer will pay all transportation charges, taxes, fees, and assessments attributable to the Gas and any other costs charged by the Local Distribution Company at or after the Delivery Point(s). If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available. Such price will not be inclusive of any transportation fees, riders, taxes or any other costs or charges incurred by Buyer for services of the Local Distribution Company.

#### **7.1a Economic Liability Conditions to Price:**

If Seller Incurs an economic liability by virtue of the need to acquire and/or sell Gas to balance deliveries in any particular month, an Economic Liability Fee per MMBtu shall be charged, in addition to the price as set out on the Transaction Confirmation, to all volumes. The fee shall be calculated as follows:

$$((VP \text{ multiplied by PPL}) \text{ plus } (VS \text{ multiplied by SPL})) \text{ divided by TV}$$

VP: Volume Purchased on days where purchase price exceeds the Inside FERC posting listed on the Transaction Confirmation for first of the month Index

PPL: Purchase Price Loss calculated as the Purchase Price less the Inside FERC posting listed on the Transaction Confirmation for first of the month Index

VS: Volume Sold on days where sales price is lower than the Inside FERC posting listed on the Transaction Confirmation for first of the month Index

SPL: Sales Price loss calculated as the Inside FERC posting listed on the Transaction Confirmation for first of the month Index less the Sales Price

TV: Total Volume impacted by the economic liability

The first sentence of Section 7.2 shall be deleted and replaced with the following:

Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or twenty (20) Days after receipt of the invoice by Buyer, provided that If the Payment Date is not a Business Day, payment is due on the next Business Day following that date.

The last sentence of Section 7.3 shall be deleted and replaced with the following:

Payment from the nonperforming party will be due twenty (20) Business Days after receipt of invoice.

Section 7,5 shall be deleted in its entirety and replaced with the following:

If the invoiced party fails to remit the full amount payable within twenty (20) Days of the due date, Seller may terminate the Base Contract and/or any effective Transaction Confirmation(s) with five (5) days written notice to Buyer.

## **SECTION 8. TITLE, WARRANTY, AND INDEMNITY**

The last sentence of Section 8,3 shall be deleted.

## **SECTION 9. NOTICES**

Section 9,4 shall be deleted in its entirety and replaced with the following:

The party receiving a Notice of change, pursuant to Section 9.3, that relates to payment instructions or other payment information shall not be obligated to implement such change until ten (10) Business Days after receipt of such Notice.

## **SECTION 10. FINANCIAL RESPONSIBILITY**

Section 10.1 Financial Responsibility shall be amended by adding the following sentences to the end of the paragraph. "Oklahoma Statutes 62 O.S. §310.1(A) and 11 O.S. §17-211(A) require that a municipality encumber the amount of the contracted expenditure (the "Encumbrance"). The City as Buyer represents that such encumbrance of funds will be made at the time this Contract is executed. The City shall return a copy of the Encumbrance to Seller along with a copy of the executed Contract. The parties acknowledge that the City may be prohibited by law from providing certain types of Adequate Assurance; accordingly, for purposes of this Section 10.1, the City shall not be required to provide forms of assurance that the City is prohibited by law from providing."

Section 10.3.1. "Early Termination Damages Apply" shall be amended by adding the following sentence to the end of the first paragraph:

Notwithstanding *any* provision to the contrary contained in this Contract, the Non-Defaulting Party shall not be required to pay the Defaulting Party.

The third sentence of Section 10.4 shall be deleted and replaced with the following:

The Net Settlement Amount as well as *any* setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the tenth (10<sup>th</sup>) Business Day following such Notice, which date shall not be earlier than the Early Termination Date.

## **SECTION 12. TERM**

The second sentence of Section 12 shall be deleted and replaced with the following:

The rights of either party pursuant to Section 7.6, Section 10, Section 13, and the obligations to make payment hereunder shall survive the termination of the Base Contract or any confirmed transaction.

## **SECTION 13. LIMITATIONS**

The third sentence of Section 13 shall be deleted and replaced with the following:



IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY EXCEPT AS MAY BE LIMITED BY OKLAHOMA LAW.

**SECTION 15. MISCELLANEOUS**

The first sentence of Section 15.4 shall be deleted and replaced with the following:

This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings, and representations, whether oral or written, relating to such transactions are superseded by this Contract and any effective transaction(s).

Section 15.5 shall be deleted in its entirety and replaced with the following:

This Contract is executed in and shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to its choice of law principles, which shall be the forum for any lawsuits arising under this Contract or incident thereto. The parties stipulate that venue is proper in a court of competent jurisdiction in Tulsa County, Oklahoma and each party waives any objection to such venue. City will not agree to binding arbitration of any disputes.

Add the following new Section 15.13:

15.13 Each party agrees and acknowledges that neither party is a "utility" as such term is used in the United States Bankruptcy Code (including 11 U.S.C. § 366) nor a provider of last resort, and each party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such party is a debtor.

...and other amendments the City of Tulsa may identify as necessary before entering into a contract with Seller.”

**The undersigned Respondent agrees to the inclusion of the above provisions, among others, in any contract with the City of Tulsa.**

Company Name: \_\_\_\_\_

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

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

Name Printed: \_\_\_\_\_

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

## Price Sheet Summary

The purpose of this form is to provide the City of Tulsa with the cost of natural gas supply and supply management services to meet the requirements of the facilities/LDC (Local Distribution Company) meter numbers listed in the Consumption Table (Appendix A) according to the following parameters:

- Volumes per Table Appendix A
- Delivery Period of May 1, 2018 through April 30, 2019
- Delivery Point(s): Oklahoma Natural Gas Company distribution system receipt point(s) for delivery to the facilities listed on Table Appendix A
- Contract Price shall be a price per MMBtu for the Delivery Period at the Delivery Point and shall include all costs and fees. The Swing shall be the only amendment or adjustment to the Contract Price and no other or additional cost shall be paid. The Swing shall be applied as set forth below.

### Contract Price Options

The City of Tulsa will select one option upon awarding the agreement and include that in the Transaction Confirmation. All pricing shall be based on market data as of February 15, 2018, at close of business. For options A and B, it will be assumed that the Contract Price will be subtracted from or added to the monthly index and NYMEX settlement unless otherwise noted.

#### Option A: Index Price Option

- Contract Price of \$\_\_\_\_\_ per MMBtu to be added to / subtracted from **(please circle one)** to the *Inside FERC 's Gas Market Report* monthly Index for ONEOK Gas Transportation LLC, Oklahoma
  
- First-of-month nomination changes over/under the volumes on Appendix A will be priced as follows:  
\_\_\_\_\_
  
- How/when is basis calculated for NYMEX risk management orders under this pricing option?  
\_\_\_\_\_

#### Option B: NYMEX-based Price Option (Fixed Basis)

- Contract Price of \$\_\_\_\_\_ per MMBtu to be added to / subtracted from **(please circle one)** to NYMEX monthly last day settlement
  
- First-of-month nomination changes over/under the volumes on Appendix A will be priced as follows:  
\_\_\_\_\_

#### Option C: Fixed Price Option

- Contract Price of \$\_\_\_\_\_ per MMBtu

- First-of-month nomination changes over/under the volumes on Appendix A will be priced as follows:

\_\_\_\_\_

Swing Pricing

In addition to the Contract Price there will also be a Swing Price awarded. The Swing is defined as the difference between the City of Tulsa's total nominated quantity for all meters and the total actual quantity used for all meters according to the LDC. This item is intended to assure the Seller of the City of Tulsa's commitment to nominate as accurately as possible and to allow the Seller some recovery of the cost for quantities outside of the Swing tolerance.

Example:

Nominated 100,000 MMBtu, Actually Used 110,000 MMBtu  
110,000 MMBtu – 100,000 MMBtu = 10,000 MMBtu  
10,000 MMBtu / 100,000 MMBtu \* 100 = 10% over nomination

- Swing Percentage Allowed at No Additional Cost:  
\_\_\_\_\_ % Under \_\_\_\_\_ % Over
- Resulting charge for usage outside of the Swing Percentage (this value is to be a dollar amount or an 'adder' to a defined index price, not a function of the NYMEX):  
\$\_\_\_\_\_ per MMBtu Under      \$\_\_\_\_\_ per MMBtu Over
- Index to which 'adder' is applied (include publication name; specific pipeline and location; and midpoint, high/low or other): \_\_\_\_\_
- Calculation of index (select one):
  - \_\_\_\_\_ Arithmetic average of entire month of daily indices
  - \_\_\_\_\_ Weighted average of daily index on date(s) of gas flow
  - \_\_\_\_\_ Other (please specify) \_\_\_\_\_

## Price Sheet Summary

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Supplier's Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

Name Printed \_\_\_\_\_

**Please provide a bid price for each of the following options that you will offer to the City of Tulsa. All prices are at the point of delivery into OGT (Oneok Gas Transmission).**

(ESTIMATED QUANTITIES FOR EVALUATION PURPOSES ONLY)

Item	Description	Estimate Annual QTY	Unit Cost	Extended Cost
1.	Nymex Basis + \$/dth	98,000 dth	\$	\$
2.	IF OGT Index + \$/dth	98,000 dth	\$	\$
3.	Fixed price/dth	98,000 dth	\$	\$

OPTIONAL RISK MANAGEMENT SERVICES                      \$ \_\_\_\_\_ PER HOUR

You will be able to obtain a copy of the Bid Summary on the City of Tulsa's Website at [www.cityoftulsapurchasing.org](http://www.cityoftulsapurchasing.org) shortly after bid opening.

**RETURN THIS ENTIRE BID PACKET**

**APPENDIX A  
PREVIOUS CONSUMPTION**

LOCATION	12/1/16	1/1/17	2/1/17	3/1/17	4/1/17	5/1/17	6/1/17	7/1/17	8/1/17	9/1/17	10/1/17	11/1/17
TULSA ANIMAL SHELTER II	864	628	463	124	37	26	26	22	23	23	48	87
TULSA PUBLIC WORKS	3,490	3,435	3,087	2,963	2,807	2,271	1,404	1,572	1,470	1,584	2,450	3,233
TULSA NORTH SIDE SEWAGE	2,042	2,000	1,543	1,370	1,168	1,084	850	740	685	729	1,011	1,235
TULSA PUBLIC WORKS PRYOR	70	73	63	51	30	13	0	1	0	1	26	70
TULSA MOHAWK	822	1,042	592	204	167	88	4	3	4	3	86	309
TULSA BYRD CREEK	33	31	9	6	2	1	2	2	4	4	11	31
TULSA A B JEWEL WATER	1,510	1,567	1,051	706	283	213	60	14	13	147	324	917
TULSA CANYON LAKE PUMP STATION	43	39	21	16	8	4	2	3	4	15	21	21
TULSA WATER POLLUTION	195	189	20	12	6	1	1	0	0	1	36	254
TULSA STORM WATER MGMT	633	658	257	141	38	14	3	3	1	3	76	205
TULSA MOHAWK BLVD	245	226	143	104	39	10	7	12	9	9	32	85
TULSA WASTEWATER TREATMENT PLANT	1,059	1,088	867	720	15	0	0	0	0	0	5	19
TULSA FIRE STATION #18	64	50	22	13	6	8	8	7	7	7	8	13
TULSA POLICE ACADEMY	460	402	189	128	52	14	4	4	3	6	34	104
TULSA EQUIPMENT MGMT	304	238	131	104	40	9	2	1	0	1	38	110
TULSA MAINTENANCE / BODY SHOP	383	351	244	128	56	30	2	2	1	9	73	183
TULSA PUBLIC WORKS	674	600	436	376	212	259	254	186	205	273	290	396
TULSA WATER SUPPLY STATION	451	466	306	220	132	40	4	2	2	2	91	249
TULSA STREET MAINT. DEPT	459	480	257	217	99	29	3	3	4	4	75	135
TULSA REED PARK	191	159	76	43	9	6	2	4	2	4	8	52
TULSA WOODWARD PARK GREENHOUSE	121	111	71	70	51	32	21	13	1	1	63	99
TULSA CNG	417	537	348	412	527	446	507	486	555	508	454	423
* TULSA	176	171	115	97	96	114	4	2	2	2	12	85
TULSA CNG	32	68	88	70	92	76	105	82	75	66	66	61
* TULSA	114	106	54	28	18	12	13	8	11	14	21	31
* TULSA	136	135	135	135	199	146	119	100	157	165	237	147
TULSA LACY	236	223	93	62	23	4	3	1	1	1	3	72
TULSA POLICE DEPT	168	155	70	41	12	5	3	4	3	4	8	37
TULSA PUBLIC WORKS	160	168	94	63	35	17	2	3	2	2	20	58
TULSA GREENWOOD CENTER	168	169	84	54	32	18	10	8	8	8	17	54
TULSA PUBLIC WORKS	127	109	42	29	13	7	6	6	6	6	9	43
TULSA EM	168	163	107	84	32	7	2	2	3	2	9	45
TULSA FS TRAINING	240	215	103	69	32	16	15	10	10	8	34	76
TULSA POLICE DEPT	198	200	71	67	14	9	1	1	1	1	12	40
* TULSA	210	217	116	93	37	16	2	1	2	2	41	102
TULSA PUBLIC WORKS	195	196	120	86	37	17	8	8	9	8	41	77
TULSA PUBLIC WORKS GEN	0	0	0	0	0	0	0	0	0	0	0	0
TULSA POLICE DEPT	223	186	93	59	21	19	5	6	7	6	22	63
TULSA FIRE STATION #4	104	108	53	38	17	15	12	11	11	11	10	31
TULSA FIRE STATION # 27	125	89	45	36	16	13	9	11	8	8	16	48
TULSA TRAFFIC OPERATION #2	105	101	49	54	30	7	0	0	0	1	19	46
TULSA FIRE DEPT	398	404	239	164	53	23	7	8	7	6	11	21
TULSA CNG	0	0	0	0	0	0	55	50	140	210	220	208
<b>TOTAL</b>	<b>17,813</b>	<b>17,553</b>	<b>11,967</b>	<b>9,477</b>	<b>6,595</b>	<b>5,139</b>	<b>3,547</b>	<b>3,402</b>	<b>3,456</b>	<b>3,867</b>	<b>6,088</b>	<b>9,575</b>

AVERAGE 12 MO : 8,206.58  
TOTAL 12 MO : 98,479.00

## Q&A

1. What start date should be used? In the Technical Specifications section, bullet G. Term, it states “as soon as possible”. Since the bids will be opened on Thursday, March 1st, the first available date to start service with a new supplier would be May 1, per ONG’s requirement of 30 days notice prior to the start date with a new supplier. (Just want to ensure we are working on the proper timeline.)

**Response: The City cannot start service until after the Mayor approves the contract. The date the mayor signs the contract will begin the term. However, we understand that delivery may actually begin more than 30 days after that date.**

2. Although Appendix A provides usage history for each individual meter, will the ONG account numbers be made available? Since Constellation is a previous supplier of the City, many of these accounts are already on record. I would simply like to ensure our ONG account numbers are updated and accurate.

**Response: ONG account numbers may be made available after the contract is awarded.**

3. Are public records available for the current natural gas contract? If so, what is the process for obtaining access to these documents?

**Response: Yes, public records are available. To obtain these documents you may submit an Open Records Request.**

4. Technical Specification – V
  - a. D- Volume
    - i. How will meter additions be handled during the term of the contract with respect to price for the new volumes? Will the supplier price those at the then current price in the market?

**Response: It is our expectation that the commodity for delivery to additional meters will be priced the same as all the existing meters on third party supply at the time the additional meters are added to the contract.**

- ii. Would the pricing for any extension be mutually agreed to by both parties?

**Response: Pricing for any renewal terms would be governed by the prices stated in this RFP.**

5. Special Provisions 7.1a
  - a. Could you provide an example of how this Economic Liability would work? There is not definition of “economic liability” in the document.

**Response: We have no information available on this question.**

- b. How is this different from an incremental or buyback price for volumes outside a swing tolerance?

**Response: We have no information available on this question.**

6. Section V, Part D: How many meters are potentially eligible for transport service in the future?

**Response: This depends on potential changes to volume usage and Tariff changes that might be adopted by the Corporation Commission, so we have no way to estimate the number of meters that are potentially eligible for transport service in the future.**

7. General Contract Terms, Page 13: Are the renewals subject to bilateral and subject to price refreshed or unilateral at current rates?

**Response: If you anticipate the need to increase your prices at annual renewal times you must include that in your response. Please be aware that any increase noted is considered in the overall evaluation and is not automatic or guaranteed.**

8. Pricing Page, Swing: Does the county prefer a specific swing bandwidth or will all be considered equally?

**Response: This RFP is for the City of Tulsa. The County handled their own purchasing process.**

9. Appendix A:

- Is the most recent calendar year consumption also available?

**Response: The City's usage should be available from either or both ONG and/or Clearwater.**

- The final line item, Tulsa CNG shows no usage and ramp up between Dec 2016 and 9/1/2017- is ~200 dth the steady state of the CNG account, or has there been additional ramp up in the previous year?

**Response: The City opened a new CNG fueling station at the bus depot at 36<sup>th</sup> and Memorial. This may account for the increase in usage.**