

Document A

GAS TRANSPORTATION COMMITMENT COMMERCIAL SERVICE AGREEMENT

This GAS TRANSPORTATION AGREEMENT (“Agreement”) is entered into by and between the CITY OF DULUTH, a municipal corporation, acting by and through the Department of Public Works and Utilities, hereinafter referred to as the "Utility", and ME GLOBAL INC., a Delaware Corporation, hereinafter called the "Customer".

WITNESSETH

WHEREAS, Utility is a provider of Gas to serve its customers in the city of Duluth which it conveys to such customers by means of Gas mains and services owned by it; and

WHEREAS, Customer is an industrial consumer of Gas in the City, consuming Gas in the performance of their operations; and

WHEREAS, Customer wishes to itself purchase Gas directly from one or more Pipelines to meet its needs and is willing to pay Utility to transport such Gas from the City’s Town Border Station to Customer’s Property where such Gas will be consumed by Customer; and

WHEREAS, Utility is willing to provide facilities for such transportation to Customer under the terms and conditions of the Agreement and Customer is willing to agree to be bound by such terms and conditions

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS**

The following terms shall have the meanings hereinafter ascribed to them for the purposes of this Agreement:

- A. Business Day: shall mean Monday through Friday of any week but excluding New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Independence Day, Juneteenth, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.
- B. Critical Day: shall mean any Day determined to be a "Critical Day" by any company owning and operating a Pipeline which transports Gas to the Utility System and announced by said company to be a "Critical Day" at any time on the day of or in advance of the subject Day.
- C. Customer: shall mean Customer and agent or entity used by Customer to purchase or secure Gas for transportation pursuant to this Agreement or any other person or entity used by Customer to implement the terms and conditions of this Agreement.
- D. Customer's System: shall mean the system of piping, valves, and equipment used to distribute Gas from the Delivery Point to and throughout Customer's Property and any and all equipment to which such Gas is delivered, used or consumed.
- E. Daily Balance shall mean the amount of Deficit Gas consumed by Customer during any Day.
- F. Daily Balancing Payment: shall mean that portion of the Balancing Payment between the Parties representing the aggregate of the amount of the Daily Balances, computed as provided for in Subparagraph B of Paragraph 6 below, for any month.
- G. Day: shall mean any 24-hour period commencing at 9:00 O'clock A.M. and ending at 9:00 O'clock A.M. on the following day.
- H. Deficit Gas: shall mean the amount of Gas delivered to the Delivery Point in any Day which exceeds the amount of Gas Nominated by Customer for delivery on that Day.
- I. Delivery Month: shall mean the particular calendar month with regard to which Customer delivers to Utility a Nomination for the delivery of Gas purchased by Customer to a specified

Pipeline, causes the delivery of said Gas so nominated to said Pipeline and takes delivery of Gas from the Utility System.

- J. Delivery Point: shall mean that point within Customer's Property where Gas has flowed through the Utility System and through Utility's Meter and has entered into Customer's System for distribution, use and consumption on and in Customer's Property.
- K. DDVC Charges: shall mean any Daily Delivery Variance Charges applied by Pipeline and announced by said Pipeline to be a System Overrun Limitation, System Underrun Limitation, and/or Critical Day.
- L. Director: shall mean the Director of the Department of Public Works and Utilities or his or her designee.
- M. Excess Gas: shall mean the amount of Gas delivered to the Delivery Point in any Day which is less than the amount of Gas Nominated by Customer for delivery on that Day.
- N. Gas: shall mean natural gas.
- O. Fixed Monthly Charge: shall mean a payment from the Customer to the Utility representing a charge based on the Customer's rate class plus applicable taxes.
- P. MMBtu: shall mean metric million British thermal unit.
- Q. Meter: shall mean the metering device owned by Utility located at the Delivery Point and used to measure the volume of Gas delivered to Customer at the Delivery Point.
- R. Nominate shall mean the act by Customer of preparing a Nomination as provided for hereunder and of delivering said Nomination to Utility.
- S. Nomination: shall mean a commitment by Customer to purchase Gas on the open market for Gas and to have a specific quantity of such Gas delivered to Utility at the Pipeline specified by Utility on any specified Day for delivery to Customer at the Property.

- T. Pipeline: shall mean a pipeline entity transporting Gas from suppliers and delivering such Gas to a Town Border Station.
- U. Property: shall mean the property of Customer located at 200 East Carterett Street, Duluth, Minnesota, 55808 to which the Utility will transport Customer's Gas pursuant to this Agreement and upon which such Gas will be consumed.
- V. SCADA: shall mean the Utility's System Control and Data Acquisition system for remotely recording and reporting to the Utility data pertaining to the delivery of Gas to the Property.
- W. System Overrun Limitation: shall mean a notification given by the Pipeline to Utility that either existing or anticipated conditions necessitate that consumers not exceed their scheduled Nomination.
- X. System Underrun Limitation: shall mean a notification given by the Pipeline to Utility that either existing or anticipated conditions necessitate that consumers not take less than their scheduled Nomination.
- Y. Town Border Station shall mean the location where Gas is delivered by a Pipeline to the Utility's Utility System.
- Z. Utility System: shall mean the system of mains, services, valves, controls, other piping and other equipment used by the Utility to provide Gas services to Customers and other customers throughout the City.

2. NOMINATION

A. Pipeline Designation

Not less than Thirty (30) days prior to the commencement of any Delivery Month, Utility shall provide Notice to Customer of the identity of the Pipeline that Customer should cause deliveries of Gas to be made during such Delivery Month.

B. Monthly Nominations

No less than Five (5) Business Days prior to the commencement of any Delivery Month, Customer shall deliver to Utility in writing Nominations, in the form of that attached hereto as Exhibit A or in another form approved in writing by the Director, setting forth the volume of Gas to be delivered by Customer to the Utility System on each day of the Delivery Month and shall identify the source of supply from which such Gas was purchased.

C. Daily Nomination Adjustments

Customer may modify its Nomination pertaining to any identified day by providing Notice to Utility prior to 6:00 A.M. on the Business Day most immediately preceding such identified day, setting forth the volume of Gas to be delivered by Customer to the Utility System on such identified day.

3. **TRANSPORTATION**

In consideration of the payment of the fees as hereinafter provided for, Utility hereby agrees to accept delivery of daily volume of Gas Nominated by Customer and delivered to the Pipeline designated by Utility pursuant to Paragraph 2 A. above and to transport said Gas through its Utility System to Customer's Delivery Point up to an amount of not to exceed Two Thousand Seventy-Five (2,075) MMBtus per day subject to the terms and conditions of this Agreement.

4. **GAS DELIVERY, PROPERTY FACILITIES & EQUIPMENT**

A. Generally

Utility shall own, control and maintain all pipe, valves, shut-offs, Gas meters and other equipment required or used for supplying Gas service from Utility's mains up to and through the Gas meter used to measure and record the volume of Gas supplied to the Property.

Customer shall own, control and maintain all pipe, valves, equipment and other devices of any kind connected to Customer's Gas supply facilities and Utility shall have no rights or

responsibilities therefore; provided that Utility shall have the right but not the obligation to require that Customer repair, replace or disconnect from Customer's System any equipment or facilities that in the opinion of the Director constitutes a violation of applicable codes or are otherwise unsafe and to interrupt service to Customer if in the exercise of the Director's discretion, safety considerations require such interruption.

B. Delivery

Subject to the provisions of Paragraph 9 below, Utility shall deliver to Customer at the Delivery Point such quantity of Gas as Customer's operations on the Property shall require provided that Utility shall not in any case have any obligation to deliver to Customer a quantity of Gas which exceeds the amount of Gas Nominated by Customer with regard to that Day or which exceeds the volume of Gas which Customer has caused to be delivered to the appropriate Pipeline on that Day.

C. Meter Protection; SCADA

Customer shall be responsible for protection of the Utility's Gas meter or meters located on the Property including SCADA equipment related thereto and in the event that any such meter is damaged or destroyed by any cause whatsoever, Customer shall promptly notify Utility of such damage or destruction and shall reimburse Utility for the cost of repairing or replacing any such meter.

D. Access

Customer shall give Utility and its agents full and complete access to those portions of the Property upon which the facilities described in this Section are located for the purpose of maintaining, repairing or replacing such facilities. In the event that the Director shall determine in the exercise of his or her discretion that the Utility needs such access and such access is denied by Customer, Utility may interrupt Gas service to the Property until such access is

provided. In addition, Customer shall be responsible for providing and maintaining a 120-volt, 15-amp electrical service to provide electrical power to the SCADA system connected to Customer's meter or meters and shall pay all costs of providing power to said system.

5. **TRANSPORTATION FEE; BALANCING PAYMENTS**

A. Generally

Commencing July 1, 2023 and continuing through June 30, 2024, Customer shall pay to Utility a fee equal to \$0.8391 per MMBtu. Beginning on July 1, 2024, and on each subsequent July 1st (the Anniversary Date) for each year thereafter through June 30, 2028, Customer shall pay Utility a fee equal to the sum of \$0.8391 per MMBtu plus an annual three percent (3%) increase. The parties agree to adjust the Utility fee at the beginning of year six in the following manner: For year six which begins on July 1, 2028, the Utility fee paid by Customer will continue to be per MMBtu and established based on a forty-five percent (45%) discount on Utility's operating costs. Beginning on July 1, 2029 and on each subsequent Anniversary Date for each year thereafter through June 30, 2033, Customer shall pay the Utility fee established for year six plus an annual three percent (3%) increase. In addition to the fees set forth in this Subparagraph, Customer shall pay Balancing Payments and a Fixed Monthly Charge.

B. Time for Payment

Utility will invoice Customer for all transportation charges on or after the Tenth (10th) day of the month following the month during which the Gas to which such charges pertain was transported by Utility. Utility will provide notice of the amount of Balancing Payments owed on or after the Tenth (10th) day of the month following the month during which the Gas which is the subject of such Balancing Payments was delivered by Customer to the Pipeline. All such charges shall be due and payable within Ten (10) days of their being invoiced to the paying party.

C. Excess Gas

Any Excess Gas nominated by Customer and delivered to a Town Border Station but not delivered to Customer's Delivery Point for any reason other than Utility's default of its obligations hereunder shall be deemed to have been transferred to Utility at no cost to Utility, Utility shall have the right to sell, deliver or otherwise dispose of such Excess Gas and Customer waives all rights to such Excess Gas and any compensation with regard thereto.

6. **REPORTING; BALANCING**

A. Reporting

In the ordinary course of its transactions with the Pipelines, Pipelines will supply to Utility an accounting of the volume of Gas which Customer had delivered to Utility's System on each Day of said Month. Utility shall be entitled to rely on said accounting in determining the amount of the Balancing Payments owed by the customer pursuant to this Paragraph.

B. Daily Balancing Payments

Upon receipt of the accounting described in Subparagraph A above, Utility shall compare the volume of Gas nominated by Customer on each Day of said month with the actual volume of Gas delivered to Customer's Property on said Day and shall determine if a portion of said Gas constituted Deficit Gas. In the event that the volume of Gas delivered to Customer on any Day constitutes Deficit Gas, Customer shall owe Utility an amount equal to the total amount of Deficit Gas, as priced by the City of Duluth's published PGA adjusted_Rate 30 Firm. Further provided that in the event that Deficit Gas is delivered to Customer on a Critical Day or the Day of a System Overrun Limitation, Customer shall also pay Utility an amount equal to that portion of the DDVC Pipeline charges that the City of Duluth incurs that is proportionally attributable to Customer. Further provided that in the event that Excess Gas is delivered to Customer on a Critical Day or the Day of a System Underrun Limitation, Customer shall also

pay Utility an amount equal to that portion of the DDVC Pipeline charges that the City of Duluth incurs that is proportionally attributable to Customer.

C. Fixed Monthly Charge

In addition to the Daily Balancing Payments, upon receipt of the accounting described in Subparagraph A above, Customer shall pay a Fixed Monthly Charge.

7. TERM

- A. This Agreement replaces and supersedes City Agreement No. 24111 which is hereby terminated as of midnight on June 30, 2023. The Term of this Agreement shall commence on July 1, 2023 and continue through June 30, 2033, unless sooner terminated as hereinafter provided for. Either Party may renew this agreement for one additional ten-year term (Renewal Term) on substantially the same terms as set forth herein subject to the Parties' mutual agreement by either Party providing the other Party with written notice of its intent to renew at least thirty-six (36) months prior to the end of the Term. The other Party shall have thirty (30) days from receipt of the renewing Party's notice to accept the renewal or request in writing to renegotiate the provisions of this Agreement pursuant to Section 7C hereof. Failure to so request renegotiation within thirty (30) days shall operate as an acceptance of the renewal. Renewal occurring by notice and acceptance pursuant to this Section 7A will be at rates increased in the following manner: For year one of the Renewal Term which begins on July 1, 2033, Customer will receive a forty-five percent (45%) discount on the Utility's operating costs per MMBtu. Beginning on July 1, 2034 and on each subsequent Anniversary Date for each year thereafter through June 30, 2038, Customer shall pay Utility the fee established for year one of the Renewal Term plus an annual three percent (3%) increase. Beginning on July 1, 2038, the Utility fee paid by Customer will be established per MMBtu based on a forty-five percent (45%) discount on Utility's operating costs. Beginning on July 1, 2039 and on each

subsequent Anniversary Date for each year thereafter through June 30, 2043, Customer shall pay the Utility fee established for year six of the Renewal Term plus an annual three percent (3%) increase. Before establishing the renewal rate, Utility will provide to Customer for their review documentation detailing Utility's operating costs. In addition to the fees set forth in this Subparagraph, Customer shall pay Balancing Payments and a Fixed Monthly Charge.

- B. Notwithstanding the above and anything herein to the contrary, Utility may terminate this Agreement for any of the following reasons, upon written notice given by the Utility to Customer at least one hundred eighty (180) days prior to the effective date of the termination:
1. Utility ceases operation of the Gas Utility System;
 2. Utility sells, leases or transfers operation or management of the Gas Utility System to another entity; or
- C. Utility and Customer acknowledge that the terms hereof have been mutually negotiated in good faith and to the best of their knowledge and ability to fairly and equitably: (i) enable Customer to realize gross gas pricing efficiencies from its volume purchases directly from a Pipeline; and (ii) compensate Utility for the use and maintenance of its infrastructure and systems, its costs in performing the administrative, accounting and billing tasks required of it hereunder and its exposure to Deficit Gas. If either party upon receiving notice of the other's intent to renew pursuant to Section 7A determines in its sole reasonable discretion that the continuation of the business terms expressed herein would fail to fairly and equitably serve those purposes, whether due to a mistake of fact or changed circumstances or any other reason whatsoever, it may respond within thirty (30) days to the renewal notice in writing by declining renewal and requesting renegotiation of terms it views as necessary the make continuation of this Agreement mutually fair and equitable. Following such notice, the parties shall negotiate in good faith toward an amendment of this Agreement to be effective not later than the

commencement of the Renewal Term. Absent a mutually agreed and fully executed written amendment, this Agreement shall terminate at the end of the Term.

- D. Notwithstanding any provision herein to the contrary, either party may at any time during the Term or Renewal Term request in writing renegotiation of this Agreement on the same basis as would support its declining the other's notice of renewal. In the event of such request, the parties shall negotiate in good faith toward amendment of this Agreement to be effective not later than the date of an executed written amendment, and in the absence of such amendment, the Term or Renewal Term shall terminate on the third anniversary of the renegotiation request.

8. **CODE CHAPTER 48 APPLICABLE**

The provision of Gas to the Property shall be generally subject to the terms and conditions of Chapter 48 of the Duluth City Code, 1959, as amended.

9. **SERVICE INTERRUPTION**

Nothing to the contrary otherwise contained herein, Utility shall have the right to temporarily reduce or interrupt Gas service to Customer when in the exercise of his or her discretion the Director determines it is reasonable or prudent to do so in the event that Utility's supply of Gas otherwise available to serve Customer has been reduced or has ceased to be available for any cause whatsoever, or when the Director, in the exercise of his or her reasonable discretion, determines that it is necessary for the health, safety or welfare of persons in the vicinity of the Property or of the general public. Customer agrees that Utility shall have no liability of any kind for any injury or damages of any kind whatsoever arising in any way out of such reduction or interruption of Gas services to Customer including but not limited to consequential damages or punitive damages and Customer specifically waives any and all causes of action against Utility and the City of Duluth in general for any such damages. Utility hereby agrees to restore

Gas service to Customer as provided for herein as soon as the Director determines in the exercise of his or her discretion that such services can be reasonably and prudently restored.

10. **DEFAULT AND TERMINATION**

A. General Default:

In the event that the Director shall determine in the exercise of his or her reasoned discretion, that Customer is in default of any of its obligations under this Agreement, Director may cause Notice to be sent to Customer notifying Customer of said default and requiring correction or rectification of said default within Ten (10) Days of the sending of such notice or, if the nature of such default is not subject correction or rectification within said Ten (10) day period, requiring that such correction or rectification be commenced immediately and that correction or rectification be completed as expeditiously as possible. If Customer shall fail to so correct or rectify such default within the aforesaid time frames, Director may terminate this Agreement and terminate the supply of Gas to Customer.

B. Special Default

In the event that the Director shall determine in the exercise of his or her reasoned discretion, that Customer is in default of any of its obligations under this Agreement and determines that such condition of default constitutes a danger of resulting in death or injury to persons or substantial damage to property, the Director may immediately terminate this Agreement and terminate the supply of Gas to Customer's Property; provided that the Director shall cause notice to be sent to Customer as expeditiously as is reasonably possible under the circumstances.

11. **OBEY ALL LAWS**

Customer agrees that it will obey all laws, ordinances, rules and regulations promulgated by any authority having the legal authority to do so which are applicable to Customer's business and operations.

12. **NOTICES**

Except as provided for in Subparagraph C of Paragraph 2 above, all notices to be given pursuant to this Agreement shall be deemed to have been given by depositing the same in the U.S. Mail, postage pre-paid addressed to the other party as follows or by transmitting said notice by e-mail addressed to the other party at all e-mail addresses set forth below, provided that a contemporaneous written copy of any such notice shall be retained by the transmitting party:

In the Case of Utility:

City of Duluth
Director of Public Works & Utilities
411 West First Street
Room 211B, City Hall
Duluth, MN 55802
pupton@duluthmn.gov & clustig@duluthmn.gov

In the Case of Customer:

Justin Meller
Duluth Plant Manger
ME Global Inc.
200 Carterett St.
Duluth, MN 55808
jmeller@meglobal.com

13. **APPLICABLE LAW**

This Agreement, together with all of its terms, covenants and conditions is made in the State of Minnesota and shall be interpreted in accordance with the laws of the state of Minnesota.

14. **FORCE MAJEURE**

Neither Party shall be responsible for any failure to comply with the terms of this Agreement where such failure is due to force majeure, which shall include, without limitation, fires, floods, explosions, strikes, labor disputes, labor shortages, picketing, lockouts, transportation embargoes, curtailment of transportation, strikes or labor disputes affecting supplies, acts of God, civil riot or insurrection, acts of any government or agency thereof and judicial action.

15. **MERGER/ENTIRE AGREEMENT**

This Agreement constitutes the final expression of the Parties' agreement, and the complete and exclusive statement of terms agreed upon. This Agreement supersedes all written understandings, agreements or representations not specified herein. Furthermore, no waiver, consent, modification, or change of terms of the Agreement shall bind either party unless in writing and signed by both Parties.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the respective parties hereto have caused this agreement to be duly executed and signed the _____ day of _____, 2023.

CITY OF DULUTH

ME GLOBAL INC. a Delaware Corporation

Mayor

By: _____

ATTEST:

City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

City of Duluth, Public Works & Utilities Department, Gas Division

NOMINATION REQUEST FORM

Date:

To: Gas Operations
Public Works & Utilities Department
520 Garfield Avenue
Duluth, MN 55802

Email: clustig@duluthmn.gov
pupton@duluthmn.gov
Phone: (218) 730-4006
(218) 730-4002

Attn: Gas Operations

- Select One: First of the Month Nomination
(Email 5 working Days prior To End of Preceding Month)
- Mid-Month Nomination Change
(Email 27 Hours Prior To Gas Day)

To Customer: Please provide complete information as requested below so we may arrange your gas deliveries in a timely and accurate manner. If you need assistance completing this, please contact Gas Operations. Thank you for your business.

Customer Name: ME Global

Month of Flow:

Facility Name/Location: City of Duluth

Plant Contact:

Phone Number:

Fax Number:

Total Volumes to be delivered for the month:

| | | | | | | |
|---------|----------|----------|----------|----------|----------|----------|
| 1 _____ | 6 _____ | 11 _____ | 16 _____ | 21 _____ | 26 _____ | |
| 2 _____ | 7 _____ | 12 _____ | 17 _____ | 22 _____ | 27 _____ | |
| 3 _____ | 8 _____ | 13 _____ | 18 _____ | 23 _____ | 28 _____ | |
| 4 _____ | 9 _____ | 14 _____ | 19 _____ | 24 _____ | 29 _____ | |
| 5 _____ | 10 _____ | 15 _____ | 20 _____ | 25 _____ | 30 _____ | 31 _____ |

Unit of Measure: MMBtu

The volumes listed above are to be delivered to POI 3059, Zone E-F, City of Duluth

Additional Comments: